
RESOLUTION OF INHERITANCE DISPUTES THROUGH NON-LITIGATION IN KEDIRI

Zainal Arifin.¹ Emi Puasa Handayani.²

Faculty of Law Kadiri Islamic University

Jl.Sersan Suharmaji Street, Manisrenggo, Number. 38 Kediri

Email: zainal.fh@uniska-kediri.ac.id

ABSTRACT

Islamic law regulates anyone who is included as an heir who is entitled to receive and who is unentitled to receive an inheritance, in fact, there are Muslims who distribute the inheritance outside Islamic law. Positive Law also regulates the inheritance distribution which is settled through the courts. This study focuses on three questions, first is how to resolve inheritance disputes out-of-court according to positive law. The second is how the inheritance distribution implementation out-of-court is applied in Kediri. This research type conducted is mixed-legal-research that combines between normative and empirical. Normatively, this study will describe inheritance law concepts based on various works of literature and empirically it is a case study whose data is obtained directly from the society as the main source and through the reality that occurs in the society. This research can be investigated through interviews, namely data obtained directly from informants where the tools used in this interview method are interview guidelines to facilitate extracting information needed in the case to be studied. The data that has been obtained will be processed through several stages and analyzed descriptively and qualitatively by analyzing the research results concept with a review of Islamic law and positive law that applies to the disputes and conclude the research output

Keywords: Disputes Settlement. Inheritance. Outside Court.

1. Introduction

Families. Children who get an inheritance are fighting to own it. Islamic law regulates the inheritance distribution by detail so that the heirs or families do not claim each other rights, in line with Positive law that also regulates the inheritance distribution by detail, both of those laws in Indonesia are used by heirs to obtain their inheritance rights.

The legal basis of inheritance in Islam is the Qur'an and Sunnah, which directly regulate this inheritance, including Al Baqarah verse 188: "... Do not consume one another's wealth unjustly, nor deliberately bribe authorities in order to devour a portion of others' property, knowing that it is a sin". This

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means that for men there is a share of the inheritance left by their parents and relatives, and for women, there is also a share of the inheritance left by their parents and relatives, either little or a lot based on the distribution provisions that have been determined.

An-Nisa verse 7 also regulates the inheritance, in An-Nisa verse 7 explains that both men and women get a share of the inheritance. Islam regulates the inheritance distribution for women related to the sociological conditions era before Islam came. Do not let women be left out or neglected in terms of inheritance distribution as was usually happened before Islam came.

In Islam, before the inheritance is distributed, there are a few things regarding inheritance rights that must be considered by the heirs. The first is the zakat rights. If the deceased person turns out to have zakat debt on inheritance, the zakat must be paid first before the inheritance is distributed to the heirs.

Second is the expenses regarding handling the corpse. All expenses related to the funeral processions, such as bathing, shrouding, and burying, are also taken from the inheritance. The third is regarding the debt, if the person who dies has debts, the debt must be paid first that must be taken from the inheritance, before being distributed to the heirs.

Fourth is will that have been spoken by the deceased while alive related to inheritance distribution. For example, the deceased once said, "Please give my land to person A or person B". This statement is a will, then the family must carry out the will first before the inheritance can be distributed. If there is leftover, then the inheritance can be distributed to the heirs. If the inheritance rights have been fulfilled such as zakat, funeral processions, debts, and wills, then the inheritance can be distributed to the heirs. There are rukun and legal conditions for inheritance distribution in Islam that need to know. There are three rukun of inheritance distribution, first, there is an asset that is inheritance. Second is the heir. Third, there is an inheritance to be divided. The three rukun of the inheritance distribution have legal conditions, first, someone who has the inheritance has died. second heirs who will receive

the inheritance are alive. Third, the relationship between the heirs and the deceased is clearly known.

Indonesian Muslims, in terms of inheritance distribution are no longer obedient to the Islamic inheritance law, although most of the population in Indonesia is Muslim, even the government also takes a role while the inheritance is distributed to the heirs using Islamic law through the Religious Courts. There are two ways of inheritance dispute settlement by Indonesian Muslims, namely through courts and out-of-court.

This study will discuss the inheritance disputes settlement issues through out-of- court which are carried out based on Islamic rules and those that are not based on Islamic rules in the Kediri. There are three research questions, first, How is the arrangement for inheritance dispute settlement according to Islamic law? Second, How was the inheritance dispute settled out-of-court according to Indonesia's positive law? Third, How is inheritance distribution out- of-court implementation according to Islamic law which is implemented in the Kediri?

The first and second questions are researched through the normative method by comprehending the sources regarding law and then analyzing it to get a conclusion. The third question is researched using empirical methods by interviewing several respondents who have distributed their inheritance out-of-court using Islamic law.

Researchers believe that this research has never been researched, although there are several previous studies that are similar to this research, namely: The Village Head role in inheritance distribution implementation according to Javanese customary inheritance law: A study at Purworejo Village Office, Kandat District, Kediri Regency, conducted by Rizky Ramadiawan.² The second study is conducted by Fachrodin, entitled: The Inheritance Disputes Settlement through out-of-Religious Courts (Case Study

² https://library.unmer.ac.id/index.php?p=show_detail&id=19374, The Village Head role in inheritance distribution implementation according to Javanese customary inheritance law: A study at Purworejo Village Office, Kandat District, Kediri Regency, Ramadiawan, Rizky

in Ngadi Village, Mojo District, Kediri Regency).³The third is a research conducted by Ury Ayu Masitoh entitled: Children from Siri Marriage as Heirs in Civil Law and Islamic Law perspective.⁴ The three studies that have been mentioned are different from the researchers' research, namely the place of research.

2. Reseach Method

The type of this research is mixed legal research between normative and empirical. Normatively, the inheritance law concepts will be studied from various works of literature and empirically are case studies whose data are obtained directly from the community as the main source and fact that happened. This study can research through an interview method which is data obtained directly from informants where the tools used in this interview method are interview guidelines to facilitate extracting the information needed in the case to be studied. The data that has been obtained is then researched through several stages and analyzed by descriptive qualitative by analyzing the research results concept with a review of Islamic law regarding the case and making conclusions regarding the case.

3. Results and Discussion

3.1. Inheritance Disputes Settlement Through Out-of-Court according to Positive Law

According to Western Country Civil Law, Inheritance Law is the law that regulates the transfer of property left by people who have died and its consequences. In principle, only the rights and obligations related to property and ownership can be inherited.⁵ The concept of inheritance

³ Fachrodin,: The Inheritance Disputes Settlement through out-of-Religious Courts (Case Study in Ngadi Village, Mojo District, Kediri Regency), Jurnal Inovasi, Volume 8, Number 1, Februari 2022 IAI Hasanudin, Pare Kediri

⁴ Ury Ayu Masitoh, Children from Siri Marriage as Heirs in Civil Law and Islamic Law perspective, Jurnal Volume 4 Number 2 Desember 2018, Uniska Kediri, page. 125

⁵ Syahrizal Abbas, Mediation in Sharia Law, Customary Law, and National Law, cet. ke-2 (Jakarta: Kencana, 2009), page. 120-122.

law is not regulated in the Civil Code, but the Civil Code regulates the procedures governing inheritance law in detail.

Inheritance often causes conflict within families. Inheritance disputes that arise in society generally focus on inheritance distribution, either because some heirs do not get their rights or some heirs control the inheritance distribution. Conflict also can arise when one of the heirs sells the inheritance without the other heir's consent, differences of opinion, conflicts of interest, and the actions of several heirs who delay the inheritance distribution with certain motives.⁶

There are two ways to settle an inheritance dispute, namely through the court and out-of-court. Inheritance disputes that are settled out-of-court according to positive law are known as non-litigation. There are several theories, one of which is mediation. When there is an inheritance dispute, the judge will suggest various ways of settlement, one of them is by mediation. Dispute Settlement through mediation according to articles 130 HIR and 154 RBG is chosen by the judge as the verdict is not null and void by law.⁷ Dispute Settlement through Mediation by PERMA No. 1 of 2008 which was updated with PERMA No.

1 2016.⁸ The definition of mediation according to Regulation of the Indonesia Supreme Court No. 1 of 2016 states that "Mediation is a method to settle disputes through a negotiation process to obtain an agreement between the parties with the assistance of a mediator".⁹

⁶ Emi Puasa Handayani, and Zainal Arifin, The application of the Supreme Court Regulation Number 1 of 2016 regarding Mediation Procedures During the Covid 19 Pandemic. (Study at the Kediri Regency Religious Court), Adhaper, volume 6 Number 2 July - December 2020, page. 117-125

⁷ Article 2 clause (3) PERMA No. 1 of 2008, reads, "Not going through the mediation procedure based on this regulation is a violation of Article 130 HIR and or Article 154 RBG which results in the verdict being null and void

⁸ Emi Puasa, Zainal Arifin, Land Dispute Settlement Implementation Through Non-Certified Mediators in the City of Kediri, volume 8 No 1 January - June 2022, page. 59-74

⁹ <https://www.pn-subang.go.id/index.php?id=1327>, 3 November 2022, 20.00 wib.

Before reviewing inheritance dispute settlement, it is first necessary to clarify some terms. First, the word inheritance means replacing the rights and obligations of the deceased. In general, only rights and obligations are in the field of property or wealth law. The function of the beneficiary is personal while the trusteeship is not transferred.

The inheritance dispute settlement in Indonesia is based on the two existing laws, namely Islamic Law and Civil Law. Both of the laws are legal bases that apply in Indonesia. For Muslims, disputes are settled through the religious courts, while for non-Muslims, inheritance disputes are settled through District Court.

3.2. The implementation of Inheritance distribution through out-of-court that applied in Kediri

3.2.1. According to Customs that are in line with the Islamic Law

The inheritance distribution throughout-out-of-court in Islam is using deliberation methods among families. The deliberation was based on the Islamic religion. Islamic inheritance law concept is the transfer of property from the deceased to the heirs. Men and women have their own calculation in the Islamic law. Islamic inheritance law is a set of legal rules that regulate the determination of heirs who are entitled to receive an inheritance, determine their position in the heirs, and the share that heirs obtained fairly and perfectly.¹⁰

In this research, several families in Kediri chose to distribute their inheritance using the deliberation method because they want to maintain harmony among the family. The harmonization of the inheritance distribution in Islamic law is called *Takharuj* (some heirs voluntarily leave their inheritance right, either in whole or in part).

¹⁰ M. Idris Ramulyo, *Comparison of Islamic Inheritance Law with Civil Inheritance Law*, Jakarta : Sinar Grafika, 1994, page. 84.

In principle, according to Islamic law, the owner of the property can use his property according to the owner's wants, unless prohibited by Islamic law. Based on this, the heirs can transfer all or part of their inheritance to other heirs.

The inheritance distribution based on *Takharuj* is carried out after the heirs know their share with the provisions of Islamic law regarding the inheritance distribution in Islamic Law Article 183, it confirms that the heirs may agree to settle the inheritance distribution after each of them has acknowledged their share. In Islam, that agreement is called *takharuj* or *tasholuh*, which means a technical adjustment in the inheritance distribution. This is because the heirs have agreed to carry out inheritance practices outside of Islamic sharia.

The fact that several areas had settled their inheritance distribution based on the deliberation among the heirs, including in the Petok village, Mojo District, Kediri Regency. The inheritance distribution is based on the customary in Petok Village that always settled through deliberation, this is to maintain harmony. This practice is not in accordance with *fara'id*, but based on *takharuj* this practice is allowed because it is in accordance with the concept of Islamic law, namely for the realization of harmony among the Muslims¹¹

3.2.2. According to Custom that in line with Positive Law

In several villages in the Kediri Regency, including Ngadi Village, the distribution of inheritance is settled through the village office. Every inheritance dispute is always settled through a recording procedure in the villages in front of the village apparatus.

¹¹ Huzaimah Al Anshori, Inheritance Law Practices in Petok Village, Mojo District, Kediri Regency From the perspective of Fiqh Mawaris, Jurnal Diversi, Volume 5 Number 1 April 2019, page. 68

The process of inheritance dispute settlement in Ngadi Village, Mojo District, Kediri Regency is carried out through family deliberation. This model of deliberation is presented by all village officials, who are attended by the village head and local religious leader to seek legal advice and administrative instructions.

The practice of inheritance disputes settlement through out-of-Religious Courts that occurred in Ngadi Village was carried out by consensus which was attended by heirs, village secretaries, government heads, general heads, hamlet heads, and local religious leaders. The background behind this inheritance disputes settlement that was carried out in Ngadi Village, Mojo District, Kediri Regency is due to several factors, including conflict factors with positive legal rules, economic factors, psychological factors, social factors as well as traditional and religious factors which are still developing strongly in society.¹²

Aside from Ngadi village, researchers also found the same thing in Purworejo village, Kandat district, the village head's role is very important in completing the inheritance distribution implementation according to Javanese customary inheritance law.

The results of interviews with the village head and research sources were obtained from Purworejo Village, Kandat District, Kediri Regency, after being analyzed using descriptive analysis methods. The results are, first: that the settlement of inheritance disputes continues to be pursued through family methods, namely deliberation. If this is not, the community usually asks the village head to settle it.

¹² <https://jurnal.iaih.ac.id/index.php/inovatif/article/view/261>,.. The Inheritance Disputes settlement Out-of-Religious Courts (Case Study in Ngadi Village, Mojo District, Kediri Regency) Fachrodin IAI Hasanuddin Pare, Kediri, VOL. 8 NO. 1 (2022): FEBRUARY 2022 / Inovasi, IAI Hasanudin.

The village head has a very important role in maintaining harmony among the society. In inheritance matters, the village head acts as an intermediary or mediator for the parties. The village head acts as a judge, but not as a decision maker, but as an intermediary judge (only present in the deliberations of the parties), standing in the middle of the parties and neutrally seeking an amicable settlement between the disputing parties in terms of inheritance.

Second is that in Purworejo Village the inheritance distribution implementation, generally using the Javanese customary inheritance law. This means that the inheritance is divided equally among the heirs, male and female heirs are not distinguished, and the inheritance distribution implementation is possible when the testator is still alive.

4. Conclusion

The inheritance disputes settlement through to the positive law that applies in Indonesia, is to use the positive legal basis of the Civil Code that applies in Indonesia and use the mediation model. The inheritance distribution out-of- court applied in Kediri, some are based on the Quran and Hadith, Javanese customs, and some are based on Positive law.

BIBLIOGRAPHY

1. Books:

- Abu Malik Kamal bin as-Sayyid Salim, 2009, Practical Guide to Inheritance Law, Pustaka IbnuUmar, Jakarta
- Ahmad Rofiq, 1998, Fiqh Mawaris, PT Raja Grafindo Persada, Jakarta
- Beni Ahmad Saebani, 2009, Fiqh Mawaris, Pustaka Setia, Bandung
- Efendi Perangin, 1997, Inheritance law, Rajawali Pers, Jakarta, 1997
- Imam Az-Zabidi, 2002, Sahih Al-Bukhari Hadith Summary, Jakarta: Pustaka Amani, Jakarta
- M. Idris Ramulyo, 1994, Comparison between Islamic Inheritance Law with Civil Inheritance Law, Sinar Grafika, Jakarta
- Mahmud Yunus, 2007, Kamus Arab Indonesia, Mahmud Yunus Wa Dzurriyyah Jakarta
- M. Idris Ramulyo, Comparison between Islamic Inheritance Law with Civil Inheritance Law,
- Syahrizal Abbas, 2009, Mediation in Sharia Law, Customary Law, and National Law, cet. ke-2, Kencana, Jakarta

2. Journal

- Emi Puasa Handayani, Zainal Arifin, The application of the Supreme Court Regulation Number 1 of 2016 regarding Mediation Procedures During the Covid 19 Pandemic. (Study at the Kediri Regency Religious Court), Adhaper, volume 6 No 2 July - December 2020,
- , Implementation of Land Dispute Settlement Through Non-Certified Mediators in the Kediri City, volume 8 No 1 January - June 2022
- Fachrodin, The Inheritance Disputes settlement Out-of-Religious Courts (Case Study in Ngadi Village, Mojo District, Kediri Regency), Jurnal Inovasi, IAI Hasanudin, Pare Kediri, Volume 8, Number 1, February 2022

Huzaimah Al Anshori, Inheritance Law Practices in Petok Village, Mojo District, Kediri Regency From the perspective of Fiqh Mawaris, Jurnal Diversi, Volume 5 Number 1 April 2019

Ury Ayu Masitoh, Children from Siri Marriage as Heirs in Civil Law and Islamic Law perspective, Diversi Jurnal Volume 4 number 2, December 2018, Uniska Kediri.

3. Website:

https://library.unmer.ac.id/index.php?p=show_detail&id=19374, The Village Head role in inheritance distribution implementation according to Javanese customary inheritance law: A study at Purworejo Village Office, Kandat District, Kediri Regency, Ramadiawan, Rizky.

<https://jurnal.iaih.ac.id/index.php/inovatif/article/view/261>, Fachrodin, The Inheritance Disputes settlement through Out-of-Religious Courts (Case Study in Ngadi Village, Mojo District, Kediri Regency) Fachrodin IAI Hasanuddin Pare, Kediri, Jurnal Inovasi, IAI Hasanudin, Pare, Volume, 8 Number: 1, February 2022

<https://www.pn-subang.go.id/index.php?id=1327>,