

The Role of Notaries in Resolution of Inheritance Rights Disputes by Mediation in Demak Regency

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Abstract. *The author uses a type of research using a qualitative descriptive approach with a case study method which aims to describe and objectively analyze social phenomena that occur in society. Primary data collection in this research was carried out through interviews. Based on the research results, the conclusion was obtained to eliminate and eliminate discrimination in the form of formal and official/institutional forms that make proof of heirs for Indonesian citizens, the Notary can play a role as the only party (official/institution) that can make proof as an heir. As a Notary who lives in an independent country, the Notary must actively participate in implementing the values of independence in a real action. The Notary must be ready to be an agent of renewal and the only official authorized to make proof of heirs in the form (formal) namely the Certificate of Inheritance for all Indonesian citizens, without being based on class/ethnicity/tribe/or religion.*

Keywords: *Inheritance; Mediation; Role of Notary.*

1. Introduction

Inheritance in Islam is a legal event that occurs when a person dies, resulting in the transfer of ownership of assets from the testator to their heirs. Islamic inheritance law essentially regulates the procedures for transferring ownership of assets left by the testator in accordance with Islamic law. These regulations include identifying those entitled to inherit, determining the share for each heir, and determining the types of assets that can be inherited. The legal basis for Islamic inheritance law refers to the Qur'an and Hadith as primary sources that provide provisions for the fair and structured distribution of inheritance. Furthermore, this inheritance law is reinforced by applicable laws and regulations, including the

Compilation of Islamic Law in Indonesia, as well as the views of Islamic legal experts (fuqaha), who also provide interpretations and guidance on the implementation of inheritance to ensure it complies with sharia principles and achieves justice for all parties involved.

In Islamic legal discourse, the use of the term mawaris is more appropriate when interpreted as an object of inheritance, namely assets transferred from a deceased testator to the surviving heirs. This is supported by an etymological study of the word mawaris, which is the plural form of the word miiraats (مِيرَاثُ), which means maurust, or in other words, inherited property. Thus, this term specifically refers to the material aspect of inheritance, namely assets that are the rights of the heirs according to the provisions of Islamic law. Meanwhile, the term warits (وَارِثُ) as found in several classical books, is more appropriately used to refer to the subject of inheritance, namely the heirs. The term that refers to the person who leaves the inheritance is muwarits (مُوَرِّثُ). Therefore, the use of the terms mawaris, warits, and muwarits needs to be carefully considered to suit the context and intended meaning.¹

Islamic inheritance law ensures the protection of the rights of heirs by clearly and firmly establishing their respective shares. This division is regulated in detail in the Quran, which serves as the primary source for Islamic inheritance law. The Quran establishes the share each heir is entitled to receive, providing clear clarity to avoid conflict and ensure fairness in the distribution of inheritance. Through these rules, Islam provides strong and detailed guidance to safeguard the rights of each individual involved in the inheritance process, according to their kinship with the testator. The Quran specifies specific numbers or fractions indicating the portion of the inheritance to which each heir is entitled, such as one-third, one-quarter, one-eighth, and so on. This determination of definite shares aims to avoid arbitrariness and ensure fairness in the distribution of inheritance.²

Dispute resolution through mediation is actually nothing new in Indonesia. Since ancient times, many indigenous communities in various regions have utilized mediation as a means of resolving disputes within their groups. Today, mediation mechanisms are not only reinforced by the national legal system but also rooted in long-standing local traditions and wisdom. Mediation is considered a more friendly conflict resolution option and reflects the nation's cultural character. This approach is considered more aligned with evolving social values, thus enabling peaceful and sustainable solutions. Its use is also very broad, encompassing issues

¹Teungku Muhammad et al, (2001), *Fiqh Mawaris*, Semarang : Pustaka Rizki Putra, p.20

²Suhrawardi K. Lubis et al, (2007), *Hukum Waris Islam*, Jakarta : Sinar Grafika, p. 20.
Amir Syarifuddin, (2004), *Hukum Kewarisan Islam*, Jakarta : Kencana, p. 39.

such as family conflicts, inheritance distribution, land boundary disputes, and other civil matters.³

2. Research Methods

2.2.1. Research Approach

The approach that the author uses in this research is the socio-legal approach (socio-legal research).

a. Research Specifications

This research uses qualitative descriptive with a case study method, which aims to describe and objectively analyze the social realities that develop in society.

2.2.2. Data Types and Sources

1. Primary Data
2. Secondary data

a. Data Collection Technique

1. Primary data collection in this study was carried out through interviews.
2. Documentation methods is one of the data collection techniques used in this study.
3. Data analysis in this study was conducted using a normative descriptive analytical approach.

b. Data Analysis Method

Data analysis in qualitative research aims to test the validity of the data, namely to ensure that the research instrument used has measured what should be measured.

3. Results and Discussion

3.1. The Role Of Notaries and Procedures For Implementing Inheritance Dispute Settlement By Mediation In Demak Regency Case Position

On December 10, 2023, in Jogoloyo Village, Wonosalam District, Demak Regency, an inheritance dispute occurred involving Mrs. Parjan and her two half-brothers, Mr. Jamari (half-brother) and Mr. Mat (half-brother). This dispute began with a complaint filed by Mrs. Parjan against her half-brothers regarding a 2000 m² plot of inherited rice fields that are currently still managed by them. Mrs. Parjan claimed that the land was hers in full because it was inherited from her biological father, Mr. Jumadi. (Mother Parjan's late biological father).

During his lifetime, the late Jumadi was known to have owned assets in the form of agricultural land measuring approximately 2,000 square meters. The land is registered under Plot No. 62, Classification S/I, located in Jogoloyo Village,

³Takdir Rahmadi, (2011), *Mediasi Penyelesaian Seng keta Melalui Pendekatan Mufakat*, Jakarta : Raja Grafindo Persada, p. 70

Wonosalam District, Demak Regency. Ownership of the land is registered in Jumadi's name, with the location and boundaries officially determined as follows:

1. North : Land of H.umam
2. East : Atminah Land
3. South Side : Land of Mahmudah
4. West : Rice Field Irrigation Channel

Please refer to the OBJECT OF DISPUTE hereinafter,

The disputed object is an inherited asset from the late Mr. Jumadi, inherited from his father, the late Mr. Mukidi. Therefore, the disputed object can be categorized as original property belonging to Mr. Jumadi. During his lifetime, neither Mr. Jumadi nor his wife ever sold or transferred ownership of the land to any other party.

Thus, Mrs. Parjan argued that her half-siblings, who were not heirs of Mr. Jumadi, had no right to the inherited land. This inheritance dispute began when Mrs. Karminah (Parjan's biological mother), who was Mrs. Parjan's biological mother, married Mr. Sarwan. When Mrs. Parjan was 10 years old, Mr. Sarwan, who acted as her stepfather, requested permission to manage a 2,000 m² plot of inherited land inherited from Mrs. Parjan's biological father, the late Mr. Jumadi.

The conflict arose when Mr. Sarwan began to claim the land as his own and distributed it to his biological children, namely Mr. Jamari and Mr. Mat, who are Mrs. Parjan's half-brothers.

This action then sparked a complaint from Mrs. Parjan, who felt that her rights to the inherited land had been ignored. From a legal perspective, Mrs. Parjan has a strong claim as the legal owner of the 2000 m² inherited land, so this problem needs to be resolved through legal channels to ensure justice and protection of applicable inheritance rights.

Legally, although Mrs. Parjan has been designated as the legal heir to the 2,000-square-meter estate, in practice, the land is now under the control of her half-siblings. They claim the land is theirs, having been a gift from their father, Mr. Sarwan.

Feeling that her property rights had been ignored, Mrs. Parjan chose to resolve the conflict through non-litigation channels, namely through mediation. The mediation process took place at Mrs. Rini's notary office, involving several community leaders as mediators, including the Village Head, Village Secretary, Village Modin (Village Modin), and a religious leader (Kyai). The presence of these mediators is expected to contribute positively to creating a fair solution acceptable to all parties in the dispute.

3.1.1. Use of theory

Feeling that her property rights had been ignored, Mrs. Parjan chose to resolve the conflict through a non-litigation approach, namely through mediation. The mediation process took place at the office of Notary Mrs. Rini, involving several community leaders as mediators, including the Village Head, Village Secretary, Village Modin (Village Modin), and a religious leader (Kyai). The presence of these mediators is expected to contribute positively to creating a fair solution that is acceptable to all parties in the dispute.⁴

In this context, a Notary must demonstrate fairness, considering his or her function as a mediator in the dispute resolution process between the disputing parties. Therefore, the position of a Notary requires an objective and neutral attitude, without showing any bias towards any of the parties involved. This provision is emphasized in Article 16 paragraph (1) letter a of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary, which states that in carrying out his or her professional duties, a Notary must be impartial and maintain a balance between the interests of the parties.⁵

The primary focus of this research is to identify legal steps that notaries and related parties can take to resolve inheritance issues without resorting to litigation. These efforts must remain within a valid legal framework and not be classified as unlawful, in order to maintain certainty and prevent disputes.⁶

The role of a notary in resolving inheritance rights issues in Demak Regency is to provide legal counseling, making a Deed of Separation and Distribution of Inheritance, namely: First, the stage of making a Deed of Declaration of Inheritance; Second, the stage of making a SKHW; Third, the stage of making a Deed of Separation and Distribution of Inheritance. Before entering into the making of a Deed of Separation and Distribution of Inheritance, it must be preceded by the making of the two deeds mentioned first. Likewise, in the process of making a Deed of Separation and Distribution of Inheritance, the notary requires documents that must be submitted to him by the heirs which include a marriage certificate, death certificate, birth certificate of a legitimate child, proof of citizenship.

⁴Carl Joachim Friedrich, (2004), *Filsafat Hukum Perspektif Historis*, Bandung : Nuansa dan Nusamedia, p. 239.

⁵Article 16 of Law No. 2 of 2014: In carrying out his/her duties, a Notary must: act in a trustworthy, honest, thorough, independent, impartial manner and safeguard the interests of the parties involved in legal acts;

⁶Noviana Dewi Harjanti, Akhmad Khisni, Peran Notaris Dalam Kepastian Bagian Warisan Untuk Anak Di Luar Nikah Yang Diakui Menurut Kitab Undang-Undang Hukum Perdata, Vol. 4 No. 4 December 2017, *Jurnal Akta Unissula*

3.2. Obstacles and Solutions To The Role Of Notaries in The Implementation Of Inheritance Dispute Settlement By Mediation in Demak Regency

According to the author, the obstacles and solutions to the role of notaries in resolving inheritance rights problems in Demak Regency are analyzed using the theory of legal certainty that the existence of general rules that make individuals know what actions are allowed and what are not allowed to be done; Legal certainty for individuals from government arbitrariness because with the existence of general legal rules, individuals can know what the State may impose or do to individuals.

Obstacles arise if the parties cannot reach an agreement. A settlement deed before a judge can also be an alternative to resolving similar cases. The substantive matters stipulated in the agreement are legally binding. The settlement deed, accompanied by a written statement from the illegitimate child, is handled by the district court without the involvement of a notary, as the court will ultimately determine who the heirs are entitled to receive the inheritance.

Various obstacles that cause weaknesses in the role of notaries in ensuring inheritance shares according to the civil code; some of which are caused by notaries themselves, namely because they do not have a good grasp of inheritance law, so that notaries have difficulty in standardizing legal events and recording them in deeds.

Given that inheritance law itself is extremely complex, another obstacle encountered is disputes that arise when customary law is prioritized, resulting in family members ignoring inheritance deeds. The Notary Law does not accommodate the creation of customary inheritance deeds. However, as a nation governed by the rule of law, customary inheritance issues must be regulated in an authentic deed that can provide legal certainty for indigenous communities facing inheritance disputes.

In certain cases, notaries have also been found to fail to properly organize information and ensure its accuracy, leading to later disputes during the preparation and ratification of inheritance deeds. This is because most problems arise after the voluntary distribution of inheritance among heirs. Disputes often arise when some or one of the heirs feels their inheritance rights have been lost or their share is disproportionate.

Inheritance law presents its own difficulties due to the large amount of information and parties that must be involved to ensure the validity of the information. There are obstacles to the role of notaries in resolving inheritance rights issues in Demak Regency, namely (1) because they do not fully understand inheritance law, so that notaries have difficulty in standardizing legal events and putting them into deeds

(2) Another obstacle encountered is disputes that arise when customary law is prioritized so that inheritance deeds are not heeded by family parties (3) In certain cases, it is also found that notaries do not organize information and its accuracy so that when making and ratifying inheritance deeds, it becomes a source of disputes in the future.⁷

4. Conclusion

The Role of Notaries in Resolving Inheritance Rights Problems in Demak Regency Notaries have an important role in providing legal certainty in resolving inheritance rights, especially through the creation of legal and authentic documents. In Demak Regency, the role of notaries in resolving inheritance rights problems includes Legal Counseling Notaries act as providers of legal information and understanding to the public, especially heirs, regarding the procedures, rights, and obligations that arise in the inheritance process. Making a Deed of Separation and Distribution of Inherited Assets This process cannot be done directly, but must go through the following stages: First Stage: Making a Deed of Declaration of Inheritance Is a deed that states who are the legal heirs of the deceased. Second Stage: Making a Certificate of Inheritance Rights (SKHW) SKHW strengthens the recognition of the heirs and becomes the legal basis for further processes. Third Stage: Making a Deed of Separation and Distribution of Inherited Assets This deed states the official and legal division of each heir's share. Before the notary makes a deed of separation and distribution of inherited assets, the heirs are required to submit supporting documents, such as: Marriage certificate (for those who are married), Death certificate of the testator, Birth certificate of the legitimate child as proof of legal relationship, Proof of citizenship. Obstacles and Solutions to the Role of Notaries in Resolving Inheritance Rights in Demak Regency, Obstacles In its implementation, there are a number of obstacles faced by notaries, including Lack of Comprehensive Mastery of Inheritance Law Not all notaries have a deep understanding of inheritance law, including civil, religious, and customary inheritance law. This causes difficulties in standardizing legal events and compiling them into an appropriate deed. Conflict between Inheritance Law and Customary Law In some cases, people adhere more firmly to customs than legal deeds. This results in inheritance deeds being ignored and becoming ineffective in resolving family conflicts. Solutions To overcome these obstacles, a number of strategic steps can be taken, including: Improving Notary Competence in Inheritance Law Notaries need to equip themselves with a comprehensive understanding of various inheritance law systems, including civil, religious, and customary law, because each system has different characteristics and provisions that can affect the content and legal force of inheritance deeds. Professionalism and Adherence to Professional Standards Notaries must carry out their duties professionally and uphold professional standards. To ensure legal certainty, order, and legal protection, a carefully drafted and legally valid authentic deed is essential. In this context, a

⁷Interview with Abdullah, SH, M.kn Notary in Demak Regency, on June 16, 2025, at 13.40 WIB

notary acts as a public service provider, providing written legal evidence for a legal event or act.

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