

Legal Implications of the Peace Agreement for Inheritance Disputes Made Before a Notary in Kolaka Regency, Southeast Sulawesi Province

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Abstract. *This study analyzes the legal implications of inheritance settlement agreements in Kolaka Regency, Southeast Sulawesi Province, focusing on the position and role of Notaries and the legal force of the resulting settlement agreements. Inheritance disputes in Indonesia, especially among Muslim communities, have become a complex juridical-social phenomenon with more than 50,000 new cases recorded in the Religious Courts in 2023. This study uses an empirical juridical method with a qualitative approach through in-depth interviews with Notaries, advocates, and heirs who have resolved inheritance disputes through notarial settlement agreements. The theoretical basis of the study includes the Theory of Agreement and Freedom of Contract, the Theory of Legal Certainty, the Theory of Restorative Justice, and the principle of Sulh in Islamic Law. This study recommends strengthening the mediation competence of Notaries, improving regulations on the role of Notaries in Alternative Dispute Resolution (ADR), conducting massive outreach to the public, simplifying the post-peace administration process, and improving coordination between Notaries, Religious Courts, and related agencies to optimize the resolution of inheritance disputes in Indonesia.*

Keywords: *Agreement; Inheritance; Justice; Restorative.*

1. Introduction

Inheritance disputes in Indonesian Muslim society have transformed into a complex and deeply rooted juridical-social phenomenon, often the focal point of protracted conflicts that disrupt the family social order. These conflicts, which often begin with questions about the distribution of inherited property, quickly escalate beyond the material dimension, damaging sacred family relationships, and often resulting in lengthy, resource-intensive, and exhausting legal proceedings within the religious courts. Statistical data from the Supreme Court of the Republic of Indonesia consistently confirms the scale of this problem.

The Supreme Court's 2023 Annual Report, for example, recorded the receipt of inheritance cases within the Religious Courts reaching more than 50,000 new cases.¹

This figure not only shows a significant volume, but also a steady increasing trend from previous years, indicating that the escalation of internal family conflicts to the judicial realm is still continuing.²

Given the various limitations and negative consequences of resolving disputes through the courts, mediation has emerged as an alternative paradigm for dispute resolution recognized and encouraged by both the noble teachings of Islamic law and the framework of Indonesia's national legal system. From an Islamic legal perspective, mediation is a manifestation of the principles of sulh (peace) and deliberation to reach a consensus.

However, this path often proves ineffective, even counterproductive, in maintaining the main essence of family relationships: harmony and integrity. The inherently adversarial nature of litigation, in which the parties are positioned as opponents to defeat each other, tends to sharpen hostilities, reopen old wounds, and ultimately leave a residue of conflict in the form of hostility that is difficult to heal, even long after a judicial decision has been made.³

Given the various limitations and negative consequences of resolving disputes through the courts, mediation has emerged as an alternative paradigm for dispute resolution recognized and encouraged by both the noble teachings of Islamic law and the framework of Indonesia's national legal system. From an Islamic legal perspective, mediation is a manifestation of the principles of sulh (peace) and deliberation for consensus. Its theological foundation is firmly and explicitly stated. The Qur'an, in Surah An-Nisa [4], verse 128, states:⁴:

...وَالصُّلْحُ خَيْرٌ...

"...and peace is better (for them)."

¹Statistical data of the Supreme Court Annual Report of the Supreme Court of the Republic of Indonesia 2023

² Zuhrah, I. Gusti Ayu Ketut Rachmi Handayani, and Burhanuddin Harahap, "Legislative Legal Politics of Inheritance Law in Indonesia," *Journal of Ecohumanism* 3, no. 6 (2024): 910–16, <https://doi.org/10.62754/joe.v3i6.4059> accessed on July 18, 2025.

³ Bred Klenten, Benny Djaja, and Maman Sudirman, "Legal Analysis of Supreme Court Decision Number 845 K/PDT/2024 Concerning Disputes over the Distribution of Inheritance: A Civil Inheritance Law Perspective in Indonesia," *Ranah Research: Journal of Multidisciplinary Research and Development* 7, no. 2 (2024): 897–904, <https://doi.org/10.38035/rrj.v7i2.1341> accessed on July 18, 2025.

⁴QS. An-Nisa [4] verse 128

This verse firmly places peace as a more important choice. The command to actively reconcile disputing parties is also emphasized in Surah Al-Hujurat [49] verse 10⁵:

God willing God willing

"Indeed, believers are brothers, therefore make peace between your two brothers and fear Allah so that you may receive mercy."

In line with this spirit, the national legal system, which is based on Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia which states that "the State of Indonesia is a state of law," institutionalizes mediation as an integral part of the judicial system.⁶ The mandate to organize simple, fast and low-cost justice as stated in Article 2 paragraph (4) of Law No. 48 of 2009 concerning Judicial Power, is the basis for the Supreme Court to encourage efficient mechanisms such as mediation.⁷

This regulation expressly requires the parties to undertake mediation in every civil case, including Islamic inheritance disputes which fall under the jurisdiction of the Religious Courts based on Law No. 7 of 1989 as last amended by Law No. 50 of 2009. However, despite the solid philosophical and legal foundation, the implementation and effectiveness of mediation in resolving Islamic inheritance disputes in Indonesia, and specifically in Kolaka Regency, still face various multidimensional challenges. General obstacles, such as low legal literacy among the public and the perception of mediation as merely a formality, are also found in this region.

This requires a mediator at the Kolaka Religious Court to possess dual competencies: not only mastering modern mediation techniques and Islamic inheritance law, but also possessing a high level of cultural sensitivity to navigate and harmonize customary values in the negotiation process. This challenge is compounded by the distribution issue of qualified mediators, who tend to be concentrated in large cities.⁸, potentially creating a shortage of mediators with the specific skills needed to handle complex inheritance disputes in areas like Kolaka.

The role of mediation has also been under-optimized due to the lack of standard monitoring instruments and evaluation frameworks to measure and ensure the quality of its implementation at the religious court level. However, this view often overlooks the fact that rigid litigation processes often fail to accommodate the parties' sense of substantial justice, exacerbate conflicts, and are time-consuming and expensive. The court process can force family members to attack each other

⁵QS. Al-Hujurat [49] verse 10

⁶Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia

⁷Law Number 48 of 2009 concerning Judicial Power, Article 2 paragraph (4).

⁸Mediation as an Alternative to Resolving Inheritance Disputes for Muslim Families in Indonesia and Malaysia, Al-Zahrawi Journal, 2024, <https://ejournal.iaitfdumai.ac.id/index.php/jaz/article/view/409> accessed on July 20, 2025.

and publicly expose each other, a social price too high to pay. In the case study context, for example, rather than selling productive assets such as clove plantations or agricultural land and dividing the proceeds mathematically, mediation can result in joint management agreements or other forms of compensation that maintain the integrity of assets and family relationships.

Thus, strengthening the role of mediation in the Islamic inheritance dispute resolution ecosystem in Indonesia is both urgent and a strategic necessity. This effort should be viewed as a long-term social investment. This research aims not only to reduce the growing caseload in religious courts and expedite dispute resolution, but more fundamentally, to achieve substantive justice that addresses the root of the problem, restores the dignity of the parties, and maintains social harmony within the smallest unit of society, the family.

3. Research Methods

The approach method used in this research is an empirical juridical method, in the sense of examining laws and regulations related to the problems to be discussed, and also conducting a field approach to obtain information as supporting material.⁹ This research will refer to the legal regulations regarding peace agreements and inheritance disputes, while empirical research is research that focuses on the practice of making peace agreement deeds for inheritance disputes carried out in Kolaka Regency.

3. Results and Discussion

Understanding contracts is a key foundation in civil law, particularly those governing legal relations in the area of property. The concept of contracts is not only theoretical but also very practical, as almost all modern economic and social activities, from everyday buying and selling to multi-billion dollar business cooperation contracts, are based on this legal institution. A comprehensive understanding of contracts is necessary to assess their validity, interpret their content, and resolve disputes arising from a contractual relationship. In the context of the systematics of the Civil Code, contracts are positioned as the primary source of contracts in Book III, entitled "Concerning Contracts." This is emphasized in Article 1233 of the Civil Code, which states, "Every contract is born either by agreement or by law." This means that contracts (which are born from agreement) and laws are the two sources that give rise to legal relations in the form of rights and obligations.

1) Definitions and Terminology

A peace agreement or *dading* is a legal institution that has been comprehensively regulated in the Indonesian civil law system. According to Article 1851 of the Civil Code (KUH Perdata), a peace agreement is defined as "an agreement by which

⁹Marzuki, PM (2011). Legal research: Revised edition. Jakarta: Kencana.

both parties, by handing over, promising, or retaining something, end a pending case or prevent the emergence of a case." This normative definition contains essential elements that distinguish it from other types of agreements.

2) Theoretical Framework of Peace Agreement

Restorative justice theory provides a strong theoretical foundation for the existence of peace institutions as effective and just dispute resolution mechanisms. Unlike the retributive justice paradigm, which focuses on retribution and punishment, restorative justice emphasizes restoration, reconciliation, and social reintegration.

An inheritance dispute is a disagreement or conflict that occurs between heirs regarding the inheritance of a deceased person. These disputes can arise from various factors, including those related to the legal subject of inheritance, the object of the inheritance, and the distribution of the inheritance itself. This complexity increases when within a family there are differing understandings regarding the inheritance law system that should be applied, often leading to protracted disputes among the heirs.

These disputes can arise before or after the inheritance is distributed, and often even before the testator dies, particularly in cases involving gifts or wills. Inheritance disputes are not merely legal issues; they also involve psychological, sociological, and emotional aspects, often complicating the resolution process. One of the main factors causing inheritance disputes is the lack of clarity regarding who is entitled to inherit. This problem can arise when there are illegitimate children, adopted children, or substitute heirs whose status is still being debated.

Furthermore, problems regarding heirs can arise from the existence of unknown heirs or heirs who are deliberately hidden by certain parties seeking to gain greater profits from the inheritance. A second, equally important factor is the lack of clarity or disputes regarding the objects of inheritance. This problem can arise when there is no clear inventory of the testator's inheritance, when there is a mix of inherited assets with joint marital assets, or when assets are controlled by a third party. A third factor is differences in understanding or interpretation of the applicable inheritance law system. Indonesia recognizes three different inheritance law systems: civil inheritance law (*Burgerlijk Wetboek*), Islamic inheritance law, and customary inheritance law. The most obvious legal consequence of inheritance disputes is the delay in the distribution and use of inheritance by the entitled heirs. From a social and psychological perspective, inheritance disputes can lead to divisions and rifts in family relationships, often lasting.

From a legal certainty perspective, protracted inheritance disputes can create uncertainty regarding the status and ownership of inherited assets. Until the dispute is resolved, the ownership status of the assets remains unclear, which can

create problems in various legal transactions. For example, disputed inherited assets cannot be used as collateral for credit, cannot be sold or transferred, and cannot be used as an object in certain agreements. More broadly, legal uncertainty resulting from inheritance disputes can also impact land administration and asset registration systems, where ownership data becomes invalid or cannot be updated due to unresolved disputes.

The most effective preventative measure to avoid inheritance disputes is for prospective heirs to undertake estate planning early. Proper documentation of all assets and ownership documents is a crucial preventative measure. Prospective heirs need to ensure that all assets they own are properly registered and possess valid and complete ownership documents. Important documents such as marriage certificates, birth certificates, heirship certificates, and other documents also need to be properly stored, and heirs need to be informed of the location of these documents. Improving heirs' understanding of applicable inheritance laws is also an important preventative measure. Many inheritance disputes arise from a lack of understanding or misunderstanding of inheritance law provisions, leading to expectations that are inconsistent with legal reality. Legal education can be provided through outreach, seminars, or consultations with legal experts, so that heirs understand their rights and obligations under the applicable inheritance law system.

Based on interviews and document analysis, the role of notaries in inheritance disputes in Kolaka extends beyond simply drafting deeds. Notaries position themselves as credible legal facilitators and informal mediators. One notary explained:

"We not only record what they agree to, but also explain the various legal options available. For example, whether the assets will be physically divided, sold and the proceeds divided, or managed jointly under a profit-sharing system. We explain the advantages and disadvantages of each option, along with their legal implications."¹⁰

Inheritance disputes are often triggered and exacerbated by long-standing emotional conflicts. Notaries must possess mediation skills to defuse tensions, manage the parties' emotions, and create an atmosphere conducive to reconciliation.

A Notary shares his experience:

"The most difficult part isn't the legal issues, but managing the emotions of the parties. Some have held grudges for years, feel neglected while their parents were still alive, or feel their siblings were spoiled more. All of this explodes during the inheritance distribution. We have to listen patiently, sometimes to the point of tears. We remind them that they are still siblings, still family, and their parents

¹⁰Interview with Mr. Achmad, SH

certainly don't want to see their children feuding. This emotional and familial approach is often more effective than legal explanations.^{11"}

As identified in the background, Kolaka's heterogeneous society (Tolaki, Bugis, etc.) still strongly adheres to customary law. Notaries are required to possess sensitivity and understanding to harmonize the provisions of Islamic inheritance law (KHI) with local customary law. For example, in some cases, there are specific rights for extended families or descendants based on customary law that must be accommodated in the agreement.

A notary explains:

"Here, there is a meeting between Islamic law, positive law, and customary law. For example, in Tolaki custom, there is the concept of 'high inheritance property' which cannot be sold and must be inherited by the eldest son to be passed on to the next generation. Meanwhile, in the KHI, all children are entitled to a share according to the provisions of 2:1. We must find a solution that respects customary values but also does not violate the law. Usually, we facilitate an agreement where the eldest son receives the inheritance, but he must provide compensation in another form to his siblings, and this is stated in the deed.^{12"}

The findings of this study confirm that a Peace Agreement Deed drawn up before a notary has strong legal force and significant legal implications for the heirs. If one party defaults (breaks a promise), the injured party can file a lawsuit with the Religious Court using the notarial deed as primary evidence. The trial process will be very short because the judge only needs to examine the breach of contract and then issue an executory decision.

Advocate resource person, Yahyanto, SH, M.Kn., emphasized:

"In practice, breach of contract lawsuits based on notarial deeds are rare because notarial deeds provide a high degree of certainty. Parties are generally afraid to violate them because they know the legal consequences are clear. Even if some do end up in court, the process is quick because the judge only needs to look at the notarial deed as the primary evidence. There's no need for lengthy proof like a regular inheritance lawsuit.^{13"}

4. Conclusion

Based on the results of the research and discussion that have been described regarding the Legal Implications of the Inheritance Dispute Peace Agreement in Kolaka Regency, Southeast Sulawesi Province, the following conclusions can be drawn: Legal Strength of the Inheritance Dispute Peace Agreement Deed in Kolaka Regency the Inheritance Dispute Peace Agreement Deed made before a Notary in

¹¹Interview with Mr. Achmad, SH

¹²Interview with Mr. Achmad, SH

¹³Interview with Mr. Yahyanto, SH, M.Kn

Kolaka Regency has significant and multi-dimensional legal force. The legal implications of the Peace Agreement Deed are comprehensive, covering aspects of legal certainty, finality of the dispute, and restoration of social relations. This deed provides definitive legal certainty regarding the status and distribution of inheritance assets, which becomes a clear basis for the heirs in exercising their rights and obligations. Based on the conclusions above, several constructive suggestions can be put forward as follows: For Notaries: Improving professional competence not only in the technical aspects of deed preparation, but also in mediation and negotiation skills through ongoing training and certification, in order to facilitate more effective and equitable peace processes. For the Community and Heirs. Increasing legal awareness regarding alternative inheritance dispute resolution through a Notary as a faster, cheaper option, and one that can maintain the integrity of family relationships compared to litigation. For the Government and Policymakers: Strengthen the regulatory framework through clearer and more comprehensive regulations regarding the role of Notaries in Alternative Dispute Resolution (ADR), including a review of granting limited executive powers after a simple court homologation process.

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Interview:

Interview with Mr. Achmad, SH

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