

# THE MEETING POINT OF THE DEVELOPMENT OF FORMAL ISLAMIC INHERITANCE LAW IN INDONESIA WITH INTERNATIONAL LAW

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## **Abstract**

The policy of developing formal Islamic inheritance law by the government of the Republic of Indonesia is closely associated with the spotlight of the world news, particularly concerning the consequences of international relations and agreements. Referring to this matter, the disclosure of the meeting point of formal Islamic inheritance law in Indonesia and international law is highly required as an effort to create world harmony and build knowledge for the international community who interacts with Indonesian citizens or when dealing with formal Islamic inheritance law in Indonesia. Through the application of the descriptive method, it can be found that the meeting point of Islamic inheritance law in Indonesia with public international law occurs at the meeting of articles 23 of the UDHR and articles 2, 3 and 23 of the ICCPR with several articles in the compilation of Islamic law Book II and some dynamic religious court judges' decisions. Meanwhile, the meeting point with private international law is at the primary and secondary linkage point as well as on the *lex site* and *lex patriae* principles.

*Keyword : Meeting Point, Islamic Law, Human Right, Private International Law*

## **Abstrak**

Kebijakan Pemerintah Republik Indonesia dalam membangun hukum kewarisan Islam formal tidak bisa lepas dari sorotan dunia, terutama menyangkut konsekuensi adanya pergaulan dan perjanjian internasional.

Oleh karena hal itu mengungkapkan titik temu hukum kewarisan Islam formal di Indonesia dengan hukum internasional sangatlah diperlukan sebagai salah satu upaya mewujudkan keselarasan dunia dan membangun pengetahuan bagi masyarakat internasional yang berinteraksi dengan warga negara Indonesia atau sebaliknya ketika berhubungan dengan hukum kewarisan Islam formal di Indonesia. Melalui metode deskriptif dapat ditemukan bahwa titik temu hukum kewarisan Islam formal di Indonesia dengan hukum internasional publik terjadi pada pertemuan pasal 3 UDHR dan pasal 2, 3 dan 23 ICCPR dengan beberapa pasal yang ada di kompilasi hukum Islam buku II dan beberapa putusan hakim pengadilan agama yang dinamis. Sedangkan titik temu dengan hukum perdata internasional ada pada titik pertalian primer dan sekunder serta pada prinsip *lex situs* dan *lex patriae*.

*Kata Kunci: titik poin, hukum Islam, Hak Asasi Manusia, hukum perdata internasional*

## Introduction

The state and its citizens have an inseparable bond. Owing to the fact that the state was also born by its citizens. In consequence, the policies of a country must reflect the interests of its citizens. One of the theories whose existence has been widely recognized and used as the basis for the formation of the state is the social contract theory. This social contract theory states that the State or the society came into being by a social contract (agreement) that was made between the state and society.<sup>1</sup> In the matter of social contract theory, the social agreement formed in the Indonesian State formation was carried out unilaterally by the initiators of the Indonesian State.

Even though it was carried out unilaterally, the majority of people throughout the archipelago agreed with the initiative for the establishment of the Indonesian State. Because the idea of establishing Indonesian has a foundation and values that do not contradict the religious teachings of the society. In addition, the Indonesian State formation is the culmination of a series of journey by the people of the archipelago in overcoming colonialism

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<sup>1</sup> AAGN Ari Dwipayana, "Between Leviatan and Fish Law, *Journal of Social and Political Sciences* 3, no. 2 (1999): 189.

that had lasted for approximately 350 years.<sup>2</sup> Although historically, some people have ideological differences with Pancasila and have the potential to disrupt the continuity of the Unitary State of the Republic of Indonesia, however, with an insignificant number of people compared to the Indonesian people (Muslim and non-Muslim) who provide support.<sup>3</sup>

Since its birth, the Indonesian state has continued to develop its capabilities in realizing its national ideals by comprehensively preserving and protecting the integrity of the state and nation in order to improve the quality of welfare and improve the quality of life of its citizens and participate in realizing world order and peace as set out in the Preamble to the 1945 Constitution.<sup>4</sup>

As a Nation based on the Rule of Law, various forms of policy, both domestic and foreign, are packaged by the government in a legal framework, both formal, material and administrative. As a consequence, the ideals of law in Indonesia are strived to be in harmony not only for the interests of the Indonesian society but also for the interests of the international community.

One of the Indonesian government's policies framed by law is the law of Islamic inheritance. This law is a law that accommodates the interests of the Indonesian Muslim community. The development of formal Islamic inheritance law continues to grow in Indonesia. Historically, it can be seen that Islamic inheritance law in Indonesia still refers to the teachings of revelation, sunnah and juridical thinking. The Religious Courts officially issued an order for the religious court to use the fiqh books from the Syafi'iyah school of thought. The use of fiqh books as the main guideline for religious court judges in adjudicating cases of Islamic inheritance has changed since the compilation of Islamic Law (KHI) Book II on Inheritance is framed by Presidential Instruction No. 1 of 1991.<sup>5</sup> Under those circumstances, the fiqh books become companion references, when the KHI has not regulated an existing problem.

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<sup>2</sup> Dharma Setyawan, "Unitary State of the Republic of Indonesia (NKRI) in the Maqasid Sharia Review" *NIZHAM* Vol 06, no. No. 01 (2018): 5.

<sup>3</sup> Abd A'la, "The Attitude of Indonesian Muslim Fundamentalists to the Unitary State of the Republic of Indonesia Between Rejection and Half-Hearted Acceptance," *Unisia* 33, no. 73 (July 24, 2010): 55-57, <http://jurnal.uui.ac.id/index.php/Unisia/article/view/2398>.

<sup>4</sup> The People's Consultative Assembly of the Republic of Indonesia, *Correctional Guidelines for the 1945 Constitution of the Republic of Indonesia and the MPR.RI Decrees*, (Jakarta: Secretary General of the MPR.RI, 2013), 60.

<sup>5</sup> Abdurrahman, *Compilation of Islamic Law* (Jakarta: CV. Akademika Presindo, 1992), 172.

The efforts to carry out world order include participating in international relations, among which activities are making international agreements. The legal basis for implementing international treaties is the 1945 Constitution which is described in Law No. 24 of 2000 on International Treaties. The law is a replacement for Presidential letter No. 2826 1960 concerning the Making of Agreements with Other Countries which are Deemed Inappropriate.

In the context of globalization, Indonesia seeks to establish international relations to anticipate various trends that develop at the international level and which may affect the state of Indonesia positively or negatively. This situation tends to lead to the formation of situations of interdependence between countries in various fields, increased participation of non-governmental organizations at the international level, the emergence of new values such as human rights, democracy, good governance, environment and the importance of adaptation to dynamic international structures and cultures. Responding to international relations is a situation that is considered important, which makes Indonesia always strive to build its national legal ideals, with the intention that the development of Indonesian law will be able to solve international problems.<sup>6</sup> The tendency of this situation can be considered by the government in positioning the Indonesian state among international relations, namely to cooperate in taking and benefiting from a relationship between countries in the form of mutual adaptation and mutual inspiration.

Perspectively, the development of formal Islamic inheritance law in Indonesia is occasionally like a double-edged sword, because it is able to solve any problem of the Indonesian Muslim community as well as answer the demands of international problems, specifically: what if the heirs change religions with the issue of religious freedom, if male and female heirs with demands for gender equality, if the heirs die and have children with protection of children's rights, and if the heirs transfer their citizenship. The existence of the ability of Islamic inheritance law to answer contemporary problems in the international world is certainly interesting if the meeting point is revealed so that it can be understood by the international community that Indonesia is a country that is sovereign, dignified and consistent in implementing international agreements. In addition, it provides an understanding to the international

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<sup>6</sup> Sukendar, "Human Rights in Indonesian Foreign Policy," *Sawala: Journal of State Administration* 3, no. 2 (2017): 72.

community and Indonesian citizens who are active in the international world and face the formal Islamic inheritance law in Indonesia.

Referring to the mentioned perspective, the author is interested in writing a paper entitled “The Meeting Point of the Development of Formal Islamic Inheritance Law in Indonesia with International Law” as a legal study which examines the development of Islamic inheritance law in Indonesia among international law. However, in view of the fact that the extent of development of Islamic inheritance law in Indonesia and the scope of international law, the writing of this paper will be limited to the scope of development of inheritance law in post-independence and public international law on human rights and private international law.

The implementation of this study is also based on the scarcity of formal Islamic inheritance law studies in Indonesia that are related to international law as part of the applicable law in Indonesia. Compared to other studies that discuss Islamic inheritance law in Indonesia with international law, this study has a broader scope, including human rights and private international law. The author hopes that this study can complement previous study that specifically discusses Islamic inheritance law with gender.<sup>7</sup>

The effort to reveal the meeting point of formal Islamic inheritance law in Indonesia and international law is a legal study that uses descriptive methods to reveal the development of formal Islamic inheritance law in Indonesia and reveal where the meeting points of formal Islamic inheritance law in Indonesia with public international law and private international law.

### **The Development of Formal Islamic Inheritance Law in Post-Independence Indonesia**

As a part of Islamic teachings, inheritance law only needs to be obeyed and implemented. However, in its historical reality in Indonesia, the form of Islamic inheritance law has developed rapidly from the initial provisions of Islamic inheritance law itself. From initially referring only to the doctrine, it has developed into a formal law in the form of a Compilation of Islamic Law and jurisprudence. These developments occurred as a result of the life of the Muslim community in the archipelago which met with various conditions from the colonialization era, some of which brought new knowledge and civilization to

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<sup>7</sup> Maryati Bachtiar, “Islamic Inheritance Law Viewed From A Gender Justice Perspective,” *Legal Study* 3, no. N0 1 (n.d.): 1.

the era of independence which entered the current era of globalization, the era of information technology and contemporary international issues.

In fact, in the Islamic legal tradition, social change caused by the discovery of science and the encounter with a new culture will relatively not cause problems as long as these changes bring benefit and justice. These social changes will be selected through the method of establishing good laws in the form of *ittiba'* or *ijtihad* with the *maslahah*, *istibsan*, *istishab*, *syadz dzara'I*, *urf* approach, etc.

During the independence period, the Indonesian Government in accepting Islamic inheritance law was like catching a hot ball by the Dutch colonial government. Islamic inheritance law, which originally had its position as a religious doctrine within Muslim individuals, was drawn to the governmental area under the institution of a religious court. Apparently, the Dutch colonial government wanted to convert the legal civilization in its home area to be applied in the archipelago for Muslim communities.

But in the end, the Dutch colonial government realized that the effort to make Islamic inheritance law into the realm of this government was not ready to be applied and returned the legal authority of Islamic inheritance to the district court. This can be viewed from the dynamics of the policy of the Dutch colonial government in determining the legal authority for inheritance from 1835 to 1937.

In 1835, the Dutch Colonial Government through Stbl no 58 of 1835 provided a policy that issues of marriage and inheritance for Muslims must be decided by Islamic law, which was implemented by the religious court through Stbl of 1882. However, since 1937, the Dutch colonial government had changed Stbl of 1882 with Stbl. No. 116 of 1937 which reduced the area of competence of the Religious Courts in Java and Madura to only the authority to issue non-binding fatwas. Inheritance issues for Muslims move to the competence of district courts.<sup>8</sup> After achieving independence, the Indonesian Government realized that not all Muslim communities felt comfortable with the policies of the Dutch Colonial Government. The inclusion of Islamic inheritance law in the realm of government has become part of the ideals of the Indonesian Muslim community.

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<sup>8</sup> Yusuf Somawinata, "Inheritance Law in the Compilation of Islamic Law (KHI) in Indonesia," *ALQALAM* 26, no. 1 (April 30, 2009): 133–134, <http://jurnal.uinbanten.ac.id/index.php/alqalam/article/view/1545>.

Realizing the ideals of the Muslim communities, the government began to create a channel for aspirations by giving exceptions to religious courts outside Java and Madura and parts of Kalimantan given the authority to handle Islamic inheritance based on PP No. 47 of 1957 article 4.<sup>9</sup>

The ideals of the implementation of Islamic inheritance law in the realm of government by the Islamic community is also seen in the inception of the Decision No. 172/k/Sip/1975 dated June 13, 1975 which refers to the Medan High Court Decision which states in inheritance cases: if the heir is Muslim then it is decided by Islamic law, while if the heir is Christian it is decided based on customary law. Until finally this ideal culminated with the enactment of Law No. 7 of 1989 concerning the Religious Courts where in article 49, the Religious Courts have the authority to handle Islamic inheritance law. The source of material law refers to the 13 books of fiqh with the Shafi'i school of thought.<sup>10</sup>

Finally, through the Presidential Instruction No. 1 of 1991, the Government of the Republic of Indonesia in 1991 established a Compilation of Islamic Law where inheritance law is included in book II. The birth of the Compilation of Islamic Law is a sign that Islamic law is ready to appear in the field of positive law in the style of Continental Europe as well as as a historical answer for the Dutch Government which draws Islamic law from the government territory

Even though its existence indicates a trend towards Continental Europe, it is very interesting that in the Presidential Instruction No. 1 of 1991, formally the president gives the authority to religious court judges to continue to explore the laws that develop in society, as a feature of Anglo Saxon American law. So that the power in Presidential Instruction No. 1 of 1991 is considered great and has an impact on the dynamics of the development of Islamic inheritance law in Indonesia.

Another interesting thing regarding material law of Compilation of Islamic law in the field of inheritance is the existence of progressive laws that can answer problems in society regarding the ability to deliberate in the distribution of inheritance, substitute heirs and certainty of inheritance dispute resolution institutions, namely in article 183, article 185 and article 188.<sup>11</sup>

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<sup>9</sup>Yusuf Somawinata, *Inheritance Law*, 135

<sup>10</sup>Yusuf Somawinata, *Inheritance Law*, 136

<sup>11</sup> Article 183 provides an opportunity for the parties to make peace in the distribution of inheritance assets, after each of them realizes their share. Whereas Article 185 provides an

Broadly speaking, through the Compilation of Islamic Law, knowledge can be obtained that inheritance is a law that regulates the transfer of the rights of the owner of the inheritance, determines who becomes the heir and how many parts of each. There are also reasons for obtaining an inheritance because of blood relations or marriage.<sup>12</sup>

The blood-related groups are divided into two, namely the male group consisting of fathers, sons, brothers, uncles and grandparents. Meanwhile, women are mothers, daughters, sisters and grandmothers. The marital relationship group is a widower or widow. The main requirement for the heirs to acquire an inheritance is Muslim and is not involved in efforts to slander, persecute, and kill the person who leaves the inheritance.<sup>13</sup>

The dynamics of Islamic inheritance law in Indonesia do not only focus on the provisions in the Islamic Law Compilation, but continue to develop through the progressive and contra legem decisions of religious court judges with the Compilation of Islamic Law in the field of Islamic inheritance is the Supreme Court Decree No. 368 K/AG/1995 dated July 16, 1995 which provides inheritance based on mandatory will (*wasiat wajibah*) against someone who and don't consider him/her as an heir. Supreme Court Decree No. 51 K/AG/1999 dated September 29, 1999 also stipulates the provision of inheritance based on heirs and mandatory wills to non-Muslim heirs. This Supreme Court decision constitutes jurisprudence, so that it can be used as a source of new law.<sup>14</sup> Besides that, there was also a judge's decision that gave an equal share of inheritance between men and women, namely decision no 92/Pdt.G/2009/PA.<sup>15</sup>

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opportunity for the heirs who have died earlier than the person who leaves the inheritance, so that their position can be replaced by their children. And Article 188 provides an opportunity for the heirs, either jointly or individually, to submit requests to other heirs to distribute the inheritance. If any of the heirs do not agree to the request, then the person concerned can file a lawsuit through the religious court to distribute the inheritance asset, Abdurrahman, *Kompilasi Hukum Islam* (Jakarta, 1992), 158.

<sup>12</sup> Abdurrahman, *Compilation*, 155

<sup>13</sup> Abdurrahman, *Islamic Law Compilation*, 156–157.

<sup>14</sup> Muhammad Muhibuddin, "Renewing Islamic Inheritance Law in Indonesia," *Abkam* 3, no. 2 (2015): 194.

<sup>15</sup> Azka Anwar, "Case Study of Decision No. 92/Pdt.G/2009/PA-Mdn Regarding the Equal Inheritance Distribution of Males and Females Children," *Student Scientific Journal in the Field of Private Law*, FH Unsyiah Kuala 1, no. 2 (2017): 33.



## **International Law Dialogue With Formal Islamic Inheritance Law in Indonesia**

In general, international law is known as public international law and private international law. The definition of international law views the existence of states and individuals as legal subjects. Therefore, public international law is defined as the whole legal rules and principles governing relations or issues that cross State boundaries that are not civil in nature. Meanwhile, private international law is the entire rule and principle of law that governs civil relations that cross State boundaries.<sup>16</sup>

Referring to this definition, there are several features that can equate and differentiate public international law and private international law. The similarity of public international law and private international law can be found in their powers in regulating relations or problems between countries, while the differences can be found in the regulated object. Public international law regulates the State and organization, while private international law regulates the individual. Apart from the regulated objects, differences also exist in the source of law, public international law originates from treaties on an international scale, while private international law is the national law of legal subjects. The scope of public international law includes relations between States, relations between States and individuals, relationships between individuals and non-governmental organizations that are recognized internationally.<sup>17</sup> Thus, the subject of public international law is closely related to states and non-governmental organizations that have an international reputation.

Referring to Article 38 (1) of the Statute of the International Court of Justice, provisions that can be used as a source of international law are international treaties that have a legal force, international customs that have been recognized by the international community, universal principles and judicial decisions and opinions of law graduates whose authority has been recognized internationally.<sup>18</sup>

One of the public international treaties is the human rights declaration in 1948 known as the UDHR. Indonesia itself is one of the countries that is active

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<sup>16</sup> Muahmmad Ashri dan Rapping Samudin, *International Law and Islamic Law on Legal Dispute and Peace*, 2013, 9.

<sup>17</sup> Ridwan Khairandy, *Introduction to the Private International law* (Yogyakarta: UII Pres, 2007), 9.

<sup>18</sup> *Ibid.*, 19.

in responding to several international declarations that have a connection with the development of human rights.<sup>19</sup>

By participating in the ratification of international treaties, these basic human rights provisions indirectly invite dialogue on the material of national legal provisions in Indonesia, both those that have been established and those that will be established, whether their existence is in accordance with the provisions of human rights in the Universal Declaration on Human Rights (UDHR) of 1948 and in the International Covenant on Civil and Political Right (ICCPR)?

One of the articles of the Universal Declaration of Human Rights of 1948 relating to formal Islamic inheritance law in Indonesia is article 3 which does not require discrimination due to religious differences.<sup>20</sup> Indirectly, article 3 of the UDHR asks the formal Islamic inheritance law in Indonesia “Has the Islamic inheritance law provided legal protection for families of different religions?”

This question can be answered with a decision by the Religious Court Judge which provides inheritance rights for heirs of different religions in the form of

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<sup>19</sup> See some lists of international covenants, the Convention of Women’s Political Rights, this convention has been stated in Law No. 68 of 1958 concerning Ratification of the Convention on Women’s Political Rights, the Convention on Elimination of All forms of Discrimination Against Women which has been stated in Law No.7 of 1984 Concerning the Convention on the Elimination of All Forms of Discrimination Against Women, International on Economic, Social and Cultural Rights as outlined in Law No.11 of 2005 concerning Ratification of the International Covenant on Economic, Social and Cultural Rights. International on Covenan on Civil and Political Rights, which has been stated in Law No. 12 of 2005 concerning Ratification of the International Covenant on Civil and Political Rights, the Convention on The Rights of Persons With Dissabilities which has been stated in Law No. 19 of 2011 concerning Ratification of the International Covenant on Rights Persons with Disabilities, Convention on The Rights of The Child, which has been outlined in Presidential Decree No. 36 of 1990 concerning the Ratification of the Convention on the Rights of the Child, Rini Maryam, “*Translating the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) Into Legislation*”, *Legislative Journal Indonesia* 9, no. 1 (2012): 110.

<sup>20</sup> See article 3 of the UDHR as follows. “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.” *Internasional Law Making, Universal Declaration of Human Rights*, *Journal of International Law*, Volume 4 Nomor 1 tahun 2006, 150

a mandatory will, namely the Supreme Court Decree No. 368 K/AG/1995 dated July 16, 1995 and the Supreme Court Decree No. 51 K/AG/1999 dated September 29, 1999.

Likewise, several articles in article 2 of the International Covenant on Civil and Political Rights (ICCPR) require legal certainty of the rights of every citizen, including inheritance rights.<sup>21</sup> This article implicitly asks “ “Is there any legal certainty that can protect the rights of heirs and Islamic heirs for Indonesian citizens ?”” This question was answered by the issuance of Presidential Instruction No.1 of 1991 concerning Compilation of Islamic Law as legal material in the Religious Courts and as evidence of the state’s concern to protect Islamic inheritance rights for citizens.

Furthermore, article 3 of the ICCPR, which requires countries participating in the signing of the ICCPR, must realize equal rights between men and women in various social and political fields.<sup>22</sup> Article 2 of the ICCPR asks “Does the implementation of Islamic inheritance law in Indonesia not discriminate against men and women? This question has been answered through the article 183 of KHI which allows for deliberation with fellow heirs to equalize the share of men and women if desired. Moreover, there is already a judge’s decision from the Medan Religious Court No. 92/Pdt.G/2009/PA. Mdn, which determines the amount of inheritance between men and women.

International law which demands answers is not only public international law, but private international law also indirectly raises questions regarding how the management of Islamic inheritance law in Indonesia if the person who leaves the inheritance is connected with the heirs of foreign citizens. This question is closely related to the scope of private international law, specifically on issues related to the type of law that must be enforced (*rechtstoepassingrecht*), issues related to court competence (Choice of Jurisdiction), issues of foreign status (*Condition des etrangers*), and issues of citizenship (*nationalite*).

Apart from the scope of private international law, another issue related to the management of Islamic inheritance law in Indonesia is the point of

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<sup>21</sup> See article 2 of the ICCPR: Each State Party to the present Covenant undertakes to respect all individuals within its territory and subject to its jurisdiction. Therefore, each State Party undertakes to take the necessary steps in order to ensure the implementation of these rights. *International Law Making, Universal Declaration*, 150

<sup>22</sup> *Internasional Law Making, Universal Declaration*, 150

linkage between the person who leaves the inheritance and the heir itself, if the heir is a foreign citizen. The point of linkage is a condition that causes a certain legal system to take effect in a legal event.<sup>23</sup> The point of linkage has two forms, namely the primary linkage point (TPP) and the secondary linkage point (TPS). TPP are elements that can realize or explain that a legal relationship between individuals becomes a private international law relationship. These elements are citizenship, ship flag, domicile, and legal entity status.<sup>24</sup>

Meanwhile, TPS is a fact that can determine which law should be used or which applies in a private law relationship. These facts include the place where the object is located, the place where a legal act is committed, the place where the marriage is held, the place where the contract is signed, the place where the contract is executed, the place where the act against the law take place, and the choice of law.<sup>25</sup>

The management of Islamic inheritance law in Indonesia which is questioned by private international law is related to the death of an Indonesian citizen who leaves the inheritance of an heir who is a foreign citizen, as a consequence, this matter is bound by the *lex site* and *lex patriae* principles. *Lex site* explains that in the case of an inherited object, it must be regulated based on the law of the place where the fixed object is located. The *lex patriae* explained that if the object of inheritance is a moving object, the inheritance of the object is subject to the law of inheritance from the place of the person who leaves the inheritance.<sup>26</sup> In this case, if there are foreign citizens who obtain inheritance in the form of fixed assets in Indonesia, and within one year there will be no process of transferring the ownership of the fixed assets, then the ownership is removed and transferred to the the State as regulated in article 21 (3) of Law No. 5 of 1960 concerning Basic Regulations on Agraria Principles. Nevertheless, if the person who leaves the inheritance is an Indonesian citizen and has the fixed object in another country, then the process of inheriting the fixed object is based on the State regulations where the fixed object is located.

Muslim heirs who are foreign nationals or who are related by blood or marriage can obtain a fixed inheritance asset in the form of use rights from the

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<sup>23</sup> Ridwan Khairandi, Introduction to the Private International Law, p 29.

<sup>24</sup> M. Ilham et al, "Study of Jurisdictional Resolution of Trade Contract Dispute Conflict in the Perspective of Private International Law, (Analysis of Jambi Court Decision Number: 09/Pdt.G/2006/PN.JBI)," *Restitution Journal* 1, no. 1 (2019): 76.

<sup>25</sup> M. Ilham et al, *Jurisdictional Studies*, 77.

<sup>26</sup> M. Ilham et al, *Jurisdictional Studies*, 189.

person who leaves the inheritance who is Muslim and has the foreign nationals who obtain residency permits, allowances, work and invest in Indonesia for an accumulative period of 30 years and can be extended for 20 years based on Government Regulation Number 103 of 2015 concerning Ownership of Residence or Occupancy by Foreigners Domiciled in Indonesia article 7 in conjunction with Regulation of the Minister of Agrarian Affairs Number 29 of 2016 concerning Procedures for Granting, Releasing or Transfer of Ownership Rights of Residence or Occupancy by Foreigners Domiciled in Indonesia.

### **Meeting Point Configuration for the Development of Formal Islamic Inheritance Law in Indonesia with International Law**

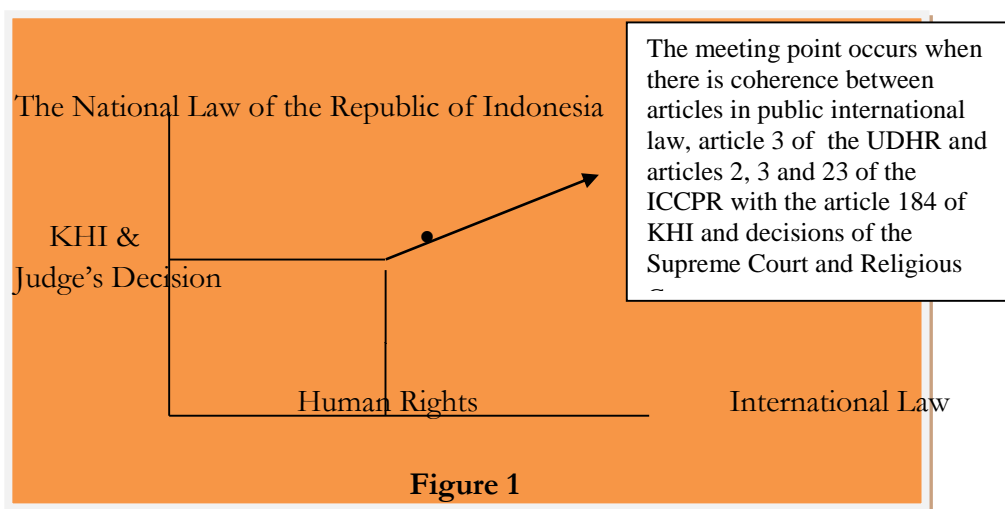
Meeting point is a term that describes the similarities between two or more parties in a group. The meeting point of Islamic inheritance law in Indonesia with international law is a situation that illustrates the harmonization between Islamic inheritance law in Indonesia as a national law and international laws. The effort to find the meeting point is inseparable from the existence of Indonesia as a member and regional organizations such as ASEAN and international organizations such as the United Nations and has ratified various international agreements, so that it is indirectly demanded to be able to serve one another and adapt and realize existing agreements. However, through the study of this meeting point, it can be found that the implementation of international law is carried out not solely because Indonesia is forced and co-opted with the international world, but because Indonesia also has a treasure trove of universal values, some of which are derived from Islamic teachings.

Therefore, based on the previous description, the meeting point of Islamic inheritance law in Indonesia and international law will be explained in two parts, namely the meeting point with public international law on human rights and the meeting point with private international law.

a. The meeting point between Islamic inheritance law and international law on human rights

As a member of the international organization, such as United Nations and other organizations, Indonesia must be able to appear confidently, friendly, able to provide benefits and take advantage of a fair relationship between countries. Islamic inheritance law is one of the national laws which is a *lex special derogate lex general* for Indonesian Muslims. The existence of inheritance law cannot be

separated from observations from other countries in the international sphere. Therefore it is necessary to disclose that in the context of international relations, Islamic inheritance law has been able to answer national and international problems simultaneously, so that the meeting point can be revealed as a point of common values and ideals in running the wheels of State organization which are manifested in aspects of inheritance law. It is hoped that this situation of similarity will foster mutual trust and mutual care on the international stage. The contents of the questions contained in the articles of international agreements have been described in a descriptive manner, then the geometric meeting points will be explained as follows:



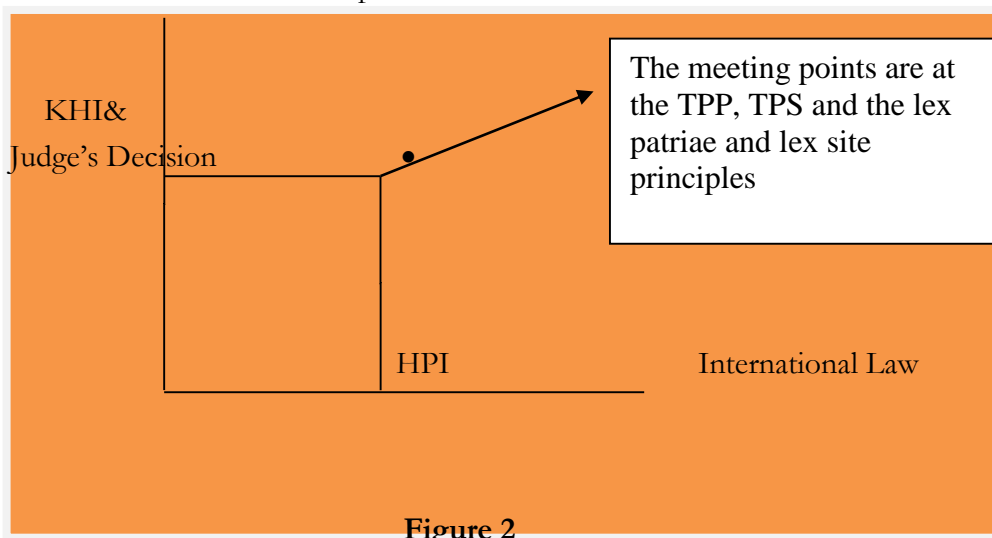
**Figure 1**  
**Meeting Point of Islamic Inheritance Law in Indonesia with International Law on Human Rights**

b. Meeting Point of Islamic Inheritance Law in Indonesia with Private International Law

Furthermore, the meeting point of Islamic inheritance law in Indonesia with private international law is at the primary linkage point and the secondary linkage point as an indication of a relationship between the person who leaves the inheritance and the heir itself. According to the Islamic law compilation, if the heirs of Indonesian citizens have a relationship with heirs of foreign nationals, the rights of the heirs of foreign nationals cannot be obstructed and the *lex patriae* and *lex site* principles apply as one of the

inheritance principles in private international law, so that it can be explained geometrically as follows:

The National Law of the Republic of Indonesia



**Figure 2**  
Meeting Point of Islamic Inheritance Law in Indonesia with Private International Law

## CONCLUSIONS

After examining the development of formal Islamic inheritance law in Indonesia as well as the characteristics of public international law and private international law, it can be concluded that :

- a. The meeting point of formal Islamic inheritance law in Indonesia and international law cannot be separated from the legal politics of the Indonesian government which formalized inheritance law in the Islamic Law Compilation book II and is supported by the decisions of progressive religious court judges in responding to developments in the issue of Islamic inheritance law, creating international relations with dignity as global citizens.
- b. Relations between individuals at the international level will create primary and secondary points of contact. In this case, formal Islamic inheritance law in Indonesia can be integrated with the principles of private international law in the lex site and the lex patriae principle.

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