

Right to Self Submission to Western Inheritance Law for the Heirs Of Islamic Religion Whom the Property Leaver Has Different Religion

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RIGHT TO SELF SUBMISSION TO WESTERN INHERITANCE LAW FOR THE HEIRS OF ISLAMIC RELIGION WHOM THE PROPERTY LEAVER HAS DIFFERENT RELIGION

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ABSTRACT

Objective: The objectives of this research are to analyze the Moslem heirs to submit themselves to Western Inheritance Law whom the property leaver has a different religion and the authority of the Notary to make a Deed of Statement to submit to Indonesian Civil Code. The benefits of this research are to give a contribution of academic and practical thoughts on the manner to analyze the issue of inheritance of different religions, especially on the rights for the Moslem heirs to submit themselves to Western Inheritance Law who the property leaver has a different religion and the authority of the Notary to make Deed of Statement to submit to Civil Code.

Method: This is normative legal research which has a prescriptive character, with the statute approach, conceptual approach, and comparative approach.

Results and Conclusion: The Moslem heirs have the opportunity of right to certify to submit himself to Civil Code in an Authentic Deed made by/ before the Notary because according to Judge-Made Law of Supreme Court of Number 172 K/Sip/1974 and the Redaction of the Results of Plenary Meeting of The Supreme Court of The Republic of Indonesia dated 3 to 5 May 2012 in the Circular of The Supreme Court Number 7 of 2012 that it is the law of the property leaver is applicable and in this matter the non-Moslem property leaver, in the case for the sake of legal certainty and legal protection, the Western Inheritance Law provides more guarantee because it is written rules, compared to unwritten customary inheritance law. The authority of the Notary to make a Deed of Statement to Submit to the Civil Code for the Moslem heirs is open because in principle a Notary is a public official (State representative) who is appointed by the State to meet the public need to legal certainty and law enforcement in a form of the authentic deed by holding firmly professionally to the Notary's Position Act.

Contribution: Given the growing development and advancement of people's thinking patterns and the increasing complexity of problems in the field of inheritance, especially the inheritance of different religions, the government, especially the legislature, should start making rules as a legal bridge in which it regulates how to solve problems regarding inheritance of different religions as a reference and guideline for settlement. dispute problem when two or more legal systems

Keywords: inheritance of difference religion, principle self submission, deed of statement.

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DIREITO À AUTOSUBMISSÃO À LEI DE HERANÇA OCIDENTAL PARA OS HERDEIROS DA RELIGIÃO ISLÂMICA, A QUEM O PROPRIETÁRIO ABANDONADO TEM UMA RELIGIÃO DIFERENTE

RESUMO

Objetivo: Os objetivos desta pesquisa são analisar os herdeiros muçulmanos para submeter-se à Lei de Herança Ocidental, a quem o faltante da propriedade tem uma religião diferente e a autoridade do Notário para fazer uma escritura de declaração para submeter ao Código Civil Indonésio. Os benefícios desta pesquisa são dar uma contribuição de pensamentos acadêmicos e práticos sobre a maneira de analisar a questão da herança de diferentes religiões, especialmente sobre os direitos dos herdeiros muçulmanos para se submeter à Lei de Herança Ocidental que o faltante da propriedade tem uma religião diferente e a autoridade do Notário para fazer o Ato de Declaração para submeter ao Código Civil.

Método: Trata-se de uma pesquisa jurídica normativa que tem um caráter prescritivo, com a abordagem estatutária, abordagem conceitual e abordagem comparativa.

Resultados e Conclusão: Os herdeiros muçulmanos têm a oportunidade de certificar-se a submeter-se ao Código Civil em um ato autêntico feito por / perante o Notário, porque de acordo com a Lei Juiz-Made do Supremo Tribunal de 172 K / Sip? 1974 e a Redação dos Resultados da Reunião Plenária do Supremo Tribunal da República da Indonésia datado de 3 a 5 maio de 2012 na Circular do Supremo Tribunal Número 7 de 2012 que é a lei do abandono de propriedade é aplicável e, neste caso, a propriedade não-muçulmana Deixar, no caso para o bem da segurança jurídica e da proteção jurídica, a Lei de Herança Ocidental fornece mais garantia porque é regras escritas, em comparação com a lei de herança consuetudinária não escrita. A autoridade do notário para fazer uma escritura de declaração para submeter ao Código Civil para os herdeiros muçulmanos está aberta porque, em princípio, um notário é um funcionário público (representante do Estado) que é nomeado pelo Estado para atender a necessidade pública de segurança jurídica e aplicação da lei em uma forma de ato autêntico, mantendo firmemente profissionalmente a Lei de Posição do Notário.

Contribuição: Dado o crescente desenvolvimento e avanço dos padrões de pensamento das pessoas e a crescente complexidade dos problemas no campo da herança, especialmente a herança de diferentes religiões, o governo, especialmente a legislatura, deve começar a fazer regras como uma ponte legal em que ele regula como resolver problemas relativos à herança de diferentes religiões como uma referência e orientação para a resolução.

Palavras-chave: herança da religião diferencial, submissão do princípio de si próprio, ato de declaração.

1 INTRODUCTION

The State of Indonesia is a constitutional state as stated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia in the third amendment that "Indonesia is a country of laws", when associated with Article 29 paragraph (1) of the 1945 Constitution, which states that "country based on the One God", then the legal state



referred to by the 1945 Constitution is a state that is not separate from “religion” (Azahary, 1992)Indonesia as a country that has a Pancasila state foundation is a middle way for the relationship between religion and the state while at the same time emphasizing that religious law is one of the sources of national law. (Thaba, 2002)

As a rule of law, Indonesia has a legal system that is pluralistic as a result of the diversity of its population which is clearly reflected in the diverse ethnicities, cultures, customs and religions as well as the effects of the results of the population classifications that have been carried out since the colonial era based on Article 131*he*. I.S. (*Indian Constitution*), *Official Gazette* 1917 Number 129,*Official Gazette* 1924 Number 557 concerning Submission to European law. Since multiple religious identities tend to reproduce political, social and economic inequalities, a rereading of the constitution is proposed from a multicultural perspective(GABATZ, 2020)(Katterbauer, et all, 2023) .With the diversity that exists and with the influence of the population classification, various legal systems are born, such as Islamic law, customary law and state law, one of which is the inheritance law system. The diversity of the inheritance law system is increasingly felt by the fact that the customary inheritance law that applies in society is not single in nature either, but varies according to the form of society and the family system of Indonesian people's life which stems from the system of drawing lineage both matrilineal, patrilineal and parental. or bilaterally.

As we know, there are three inheritance law systems that apply in Indonesian society, including: the Islamic inheritance law system, the Western inheritance law system and the customary inheritance law system.

The Islamic inheritance law system is intended for people who are Muslim and the main source of this Islamic inheritance law is the Al-Qur'an including QS.*an Women* (4): 11, 12, 33 and 176 are then elaborated in Articles 171 to 214 of the Compilation of Islamic Law (KHI). (Salihima, 2015)The Western inheritance law system is intended for people who submit themselves to Western civil law and are based on the Civil Code (Code of Civil Code). Meanwhile, the customary inheritance law system is used and enforced in certain customary law communities based on customary law.

With the enactment of these three inheritance law systems, it results in the settlement of inheritance disputes, where family members in dispute can choose one of the three legal systems.



At the level of positive law in Indonesia, the settlement of the division of inheritance is still valid until now dualism of judicial bodies, namely the District Court and the Religious Court. The Religious Courts in deciding inheritance cases are based on Islamic law regarding inheritance *or farid* and are also guided by Presidential Instruction No. 1 of 1991 concerning the Compilation of Islamic Law.(Susylawati, 2018) While the District Court in deciding inheritance cases based on the Civil Code and customary law.

Law Number 7 of 1989 concerning the Religious Courts recognizes the existence of a choice of law (hereinafter referred to as a legal option) in inheritance cases. In the General Explanation of the Law, it is stated that “*the parties before the litigation can consider choosing what law will be used in the distribution of inheritance*”. This legal option gives consequences to which court will adjudicate an inheritance matter, if the parties agree to choose the District Court to resolve their inheritance matter then the settlement will use customary law or the Civil Code (Civil Code) otherwise if the parties choose to submit their inheritance case to the Religious Court then the solution will be using Islamic inheritance law.

However, after running for 16 (sixteen) years since the promulgation of this Law with the many developments that have occurred in society, both directly and indirectly in influencing the application of Islamic law in Indonesia, this legal option was removed by Law Number 3 of 2006 regarding Amendments to Law Number 7 of 1989 concerning Religious Courts. With the abolition of this legal option, it can be interpreted that if the parties submitting inheritance cases are Muslim parties, it will automatically become the authority of the Religious Courts and District Courts to no longer have the authority to accept and adjudicate inheritance cases between people who are Muslim.

Problems then arise when its application in society differs from that stipulated in the Law, namely when the three systems of inheritance law simultaneously meet and regulate problems or cases in the midst of the parties, in this case what is meant is problems and cases of inheritance of different religions. . Inheritance from different religions has the potential to cause problems, especially if there is injustice and dissatisfaction among the heirs in the division, while there is no positive legal certainty that bridges them in solving the inheritance problem, especially in the problem of religious differences between the heir and the heir.

This problem of inheritance from different religions has occurred a lot in Indonesia and there have been several decisions that deviate from the stipulated



provisions, such as the first example: Supreme Court Decision Number: 368 K/AG/1995, this decision was given for cases of married couples who have six children, five children are Muslim and one other child converted to Christianity. The result of the Decision is to give inheritance to children who are Christians through a mandatory will, where we know that the obligatory will in the Compilation of Islamic Law (KHI) is a provision that is regulated for adopted children and adoptive parents while for heirs of different religions it does not matter in the Compilation of Islamic Law (KHI). The second example is the Supreme Court Decision Number; 51 K/AG/1999, the results of the decision stated: *Heirs who are not Muslim can still inherit from the inheritance of Muslim heirs, inheritance is carried out using the Compulsory Wills Institution, where the share of children who are not Muslim gets the same share as the share of children who are Muslim as heirs*". The results of this decision deviate from the provisions of the Compilation of Islamic Law as the first example where the obligatory will is a provision for adopted children and adoptive parents not for heirs of different religions plus the amount specified in the decision is the same as the heirs who are Muslim and matters This deviates from the provisions of the obligatory will not exceeding 1/3 of the inheritance. The third example is Case Number: 4/Pdt.P/2013/PA.Bdg in Kuta, Badung which contains a Decision by the Supreme Court of the Republic of Indonesia on the settlement of problems regarding heirs and heirs of different religions where the deceased husband is Muslim and the deceased wife is Hindu. with four children (one daughter is Hindu and three sons with two among them Muslim and the other Hindu) as heirs, this matter was submitted to the Religious Court where if it was based on the Religious Courts Law, the authority of the Religious Courts in handling this case was not strictly regulated, not to mention the customary law in the Badung area which also participated affecting the inheritance distribution system, as a result the results of decisions from the Religious Courts do not necessarily fulfill the aspects of certainty, justice and expediency which are legal ideas from Indonesia as a constitutional state that cannot be ignored. Seeing one case among many cases of inheritance from different religions proves that there are still many problems in inheritance law where until now there has been no national inheritance law used as a reference in solving this inheritance problem.

Three examples of cases among the many cases of inheritance of different religions in Indonesia prove that the practice of resolving disputes on the inheritance of different religions still deviates from the provisions of inheritance law and positive law



that should be and also prove that until now there has been no positive law that bridges them when the three legal systems these meet together and arrange in the same issue/inheritance case. So decisions are taken based solely on judges' considerations and juridically, decisions like this do not have standard references so it can be said that these decisions do not necessarily fulfill the aspects of certainty, justice and benefit which are legal ideas from Indonesia which should not be ignored.

In this study, the authors focus on the problems that arise if the heir is a non-Muslim with several heirs of different religions where the position of Muslim heirs is a minority among the group of heirs.

Departing from the problems above, the author then analyzes several things, namely on the one hand based on MA Jurisprudence No.172K/Sip/1974 that the law applied is based on the religion adhered to by the heir and the Formulation of the Results of the Plenary Meeting of the Religious Chamber of the Supreme Court of the Republic of Indonesia from 3 to 5 May 2012 that the religion of the heir determines the competent court, the heir who is Muslim, inheriting disputes becomes the authority of the judiciary religion, while other religious heirs to the general court. In the above problem, if the heir is non-Muslim, the distribution of inheritance is carried out according to custom or guided by the Civil Code, which in Chapter Twelfth concerning "*Inheritance Due to Death*" this does not apply to the Foreign East, other than the Chinese, and only applies to the Chinese, then on the other hand there is one of the Hadiths narrated by Bukhari and Muslim from Usamah Bin Zaid r.a. which mentions that "*The Prophet SAW said: Muslims do not receive inheritance from infidels and infidels do not receive inheritance from Muslims.*" (Hamidy, 1992) and also "*the principle of Islamic personality, namely the principle which states that transition can only occur if both the heir and the heir adhere to the Islamic religion.*" (Djakfar & Yahya, 1995) Coupled with the existence of the customary inheritance law system which is possible to affect the arrangement of inheritance in these problems because of religious differences between all of them. When this problem arises, if it is connected with the variety of inheritance law systems within it, heirs who are Muslim who have a position as a minority among the group of heirs can be threatened with being unable to inherit and claim their inheritance rights.

Related to the above, how can an heir who is Muslim claim his rights while the heir adheres to a different religion, so that the settlement of the inheritance dispute cannot be submitted to the Religious Court because it is in accordance with the



provisions of Supreme Court Jurisprudence above that the inheritance law that is applied in the distribution of inheritance is the inheritance law adopted by the heir and in this case the heir is a non-Muslim, plus the Religious Courts only have the authority to examine, decide and resolve cases between people who are Muslim according to Article 49 of Law Number 3 of 2006 concerning Religious Courts (First Amendment), stated emphatically that "*The Religious Courts have the duty and authority to examine, decide and resolve cases at the first level between people who are Muslim in the fields of: a. marriage; b. inheritance; c. will; d. grant; e. waqf; f. zakat; g. infaq; sadaqah; and i. Islamic economics.*"

The only way is to submit the case to the General Court, namely the District Court, but the first question that then develops is if this case is filed at the District Court then with what inheritance law system has legal certainty for Muslim heirs to be able to resolve problems in above in a fair manner the parties who become heirs of different beliefs with the heir coupled with family customs which are also possible to apply in it while the legal option rights regulated in the Elucidation of Law No. 7 of 1989 concerning Religious Courts have been removed by Law No. 3 of 2006.

The second question that then arises is whether the heirs who are Muslim can submit themselves to the Civil Inheritance Law which is guided by the Civil Code because even though the legal option rights mentioned above have been abolished, the freedom to choose a law has been explicitly limited, but what is of concern to the author is that Article 49 itself in the Law does not explicitly regulate the limitation or abolition of option rights in inheritance disputes but is only stated in the explanation of Article 49, plus Article 49 explicitly states the duties and powers of the Religious Courts are examine, decide and resolve cases at the first level between people who are Muslim not between people who are Muslim and people of other religions, thus implicitly changing the law still maintains the opportunity for option rights in resolving inheritance disputes faced, apart from In addition, the Law also does not provide a clear solution to solving problems in the field of inheritance for parties of different religions so that there is no legal certainty for those who are in dispute while submission is a principle known in Civil Law, this principle opportunity to be used in solving problems of inheritance from different religions, especially for non-Muslim heirs and Muslim heirs, is still open and to fulfill legal certainty it can be stated in the form of a statement that has the force of



law as a reference for the District Court to focus on one inheritance law system in its settlement.

Submission is related to the principle of the enforceability of a law or rule, so that a person who is not subject to a particular law can submit himself to the law desired by the person concerned or the will of the law itself. (Prodjodikoro, 1962) However, the principle of self-submission is essentially that Indonesians will still apply customary law, making it impossible for Indonesians to freely declare themselves subject to Western law, and vice versa. However, if there is a conflict between various legal regulations, it is possible for a person to submit himself to a certain law, this is a breakthrough from the principle of self-submission.(Prodjodikoro, 1962) It is hoped that with the application of this principle of submission it will be possible for Judges to resolve the problem of inheritance from different religions to be more easily focused on what one inheritance law system will be used and can fulfill the three legal ideas of a rule of law nation as the authors mentioned above.

Related to the statement of submission to Western Civil Law is regulated in *Indian Constitution (I.S.) Pasal 131 because. Official Gazette 1917 No. 12*, which states that Indigenous Indonesians and Foreigners of the East, simply that they have not complied with the regulations that apply to Europeans, can submit themselves to Indonesian Civil Code (*Burgerlijk Wetboek*) and the Criminal Code. (*Hukum Perdata*, n.d.)

In *Indian Constitution (I.S.) yo. Official Gazette 1917-12 articles 27 and 28* regulate how to submit oneself voluntarily, namely that it must be expressly stated in a letter, which contains a statement that one is willing to submit to the Civil Code. The statement is made in the form of an authentic deed or at least an endorsement (*authentication*) by a notary or other authorized official. (*Hukum Perdata*, n.d.)

Through a statement that must be made in the form of an authentic deed, the third question arises, namely what are the provisions of *Indian Constitution (I.S.) yo. Official Gazette 1917 No. 12* can be the basis for the authority of a notary to make a Deed of Compliance with the Civil Code based on statutory regulations. Because there are things that need attention, namely in Article 7 paragraph (1) of Law no. 10 of 2004 jo. UU no. 12 of 2011 concerning the Establishment of Legislation, *Indian Constitution (I.S.) me. Official Gazette 1917 No. 12* is not included in one of the legal products so that the provisions in it are not binding.



At the beginning the author has also explained that Indonesia is a constitutional state in which the administration of government is based on the law in force therein. This means that there is a problem of void norms (*gaps in standards*) because there are no clear rules in responding to the problem of submission to inheritance law in Indonesia which is pluralistic in nature and there are also no strict regulations regarding the legal basis for the authority of a notary in making a Declaration of Submission to the Civil Code and law enforcers in Indonesia should have thought about The solution to this problem is because in a legal system that is intact, complete and complete in a society where there is a plurality of laws, there must be Inter-Legal Law (HATAH) to regulate legal relations between people who are subject to different legal systems. Referring to the complex problems of inheritance from different religions and the inheritance system that is pluralistic in solving the problems described above, the author is interested in conducting a study of the problem, in particular, whether Muslim heirs have the right to submit to Western inheritance law which is guided by the Civil Code. and how is the authority of a notary in making a Declaration of Compliance with the Civil Code for heirs who are Muslim. Based on the description of the background of the problems that have been described above, the authors formulate the above problems into two problem formulations as follows: Do heirs who are Muslim have the right to submit to the Western Inheritance Law which is guided by the Civil Code (Civil Code)? Second: What is the authority of a notary in making a Declaration of Compliance with the Civil Code for heirs who are Muslim whose heirs are of different religions?

2 THEORETICAL FRAMEWORKS

2.1 LEGAL PLURALISM THEORY (LEGAL PLURALISM)

Pancasila "as the philosophy of the nation and the "1945 Constitution" as the foundation of the state provides basic directions for the Indonesian nation to tread today and tomorrow, about how law should be in the mindset of the archipelago which says that the entire archipelago is one unit and only there is one law that serves the national interest, and Indonesia's national legal system is formed and influenced by three legal systems, namely: the Western legal system, the Customary legal system and the Islamic legal system. (Petir MP, 2008)The three legal systems that apply in the same social arena, in this case what is meant is the arena of the Indonesian state which is still valid today and certainly influences changes in the Indonesian State Legal System, including in the field



of inheritance. A view of legal pluralism examines various laws in a social area how to simultaneously regulate a problem/case. Such a classic concept from one legal pluralist in the early days (1970s) Griffiths focused on the existence of more than one legal order in one social area, namely "By 'legal pluralism' I mean the presence in a social field of more than one legal order". In areas where there is legal pluralism, it can be said that on the one hand state law applies but on the other hand there are people's laws which in principle do not originate from the state such as customary law, religion and other social customs or conventions which assessed and seen as law.

According to John Griffiths Legal Pluralism is divided into 2 (two) types, namely: (Tommi, 2009) Pluralism Weak is a legal construction in which the more dominant legal rules provide implicit or explicit space for other types of law that exist within a community group, for example customary law or religious law. Then the state acknowledges and ratifies the other law and enter it in the state legal system. This weak legal pluralism is another form of legal centralism because even though it recognizes the existence of legal pluralism in a social area, it is still state law that is seen as superior, while other laws are unified in a hierarchy under state law. Whereas Strong Pluralism is a legal construction that refers to a situation in which two or more legal systems coexist within a group of people but each of these legal systems has a basis of legitimacy and validity. Although the view of Legal Pluralism is considered to be able to understand the reality of the pluralism and diversity of society globally, it does not mean that in its journey this understanding did not receive a number of criticisms, one of which was criticism from Rikardo Simarmata, who according to him an important weakness of legal pluralism is its neglect of the aspect of justice. (Rato, 2010)

2.2 THE PRINCIPLE OF SUBMISSION TO CIVIL LAW

Subdue Self is a principle known in civil law. The legal basis for implementing this principle is Indische Staatsregeling (I.S.) Article 131 jo. Staatsblad 1917 No. 12 which entered into force on October 1, 1917. (Prodjodikoro, 1962)

According to these regulations there are 3 (three) types of submission to Western Civil Law (B.W and W.v.K) for native Indonesians, including: *First*, subdue themselves to all Western Civil Law; *Second*, subdue themselves in certain parts of Western Civil Law; *Third*, submission to a certain legal act.⁸⁶

Principle of subdue self the fact is is a person Indonesia customary law will still



apply, making it impossible for Indonesians to freely declare themselves subject to Western law, and vice versa. However, if there is a conflict between various legal regulations, the possibility is opened someone to submit oneself to a certain law, this is a breakthrough from the principle of submission.

3 METHOD

This type of research uses normative legal research, which is also known as library research or document study, namely research conducted or aimed only at written regulations or other legal materials. (Soekanto & Mamudji, 2004)

The type of research that researchers use in this study is doctrinal legal research, namely research that provides a systematic explanation of the rules governing a particular legal category, analyzes the relationship between regulations explaining areas of difficulty and possibly predicts future development. (Marzuki, 2011) This research will analyze the right of Muslim heirs to submit to the Western Inheritance Law which is guided by the Civil Code (KUH Perdata), and the authority of a notary to make a Deed of Declaration of Compliance with the Civil Code for heirs who are Muslim. These problems will be analyzed against regulations that specifically regulate them.

The research studied by the author in this study is prescriptive research. As a prescriptive science, jurisprudence studies the purpose of law, the values of justice, the validity of legal rules, legal concepts and legal norms. (Marzuki, 2011) The research study by the author in this study is prescriptive research, which is intended to provide arguments for the results of research that has been carried out regarding the right of Muslim heirs to submit to Western inheritance law where the heirs are of different religions and the authority of a notary in making a deed of submission. in the Civil Code.

The approach used by the authors of the several approaches above is the statutory approach (*statute approach*), conceptual approach (*conceptual approach*) and comparative approach (*comparative approach*).

The research was conducted based on existing legal regulations. In this research, the author first departs from statutory provisions related to research, especially in the field of inheritance, a comparison of three inheritance law systems namely the Islamic inheritance law system, the Western inheritance law system and the customary inheritance law system applicable in Indonesia, the concept of subjection himself in



answering the problems faced and regarding the authority of a Notary in making a deed of submission to the Civil Code.

4 RESULTS AND DISCUSSION

4.1 THE RIGHT TO SUBMIT TO THE CIVIL CODE FOR MUSLIM HEIRS WHOSE HEIRS ARE OF DIFFERENT RELIGION

Civil Law in the opinion of H.F.A. Vollmar is defined as "Rules or norms that provide restrictions and therefore provide protection to individual interests in the right ratio between the interests of one with the other interests of people in a particular society, especially regarding family relations and traffic connection".

Civil Law in a narrow sense is civil law as contained in the Indonesian Civil Code (Indonesian Civil Law/ *Burgerlijk Wetboek*). Meanwhile, Civil Law in a broad sense is as stated in the Indonesian Civil Code (Indonesian Civil Code). Commercial Law Code (*Burgerlijk Wetboek*) along with a number of laws called other additional laws, for example: Law Number 5 of 1960 concerning the Basic Agrarian Law, Law Number: 23 of 2006 concerning Population Administration, Law Number: 40 of 2007 Regarding Limited Liability Companies, Law Number 1 of 1974 concerning Marriage, and others.

Inheritance law is part of family law which is closely related to the scope of human life because every human being must experience a legal event called death. (Suparman, 1995) Regarding inheritance law, various systems are still in force in Indonesia, namely; Islamic inheritance system, customary inheritance system, western inheritance system.

The existence of these various systems, as previously stated by the author, is due to the classification of the population according to the provisions of Article 131 I.S. jo 163 I.S. into three groups, among others: European group or equivalent; foreign Eastern group (Indonesian citizens of Chinese descent and their equivalents: Japan, Korea, Vietnam, and others; Indonesian citizens of Arab descent and their equivalents: India, Afghanistan, Africa, and others) and Indigenous/Bumiputera groups. The civil inheritance system contained in the Civil Code) under the provisions of Article 131 I.S. jo *Official Gazette* 1917 Number 12jo *Staatsblad*1924 Number 557 concerning Submission to European Law, it contains that the Civil Code (*Indonesian Civil Code*) applies to: (Suparman, 1995)

- a. Europeans and those who are equated with Europeans;
- b. Chinese Foreign Easterners (*Official Gazette* 1917 Number 129);



c. Other Foreigners and Indonesians who submit themselves to European Law. (Sharif, 2003)

Indonesian Civil Code (*Burgerlijk Wetboek*) does not apply in full/absolutely/absolutely to indigenous Indonesians, the civil law that applies to indigenous Indonesians is customary law, except by means of equal rights (*Official Gazette* 1883 Number 192) or by submitting (*Official Gazette* 1917 Number 12), where in Article 131 I.S. also stated that: “*Original and Foreign Indonesians, just because they have not complied with the regulations that apply to Europeans, can submit themselves to the Civil Code and the Criminal Code*”. In Mr.'s opinion C.J. Scholten van Oud Haarlem which states that: “*Voluntary submission will provide "great security" and "advantage" to Europeans, if they make agreements or agreements with people who are not part of the European group, by treating European law for the agreements they make, because European law is written law which will provide more legal certainty than customary law which is unwritten law*”. Here, the author examines that Western civil law provides more certainty and legal protection for legal subjects who use it, especially in the country of Indonesia which adheres to positive law compared to the customary law system whose form is not written.

According to Utrecht, legal certainty contains two meanings, namely: 1) the existence of general rules that make individuals aware of what actions may or may not be performed; and 2) in the form of legal security for individuals from the government's arbitrariness because with these general rules, individuals can know what the state may charge or do to individuals. (Syahrani, 1999)

Legal certainty can also be interpreted that someone will be able to obtain something that is expected in certain circumstances. Certainty is defined as clarity of norms so that they can be used as guidelines for the people who are subject to this regulation. The definition of certainty can be interpreted that there is clarity and firmness towards the enactment of law in society. This is not to cause many misinterpretations. Legal certainty, namely the existence of clear behavioral scenarios that are general in nature and binding on all citizens, including the legal consequences. Legal certainty can also mean things that can be determined by law in concrete matters. Legal certainty is a guarantee that the law is enforced, that those entitled according to law can obtain their rights and that decisions can be implemented. Legal certainty is a justifiable protection against arbitrary actions which means that someone will be able to get something that is



expected in certain circumstances. The law is tasked with creating legal certainty because it aims to create order in society. Legal certainty is a feature that cannot be separated from law, especially for written legal norms, which can be enforced and determined as instruments in a country. (Manan, 2005)

Legal certainty for heirs who are Muslim by submitting to the Civil Code in obtaining their inheritance rights from heirs who have different beliefs from among other groups of heirs is more secure because subject to the Civil Code provides legal guarantees for heirs from arbitrariness. Al-Quran can indeed be understood as a companion to fundamentalist teachings. (Villareal, et al, 2023) so that it can be accepted from other heirs who are in dispute with him because with written rules in the form of laws, heirs can find out what is imposed or done by the state against him. The clarity of written norms in the Civil Code can be used as a guide for parties subject to this regulation. In addition to clarity, there is also firmness regarding what legal system applies, in this case what kind of inheritance law system for heirs is used as a reference for resolving inheritance disputes they are currently facing. As is submission from Muslim heirs to the Civil Code, in the process of resolving inheritance disputes of different religions faced, especially when they end up in the realm of court, it will be a guarantee of legal certainty for these heirs in securing their inheritance rights from the worst possibility that can occur if other heirs use Islamic law rules which state that a Muslim heir is not allowed to inherit property from a non-Muslim heir, even though in the Supreme Court Jurisprudence Number: 172 K/Sip/1974 that the inheritance law that is enforced is the inheritance law adopted by heir. Legal security will be obtained in the form of legal certainty for heirs who are Muslim if they have strictly adhered to the Civil Code which will also become a reference for judges in court in examining, deciding and resolving their cases because it does not cause much harm. misinterpretation and Muslim heirs get a guarantee that the law they are subject to will be carried out.

In addition to the legal certainty obtained for the Muslim heirs, by submitting to the Civil Code, the Muslim heirs will also obtain legal protection in obtaining rights as heirs. Because protection is an important element in rights, as Houwing's opinion sees "*rights as an interest protected by law in a certain way.*" (Rahardjo, 2010) The law must carefully consider interests and create a balance between these interests. Van Dijk and Peter Mahmud Marzuki stated that "the law must function in achieving the goal of peace,



the goal of achieving peace can be realized if the law provides as much as possible a fair arrangement." (Marzuki, 2006)

The inheritance rights of heirs who are Muslim after submitting to the Civil Code will be protected by all the relevant articles in the Civil Code in terms of implementing arrangements for the distribution of inheritance to the rightful heirs.

Regarding the right of a Muslim heir to submit himself to the Civil Code, the authors attribute this to the enactment of Law Number: 12 of 2006 concerning Citizenship of the Republic of Indonesia which replaces the position of Law Number: 62 of 1958 concerning Citizenship of the Republic of Indonesia. This Citizenship Law categorizes citizens into two groups, namely: (1) Original Indonesian citizens, namely people who have become Indonesian citizens since their birth and have never received another citizenship at their own will; (2) people of other nations who are legalized by law as Indonesian citizens through the process of citizenship. So based on the Citizenship Law, in principle it only recognizes Indonesian Citizens (WNI) and Foreign Citizens (WNA) and no longer mentions any population classification. Furthermore, in the Instruction of the Presidium of the Cabinet Number: 31/U/IN/1966 in terms of regulation regarding civil registration, it also explicitly and explicitly ordered the abolition of population classification and only distinguished them from Indonesian Citizens and Foreign Citizens. From these two provisions, the authors draw the conclusion that the classification of the population should be no longer recognized and no longer enforced because what is known is only differences in nationality, namely Indonesian citizens and foreigners. So even though in the case of positive law in Indonesia there is still legal pluralism, especially in the case of this research, namely Islamic Inheritance Law, Customary Inheritance Law, and Western Inheritance Law, these various laws should no longer be aimed at certain groups of the population, but are aimed specifically at to Indonesian citizens, so that all Indonesian citizens are entitled and free to choose which civil law will be used to resolve problems or legal relations that are being faced, including in this case the heirs who are Muslim in question.

And in this study, the author examines the choice of Muslim heirs to submit to Western inheritance law because this inheritance law has guaranteed legal certainty and protection of inheritance rights for heirs regarding the rules for dividing inheritance explicitly and clearly stated in the Book of Laws. The Civil Code is in the Twelfth Chapter



Concerning Inheritance Due to Death which starts from Article 830 of the Civil Code up to Article 1130 of the Civil Code.

Furthermore, if it is connected between the rights of heirs in subjecting themselves to Western inheritance law with legal option rights in the Explanation of Law Number 7 of 1989 concerning Religious Courts which has been abolished by Law Number 3 of 2006 concerning Religious Courts (First Amendment) which results in the freedom of Muslim heirs to choose a law has been erased, so according to the author's study in this study explicitly freedom in choosing what law will be used by heirs to resolve inheritance disputes has indeed been limited, but if you pay attention to the provisions of Article 49 Law Number 3 Year 2006 in conjunction with Law Number: 7 of 1989 itself explicitly does not regulate the limitation or abolition of option rights in inheritance disputes, but only stated in the elucidation of Article 49, it is further strengthened that Article 49 clearly states that the duties and powers of the Religious Courts are to examine, decide and resolve the first case at the first level "*among Muslims*" and the sound clearly shows that the task and authority of the Religious Courts is not to examine, decide and resolve cases between people who are Muslims and people of other religions. Because the judiciary that handles the issue of inheritance from different religions, especially for cases of heirs of non-Muslim religions, is under the authority of the General Court. In addition, in Article 49 and in the Elucidation of Article 49 which contains the issue of legal option rights that have been removed, they are not replaced at all. nor additional articles and explanations are added which provide solutions to the resolution of inheritance disputes of different religions, especially those seeking justice are heirs who are Muslim to heirs of other religions along with other heirs who also have other religions.

With the author's interpretation of the contents of the Law on Religious Courts, especially regarding the abolition of the option right, then in the case of this writer's research there is still a great opportunity for heirs who are Muslim to realize their inheritance rights with legal certainty and protection through an institution of submission to Western inheritance law. In addition to obtaining legal certainty and protection, it will also make it easier for judges to examine, decide and resolve cases of inheritance disputes of different religions because they already have one definite reference for what inheritance law system will be used in settling the case.

It is possible for a person who is not a resident of the European or Eastern Foreign group to submit himself to Western Civil Law (the Civil Code) or in other words to



voluntarily comply with European private law as stipulated in an organic regulation, namely in Article 131 I.S. contained in the L.N.H.B. 1917-12 for which this ordinance is named "*Arrangement Concerning The Voluntary Submission To It European private law*" (Regulations on voluntary compliance with European private law).(Rahardjo, 2010)

With the existence of Article 131 paragraph 4 I.S. indicates that the Bumiputera and Timur Asinga residents can waive the application of their customary law on their own accord or at the will of the government by submitting themselves to the Civil Code (Indonesian *Civil Code/ Burgerlijk Wetboek*) either in whole, in part, or only for a certain legal action or tacitly to the Civil Law (*Indonesian Civil Code / Burgerlijk Wetboek*).

This voluntary submission is regulated in *Royal Decree* or the King's Decision dated September 15, 1916; Stb. 1917 - 12 jo. 528 which came into effect on October 1, 1917. Then there were changes and additions among them in: Stb. 1926 - 360, Stb. 1931 - 168 years. 423, Stb. 1932 - 42, and the last one was Stb. 1942 - 13 jo. 14.

Related to this study, the authors interpret that subjecting oneself to Western Inheritance Law in this case the Civil Code for heirs who are Muslim can be done voluntarily either in whole, in part or for a certain legal act. Where this submission is carried out with the aim that the heirs obtain guarantees of certainty and legal protection because this *Burgerlijk Wetboek Civil Law* is a written law that has expressly regulated all the rights and obligations of heirs clearly in the Civil Code, especially in matters Inheritance law is compared to unwritten customary law.

Voluntarily submitting to all Western Civil Law (Article 1-17 Stb.1917/12), submitting to this type, the heir concerned makes submission in full to Western civil law in Indonesia forever, where in the implementation of submission this does not apply to a man who has more than one wife or in other words here must adhere to the principle of monogamy; a woman who is still married; a child who is not old enough or immature; and people who are still under guardianship. This provision only applies to Bumiputera and Foreign Orientals and their children and descendants of those children who are not old enough (*underage*).(Rahardjo, 2010) It should be noted that a Muslim heir here who voluntarily submits to *Burgerlijk Wetboek Civil Law* does not mean that he switches to the European legal group, rather he is still in the legal group, only in the field of civil law (in matters certain), he is controlled and must comply with the provisions in the *Burgerlijk Wetboek Civil Law*. So if there is a dispute in the civil field, then the case will be examined and decided using the legal basis or provisions in the *Burgerlijk Wetboek Indonesian civil*



law, whereas in a dispute that is outside the civil law, the case will be examined and decided using the provisions contained in the law that applies to the group. And the thing that needs to be paid attention to is that this institution of submission for the whole is irrevocable, so once a person voluntarily submits himself to the entire Civil Code of *Burgerlijk Wetboek*, then for all that person cannot return to his original civil law.

The method used by heirs who are Muslim if they have decided to submit to *Burgerlijk Wetboek* Civil Law is that the heir makes a Deed of Self-Submission before a Notary containing a statement voluntarily submitting himself to *Burgerlijk Wetboek* Civil Law at least this statement must be ratified/legalized or *waarmerking* by a notary or authorized official for that purpose. Furthermore, the Deed of Submission is registered with the Minister of Justice through the District Court (Ministry of Law and Human Rights) and will then be announced through the state news. (*Hukum Perdata*, n.d.)

Submit voluntarily on part of Western Civil Code (Articles 18-25 Stb. 1917/12). This provision is only intended for the Bumiputera group, while for the non-Chinese Eastern Foreign group this provision is not needed because in fact they have been subject to this law based on the Stb. 1924-556, as well as the Eastern Foreign Chinese group, it was regulated by Stb.197-129, lastly amended by Stb.1925-92. The group that is not allowed to do this submission is the group that is in the entire submission, except for men who have more than one wife on condition that they have obtained the consent of their wives. This can be excluded because provisions regarding personal law and family law are excluded in this partial submission. (Rahardjo, 2010) So submit yourself to some of the *Burgerlijk Wetboek* Civil Law only to the law of wealth/objects. Muslim heirs can use the institution of submission to some of the *Burgerlijk Wetboek* Civil Law in the special framework of securing their inheritance rights in order to obtain more guarantees of certainty and legal protection. As with the complete submission, this partial submission must also be poured into a written statement voluntarily by the heir who is pleased with this matter, then the statement must at least be legalized by a notary or other authorized official for that purpose.

Through the author's description regarding submission to *Burgerlijk Wetboek* Civil Law which in this case is carried out by Muslim heirs to the Civil Code (*Burgerlijk Wetboek*) is a solution that can be carried out so that inheritance rights which due to differences in religion with the heir can be threatened with not being obtained either in part (decreasing/getting an inappropriate number of parts) or not at all when the



distribution of inheritance is carried out according to customary law because the distribution of inheritance according to customary law also takes into account the special circumstances that exist in the group of heirs. This submission institution can be the answer to obtain legal certainty and protection for these Muslim heirs in the event of a dispute during the distribution of inheritance by putting out a statement containing voluntarily submitting oneself to the Civil Code in writing and then the statement shall be at least the lack of being legalized or waarmed by a notary or an authorized official for that or pouring it into the Deed of Submission drawn up before a Notary.

4.2 THE AUTHORITY OF THE NOTARY TO MAKE DEEDS OF DECLARATION OF SUBJECT TO THE CIVIL CODE FOR HEIRS WITH THE RELIGION OF ISLAM WHOSE HEIRS ARE OF DIFFERENT RELIGIONS

National and state life cannot be separated from the existence of people or society with interactions between individuals in it and the need for regularity in these interactions. These three things, namely the people, interaction and regularity of interaction (order) which is the background for the establishment of a country and the life of a nation.(Bachrudin, 2019)

One area of law that regulates interactions between individuals in society is the field of private or civil law. Such interaction in the world of law is called "legal relations".There are important elements that build the pattern of relations between the state and its people in civil matters, namely: a) elements of the state; b) elements of the people; c) elements of interaction or civil law relationships; d) elements of the need for regularity (order) in civil law relations; e) the element of the need to grant authority in a position to carry out order (order) in said civil law relationship (exclusive agreement).

In the framework of the regularity of civil law relations between individuals in society, the state gives authority to individual citizens as office holders to become representatives of the state in carrying out order (order) so that armed with such regularity it is hoped that an advanced national life can be realized and the goals of the state can be achieved

The element of order (order) in civil law relations means the need for written evidence that can provide legal certainty between the parties, namely in the form of an authentic deed. As the author described earlier, the word authentic is the nature of a deed made by or before a public official who is authorized to make it or public officials who



have the power to make it, the form and procedure for making it are determined in the law. One example of an authentic deed is a notarial deed.

In making an authentic deed, the authority possessed by a notary is attribution authority, which means that authority is directly granted by laws and regulations. This authority is expressly stated in Article 15 paragraph (1) of Law Number 2 of 2014 concerning Amendments to Law Number: 30 of 2004 concerning the Office of a Notary (or commonly referred to as the "Notary Office Act" or abbreviated as " Law on Notary Profession ").

Based on the order of laws and regulations in Indonesia, the birth of the Law On Notary Profession is sourced or obtains and at the same time takes the spirit of its enforcement from the 1945 Constitution. The spirit that is instilled in the birth of Law On Notary Profession is:

- a. The spirit of the opening of the 1945 Constitution, namely the spirit of "state goals" and the spirit of "Pancasila" as the basic norms (grundnorm of state life; and
- b. The spirit of Article 1 paragraph (3) of the 1945 Constitution which states that Indonesia is a state based on law.

The birth and authority of the position of a notary public based on this Law gives meaning to how important the position, function and role of a notary is in the life of the nation and state, especially in supporting the process of national development. (Bachrudin, 2019) The birth and presence of a notary as a public official based on Law on Notary Profession gives importance to the realization of "orderliness" of civil law relations in society. Based on the mandate of the law, the notary is appointed and appointed by the Minister of Law and Human Rights as a public official and represents the state in civil matters. Through the authentic deed he made, it will provide guarantees of certainty, order and legal protection for people who carry out legal actions in a civil law environment. This is in line with Law on Notary Profession in the Considering section letter b which reads: "That in order to guarantee certainty, order and legal protection, authentic written evidence is needed regarding actions, agreements, stipulations and legal events made before or by an authorized official." (Bachrudin, 2019)

The guarantee of certainty, order and legal protection is a form of order required in civil law relations which can be obtained through written evidence in the form of an



authentic deed. ²Based on the description above, a notary has the following positions, functions and roles: (Bachrudin, 2019)

- a. ²The position of a notary is as a state representative (general official) ²in civil matters relating to making authentic deeds, so that the position of a notary is an office. The position of this notary is confirmed in Law On Notary Profession in the Considering section letter c which reads; *“that a notary is a public official who carries out his profession in providing legal services to the public...”*;
- b. The function of a notary is to act (in his position) in making authentic deeds related to legal actions in the field of civil law. The function of a notary is emphasized in Law On Notary Profession Article 1 paragraph (1) which reads: *“Notary is a public official authorized to make authentic deeds and has other authorities as referred to in this law or based on other laws..”*;
- c. The role of a notary is to provide guarantees of certainty, order and legal protection for people who carry out legal actions in the field of civil law through authentic deeds drawn up by or before a notary. The role of the notary is emphasized in Law On Notary Profession in the Considering section letter b which reads: *“that in order to guarantee certainty, order and legal protection, authentic written evidence is needed regarding actions, agreements, stipulations and legal events made before or by an authorized official.”*

²In accordance with the principle of legality, Law On Notary Profession is the basis for legality for the birth of the position of notary and the authority of the office. The element of "authority" granted by law to the position of a notary is strictly regulated in Article 15 paragraph (1) to paragraph (3) of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary, which is divided into:

- a. General Authority of a Notary in Article 15 paragraph (1) Law On Notary Profession Notary has the authority to make authentic deeds regarding all actions, agreements and stipulations that are required by laws and regulations and/or that are desired by interested parties to be stated in an Authentic Deed, guaranteeing the certainty of the date of making the deed, keep the deed, provide grosse, copy and excerpt of the deed, all of this as long as the making of the deed is also assigned or excluded to other officials or other people determined by law.



- b. Notary Special Authority in Article 15 paragraph (2) to take certain legal actions, such as:
 - 1) Validate the signature and determine the certainty of the date of the letter under the hand by registering it in a special book;
 - 2) Book private letters by registering in a special book;
 - 3) Make a copy of the original private letter in the form of a copy containing the description as written and described in the letter concerned;
 - 4) Verify the compatibility of the photocopy with the original letter;
 - 5) Conduct legal counseling in connection with the making of the deed;
 - 6) Making deeds related to land; or
 - 7) Make a deed of minutes of auction.
- c. The authority of a Notary to be determined later in Article 15 paragraph (3) Law On Notary Profession which regulates other authorities of a notary as regulated in laws and regulations.

The position, function and role of a notary in Indonesia is more difficult than that of a notary in the Netherlands. A notary in Indonesia deals with clients from various population groups and each has its own customs and has various differences. Under these circumstances a Notary must be more careful in exercising his authority as a public official (state representative) who is trusted by the public to fulfill their legal needs in the field of civil law. One of them is the legal requirement for inheritance.

As previously explained by the author, Indonesia adheres to a pluralistic legal system, especially in the field of inheritance law, where three systems of inheritance law still apply in Indonesia, namely Islamic inheritance law, Western inheritance law and customary inheritance law. The existence of inheritance law issues that the authors make as the focus of this thesis research is the problem of inheritance of different religions where the heir is non-Muslim and has several heirs who have different beliefs from the heir, where Muslim heirs become heirs who are a minority among the group of heirs. .

In accordance with the Supreme Court Jurisprudence Number 172 K/Sip/1974 that the inheritance law applied in the distribution of inheritance is the inheritance law adhered to by the heir. Because there are three legal systems that meet and regulate simultaneously on the same case issue, in this case the case of inheritance from different religions. So there should be a law between legal systems, which is precisely the law between groups that the state is trying to establish in order to provide a solution to a situation like this.



Based on the author's literature research, the institution of self-submission can be poured into a Deed of Submission to the Civil Code made before a Notary as an answer to this problem of different religious disputes with the following considerations:

1. The inheritance law that applies is the inheritance law of the heir with the legal basis being the Supreme Court Jurisprudence Number 172 K/Sip/1974 and which Formulation of the Results of the Plenary Meeting of the Religious Chamber of the Supreme Court of the Republic of Indonesia May 3 to 5 2012 that the religion of the heir determines the competent court, heirs who are Muslim in inheritance disputes become the authority of the religious court, while heirs of other religions go to the general court. , in the matter of this thesis the heir is a non-Muslim so that the possibility of inheritance law being applied is between Western inheritance law or customary inheritance law which is also the realm of the authority of the general court. If it is related to the state of Indonesia as a rule of law, the inheritance law system that provides more guarantees of certainty and legal protection is Western inheritance law which is guided by the Civil Code. The law must be upheld because everyone wants to be able to enact laws against concrete events that occur. So basically there are no more deviations with the existence of legal certainty and public order will be achieved, besides that the implementation and enforcement of the law must provide benefits to the community, do not let the implementation and enforcement of the law harm the community so that justice can be realized because even though all the heirs Those left behind by the heir are people who have blood relations and marital relations with the heir and those who are loved by the heir so that the heir's hope is that everything left by the heir can be enjoyed by all the heirs he left behind and he loves.

2. Legal option rights regulated in the General Elucidation of Law Number 7 of 1989 concerning Religious Courts are stated to be abolished by Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning Religious Courts, according to the author this freedom has been explicitly limited with the abolition of the legal option right, but in Article 49 as an article that regulates the authority of the Religious Courts in examining, deciding and resolving cases does not explicitly also contain restrictions on choosing which law to use in resolving inheritance cases. The limitation of option rights is only carried out by eliminating



said option rights contained in the General Elucidation of the Law. And it is not replaced by either the addition of articles or changes to articles that contain the resolution of the problem of inheritance of different religions in the Act. While in the Elucidation section of Article 49 of the Law on Religious Courts it explains that what is meant "between people who are Muslim" includes people or legal entities who themselves "submit themselves voluntarily" to Islamic law regarding matters that become "authority" Religious Courts", it is clear here that the word subjection voluntarily is also known in the Islamic legal system, but there are limits to matters that fall under the authority of the Religious Courts. If the heir is Muslim, the inheritance case will fall under the jurisdiction of the Religious Court and non-Muslim heirs must comply with Islamic law in solving the problem of inheritance distribution, but vice versa if the heir is non-Muslim, and not the domain of the authority of the Religious Court to solve this problem so that in this case submitting himself should be done by the heir according to the inheritance law of the heir. So the writer concludes that the condition of the problems being researched by the author at this time still gives the possibility for heirs to choose the settlement of inheritance problems in the General Court because this judicial body is open to all Indonesian citizens who want to seek justice and is connected with Indonesia as a rule of law, so to assurance of certainty and legal protection for heirs who are Muslim can use the institution of self-submission by making a deed of submission to the Civil Code before a Notary compared to customary law which is not written and is not singular but varies according to the form of the community and the family system of community life .

3. The authority of a notary in carrying out his position is the authority of attribution which is the main and dominant element in a position, including those who provide public services such as a notary. The establishment of the notary position by the state as well as the granting of authority over the position, namely through Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary, so according to the legality of the Law On Notary Profession it is the basis for the legality of the birth of the position of a notary and the authority of his position as a state representative in matters of civil law relations. Regarding how a notary must act professionally, everything has been regulated explicitly and clearly in the Law On Notary Profession.



4. With the authority of a Notary, Muslim heirs can use the legal services of a Notary to fulfill their needs for certainty and legal protection as heirs of heirs who have different beliefs from them, namely by pouring a statement that he voluntarily submits himself to the Civil Code into a authentic deed.

Thus it can be concluded that the authority of a notary in making a deed of submission to the Civil Code for Muslim heirs in resolving problems of inheritance disputes of different religions is possible to be implemented to provide guarantees of certainty and legal protection for these Muslim heirs if later there is an inheritance dispute and in this case the inheritance of different religions, with this deed of submission, the judge in resolving the dispute over the inheritance of different religions becomes easier because the reference for the division of inheritance for judges is clearer.

5 CONCLUSION

Muslim heirs have the right to submit to the Western Inheritance Law because according to the Supreme Court Jurisprudence Number: 172 K/Sip/1974 that the inheritance law that is enforced is the inheritance law adopted by the heir and from the Formulation of Results of the Plenary Meeting of the Religious Chamber of the Supreme Court of the Republic of Indonesia 3 to 5 May 2012 that the religion of the heir determines the competent court, the heir who is Muslim, disputes over his inheritance become the authority of the religious court, while the heir who is a Muslim other than that to the general court. So in the event that the heir is a non-Muslim, the realm of authority lies with the general court. In a good legal system, there should be no contradictions and clashes between its parts, including in terms of inheritance from different religions which are classified in the legal context between groups, especially inter-religious law, then through a bridge the institution of self-submission as outlined in the deed of submission to According to the Civil Code, the legal structure of the District Court has one standard reference in resolving disputes when they occur in the future and legal certainty, legal benefits and legal justice can be fulfilled. And when it is related to legal option rights in the Elucidation of Law Number 7 of 1989 concerning Religious Courts which has been amended by Law Number 3 of 2006 concerning Religious Courts (First Amendment) which is declared abolished resulting in the freedom of Muslim heirs to choose law being



erased has no effect because what applies and works in an inheritance case is the legal system of the heir.

The authority of a notary in making a Declaration of Compliance with the Civil Code for heirs who are Muslim is open because basically a notary is a public official (state representative) who is appointed by the state to meet the public's need for legal certainty and protection in the form of making authentic deeds. The authority of a notary in carrying out his position is an attribution authority, where this attribution authority is the main and dominant element in a position, including those who provide public services such as a notary. The establishment of the notary position by the state as well as the granting of authority over the position, namely through Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary, so according to the principle of legality, Law On Notary Profession is the basis for the legality of the birth of the position of notary along the authority of his position as the representative of the state in matters of civil law relations. Regarding how a notary must act professionally, everything has been regulated explicitly and clearly in the Law On Notary Profession.



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