

The Inheritance Dispute Settlement In Court

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Abstract. *The purpose of this study is regarding the settlement of inheritance law disputes, which is one of the reasons a person gets an inheritance, including marriage, blood relations, parents or close sibling relationships or because of testament. This has also been regulated in the provisions of the civil law code of the Civil Code B.W, because someone receives an inheritance because of a nashab/kinship relationship and because of marriage. Meanwhile, for the occurrence of inheritance, it is necessary to have the following elements: 1. The existence of a person who dies (erflater) The person who dies is the person who leaves the inheritance and is called the heir. 2. There are people who are still alive (erfgenaam) people who are still alive, namely people who according to the law or testament are entitled to inherit from the person who died. They are called: Heirs. 3. The existence of objects that are left behind (erftenis, nalatenschap) objects that are left behind are things that are left by the testator at the time of his death, which is called inheritance. The form of this inheritance can be in the form of Activa (receivables, bills) or Liabilities (debts). Problems regarding the distribution of inheritance have basically been regulated in the legal provisions in Indonesia. Both in the provisions of the civil code and in the provisions of the compilation of Islamic law. Where are the provisions regarding Islamic inheritance disputes whose dispute resolution authority is in the religious courts. As for people who are non-Muslims, the settlement process is in the state court. Where in its implementation it must be able to reflect a sense of justice, while still upholding the principle of kinship that applies in the social life of the community.*

Keywords: Inheritance; Dispute; Decision; Part; Justice.

1. INTRODUCTION

Problems In the order of family life, cases related to inheritance often cause problems. Where these problems often cause disputes and divisions in the family. Where these problems should be the realm of family life that can be resolved amicably, without having to involve outsiders or courts. Because in this case the value of togetherness and kinship should be able to become a foothold without having to prioritize the ego and interests of each individual. Inheritance can be interpreted as a process of transferring inheritance from an heir to his heirs¹.

The function of inheritance is to replace the position in owning property between the person who has died and the person left behind. The provisions for the distribution of

¹ Setiawan Ridwan, Dini Destiani and Cepi Slamet, (2014), *Perancangan Sistem Pakar untuk Pembagian Waris Menurut Hukum Islam (Fara'id)*, Jurnal Hukum

inheritance have been regulated in the inheritance law. Inheritance law itself is: the entire regulation by which the legislator regulates the legal consequences of the death of a person on property, transfer to heirs and their relationship with third parties².

Inheritance law has a very important position in the process of inheritance distribution, in order to be able to create a legal order. The division of inheritance that is considered inappropriate and unfair is what causes a dispute, where in this case one of the family parties is dissatisfied with the part of the inheritance he receives, so he files a lawsuit in court in the hope of getting the expected justice. Even though the family is aware that a familial settlement is the best way, if the process cannot be realized, then only through legal channels is considered to meet the principle of justice for the disputing parties, because a fair decision is considered to fulfill legal certainty for the disputing parties.

The judiciary is one of the institutions in fulfilling the needs of the community in law enforcement and justice, which refers to the applicable law. The existence of religious courts and state courts is an institution that implements judicial power whose provisions have been regulated in law. The religious court is a judicial implementing agency, one of which is to resolve inheritance disputes for those who are Muslim, while the district court has the authority to resolve inheritance cases for non-Muslims. This means that if there is a dispute over the distribution of inheritance, there will be no disputes and overlaps in the jurisdiction of the court.

The trial process regarding inheritance disputes before the court, it is clear the position of the parties, both the plaintiff and the defendant. Which is where the parties have a great desire about the meaning of justice. Although in reality, not every decision that is produced reflects a sense of justice, because in this case a decision that is considered fair for one party is not necessarily considered fair by the other party litigating. But whatever the reason, the main purpose of a person filing a lawsuit before the court is to get justice and legal certainty, where litigation disputes between the parties can be resolved by looking at the rights and obligations of the parties that must be fulfilled. The process of resolving inheritance disputes in court is a very important part in creating the principle of justice in the distribution of inheritance. Where if there is a dispute over the inheritance of his parents, then the dispute resolution process must be able to be resolved by prioritizing the position, rights, and obligations of each party in its distribution. But on the other hand, what is also very important for the author in the research to be studied is to understand how the provisions and process of giving or transferring property from parents to children or heirs are, and how the principles of inheritance distribution according to the law are made. The basis in the decision, as well as what factors are taken into consideration by the judge in making a decision³.

The existence of an inheritance dispute causes one of the parties to file a lawsuit to the court, with the aim of obtaining justice and legal certainty. Where in the dispute resolution process it must be carried out in accordance with applicable provisions, without having to sacrifice justice from one of the parties, so that in reality the part that should be their right can be obtained fairly according to their portion, without having one party get more. Thus the judiciary is the last hope for the litigants, especially those seeking justice regarding inheritance disputes, where the court as an

² 'Ahmad-Hamid., Muh. Muhyiddin., (1984), *Ahkam al-Mawaris fi al-Syari'ah al-Islamiyah*. Dari Al-Kitab Al-'Araby. 1404 H, p.34-35

³ Bachtiar, (2007), Mariyati, *Hukum Waris Islam Dipandang dari Perspektif Hukum Berkeadilan Gender*, Jurnal Hukum, Volume 3 Nomor 1

institution is expected to be able to provide decisions that meet the principles of justice for all litigants. Judges in their position must be fair in giving decisions,

Judges must also make considerations in making decisions. Where the considerations made by the judge must be able to touch the value of objectivity by looking at the position of each party to the dispute, one of which is how the strength of evidence is in the examination process in the trial, which will then be considered by the judge in making a decision, so that justice and legal certainty able to materialize⁴.

2. RESEARCH METHODS

As for discussing the problems in the research, the approach method that the author uses is a normative juridical approach, that the writing of this research is about the application of the law by judges in giving decisions in cases of inheritance disputes in court. Which is based on a study of legal aspects, applicable legislation and norms that live and develop in society. Types of research to obtain the data needed by the author in this study, the author uses a descriptive type of research, namely a study that is intended to provide an overview of the state of the subject and/or object of research as it is⁵.

3. RESULTS AND DISCUSSION

The Authority of the Court in Adjudicating Inheritance Disputes of Muslims

The four judicial circles under the Supreme Court are administrators of state power in the judicial field. Therefore, it is constitutionally acting to administer the judiciary to enforce law and justice in its position as a state court. Thus, Article 24 paragraph (2) of the 1945 Constitution of the Republic of Indonesia is the basis of the state justice system in Indonesia which is divided and separated based on jurisdiction or separation court system based on jurisdiction. Regarding the system of separation of jurisdictions, Yahya Harahap argues that the separation of jurisdictions is based on the environment of authority in which each environment has the authority to adjudicate a certain or diversity jurisdiction⁶.

This particular authority creates absolute authority in each environment in accordance with the subject matter of jurisdiction. Therefore, each judicial environment is only authorized to adjudicate limited to cases delegated by law to it. The District Court has the authority to adjudicate civil cases in general, except for certain civil cases which are the authority of the Religious Courts. After the promulgation of Act No. 3 of 2006, the authority of the Religious Courts underwent an expansion, which previously only handled disputes in the fields of marriage, inheritance, wills, grants, and *sadaqah*, then added to handle disputes over *zakat*, *infaq* and sharia economics as stated in the amendment to Article 49 of the Law on Religious Courts which states that the Religious Courts have the duty and authority to examine, decide, and resolve cases at the first

⁴ Satya Pambudi, Galih, (2012). *Kedudukan Hukum Waris Adat terhadap Pluralisme Hukum Waris di Indonesia*, Jurnal Hukum, Universitas Brawijaya, Malang

⁵ Umar Haris Sanjaya, (2018), *Kedudukan Surat Wasiat Terhadap Harta Warisan Yang Belum Dibagikan Kepada Ahli Waris*, Yogyakarta, Vol. 5, Jurnal Yuridis. p.45

⁶ Sudaryanto, Agus, (2010), *Aspek Ontologi Pembagian Waris dalam Hukum Islam dan Hukum Adat Jawa*, Jurnal Mimbar Hukum, Volume 22, Nomor 3, October 2010.

level between people who are Muslim in the fields of Marriage, Inheritance, Wills, Grants, Endowments (*Waqf*), *Zakat*, *Infaq*, *Sadaqah*, and Sharia Economics⁷.

Elucidation of Article 49 letter (b) of the Law on Religious Courts states that "What is meant by "inheritance" is the determination of who becomes the heir, determination of inheritance, determination of the share of each heir, and carrying out the distribution of the inheritance, and Determination of the Court on a person's request regarding the determination of who is the heir, the determination of the share of each heir. Article 171 letter a Compilation of Islamic Law "What is meant by Inheritance law is the law that regulates the transfer of ownership rights to the inheritance (*tirkah*) of heirs, determining who is entitled to become heirs and how much of each."⁸

Sudira added that inheritance disputes are disputes related to the distribution of inheritance and/or other rights to heirs other than people who are not entitled to inherit from the testator. Based on the description above, the absolute competence of the Religious Courts in the field of inheritance can be divided into 3 (three), namely the determination of who becomes the heir and how much part is obtained (the subject), the determination of the inheritance (the object), and the determination of the implementation of the inheritance. The division of inheritance (transfer of ownership rights to inheritance). When referring to Article 50 paragraph (2) of the Law on Religious Courts, there is a provision that "In the event of a dispute over property rights as referred to in paragraph (1), the legal subject of which is between people who are Muslim, the object of the dispute shall be decided by the Religious Court together with the case as referred to in Article 49". Thus, property rights disputes over inheritance must be resolved together with inheritance disputes.

At first glance, inheritance is one of the subject matter of jurisdiction of the Religious Courts, but the decision of the Supreme Court of the Republic of Indonesia. Number 287 K/AG/2012 dated July 12, 2012 states that inheritance cases are inheritance cases between heirs. If the inheritance has not been divided, then there are heirs who transfer, then the heirs must be punished by reducing their share, or if all of them have been transferred, then it is no longer an inheritance dispute but a ownership dispute (which is the authority of the District Court). One of the important things in the decision is in its consideration, the Panel of Judges is of the view that inheritance disputes in the Religious Courts do not involve parties outside the heirs⁹.

Based on the decision, there are two things that need to be observed, namely relating to the scope of the ownership dispute and the disputing parties in the inheritance dispute. The opinion that this property rights dispute involves at least two parties who claim each other as the legal owners of the property in dispute. Property rights disputes include legal relations between one person and another as well as legal relations between people and objects through control or ownership disputed. With regard to the disputing parties in inheritance disputes, RI Supreme Court Decision Number 177 K/AG/2014 dated 26 May 2014 that inheritance cases in the Religious Courts are purely disputes between heirs. Inheritance cases do not provide an opportunity for parties other than the heirs to be able to become one of the parties in the case. In fact, H. Sarwohadi is of the opinion that if the inheritance has been completely transferred, the party receiving the transfer does not need to be made a

⁷ Abdulrahman., (1992), *Kompilasi Hukum Islam Indonesia*. Akademika Presindo, Jakarta, p.234

⁸ Islamic Law Compilation 1991

⁹ Ash-Shabuni., Muhammad Ali., (1995), *Pembagian Waris Menurut Islam*. Gema Insani Press, Jakarta. p. 74-75

Defendant or Co-Defendant. Therefore, the inheritance case closes the possibility of someone other than the party who becomes the heir. Based on this description, there is the authority of the District Court in adjudicating disputes over the inheritance of Muslims¹⁰.

The District Court has the authority to adjudicate disputes over the inheritance of Muslims if (1) the disputed inheritance has been transferred, even though the inheritance has not been divided and (2) there are other legal subjects who serve as parties, both the Plaintiff, Defendant and Co-Defendant, other than heir. These two conditions are benchmarks for determining whether a case is included in an inheritance dispute or an ownership dispute. Thus, there is a wedge between the authority of the District Court and the religious court in the field of inheritance. The slice of authority of the District Court has a very vital legal effect on the absolute competence of the Religious Courts. If an inheritance case is submitted to the Religious Court on the inheritance of a Muslim who has all been transferred and there are other legal subjects other than the heirs who are drawn as one of the parties, the Religious Court must declare that it is not authorized to handle the case. This is because the case is the authority of the District Court in examining and adjudicating disputes over the inheritance of Muslims.

The Authority of the District Court to Adjudicate Inheritance Cases on the Ground of Lawsuits for Unlawful Acts The lawsuit submitted must have a legal basis (*rechtelijke grond*) which contains an affirmation or explanation of the legal relationship between the plaintiff and the disputed material and or object and between the plaintiff and the defendant relating to the material or object of dispute.⁵ In filing a lawsuit, there are two legal institutions that can be used as a basis for filing a lawsuit in a civil court, namely default and unlawful acts. The provisions regarding unlawful acts are sourced from Article 1365 of the Civil Code which stipulates that any unlawful act that results in harm to another person, obliges the person who committed the act to compensate for the loss¹¹.

With regard to the authority to adjudicate cases on the basis of a lawsuit for unlawful acts, Yahya Harahap argues that the general principle in the judiciary is that civil lawsuits regarding the existence of unlawful acts are the absolute jurisdiction of the district court. This authority is an absolute authority concerning the distribution of power between judicial bodies (*attributie van rechtsmacht*) so that it cannot be interfered with by other judicial bodies. Thus, the District Court is the only court that can hear the case. However, the Law on Judicial Power provides opportunities for deviations from these general principles¹².

Based on the description above, in essence, the District Court and the Religious Courts each have the competence to adjudicate unlawful acts. This is because both the District Court and the Religious Courts have jurisdiction to settle contentious claims. Therefore, in order to know the scope of jurisdiction of the general court environment, it is necessary to first know the *natuurrechtsmacht* of the Religious Courts environment. When referring to Article 50 paragraph (2) of the Law on Religious Courts, there is a provision that "In the event of a dispute over property rights as referred to in paragraph (1), the legal subject of which is between people who are

¹⁰ Budiono, A. Racmad., (1999), *Pembaharuan Hukum Islam di Indonesia*. PT Citra Aditya Bakti, Bandung. p. 46

¹¹ Op.Cit.

¹² Ibid.

Muslim, the object of the dispute shall be decided by the Religious Courts jointly the same as the case as referred to in Article 49¹³.

By elaborating on the Supreme Court Decision of the Republic of Indonesia. Number 287 K/AG/2012 dated July 12, 2012 and Supreme Court Decision Number 177 K/AG/2014 dated May 26, 2014, the mentee uses two terms related to the intersection between inheritance disputes and property rights disputes, namely "property rights disputes in terms of inheritance" and "inheritance disputes regarding property rights". The term "inheritance dispute in terms of property rights" is a property rights dispute as regulated in Article 50 paragraph (2) of the Law on Religious Courts. With the adoption of the principle of Islamic personality in this article, this type of dispute only involves the heirs (who are Muslim) only. Thus, "inheritance disputes in terms of property rights" are the authority of the Religious Courts. The term "property rights dispute in terms of inheritance" is a property rights dispute that meets the requirements as specified in the Decision of the Supreme Court of the Republic of Indonesia.

Thus, disputes of this type fall into the absolute jurisdiction of the General Courts. Therefore, a lawsuit regarding the "property rights dispute in terms of inheritance" was submitted to the District Court. Considering that Article 25 paragraph (3) of the Law on Judicial Power adheres to the principle of Islamic personification of the Religious Courts, all absolute competencies under the authority of the District Courts must be set aside if they are stated as absolute competences of the Religious Courts. This is due to the principle of *lex specialis derogate legi generali*. Therefore, the absolute competence of the Religious Courts must first be determined, then the remainder of the reduction becomes the absolute competence of the District Courts. The absolute competence of the Religious Courts in the field of inheritance can be divided into 3 (three), namely the determination of who becomes the heir and how much is obtained (the subject), the determination of the inheritance (the object), and the determination of the implementation of the distribution of the inheritance (transfer of ownership rights to the inheritance). With regard to the subject of inheritance, the Religious Courts determine who will be the heirs along with the portion of the inheritance they get. Regarding the object of inheritance, the Religious Court determines the inheritance of the heir. The inheritance in this case includes the calculation of assets after deducting debts and religious obligations that must be carried out. In relation to the implementation of the distribution of inheritance, the decision of the Religious Courts can be used as a basis for transferring the ownership of the inheritance. These three things are "inheritance disputes in terms of property rights".

Therefore, the District Court does not have the authority to try him, even though civil lawsuits relating to unlawful acts are the absolute jurisdiction of the district court. This is because Article 50 paragraph (2) of the Law on Religious Courts closes the possibility for the District Court to hear the case. Based on the description above, the District Court has the authority to adjudicate lawsuits on the basis of unlawful acts in "inheritance property rights disputes". The authority of the District Court in adjudicating inheritance cases on the basis of a lawsuit for unlawful acts is formed when the disputed inheritance property has been transferred, even though the

¹³ Djakfar, Idris dan Taufik Yahya., (1995), *Kompilasi Hukum Kewarisan Islam*. Pustaka Jaya, Jakarta. 1995. p. 7

inheritance has not been divided and there are other legal subjects as parties, both the Plaintiff, Defendant and Co-Defendant, other than the heirs¹⁴.

4. CONCLUSION

The factors that cause this inheritance dispute are first, because of the inheritance property that has not been divided first because the heirs have died before the heirs. Second, the death of the heir first than the heir which causes the transfer of the inheritance which is the right of the heir. Third, in this inheritance dispute, it is clear that there is a less harmonious family relationship due to differences in social strata. In the settlement of disputes arising from the non-execution of the will, that the judge prioritizes the Compilation of Islamic Law first in the process of dividing the inheritance.

5. REFERENCES

Journals:

Bachtiar, (2007), Mariyati, *Hukum Waris Islam Dipandang dari Perspektif Hukum Berkeadilan Gender*, Jurnal Hukum, Volume 3 Nomor 1

Satya Pambudi, Galih, (2012). *Kedudukan Hukum Waris Adat terhadap Pluralisme Hukum Waris di Indonesia*, Jurnal Hukum, Universitas Brawijaya, Malang

Setiawan Ridwan, Dini Destiani and Cepi Slamet, (2014), *Perancangan Sistem Pakar untuk Pembagian Waris Menurut Hukum Islam (Fara'id)*, Jurnal Hukum

Sudaryanto, Agus, (2010), *Aspek Ontologi Pembagian Waris dalam Hukum Islam dan Hukum Adat Jawa*, Jurnal Mimbar Hukum, Volume 22, Nomor 3, October 2010.

Umar Haris Sanjaya, (2018), *Kedudukan Surat Wasiat Terhadap Harta Warisan Yang Belum Dibagikan Kepada Ahli Waris*, Yogyakarta, Vol. 5, Jurnal Yuridis. p.45

Books:

'Ahmad-Hamid., Muh. Muhyiddin., (1984), *Ahkam al-Mawaris fi al-Syari'ah al-Islamiyah*. Dari Al-Kitab Al-'Araby. 1404 H

Abdulrahman., (1992), *Kompilasi Hukum Islam Indonesia*. Akademika Presindo, Jakarta

Ash-Shabuni., Muhammad Ali., (1995), *Pembagian Waris Menurut Islam*. Gema Insani Press, Jakarta.

Budiono, A. Racmad., (1999), *Pembaharuan Hukum Islam di Indonesia*. PT Citra Aditya Bakti, Bandung.

Djakfar, Idris dan Taufik Yahya., (1995), *Kompilasi Hukum Kewarisan Islam*. Pustaka Jaya, Jakarta. 1995.

M. Ahnan, Maftuh., (1996), *Mutiara Hadist Sahih Bukhari*. Bandung, Bintang Pelajar.

¹⁴ Ibid.

Regulations:

Act No. 39 of 1999 concerning Human Rights

Basic Agrarian Law (UUPA)

Code of Civil law

Government Regulation No. 24 of 1997 concerning Land Registration

Islamic Law Compilation 1991