

The Analysis of Law Regarding the Peace against Inheritance Distribution According to Islamic and Civil Laws

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Abstract

This study aims to determine the legal strength of a peace institution in the settlement of a judicial case. This is related to the legal arrangement regarding the distribution of inheritance based on Islamic law. The implementation of peaceful institutions in court proceedings can be carried out through the Supreme Court Circular No. 1 of 2002 as follows: so that all panels of judges who hear cases will seriously seek peace by applying the provisions of Article 130 HIR / 154 R.Bg not just a formality for proposing peace, the appointed judge acts as a facilitator who helps the parties in terms of time, the location and collection of data and arguments of the parties in preparation for peace, from the results of this research analysis it can be seen that the distribution of inheritance has practical, systematic and detailed guidelines in the form of Alqur'an verses, the Prophet's traditions and the law. Islam which has been regulated in Articles 176, 183, Compilation of Islamic Laws shows that the heirs can agree to make peace in the distribution of inheritance.

Keywords

peace; inheritance distribution; Islamic law, civil law



I. Introduction

Islam as a religion that brings mercy to all nature has teachings and rules of law which are always oriented to the benefit of humans. Every law that is prescribed must contain the value of benefits returned to humans, it's just that the value of benefits is sometimes not found after reasoning. But generally, in the applied laws can be found the value of benefits which is also called the wisdom of the law or the philosophical basis of law. (Helmi, 2019)

Islamic law is essentially a law that originates and becomes part of the Islamic religion. The word Islamic law is actually not found at all in the Qur'an, but what is in the Qur'an is the word sharia, jurisprudence, law and the same root. According to records in Western literature, Islamic law is a translation of the term "Islamic Law". Given the importance of this terminology, every person and group tends to understand it in accordance with their respective frameworks. (Arifin, 2020)

Inheritance law in Islamic law is one part of kinship law, it is very important to learn so that in the implementation of the distribution of inheritance there are no mistakes and can be carried out fairly and wisely, because by studying Islamic inheritance law, a Muslim will be able to fulfill his rights. -Rights relating to inheritance after being abandoned by the heir and passed on to the heirs who are entitled to receive it. Therefore, the Qur'an is the main reference material for the law as well as the determination of the distribution of inheritance assets, while the provisions regarding inheritance are derived from the hadith of the Prophet Muhammad, and ijma paraulama are very few.

The issue of inheritance occupies a very important place in Islamic law. Verses of the Qur'an govern the inheritance law clearly and in detail. This can be understood because the inheritance problem must be experienced by everyone. Apart from that, inheritance law

directly concerns property which, if not provided with certain provisions, is very easy to cause disputes between heirs. Every time someone dies, it immediately arises how the inheritance must be treated and to whom the property is moved, and how. This is regulated in inheritance law. (Zuhirsyan, 2019)

It can be said that in Islamic law and sharia there are very few verses of the Al-Qur'an that detail a law in detail, except for the law regarding inheritance. This is because inheritance is a form of legal ownership and is justified by Allah SWT. Inevitably, the issue of inheritance is one of the important problems in human life. Inheritance can arise because of three things. First, there are people who die, who are called heirs. Second, there is an inheritance, which is the property of the heir. Third, there are people who receive an inheritance, who are called heirs. The existence of inheritance means the transfer of rights, in the form of property from the heir to the heir.

The state of Indonesia, a country with a majority Muslim population, has several inheritance systems in place. The oldest is the inheritance system according to customary law. Customary inheritance law is always alive, because it embodies the real feeling of law from the people, and is dynamic and will grow and develop in line with the community.

The implementation of inheritance sharing in Islam aims to create peace in the lives of those who carry it out, this is seen as part of the science of sharia. Islamic law has provided a place related to inheritance rules and laws regarding property as well as possible and fairly. Talking about Islamic inheritance law, the Compilation of Islamic Law is here to make it easier for Muslim communities in Indonesia which is a guideline for several familial issues, including the law of inheritance.

In the formulation of the Islamic Law Compilation, hereinafter referred to as KHI, it is substantially carried out by referring to the sources of Islamic law, namely the Al-Qur'an and Hadith, and hierarchically referring to statutory regulations. In addition, the formulators of the Islamic Law Compilation (KHI) pay attention to generally accepted developments that have a meeting point with the Islamic legal order, so in some cases there have been adaptations and modifications to other legal systems (Western and Customary) into the Islamic Law Compilation. Thus, the Compilation of Islamic Law is a unique legal manifestation in Indonesia.

II. Review of Literature

2.1 Theory of Village Peace Judge Decisions

Emergency Law Number 1 Year 1951 which regulates temporary measures to organize the unity of structure, powers and procedures of civil courts, regulates in Article 1 paragraph (2) sub. b which states that the abolition of all forms of court, including the Customary Court. It is further explained in paragraph (3) that abolishing all forms of courts, including customary courts, does not reduce the power rights that have been given to peace judges in villages as regulated in Article 135a HIR / 161a RBg.

Settlement of civil disputes through courts is based on Civil Procedure Law, in this case the HIR for the jurisdiction of Java and Madura, and RBg for areas outside Java and Madura. Procedural law can be interpreted as a set of regulations governing procedures for resolving civil disputes through courts, which are rigid and coercive in nature so that they cannot be distracted by litigants or law enforcers, in this case judges and legal attorneys.

Article 135a of the HIR regulates the existence and role of village judges in resolving certain civil disputes before they are resolved through the court, which reads in full as follows:

- 1) If the claim is related to a court case which has been decided by the village judge, the district court must know the decision and the reasons thereof.
- 2) If the claim is related to a court case which has not yet been decided by the village judge, while the district court views it as beneficial for the case to be decided by the village judge, the presiding judge will inform the plaintiff by providing a certificate. The investigation of the case is then postponed until the trial day determined by the chairman on the strength of his office.
- 3) If the village judge has passed a decision, then if the plaintiff wishes to continue the examination, the contents of the decision must be notified to the district court together with a copy, and then the case is continued in its examination.
- 4) If two months after the plaintiff reports the case to the village judge, the village judge has not yet made a decision, then if asked by the plaintiff, the case can be re-examined by the court.
- 5) If according to the judge's consideration, the plaintiff cannot adequately provide an acceptable reason, that the village judge does not want to issue a verdict, then the judge must believe that the situation is due to his position.
- 6) If it turns out that the plaintiff has not brought the case to the village judge, then the lawsuit is deemed discontinued.

III. Research Method

The method used in the preparation of this research is normative legal research, so that the research method and data collection used is library research, which is a method or way of collecting data using written materials in the form of legislation.

IV. Result and Discussion

4.1 Peace Institution in Settlement of a Case

A dispute is something that occurs between two or more parties, because one of the parties is dissatisfied or feels aggrieved. In principle, the disputing parties are given the freedom to determine the preferred dispute resolution mechanism, according to Laura Nader and Harry F. Todd, to determine the stages of a dispute, namely:

First, pre-conflict, which underlies a person's dissatisfaction.

Second, conflict is a situation in which the parties are aware or know about the feeling of dissatisfaction.

Third, disputes where the conflict is stated in public or by involving a third party. Disputing parties are given the freedom to determine the preferred dispute resolution mechanism, whether to be resolved through litigation (court) or through non-litigation (outside court) using ADR (Alternative Dispute Resolution), as long as it is not determined otherwise in laws and regulations.

a. Dispute Resolution Institutions outside the Court (Non Litigation)

1. Alternative Dispute Resolution

Settlement of cases using ADR is starting to appear and be developed in Indonesia. This is in line with the rampant world trade activities which cannot be avoided from the occurrence of disputes between the parties involved in these trading activities. Litigation dispute resolution (through court) is considered too long in the process of resolving the case which in the business world is considered unfavorable and not in accordance with the times.

2. Arbitration

In Article 6 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, it is stated that a dispute or difference of opinion in a civil dispute can be resolved on the basis of good faith by overriding the settlement by litigation in court, by holding a direct meeting by the parties within no later than 14 days and the results are stated in a written agreement.

3. Conciliation

In the Big Indonesian Dictionary, conciliation is defined as an attempt to reconcile the disputing parties' desires to reach agreement and resolve disputes. Conciliation can also be interpreted as an effort to bring the disputing parties to resolve problems between the two Parties through negotiation. Conciliation is an alternative dispute resolution process that involves a third party or more, where the third party involved in resolving the dispute is someone whose reliability has been proven professionally.

4.2 Legal Arrangements for the Distribution of Heritage Assets

a. According to Islamic Law

According to Article 171 letter a Compilation of Islamic Law Inheritance law is a law that regulates the transfer of ownership rights to the inheritance (tirkah) of the inheritor, determines who has the right to become heirs and how many shares of each. In the Islamic Law Compilation, there is a bilateral principle in inheritance which means that inheritance is transferred to or through two directions. This means that everyone receives inheritance rights from both sides of the family line, namely the male relatives and the female relatives. The Islamic inheritance law which regulates the distribution of inheritance in detail in the Qur'an is intended to avoid disputes between fellow heirs. Thus, the distribution of inheritance from a deceased person can be carried out by the heirs in a family manner in accordance with the verse of the Al-Quran which regulates these provisions.

The existence of this formula can allow for the distribution of inheritance assets in mathematically equal portions (1: 1) among all heirs through the peace route, as a deviation from Article 176 of the Compilation of Islamic Law that the implementation of the distribution of inheritance between sons and daughters. Girls with a ratio of 2 to 1, girls if only one person gets 1/2 share, if two or more people get 2/3 of the share, but if each heir voluntarily divides it in a family manner, it can be divided equally amicably or amicably in accordance with the agreement of each party concerned. In fact, based on this it is legal if any of the heirs give up or abort their rights in the distribution of the inheritance to be handed over to other heirs.

b. According to Civil Law

According to the Civil Code, there are two ways to obtain an inheritance, namely:

1. As an heir according to law.
2. Because it is appointed in a will (testament).

The first method is called legally inheriting or "ab intestine" and the second method are called "testament water" inheritance.

In the Civil Code (BW), unkempt inheritance is also known, namely if a person dies and then has assets, but there is no heir, then the inheritance is considered neglected. In such a case, the Balai Harta Peninggalan (Wesskamer) without waiting for an order from the Court is obliged to manage the assets but must notify the Court. In the event of a dispute whether an inheritance can be considered as neglected or not. This will be decided by the Court, Weeskamer is required to make a record of the condition of the assets and if deemed

necessary preceded by sealing the goods, and then clearing all the inheritor's concerns in the form of debts and others. Wesskamer must make accountability, and is also required to summon any heirs who may exist by general calling, such as through RRI, newspapers and other means deemed appropriate. If after three years there is no heir who appears or reports he, then the weeskamer will take responsibility for the management of the inheritance to the state, and then the assets will become the property of the state.

4.2 Sharing of inheritance in a peaceful manner

The distribution of inheritance can be carried out in two ways, namely distribution outside the court and distribution through the court.

1. Division outside the Court

The distribution of inheritance can be carried out by the heirs themselves in a familial manner in accordance with Islamic law which regulates inheritance. If they are unable to complete the distribution of the inheritance by themselves, they can appoint an expert in that field to help complete the distribution of the estate.

2. Distribution of inheritance through the Court

This subject matter concerns material law and formal law. In terms of material law, Islamic inheritance law does not allow inheritance to accumulate. It must be shared with the rightful heirs as soon as possible after the inheritance is open, in case of peace, the mediator formulates the contents of the agreement of the disputing parties and draws a peace certificate. After the peace certificate is completed and read out to the parties, the mediator reports the results of the agreement that has been made to the panel of judges who handle the case. The panel of judges who receive the reconciliation report from the mediator, reads the results of the peace and is included in the final decision. The principle of Islamic inheritance is very important to be understood by mediators as a guide when bridging the disputing parties in problems.

V. Conclusion

1. The application of peaceful institutions in court proceedings can be carried out through a Supreme Court Circular No. 1 of 2002 as follows: so that all panels of judges who hear cases will seriously seek peace by applying the provisions of Article 130 HIR / 154 R.Bg not just a formality for proposing peace, the appointed judge acts as a facilitator who assists the parties in terms of time, place and collection of data and arguments of the parties in preparation for peace. The application of Peace Institutions in civil case proceedings in court must be further developed, to provide satisfaction to the justice-seeking community and in the context of limiting cassation cases.
2. The distribution of inheritance has practical, systematic and detailed guidelines in the form of Alqur'an verses and the Prophet's traditions. The guidelines are clear and must be fully referenced consistently when there is a distribution of the inheritance left by an heir. If there is an heir who deserves to be supported, this can be done by donating the assets owned individually by the heirs, including those from the acquisition of inheritance assets.
3. Legal arrangements regarding the distribution of inheritance according to Islamic law are regulated in Articles 176, 183, Compilation of Islamic Law which state that the heirs can agree to make peace in the distribution of inheritance assets, after each realizes their share. Meanwhile, in the Al-Qur'an and Al-Hadith, there is no clear regulation on the distribution of inheritance in a peaceful manner.

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