

## **Analysis of Judge's Considerations In Inheritance Rights Disputes With Fictive Death Claims and The Psychological Competence of The Parties (Study of Decision Number: 457/Pdt.G/2020/Pa.Plk)**

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**Abstract.** *Decision Number 457/Pdt.G/2020/PA.Plk decided by the Palangka Raya Religious Court presents the complexity of inheritance disputes that include two main issues, namely the claim of fictitious death against one of the heirs and the alleged legal incapacity due to a history of mental disorders. This dispute shows the challenges in assessing the validity of the legal status of the heirs and its implications for the right to inheritance. This study aims to analyze the judge's considerations in resolving the dispute and evaluate its compliance with the principles of justice, legal certainty, and Islamic legal norms. The method used is a normative legal approach with content analysis techniques on primary legal materials in the form of court decisions, the Compilation of Islamic Law (KHI), and the Civil Code (KUHPerdota), as well as relevant secondary and tertiary legal materials. Data collection techniques are carried out through document studies of regulations, academic literature, and court decision documents. The results of the study show that the panel of judges rejected the claim of fictitious death on legal grounds, namely that it was not supported by formal evidence such as a death certificate or court decision, in accordance with the provisions of Article 44 of the Civil Code and Article 171 of the Compilation of Islamic Law. The plaintiff's physical presence at the trial and a valid official identity confirmed his legal status as a living party and entitled to inheritance. The claim regarding mental disorders was declared baseless because there was no determination of guardianship based on Article 433 of the Civil Code, and the 2014 medical history was not relevant to assess the plaintiff's legal condition at the time the dispute took place in 2020. During the trial process, the plaintiff was also considered to have demonstrated behavior that reflected legal competence. In his verdict, the judge decided on the distribution of the inheritance based on the principles of Islamic inheritance law, namely that the sons receive a share of 2/8, the daughters each 1/8, and the remainder is distributed to other heirs according to their lineage. The inheritance was ordered to be auctioned, and the proceeds distributed according to the provisions as a form of implementing the principle of justice and protection of the civil rights of all heirs.*

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*In general, the judge's considerations in this decision have reflected the principle of justice in Islam, upholding legal certainty through the application of valid evidence, and being consistent with the values of Islamic law in providing legal protection for inheritance rights and the integrity of the judicial process.*

**Keywords:** *Fictitious Deaths; Inheritance Disputes; Judge's Considerations; Legal Competence.*

## 1. Introduction

Indonesia is a country based on law as stated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which states that "the State of Indonesia is a country based on law". This provision confirms that all aspects of national life must be resolved based on applicable legal norms, including the resolution of inheritance disputes. As a country based on law, Indonesia guarantees legal certainty, justice, and benefits for all its citizens, including in matters of inheritance distribution.

Inheritance law in the context of Muslim society in Indonesia has its own characteristics that are not only rooted in positive legal norms, such as the Law and Compilation of Islamic Law (KHI), but also derived from the main sources of Islamic law, namely the Qur'an and Hadith. KHI as one of the legal references in the Religious Court environment was ratified through Presidential Instruction Number 1 of 1991, which aims to align Islamic legal practices with the national legal system. Article 171 letter c of KHI explicitly states that "Inheritance is the transfer of ownership rights over the inheritance (tirkah) of the testator to the heirs."

Inheritance in the perspective of Islamic law is not merely a matter of transfer of property, but is also part of worship and implementation of sharia that reflects social justice in society. The distribution of inheritance according to sharia provisions has spiritual, moral, and legal dimensions, which require its implementation to be based on the principles of justice ('adl), welfare (maslahah), and legal certainty. Therefore, any form of deviation from the provisions of sharia in the distribution of inheritance can have implications for the emergence of conflict between heirs and weaken the function of law as a means of social engineering and maintaining a just social order.

Islamic inheritance law, philosophically, is not only a legal-formal rule, but also a manifestation of divine values that aim to realize social justice in society. One of its basic principles is distributive justice, which is a concept of justice that emphasizes proportional and appropriate distribution, as has been firmly established in the Qur'an. In Surah An-Nisa verses 11, 12, and 176, Allah SWT determines the share of each heir in detail, to avoid domination and inequality in the distribution of inheritance. Thus, the implementation of Islamic inheritance law is not only a legal obligation, but also a form of spiritual obedience that has moral consequences.

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The distribution of inheritance to be distributed by the heirs has been determined by the Al-Quran and also the Compilation of Islamic Law.<sup>1</sup>, but in reality many people do not follow the provisions regarding the amount of inheritance distribution that have been determined by the Al-Quran and the Compilation of Islamic Law.<sup>2</sup>The consequence of not following the provisions for the division of inheritance as determined by the Quran and the Compilation of Islamic Law has resulted in many conflicts arising among the heirs regarding the division of inheritance, because the heirs compete to get the largest share for themselves.

Inheritance disputes are legal issues that often trigger conflicts between family members, involving not only aspects of property ownership, but also moral, psychological, and social dimensions. From a psychological perspective, inheritance conflicts are a significant source of emotional stress, especially in large families that previously had harmonious relationships. Inheritance disputes often open old wounds, giving rise to feelings of disrespect, jealousy, and even hatred between siblings. This condition can cause psychological trauma, worsen mental health conditions, and hinder the emotional recovery process after the loss of a family member. In some extreme cases, inheritance conflicts can even trigger physical violence or long and mentally exhausting lawsuits.

These conflicts can stem from a variety of factors, including differences in interpretation of the will, dissatisfaction with the division of assets, and even the emotional or mental conditions of the parties involved. In practice, resolving inheritance disputes often faces complex challenges, especially in unusual situations such as claims of fictitious death and the psychological condition of one of the parties.

For example, in the East Jakarta District Court Decision Number 269/Pdt.G/2020/PN Jkt.Tim, a child sued for the cancellation of an inheritance deed because he felt he was not involved in the distribution of his father's inheritance. He argued that there was administrative manipulation and that his mother's condition was elderly and she had memory loss when she signed the inheritance document. Although the lawsuit was ultimately rejected due to insufficient evidence regarding the mother's mental condition at the time of signing, this case shows how psychological dimensions and alleged injustice can exacerbate inheritance conflicts.

Settlement of disputes arising from inheritance, Muslims in Indonesia can file a lawsuit with the Religious Court, which has the authority to decide cases faced by Muslims. Article 49 of Law Number 3 of 2006 concerning Religious Courts states:

"The religious court has the duty and authority to examine, decide, and settle cases at the first level between people who are Muslims in the fields of: marriage, inheritance, wills, gifts, endowments, zakat, infaq, shadaqah; and sharia economics."

This article confirms that inheritance cases for Muslims in Indonesia are resolved by the Religious Court. Religious Courts in resolving inheritance problems use Islamic law or are also called Islamic inheritance law or Faraid. In the field of inheritance, there are several

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<sup>1</sup>Hamidah, S., Suwardiyati, R., Rohmah, S., Chanifah, N., Hidayat, F., Ganindha, R., ... & Budiono, R, 2021, Islamic Inheritance Law, Brawijaya University Press, Malang, p. 12

<sup>2</sup>Editorial Team Nuansa Aulia, 2020, Complete Edition of Compilation of Islamic Law, CV Nuansa Aulia, Bandung, p. 9

problems that can be resolved through the Religious Court, including determining who the heirs are; Determination of inheritance; Determination of the portion of each heir.<sup>3</sup>

Cases regarding control of inheritance that occur between heirs are common in life. The consequences of control of inheritance between heirs certainly cause conflicts regarding inheritance. One of the fairly complex inheritance dispute cases that occurred in Central Kalimantan is Decision Number 457/Pdt.G/2020/PA.Plk., issued by the Palangka Raya Religious Court regarding the determination of heirs and the distribution of undivided inheritance. This case is an inheritance lawsuit between AP (plaintiff) who sued his five siblings for the distribution of inheritance.

This dispute began with a lawsuit filed by one of the heirs, AP, against his five siblings. The plaintiff stated that he did not receive a share of the inheritance of his parents, the late SDA and HA, which had been controlled and distributed by the defendants without involving him.

The problem becomes complex because there is the fact that AP, in previous administrative records, was declared dead. This death claim was made for the purpose of an insurance claim from PT Asabri. Although administratively he has been considered dead and the insurance benefits have been received by his ex-wife, it turns out that AP is actually still alive and is present as a plaintiff in this inheritance case. This raises significant legal problems, because in Islamic law, death is one of the main requirements for the inheritance process (*sabab al-mīrāt*). A person who has been declared dead is legally considered to have lost his position as a legal subject in the context of inheritance, so that his rights to the inheritance are considered to have been transferred to other heirs.

This study is important to analyze the judge's considerations in resolving inheritance disputes that are colored by claims of fictitious death and the psychological competence of the parties. This study aims to explore how judges interpret legal facts, apply Islamic legal norms, and face unique challenges in achieving fair and balanced decisions, with legal certainty, and in accordance with Islamic legal norms. This study is expected to contribute to the development of Islamic inheritance law theory, especially related to contemporary psychological issues and unusual claims.

## 2. Research Methods

This study uses a normative legal research type, which focuses on the study of legal norms contained in laws and regulations, court decisions, and relevant legal theories. Normative legal research aims to understand how the law is applied in practice.<sup>4</sup>, especially in inheritance disputes involving claims of fictitious death and psychological disorders of the parties involved. This study will explore the applicable legal provisions, such as the Compilation of Islamic Law (KHI) and other regulations, and how these legal norms are applied in deciding cases.

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<sup>3</sup>Taroman Pasyah, 2022, Introduction to Family Law in Islam in Indonesia, CV. Amanah, Palembang, p. 134.

<sup>4</sup>Wiraguna, SA (2024). Normative and empirical methods in legal research: An exploratory study in Indonesia. Public Sphere: Journal of Social Politics, Government and Law, 3(3).

### 3. Results and Discussion

#### 3.1. Judge's Considerations in Resolving Inheritance Rights Disputes in Cases with Claims of Fictitious Death and Psychological Disorders of Parties in Decision Number 457/Pdt.G/2020/PA.Plk.

##### 1. Facts of the Case

This case is an inheritance dispute in the family of the late H. Silem Duyen Apil Bin Duyen Apil and the late Hj. Hainah Binti Tarmi Tunang, a married couple who during their lifetime were blessed with six children, each named: Hj. Lestari, Spd, (hereinafter referred to as Defendant 1), Hj. Elina, S.Sos, (Defendant II), Hj. Widiastuti, (Defendant III), Hj. Lolita Fioda, (Defendant IV), Apriady Bin H. Silem Duyen Apil (Plaintiff), and H. Susantri, SH. (Defendant V). This dispute began when Apriady (Plaintiff) felt sidelined in the distribution of the inheritance of their two deceased parents, namely Hj. Hainah on June 25, 2020 and H. Silem Duyen Apil at a time not explicitly stated in the document, but acknowledged to have died first.

According to the plaintiff, the defendants (his five siblings) have divided and controlled all the inheritance unilaterally without his knowledge or consent, so that he did not receive any portion of the inheritance. Not only that, the plaintiff also stated that all his personal documents, such as population documents, diplomas, and other important documents, are still controlled by the defendants, which has caused him difficulty in taking care of official identity and finding work.

Before taking legal action, the plaintiff had tried several times to resolve this issue through a family approach. However, he did not get a solution, but rather rejection in the form of eviction, insults, and neglect of his rights as an heir. Because he did not find a peaceful way and based on the injustice he felt, the plaintiff then filed an official lawsuit with the Palangka Raya Religious Court, which was registered in Case Number: 457/Pdt.G/2020/PA.Plk, with the main legal reference to Article 188 of the Compilation of Islamic Law which gives the heirs the right to demand the distribution of inheritance through the court if there is a rejection from the other heirs.

In the main points of the lawsuit, the plaintiff asked the court to:

- a. Determine himself and the defendants as the legal heirs of the deceased;
- b. Determine the list of objects/inheritance assets in the form of:
  - 1) A plot of land and the buildings on it, namely 1 (one) house, 10 (ten) shophouses, and 1 shop.
  - 2) A plot of land with a house and a 3-door shop
  - 3) A plot of land measuring 22858 m<sup>2</sup>
- c. Appointing KPKNL Palangka Raya to carry out auction of inherited assets for fair distribution;
- d. Establish a security deposit on all inherited objects so that they are not transferred during the legal process.

The plaintiff argued that the actions of the defendants who had divided and controlled the inheritance without his involvement were unlawful, and had deprived him of his rights as a



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legitimate heir. Therefore, he appealed to the Panel of Judges to issue an immediate decision so that his rights could be immediately protected by law.

## **2. Legal Considerations of the Panel of Judges**

In the Islamic civil justice system, especially in the Religious Courts, judges have a responsibility that is not only limited to the application of the law normatively and procedurally, but also to the enforcement of substantive justice that is in line with the principles of justice in Islam. Inheritance disputes, as one of the types of cases most often submitted to religious courts, often involve not only formal legal aspects, but also the complex social and psychological conditions of the parties. In this context, the judge's considerations must comprehensively consider both normative legal aspects and relevant non-legal facts.

The inheritance case that is the focus of this study, as reflected in Decision Number 457/Pdt.G/2020/PA.PLK, shows unique dynamics in the form of the emergence of a fictitious death claim against one of the parties and accusations of mental disorders that can have implications for legal incompetence. The lawsuit was filed by AP as the plaintiff against his five siblings who had previously divided their parents' inheritance without involving him. Instead of being resolved amicably, the plaintiff's efforts to claim his rights were met with rejection and degrading treatment, resulting in legal efforts in court.

In their exceptions, the defendants put forward two fundamental arguments: first, that the plaintiff has died, and therefore has no legal standing; and second, that the plaintiff suffers from a permanent mental disorder and therefore does not have the legal capacity to act as a legitimate legal subject. These two claims directly challenge the plaintiff's legal existence, both in terms of personal status and civil capacity, and therefore require strong evidence and in-depth legal considerations from the panel of judges.

This situation places the judge in a very strategic and challenging position. The judge in this case is required not only to apply the law textually and formally, but also to take a holistic approach that considers the factual, psychological, and substantive justice values. The following discussion will focus on the analysis of the legal considerations of the panel of judges in assessing two main issues, namely the validity of the fictitious death claim and the assessment of the psychological competence of the parties.

### **a. Judge's Legal Considerations on Fictitious Death Claims in Inheritance Disputes**

In the inheritance case registered with number 457/Pdt.G/2020/PA.PLK, one of the main issues that arose was the defendant's argument regarding the fictitious death claim directed at the plaintiff. The defendants filed an exception that the plaintiff did not have legal standing in filing a lawsuit for inheritance distribution and lost his inheritance rights, on the grounds that the plaintiff had previously declared himself dead in order to take care of the insurance claim from ASABRI, as stated in the exception to the decision:

"The Plaintiff has taken care of Asabri on the grounds that the Plaintiff has declared himself deceased (died) and the Plaintiff has received payment for the insurance which was sent through the account of Ary Julianti (the Plaintiff's ex-wife)"

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The argument is based on information from the plaintiff's ex-wife, Ary Julianti, as witness IV who stated that she had received a sum of money from ASABRI in the name of the plaintiff to her account, but did not know the purpose of the money. The defendants concluded that the plaintiff had declared himself dead, so legally he could not act as an heir because he was considered administratively dead.

However, in his response, the plaintiff firmly denied the allegations and stated that he was still alive, healthy, and had never consciously or legally declared himself dead. The plaintiff also stated that the allegations were baseless slander and were not supported by valid evidence in court, as quoted from the answer to the verdict exception: "very vile slander" and emphasized that "until now, thank God, the plaintiff is still given health and breath by Almighty God." In addition, the plaintiff also submitted logical arguments that refuted the claim through the exception, that:

"Logically, can a deceased person take care of his own affairs (take care of Asabri) even though he has died and what was the attitude of the Plaintiff's superior when he saw the Plaintiff, who had died at that time, come to take care of Asabri?"

The statement confirms that the Plaintiff never declared himself dead and there is no evidence to justify the Defendants' claims.

The panel of judges considered that the claim of a fictitious death was not proven. The Panel of Judges in its considerations rejected the exception for a number of reasons: First, the evidence submitted by the defendant, in the form of information from the plaintiff's ex-wife and alleged receipt of ASABRI funds, was not strong enough to declare someone legally dead. Second, the Judge considered that there was no authentic evidence or court decision stating that the plaintiff had died. Third, the plaintiff's presence before the trial and his testimony which was confirmed by six witnesses showed that the plaintiff was still alive and permanently domiciled in Palangka Raya.

The first reason for rejection, the Judge gave legal considerations by emphasizing the principle of proof. The Judge considered that the claim of fictitious death was not legally proven. In his considerations, the judge stated:

"The Defendants stated that the Plaintiff stated that he had died, but was not accompanied by written evidence and only the statement of the Defendants' witness IV stated that he only received insurance money from Asabri and entered the account of witness IV, but did not know for what purpose..."

The panel of judges, in the verdict, stated that the accusation of fictitious death addressed to the plaintiff was not legally proven. This assessment was based on the principle of proof in civil procedural law, as regulated in Article 1865 of the Civil Code (KUHPerdara) which states that: "Any person who submits an incident before the court must prove the incident." Similar provisions are also contained in Article 163 of the Herzien Indonesisch Reglement (HIR) which states: "Any person who claims to have rights, or states that another person does not have rights, must prove the existence of that right or the absence of that right."

The defendants who argued that the plaintiff had declared himself dead fictitiously were unable to present valid and relevant evidence. In his deliberations, the judge stated that the defendants' argument was not supported by written evidence or official documents, but was only based on the statement of witness IV. The witness stated that he received a sum of

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money from Asabri, but did not know for what purpose the funds were received. Thus, the judge considered that the statement did not have sufficient evidentiary power, because it did not contain direct relevance to the accusation regarding the plaintiff's declaration of fictitious death. Therefore, the panel of judges rejected the defendants' argument because it was not legally proven, and this decision reflects the application of the principle of caution and consistency towards the principle of legal certainty/legality in assessing the validity and strength of evidence in the trial process.

### **b. Legal Considerations of Judges Regarding the Psychological Competence of Parties in Inheritance Disputes**

In the a quo inheritance dispute, the defendants filed an exception to the validity of the power of attorney used by the Plaintiff on the basis that the Plaintiff was deemed legally incompetent due to a history of psychological disorders (severe depression) as stated in two medical documents from 2014, namely Referral Letter Number: 445/005/KPA/I/2014 from the Aliyang Pratama Clinic, dated January 14, 2014, which referred the Plaintiff for further examination at the Mental Hospital and Doctor's Certificate Number: 445/32/RSJKA/I/2014 from the Kalawa Atei Mental Hospital, which stated that the Plaintiff was suffering from severe depression and required further treatment and monitoring.

Based on the two documents, the Defendants concluded that the Plaintiff was mentally incapable of performing legal acts, including in this case granting power of attorney and filing an inheritance lawsuit. As stated in the decision that:

"The Defendant stated his objection to the power of attorney used by the Plaintiff in filing the lawsuit because the Plaintiff has a history of severe mental disorders (severe depression), as stated in the referral letter from the Aliyang Pratama Clinic Number: 445/005/KPA/I/2014 dated January 14, 2014 and the Certificate from the Kalawa Atei Mental Hospital Number: 445/32/RSJKA/I/2014, which states that the Plaintiff is under the supervision of a psychiatrist and undergoing further treatment."

However, in the reply submitted to the Panel of Judges, the Plaintiff rejected the Defendants' exceptions and emphasized that the medical conditions used as the basis for questioning his competence were no longer relevant. The Plaintiff stated that the documents submitted by the Defendants, namely the referral letter and doctor's certificate from 2014, could not be used as a basis for assessing his mental condition at the time of filing the lawsuit in 2023. Thus, according to the Plaintiff, the argument regarding legal incompetence due to psychological disorders is no longer justified. In accordance with the following quote from the decision:

"The Plaintiff in his reply stated that the medical conditions as mentioned in the two letters in 2014 have been over for more than seven years and are no longer relevant to assess the Plaintiff's current mental state. The Plaintiff even asserted that the person concerned has recovered and is consciously and actively taking care of his resignation and early retirement from the TNI."

This statement is important to emphasize that a person's legal capacity cannot be determined solely based on past medical history without a formal court ruling regarding incompetent status or being under guardianship. This is also in line with the basic principle



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of civil law that a person's legal capacity is assumed to exist until proven otherwise by a valid court decision.

The Plaintiff's active actions in taking care of his resignation and early retirement from the TNI were referred to by the person concerned as a real form of legal awareness and administrative ability. This is an argument to support the argument that at the time of filing the lawsuit, the Plaintiff was in a stable mental condition and legally competent.

Departing from the issue of the psychological competence of the parties, the Panel of Judges considered that:

"There is no evidence to show that at the time of granting power of attorney and filing the lawsuit, the Plaintiff was in a state of legal incompetence. There is also no court ruling stating that the Plaintiff is under guardianship as referred to in Article 433 of the Civil Code."

The claim of legal incompetence based on past medical history was declared insufficient to invalidate the validity of the power of attorney or the Plaintiff's legal standing in the a quo inheritance case. The Plaintiff's attitude in proactively refuting the argument of incompetence and providing evidence of rational administrative actions also strengthened his legal position as a legitimate party in the case.

The following discussion is related to inheritance in Islam, the Panel of Judges in its considerations explicitly made the aspect of psychological competence as one of the important elements in assessing the Plaintiff's legal competence to file a lawsuit in the a quo inheritance case. This is in line with the provisions of Article 1329 which states that "Every person is competent to make a contract, unless he is declared incompetent according to the law." and furthermore, Article 1330 of the Civil Code emphasizes that:

"Those who are not competent to make an agreement are people who are minors; those who are placed under guardianship; and women, in cases stipulated by law, and generally all people to whom the law prohibits making certain agreements."

A person who is not legally or not declared to be under guardianship is still considered capable of carrying out legal acts, including in this case suing for inheritance rights. Meanwhile, Article 433 of the Civil Code states:

"Every adult who is in a state of perpetual imbecility, memory sickness, or dark-sightedness, should be placed under custodial care, even if occasionally able to look after his interests."

Guardianship must be determined by a court decision, and cannot be imposed solely on the basis of allegations or outdated medical evidence.

The Panel firmly rejected the Defendants' exception stating that the Plaintiff was not legally competent, by putting forward three main legal bases:

#### 1) Expiration of Medical Evidence

The Panel noted that the medical documents used as the basis by the Defendants to declare the Plaintiff's legal incompetence, namely the Referral Letter from the Aliyang Primary Clinic and the Doctor's Certificate from the Kalawa Atei Mental Hospital, both dated January 14, 2014, were more than seven years old when the case was examined. In its consideration, the Panel stated "That both letters are outdated evidence that does not

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necessarily describe the Plaintiff's current mental state." Therefore, they cannot be used as a basis to eliminate legal competence in the current context.

## 2) No Determination of Guardianship

The Panel also emphasized that legally, a person's competence can only be set aside if there has been an official determination from the court that the person concerned is in a state of guardianship. In this case, there is not a single court decision stating that the Plaintiff is in such a status. Thus, the Panel continues to apply the principle of presumption of mental competence, namely the legal assumption that a person is considered competent unless proven otherwise legally.

## 3) Facts of the Plaintiff's Presence and Participation at the Trial

The fact that the Plaintiff was present in person at the trial, provided a legal response to the Defendants' arguments, and demonstrated administrative understanding by taking care of early retirement from the TNI, was also used as an indicator by the Panel that the Plaintiff was in a legally conscious state and had the mental capacity to exercise his rights. In this case, the Panel stated: "That the Plaintiff was present in person at the trial and was able to provide clear and structured information, indicating that he was competent to carry out legal acts."

## **3. Judge's Decision on Inheritance Dispute with the issue of fictitious death claim and Psychological Competence of the Parties.**

The inheritance dispute examined by the Palangka Raya Religious Court in case Number 457/Pdt.G/2020/PA.Plk relates to the inheritance of the late H. Silem Duyen Apil and the late Hj. Hainah binti Tarmi Tunang. The Panel of Judges in inheritance case Number 457/Pdt.G/2020/PA.Plk provided a comprehensive assessment of all evidence submitted by the parties, including population documents, authentic evidence, witness statements, and the legal status of the parties. In his lawsuit, the plaintiff in his petition requested that the Court be pleased to:

"1). To determine the Plaintiff and the Defendants as the heirs of the late H. Silem Duyen Apil Bin Duyen Apil with the late Hj. Hainah Binti Rami Tunang. 2). To determine the assets mentioned in the posita to be the inheritance/inheritance of the testator; 3) To determine the level of each heir according to Islamic inheritance law or according to the provisions of applicable laws; 4) To determine 1 heirloom in the form of a Mandau to be in the possession of the plaintiff; 5). To sentence the Defendants or other parties or third parties who obtain and control the inheritance of the late H. Silem Duyen Apil Bin Duyen Apil with Mf. Hainah Binti Tarmi Tunang unlawfully to hand over the portion of the Plaintiff in a voluntary manner and if it cannot be divided naturally, it can be replaced with money or sold or auctioned and handed over according to their respective portions; 6). To determine, appoint the State Tax Service and Auction Caritor (KPKNL) Palangka Raya, as the auction organizer for the inheritance of the deceased M. Silem Duyen Apil Bin Duyen Apil with Hf. Hainah Birt Tarmi Tunang. 7). Declare the validity and value of the seizure of collateral carried out by the bailiff of the Palangka Raya Religious Court against the inheritance of the deceased H. Silem"

From the lawsuit, the judge issued a verdict as stated in the judge's decision as follows:

"Decision Number 457/Pdt.G/2020/PA.Plk Grants the Plaintiff's lawsuit in part; 1). Declares that the Plaintiff, Defendant I, Defendant II, and Defendant III are each heirs of the late H.

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Silem Duyen Apil and the late Hj. Hainah binti Tarmi Tunang; 2). Declares that the Plaintiff is entitled to a portion of the inheritance of the deceased and the deceased according to Islamic law; 3). Declares that the object of the dispute in the form of inherited property located on Jl. RTA Milono, Palangka Village, Jekan Raya District, Palangka Raya City, is inherited property that has not been divided to the heirs; 4). Declares that the actions of the Defendants who control all the inherited property without distributing it to the Plaintiff are contrary to Islamic inheritance law; 5). Orders the Defendants to divide the inherited property according to the respective portions of each heir according to Islamic law, 6). Rejects the Plaintiff's lawsuit for the rest; 7). Charge court costs to the parties in accordance with procedural law provisions."

Based on the verdict above, it can be seen that in relation to In his considerations, the judge rejected the Defendants' exceptions which argued that the Plaintiff no longer had legal standing because he had died (fictitious death claim) or was considered psychologically unhealthy. And determined the plaintiff as the legal heir of the testator.

In connection with the fact that this case is a case of a quo inheritance, the Panel of Judges first considers and examines whether or not there is a legal relationship between the plaintiff and the defendants to assess the validity of the plaintiff's legal standing as an heir. This examination is important to ensure whether it is true that the plaintiff and the defendants were ever bound by a legal relationship that gave rise to inheritance or inheritance that became the object of inheritance, and whether this relationship can be used as a legal basis by the plaintiff in claiming inheritance rights at the Palangka Raya Religious Court.

The Panel of Judges then conducted verification based on the evidence submitted, namely the Family Card, family tree statement, and birth certificate, and took into account the confessions of the defendants in court. All of the evidence and facts showed that the plaintiff and the defendants were the biological children of the deceased couple H. Silem Duyen Apil and Hj. Hainah. Based on the provisions of Article 171 letter (c) of the Compilation of Islamic Law (KHI), it is stated that: "Heirs are people who at the time of death have a blood relationship or marital relationship with the testator, are Muslim and are not prevented by law from becoming heirs." With the fulfillment of the elements of blood relationship and same religion, and the absence of legal obstacles, the plaintiff's status as an heir can be declared legally valid.

### **3.2. Conformity of Judge's Considerations in Decision Number 457/Pdt.G/2020/PA.Plk regarding Inheritance Rights Dispute with Claim of Fictitious Death and Psychological Disorders of the Parties with the Principles of Justice, the Principles of Legal Certainty and the Principles of Islamic Law.**

Discussion in the realm of Islamic inheritance law, the existence of a court decision is not solely assessed from the final result, but also from the quality of the legal considerations underlying the decision. Decision Number 457/Pdt.G/2020/PA.Plk reflects the complexity in resolving inheritance disputes which are not only related to proving rights to inherited property, but also related to contemporary legal issues, such as claims of fictitious death and the psychological condition of one of the disputing parties. In this context, it is important to examine whether the judge's considerations in deciding the case are in line with the principle of justice as the main objective of the law, the principle of legal certainty

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as the basis for protecting the rights of legal subjects, and the principles of Islamic law which are the substantive basis in religious courts. Therefore, this discussion is directed at analyzing the conformity of the judge's considerations in the a quo case with these three principles normatively and legally, in order to assess the validity and integrity of the decision within the framework of Islamic law and the national justice system.

**1. The suitability of the judge's considerations regarding inheritance rights disputes with Fictitious Death Claims with the principles of justice, the principle of legal certainty and the principles of Islamic law.**

Analysis of the judge's decision in inheritance case Number 457/Pdt.G/2020/PA.PLK which rejected the claim of fictitious death against the plaintiff shows the application of the principle of justice that is consistent and proportional. When viewed from the principles of formal justice and substantive justice in the civil law system and Islamic inheritance law in Indonesia, this decision can be assessed as a form of legal protection that is not only procedurally valid but also in accordance with the principles of justice, legal certainty, and in accordance with the values of Islamic Law.

From a formal justice perspective, the judge's decision shows the application of legal procedures in accordance with applicable laws and regulations. The judge refers to the provisions of Article 1865 of the Civil Code (KUHPPerdata) and Article 163 of the Herzien Indonesisch Reglement (HIR) which expressly state that "anyone who claims to have rights, or mentions an event to assert his rights or to deny the rights of others, must prove the existence of such rights or events." In this case, the defendant who claimed that the plaintiff had died could not show authentic evidence such as a death certificate or a ruling from a competent court. Therefore, the death argument is not legally acceptable and is formally declared null and void. In addition, the plaintiff's presence in person at the trial and his legitimate legal identity strengthen his legal standing, so that the rejection of the exception stating the loss of legal standing is an application of the principle of legal certainty and the principle of caution by the judge in deciding the case.

From the aspect of substantive justice, the judge's decision does not merely adhere to the procedure, but deeply assesses the contents of the case for the sake of protecting the plaintiff's civil rights as a legitimate heir. Substantive justice, according to Gustav Radbruch, places truth and moral justice above mere formal legality. In this context, the judge emphasized that there were no legal provisions or evidence stating that the plaintiff had died or lost his inheritance rights. Therefore, by rejecting the unproven fictitious death claim, the judge has prevented the occurrence of legal engineering or manipulation that could eliminate someone's rights. This decision reflects the protection of the plaintiff's legal interests and upholds the principle of substantive justice that sides with factual truth and legal moral values.

Furthermore, within the framework of Islamic law, the principle of justice (al-'adl) occupies a central position as the main objective of implementing the law. The Qur'an in Surah An-Nahl verse 90 states that "Indeed Allah commands (you) to act justly and do good", while in Surah An-Nisa verse 135, Allah commands to act justly even to oneself or one's closest relatives. In Islamic law, the principle of justice also emphasizes the importance of bayyinah or clear and convincing evidence, as the Prophet Muhammad SAW said:

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"If two people bring a case to me, then I will decide based on the information of one of them. So whoever can bring the bayyinah, then he will win." (HR. Bukhari and Muslim).

In this case, the absence of bayyinah from the defendant strengthens the basis of justice used by the judge. The judge not only assessed based on national positive law, but essentially applied the values of Islamic justice in guaranteeing the right to life and inheritance rights of someone who is still alive and present at the trial.

## **2. Conformity of Judges' Considerations Regarding Inheritance Rights Disputes with the Issue of Psychological Competence of the Parties with the principles of justice, the principle of legal certainty and the principles of Islamic law.**

In the case of inheritance dispute involving the claim of the Plaintiff's legal incompetence due to a history of psychological disorders in the form of severe depression, the Panel of Judges showed a careful and fair attitude in assessing the psychological competence of the party concerned. The Defendant filed an exception on the grounds that the Plaintiff was not legally competent based on two medical documents from 2014, namely Referral Letter Number: 445/005/KPA/I/2014 from Aliyang Pratama Clinic, dated January 14, 2014, which referred the Plaintiff for further examination at the Mental Hospital and Doctor's Certificate Number: 445/32/RSJKA/I/2014 from Kalawa Atei Mental Hospital stating that he had severe depressive disorder. However, the Panel of Judges rejected the exception on the grounds that the medical evidence had expired and was not relevant to assess the Plaintiff's mental condition when the lawsuit was filed in 2023. In his decision, the judge stated that "The evidence submitted by the Defendants in the form of a 2014 medical certificate cannot be used as a basis for assessing the Plaintiff's legal capacity at this time, because there is no court ruling stating that the Plaintiff is under guardianship."

The Panel of Judges emphasized that a person's legal capacity must be proven by an official court ruling regarding the status of incompetence or under guardianship, as regulated in Article 433 of the Civil Code (KUHPperdata) which reads: "A person who is incompetent to perform legal acts is one who is under guardianship." The absence of a court decision stating that the Plaintiff is under guardianship, as well as the fact that the Plaintiff actively takes care of administrative matters such as resignation and early retirement from the TNI, are strong indicators that the Plaintiff has adequate legal capacity and legal awareness.

The judge's approach in making this decision very much reflects the principle of justice as mandated in Islam which emphasizes justice (al-'adl) as the main basis for every legal decision. In the Qur'an, Surah An-Nisa' verse 135, it is emphasized: "O you who believe! Be people who always uphold justice, bearing witness to Allah even though it is against yourselves or your parents and relatives." This principle shows that justice must be upheld regardless of closeness or prejudice, and the judge in this case upheld justice by rejecting the exception without valid and up-to-date legal evidence.

The judge's considerations also reflect the principle of legal certainty which demands that the law must provide certainty and not allow doubt about a person's legal status. According to Satjipto Rahardjo in legal theory, the principle of legal certainty is a fundamental principle that aims to protect individual rights and provide clear guidelines in resolving disputes. Therefore, without a court decision determining legal incompetence, the court



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must position the Plaintiff as a person who is legally competent and has the right to file a lawsuit.

Furthermore, the judge's consideration is also in line with the principles of Islamic law in inheritance which recognizes the rights of heirs based on blood relations and the legal status of the heir, as regulated in the fiqh of inheritance. In the book of fiqh, inheritance rights are rights that cannot be ignored without clear sharia reasons. Imam al-Kasani in the book *Bada'i al-Sana'i* emphasized that legitimate heirs must be given their rights fairly in accordance with sharia provisions. The judge's decision which strengthens the Plaintiff's status as an heir who has the right to inherit, while rejecting the argument of incompetence that has not been proven legally, strengthens the protection of civil rights and human rights from an Islamic legal perspective.

### **3.3. Comparative Study of Handling Inheritance Disputes with Claims of Fictitious Death and Psychological Disorders of Parties in Other Countries**

In inheritance law, the status of a person's life or death is a fundamental prerequisite for determining the legal subject who is entitled to become an heir. However, in practice in the field, there is a phenomenon of fictitious death claims, namely a situation where a person is mistakenly or intentionally declared dead even though he is still alive or conversely someone declares another party to have died in order to obtain inheritance rights illegally. The problem of this fictitious claim is carried out with the intention of obtaining inheritance rights illegally or not in accordance with the provisions of the law. This problem becomes more complex when associated with the psychological capacity of the parties involved, both as claimants and opposing parties. This study conducts a comparative analysis of regulations and jurisprudence in various jurisdictions of other countries in resolving inheritance disputes involving fictitious death claims, while also examining the psychological implications of the disputing parties as a factor in legal considerations. By comparing legal practices in Indonesia with other countries, similarities, differences, and their relevance to the development of inheritance law in Indonesia can be identified.

#### **1. Handling of Inheritance Rights Disputes with Fictitious Death Claims and Psychological Competence of Parties in Other Countries**

The phenomenon of fictitious death claims in inheritance disputes is not a problem that only occurs in Indonesia, but is also found in various countries with diverse legal systems. Two countries that are relevant to be used as comparative material in this context are Malaysia and Egypt, because both have legal traditions that combine elements of Islamic law and positive legal systems, but apply them through different approaches.

In Malaysia, the handling of fictitious death claims in inheritance disputes is regulated in a legal framework divided between the Islamic legal system and civil law. The most relevant provisions related to fictitious death claims are contained in Article 108 of the Evidence Act 1950, which regulates the principle of presumption of death. Based on this article, a person whose whereabouts are unknown for seven consecutive years, without any legitimate news or communication, can be legally considered to have died. This principle is used as the basis by the Sharia Court and the Civil Court to issue a presumption of death order for the sake of inheritance rights distribution. As an illustration, the Selangor Sharia Court in the case *Re: the Estate of the Late Wan Ahmad bin Wan Mohamed* in 2010, granted the heirs' request to

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declare the death of a person who had been missing for more than seven years, even though no physical evidence of death was found. This decision became the basis for the legal distribution of inheritance. However, if it is later proven that the person in question is still alive or the claim of his death was fabricated, the Malaysian legal system provides room to cancel the order and review the entire inheritance distribution process. This cancellation mechanism is based on the provisions of the Civil Law Act and jurisprudence that emphasizes the principle of caution in responding to the legal status of a missing person.

## **2. Consideration of Psychological Competence of Parties in Inheritance Disputes in Other Countries**

In addition to the issue of fictitious death claims, one crucial aspect in resolving inheritance disputes is the psychological competence or legal capacity of the parties involved. This competence refers to a person's ability to understand and consciously make legitimate legal decisions, including in demanding or receiving inheritance rights. In a legal context, a person who is deemed incompetent due to mental disorders cannot be held responsible for his legal actions without a legitimate representative.

Malaysia and Egypt are two countries that have incorporated Islamic law into their legal systems, and have specifically regulated protection mechanisms for individuals with mental disorders, although their approaches reflect the different paradigms between the common law/civil law model and the fiqh tradition.

Malaysia with a Legal-Formal and Institutional Approach, as a country with a dualistic legal system with a combination of civil law and Islamic law, regulates mental health aspects comprehensively through the Mental Health Act 2001. This law is the main legal framework in handling individuals with mental disorders, including in civil and inheritance cases both in the Civil Court and the Sharia Court. Articles 52 and 54 of the Mental Health Act 2001 authorize the court to appoint a legal entity called the Committee of Person and Estate, which is a legal guardianship authorized to represent and manage the legal and financial interests of individuals who are medically declared mentally incompetent. This evaluation must come from an accredited psychiatrist and have valid professional authority.

An example of the implementation of this provision is seen in the case of *Re: Lim Swee Cheng (Deceased)* [2012] MLJU 987, where the High Court of Malaysia ruled that the claimant lacked mental capacity. Based on expert testimony and psychiatric reports, the court appointed a legal guardian to protect his rights.<sup>5</sup> This decision demonstrates the Malaysian legal system's commitment to the principles of fairness and procedural justice, as affirmed in the principles of justice in the Act and in the court's jurisprudence.

Egypt has an integrative approach between Islamic law and civil law, the issue of mental capacity in the context of inheritance is regulated through integration between Islamic law (fiqh al-mawārīt and ahwāl al-shakhṣiyyah) with national civil law. In the fiqh tradition, individuals who experience severe mental disorders are classified as *majnūn tamm* (people who have completely lost their minds), who legally do not have the capacity (*‘adam al-ahliyyah*) to take legal action (*taṣarruf*). Therefore, all legal actions—including inheritance

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<sup>5</sup> Hashim, R. 2016. "Mental Incapacity and Legal Protection in Malaysian Law". *Malayan Law Journal*, Vol. 4, No. 1, p. 55–70.

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claims—can only be carried out by guardians (al-walī) or curators (al-qayyim) who are officially appointed by the court.

The appointment of a legal guardian is carried out after a forensic medical examination by a psychiatrist assigned by the court, and the results of the medical evaluation are used as official evidence in the trial process. An example of this can be seen in the case of Personal Status Case No. 326/2018 at the Cairo Personal Status Court. In this case, the court rejected a man's inheritance claim after a medical evaluation showed that he suffered from chronic mental disorders. The court then appointed a legal guardian to look after his interests, in order to prevent exploitation and ensure legal protection.

Egypt's approach explicitly reflects the values of *maqāṣid al-shari'ah*, particularly the principle of *ḥirāsat al-ḥuqūq* or protection of rights, which emphasizes the need for legal protection for vulnerable groups in society. This principle is implemented in conjunction with due process of law which ensures a fair and non-discriminatory judicial process.

### **3. Comparative Analysis and Relevance to Practice in Indonesia**

A comparative analysis of legal practices in Indonesia, Malaysia, and Egypt shows that there are similarities in the principles of recognizing a person's legal competence, especially in the context of inheritance disputes. All three countries adhere to the principle that everyone is basically considered legally competent until proven otherwise through a valid legal mechanism. In Malaysia, the Sharia legal system applies to Muslims in inheritance matters, and a person's legal competence is regulated by the Sharia Court. A person can only be declared incompetent if there has been a Sharia guardianship decision based on valid medical evidence and supported by a legal process. Likewise in Egypt, although the legal system is a combination of civil law and Islamic law, the basic principle used is that "everyone is considered sane" until there is an official court decision determining a person's insanity or incompetence. Old medical certificates or outdated psychological evidence are not sufficient to revoke a person's legal rights, including in filing a lawsuit or receiving an inheritance.

The three countries also show consistency in the use of actual and objective evidence in assessing legal competence. In all three, a history of mental illness is not necessarily a basis for revoking legal rights, unless there has been a recent psychiatric evaluation formally approved by an authorized institution. In addition, in both Malaysia and Egypt, a person's presence in court, their ability to answer questions from the judge, and their ability to understand the facts of the case are strong indicators for assessing their level of legal competence. This approach is very much in line with the principle of non-discrimination against people with mental disabilities as stipulated in the UN Convention on the Rights of Persons with Disabilities, which has also been ratified by all three countries.

The relevance of this comparison to practice in Indonesia is very important, especially in the context of enforcing the principles of civil procedural law that guarantees the right of every person to litigate in court. In Indonesia, the Civil Code and civil procedural law do not explicitly detail provisions regarding the revocation of legal capacity, but entrust it to the court's decision on guardianship as regulated in Article 433 of the Civil Code. In practice, courts in Indonesia also assess a person's legal capacity based on actual indicators, not just past medical history. Therefore, the existence of a plaintiff who is able to attend the trial,

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submit claims coherently, and answer the judge's questions logically, indicates that he or she is still considered legally competent.

From a comparative perspective, Indonesia needs to continue to strengthen its regulations and judicial practices so as not to discriminate against people with a history of mental disorders, as long as there is no official decision on guardianship. In addition, Indonesia can learn from the systems in Malaysia and Egypt that place a strong emphasis on up-to-date medical evaluations, oversight mechanisms for psychiatric institutions, and the active involvement of judges in directly assessing the psychological competence of the disputing parties. This is important to maintain substantive justice in the judicial process, as well as to avoid the practice of misusing allegations of mental disorders as a tool to weaken a person's legal position in inheritance disputes. Thus, through this approach, Indonesia can not only guarantee the protection of citizens' civil rights, but also uphold the principles of humanity and non-discrimination in the national judicial system.

#### **4. Conclusion**

Based on the analysis of Decision Number 457/Pdt.G/2020/PA.Plk, this study concludes two things, namely:

1. The judge's considerations in resolving inheritance disputes with claims of fictitious death and psychological disorders, the panel of judges consistently applied applicable legal principles. The judge rejected the fictitious death claim because of at least 3 things, namely the medical evidence submitted had expired and did not reflect the mental condition when the lawsuit was filed. Furthermore, no valid evidence was found in the form of a death certificate or court decision stating that the plaintiff had died, as regulated in Article 44 of the Civil Code and Article 171 of the KHI. The plaintiff's physical presence at the trial along with valid identity is strong evidence that his legal status is still alive. Meanwhile, regarding psychological disorders, the judge is of the opinion that the medical history in 2014 is no longer relevant to prove legal incompetence in 2020, especially since there was no determination of guardianship based on Article 433 of the Civil Code. The plaintiff's active and responsive behavior during the trial further strengthens his legal capacity. Even in the case of a person who has been declared dead by the court but is later found to be alive, the law provides room for the restoration of his rights, as stated in Article 175 of the KHI. Therefore, the Plaintiff still has the right to maintain his position as a legitimate heir and has full rights to the inheritance according to the provisions of Islamic law and applicable legislation. 2. The judge's considerations in this case are in accordance with the principles of justice, legal certainty, and Islamic law. The judge considered the aspect of justice through proportional inheritance distribution, namely that the male child receives 2/8 and the female child receives 1/8. This distribution is in accordance with the provisions of Surah An-Nisa paragraph 11 and Article 176 of the Compilation of Islamic Law (KHI), while also showing protection for the rights of the plaintiff that were previously neglected. Furthermore, the judge's decision reflects legal certainty by rejecting claims of fictitious death and mental disorders based on valid and accountable evidence as regulated in Article 284 HIR. In addition, the decision confirms the fulfillment of the principle of legal standing and protection of the civil rights of the parties. And the judge's considerations are also in line with the principles of Islamic law, where the determination of heirs is based on blood

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relations as stated in Article 171 KHI. The rejection of the exception filed by the defendant is also consistent with the provision that the status of death must be formally determined through a deed or court decision in Articles 173–175 KHI. 3. A comparative study of the handling of inheritance disputes involving claims of fictitious death and consideration of the psychological competence of the parties in various countries shows the complexity and diverse approaches in determining a person's legal status as an heir. In the context of inheritance law, the status of a person's life or death is an essential requirement that forms the basis for determining the distribution of inheritance rights. Claims of fictitious death, whether intentional or not, can have implications for deviations from the justice of inheritance distribution, as well as open up the potential for abuse of the law. The legal systems in Malaysia and Egypt found that both countries have similarities in recognizing the need for a court decision as a legal basis for declaring a person's death, with different time limits and approaches. Malaysia applies the principle of presumption of death based on rigid formal provisions, while Egypt considers the situation and context of a person's disappearance more based on the principles of fiqh and positive law. Both countries also provide corrective mechanisms to cancel the determination of death if it is proven that the claim is invalid, as a form of protection against the rights of individuals who have been violated. Malaysia, with a legal-formal approach, regulates the appointment of legal representatives through the mental health law, while Egypt applies the principles of sharia and civil law in an integrated manner, emphasizing the legal incompetence of mentally ill individuals. In both systems, legal action by mentally incompetent individuals can only be taken through a legal guardian or guardianship.

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