

Resolution of Heritage Disputes using Choice of Law in Tanjung Pura Langkat

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Abstract

Inheritance law in Indonesia, at least sociologically, there is still pluralism, in the sense that it is still permissible for interested parties to distribute inheritance/inheritance based on the preferred law (choice of law). Especially in Tanjung Pura Langkat, until now it has been implemented with different systems. there is an inheritance distribution system that is shared equally, some through family agreements, some represent the oldest children to share inheritance, some use Islamic law, if an inheritance dispute occurs, the heirs in resolving disputes through the mediation of the village head, and community leaders, they do not want to settle disputes in court because of the high costs and lengthy process in court. The people of Tanjung Pura are a society whose majority of the population is Muslim and upholds Islamic values, however, many of them share inheritance using customary law.

Keywords

heritage disputes; resolution; choice of law



I. Introduction

Inheritance law in Indonesia, at least sociologically, there is still pluralism, in the sense that it is still permissible for interested parties to distribute inheritance / inheritance based on the preferred law (choice of law). As for the rules used in Indonesia are:

1. Western Civil Law, the term inheritance law in Western civil law is known as "erfrecht" which comes from two words, namely "erf" which means inheritance and "recht" which means law. Juridically, inheritance law in the course of Western Civil Law is known as: "a series of provisions, in which, in relation to the death of a person, the consequences in the material field are regulated, namely: the result of the transfer of inheritance from someone who died, to the heirs, whether in relation to themselves, or with others.
2. Customary Law, a law that regulates the transfer of assets of a person who has passed away to their heirs based on rules that have been followed from generation to generation. As for the customary law inheritance in effect in Indonesia, the background is in the form of social structure, namely the hereditary and kinship system, which is basically divided into three types, namely the patrilineal, matrilineal, and parental / bilateral systems.. patrilineal (fatherhood), matrilineal (motherhood) and parental (father-mother). According to this patrilineal system, the descendants are taken from the father line, which is the emanation of the original father and determines the descent of posterity. In this case, women are not the blood vessels that connect the family. A woman who marries a man joins her husband and her child becomes the father's family. In the law of inheritance, this alliance is more concerned with the offspring of sons than daughters. Meanwhile, matrilineal is the descendant of the mother, so that the measurement is only the blood relationship of the mother line which is the measurement and is a legal partnership. Married women remain and are included in the combined

family themselves, while their children are included in the offspring of their mother. Matrilineal values female heirs more than male heirs. As long as there are girls, boys do not get tirkah. While the latter, blood ties are seen from both sides, father and mother and ancestors. Both offspring are equally important for this (bilateral) fellowship. It is this community group that lays the foundations for equal position between husband and wife in their respective families.

Islamic law, the distribution of inheritance based on the Koran, Hadith which is known as farāid. Meanwhile, according to Islam, inheritance is a number of assets and all the rights of the deceased who are clean. The point is that the inheritance inherited by the heirs is all property and rights. After deducting the debts of the heir and other payments due to the death of the heirs. As for the basis for the right to inherit or the basis for obtaining a share of inheritance according to the Koran, namely: due to blood relations, sexual relations or marriage, fraternal relations, because religion has been determined by the Qur'an, the share is not more than one third of the inheritance's assets; and kinship relations due to fellow migrants at the beginning of the development of Islam, although there is no blood relationship. Likewise, in Tanjung Pura Langkat, up to now, it has been implemented with different systems. there is an inheritance distribution system that is shared equally, some through family agreements, some represent the oldest children to share inheritance, some use Islamic law, if an inheritance dispute occurs, the heirs in resolving disputes through the mediation of the village head, and community leaders. The family is a basic family unit consisting of a husband, wife and children (Batubara,2019).

The people of Tanjung Pura are a society whose majority of the population is Muslim and adheres to Islamic values, however, many of them share inheritance using customary law. Based on the data found by researchers through observation and interviews. Then the data obtained from 2017 to 2019 are as follows:

No.	Village	Number of Cases		
		2017	2018	2019
1.	Pulau Banyak	7	8	10
2.	Bakung Bay	9	9	9
3.	Tanjung Pura Week	11	10	8
	amount	27	27	27

The sample of this study involved three villages because there were many disputes regarding the distribution of inheritance in the three villages. Then there was an increase in the number of cases in Pulau Banyak village and there was a similar number of cases in Teluk Bakung village and there was a decrease in the number of cases in Pekan Tanjung Pura village.

Seeing the conditions above where the community is still pluralism in the inheritance distribution system, the role of choice of law in the settlement of inheritance disputes is applied. So the authors feel interested in conducting research on the implementation of the distribution of inheritance in the community of Tanjung Pura Langkat.

Academically, this research is intended as an academic contribution to Islamic research, especially in the field of inheritance dispute resolution with choice of law.

Practically, this research can be used as a contribution and contribution of thought to be able to implement the application of inheritance law by using the choice of law in the life of the Muslim community.

II. Review of Literature

2.1 Choice of Law

The choice of law or what is called the choice of law is what is described in Law No.3 of 2006 described in relation to the amendment to Law Number 7 of 1989 concerning religious courts which states that parties before litigation can consider choosing what law to use in the distribution legacy.

2.2 Inheritance law

Inheritance law is a rule given so that the process of distributing inheritance assets runs smoothly. According to Prof. Dr. Wirjono Prodjodikoro - Indonesian legal expert - the definition of inheritance law is a regulation regarding the position of a person's wealth when the heir has passed away. Pun is defined as a way of transferring property to the heirs. The explanation of inheritance law is also included in Presidential instruction number 1 of 1991. Based on this rule, inheritance law functions as a rule that determines the names of heirs, the transfer process, and the nominal distribution.

Islamic inheritance law applied by Muslims in Indonesia is contained in Articles 171-214 concerning Compilation of Islamic Law. In this regulation there are 229 articles that write about the inheritance of assets according to Islam. Islam implements a system of bilateral individual inheritance-originating from the mother or father.

2.3 Islam

Islam is a religion that was revealed by Allah SWT. to the prophet Muhammad SAW. as the last prophet and apostle to guide the life of all mankind until the end of time. Islam is a religion that believes in one God, namely Allah SWT. the meaning of Islam literally means peace, stay, and clean, from this literal Islamic understanding, it can be concluded that Islam is a religion that brings salvation to life in the world and in the hereafter.

III. Research Method

The research method is a way of doing something by using the mind carefully which is useful in order to achieve a goal by searching, taking notes, formulating, and analyzing to compiling reports. The term methodology comes from the word method which means method, however, according to custom, the method can be formulated with the possibilities of a type used in research and assessment.

This type of research is empirical law, which examines the applicable legal provisions and what happens in reality in society. Or in other words, the type of empirical legal research is a research carried out on the actual situation or real conditions that occur in society with the intention of knowing and finding the facts and data needed, after the required data is collected then it leads to the identification of the problem which in the end. leading to problem solving. In this study, the approach used is a statutory approach, namely an approach that is carried out by examining laws and regulations related to the legal issues under study. The case study approach is that the researcher explores a particular phenomenon (case) in a time and activity (program, event, process, institution or social group) and collects detailed and in-depth information using various data collection procedures during a certain period.

So this research is carried out on an incentive basis throughout this study. This means that this research examines the inheritance law regulatory system in Tanjung Pura, the application of choice of law in inheritance cases in Tanjung Pura, the process of disputing the distribution of inheritance through the choice of law in Tanjung Pura then answers the problem formulations, namely; (a) knowing the inheritance law regulatory system in Tanjung Pura, (b) knowing the application of choice of law in inheritance cases in Tanjung Pura, (c) the process of settling inheritance disputes through choice of law in Tanjung Pura.

3.1 Research Sites

The location of this research is located in Tanjung Pura Langkat by examining the system of regulating inheritance law in Tanjung Pura, the application of choice of law in inheritance cases in Tanjung Pura, the process of settlement of inheritance disputes through choice of law in Tanjung Pura.

3.2 Types and Sources of Data

The data used by the authors in this study are of two types, namely:

- a. Primary data are data obtained directly from the first or second and third sources related to the issues discussed. Sources of data obtained from the field directly with interviews with: traditional leaders in Tanjung Pura, KUA Tanjung Pura.
- b. Secondary data is data obtained to complement primary data such as. Secondary data consists of 3 (three) types of legal materials, namely:

1. Primary legal material

Primary legal materials are binding legal materials or materials related to the problem under study, including:

- a) Laws and Compilation of Islamic Laws

2. Secondary legal material

Secondary legal materials, namely providing an explanation of primary legal materials, namely:

- a) Books relating to the title and problems studied in the writing of this thesis.
- b) The results of research and scientific papers related to the writing of this thesis.
- c) Seminar papers related to the writing of this thesis.
- d) Legal journals and literature related to the writing of this thesis.

3. Tertiary legal materials

Tertiary legal materials are materials that provide instructions or provide explanations for primary and secondary legal materials, namely:

- a) Legal dictionary
- b) Indonesian dictionary
- c) English dictionary
- d) Related encyclopedia

- c. Data collection techniques are the most important step in research, because the main purpose of research is to get data. Without knowing the data collection technique, the researcher will not get data that meets the established data standards. To obtain data related to this research, data collection techniques are needed. Data that has been collected by means of observation, interviews, and documentation.

3.3 Observation

The first data collection technique is observation. Observation is a data collection technique that has specific characteristics when compared to other techniques, namely interviews and questionnaires. If interviews and questionnaires always communicate with people, then observation is not limited to people, but also other natural objects.

This technique requires observations from researchers either directly or indirectly on the object of research. The instruments that can be used are observation sheets, observation guides. Some of the information obtained from observations includes: space (place), actor, activity, object, action, incident or event, time and feeling.

Observations made are to present a realistic picture of behavior or events, answer questions, help understand human behavior, and evaluate that is to measure certain aspects of doing feedback on these measurements.

The results of these observations are needed to obtain data as well as to support and provide a detailed description of the object of research in the field. The researcher conducted observations on all activities of the distribution of inheritance in each customary tribe in three sub-districts in Tanjung Pura Langkat

3.4 Interview

The second data collection technique is through interviews. The interview is a data collection technique if the researcher wants to conduct a preliminary study to find problems that must be researched, and also if the researcher wants to know things from the respondent that is more in-depth and the number of respondents is small / small. This data collection technique is more about self-report or self-report.

So the research respondents were KUA Tanjung Pura, traditional figures and people of various ethnic groups.

3.5 Documentation

The third data collection technique is documentation. Documentation is a way to collect, manage and store information in the knowledge area. Document is any written material or film. Documents are usually divided into two types, namely personal documents and official documents. A large number of facts and data are stored in material in the form of documentation. Most of the available data is in the form of daily notes, souvenirs, reports, artifacts, and photographs. The main nature of this data is not limited to space and time, thus providing opportunities for researchers to find out about things that have happened in the past. In detail, documentary materials are divided into several types, namely autobiographies, personal letters, books or diaries, memorials, clipping, government or private documents, data on servers and flash, So the documentation that has been carried out in this research is audio recordings and notes made to the KUA Tanjung Pura, traditional figures in Tanjung Pura such as: Malay customs, Javanese customs, Batak customs, Thai customs and others.

3.6 Data Analysis Technique

Data analysis is the process of systematically searching and compiling data obtained from interviews, field notes, and other materials, so that they can be easily understood, and the findings can be shared with others. Data analysis is carried out by organizing data, decomposing it into units, synthesizing it, arranging it into patterns, choosing what is important and what will be studied, and making conclusions that are shared with others.

So after all the data is collected either from the results of interviews, observations and documentation studies, the next step is to conduct data analysis. The data analysis used in this study are as follows:

1. Data reduction is a way of showing the process of selecting, focusing, simplifying, abstracting, transforming written data from field notes,
2. Data display is the process of organizing and arranging data in such a way that it is possible to draw conclusions from it.
3. After displaying the data, verification is carried out as well as drawing conclusions to see the implications of the findings in the study.

3.7 Data Validity Test Techniques

Test the validity of the data in research, often only emphasized on the validity and reliability tests. Meanwhile, Moleong developed a validity testing technique called an inspection technique. Test data credibility or trust in data from qualitative research results, including:

a. Participation Extension

In any qualitative research, the presence of the researcher at each stage of qualitative research helps the researcher to understand all the data collected in the study because, it is almost certain that the qualitative researcher is the person who directly conducts interviews and observations with the informants. Therefore qualitative researchers are researchers who have a long time with informants in the field even until saturation in data collection is reached,

b. Finding the Data Similarity Cycle

There is no agreement about when a qualitative research is stopped in terms of when a research is done qualitatively. When the researcher says that every day he finds new data, it means that he still has to keep working to find other data because the information he wants to get is still a lot,

c. Persistence of Observation

To obtain a high degree of validity, another important way is to increase persistence in field observations.

d. Researcher Triangulation, Methods, Theory, and Data Sources

Researcher's honesty triangulation was conducted to test the honesty, subjectivity, and ability of researchers to record data in the field. Triangulation with data sources is done by comparing and checking both the degree of confidence of information obtained through different times and methods in qualitative methods which is done by comparing the data from observational research with interviews and other things that are needed. Method triangulation is used to check the use of data collection methods, whether the information obtained from the various methods is the same or different. And Triangulation with Theory is done by describing patterns, relationships and including explanations that emerge from the analysis in search of themes or comparative explanations.

e. Negative Case Studies

Negative case studies are carried out by collecting examples and cases that do not correspond to and tendencies of the information that has been collected and used as a comparison.

f. Reference Adequacy

The validity of research data can also be done by multiplying references that can test and correct the results of research that has been done,

g. Detailed Description

A detailed description is an attempt to provide an explanation to the reader by explaining the results of the research with detailed explanations,

h. Auditing

This concept is a strict managerial concept and is utilized to examine data dependability and certainty. This is done both to the process and to the result or output.

IV. Results and Discussion

Inheritance Distribution Dispute Resolution through Choice of Law at Tanjung Pura

According to Suyud Margono, there are several ways to resolve inheritance disputes, namely:

4.1 Adjudication Processes

a. Litigation

is a process of litigation over a conflict which is ritualized to replace the actual conflict, in which the parties give a decision maker two conflicting options.

b. Arbitration

is a way of resolving a civil dispute outside the general court based on an arbitration agreement made in writing by the parties concerned. 30 of 1999 concerning Arbitration and Alternative Settlement of the General Accord CHAPTER I General Provisions Article 1

4.2 Consensus Processes

a. Ombudsman

is a designation of an agency or agency whose task is to investigate objections and prevent disputes between the parties or to facilitate solving the problems.

b. Neutral Fact Finding

c. Negotiation

is a concession process used by the parties to reach an agreement between them

d. Mediation

is a process of problem-solving negotiation in which impartial outsiders work together with the parties concerned to help obtain a satisfactory agreement.

e. Conciliation

is when the disputing parties are unable to formulate an agreement and the third party proposes a solution to the dispute.

4.3 Pseudo Adjudication Process

a. Mediation-Arbitration (Met-Arb)

Is the process of completing the mixed sengkera that is done after the process is unsuccessful.

b. Mini trial

c. Early neutral evaluation

The settlement that often occurs in the Tanjung Pura Langkat community is deliberation. Settlement of disputes through deliberation to reach a consensus is the earliest route taken by the disputing parties before finally entering the legal or court route. With this route, it is hoped that the disputing parties can resolve their problems in a good way (deliberation) so that they arrive at peace (consensus).

The following are steps in dispute resolution through deliberation to reach a consensus, namely:

- a. Returns to the existing contract points
- b. The parties return to sit together and focus on the issues in dispute
- c. Prioritizing deliberation and kinship, this is highly recommended to resolve disputes
- d. Achieved peace between the disputing parties

Based on the steps for resolving disputes through this deliberative consensus, it is hoped that peace can be created because the teachings of Islam itself love peace. But when through this route the dispute is not resolved, then this dispute will be taken to the last route that must be taken is the Court route.

Dispute settlement patterns / models in Tanjung Pura

a. Settlement of inheritance disputes through juridical

The settlement of inheritance disputes in Tanjung Pura through juridical is if it involves a third party . Juridical settlement can be divided into two, namely:

1. Court settlement
2. Settlement that does not go through court which can take the form of arbitration, mediation and conciliation

So it can be concluded that juridical dispute resolution basically leads to goodness and resolves as desired. Disputes over inheritance that occurred in Tanjung Pura are on Pulau Banyak, Teluk Bekung and Pekan Tanjung Pura. There is no juridical pattern / model for settlement of inheritance, because in addition to the complicated and long-running affairs, it is also costly, especially the disputing parties do not know the settlement of inheritance disputes through juridical. All of these are the results of interviews with the Chief of Customs in Tanjung Pura as well as the Faroid Ulama:

"Usually, residents who experience disputes in the distribution of their inheritance property resolve it in a way that does not want to smell of state law. Besides they feel that they are not knowledgeable, they are also afraid of the high costs and the long business."

Based on the results of the interview above, it can be analyzed and it can be concluded that the settlement of inheritance disputes does not use legality, because of the lack of public knowledge about this and also the assumption that they will take a long time.

b. Non-juridical dispute resolution

Non-juridical settlement of inheritance disputes is by not involving a third party. Non-juridical settlement takes several forms:

1. Negotiation
2. Unilateral settlement
3. Violent settlements are resolved kinship based on religion.

So in fact the settlement of inheritance disputes is more non-juridical based on the results of interviews with the Head of Customs in Tanjung Pura as well as the Faroid Ulama:

"We have had a dispute here in the distribution of inheritance. So to solve it by calling the heirs, community leaders, religious leaders with the mediation of the village head of the place concerned "

Based on the results of the interview above, it can be analyzed and it can be concluded that the settlement of inheritance disputes is through non-legality.

- a. *Choice of Law* in an inheritance case at Tanjung Pura
1. Case : in 2018 the village of Teluk Bakung had an inheritance dispute where the property was controlled by the eldest son
Heir : Mr. Katiman and Mrs. Laminah
Heir : Razi, Sumiem, Sumiran, Suminten and Sugeng
The solution : through non legality, his siblings asked to present a Faroid cleric figure mediated by Mr. Ifran as the Head of Teluk Bakung Village
 2. Role of customary stakeholders: customary stakeholders do not participate because heirs choose Islamic law in the settlement of inheritance disputes
 3. Analysis of inheritance dispute resolution through the choice of law: researchers analyze from the information and what happens in the field that the settlement of inheritance disputes through the choice of law is one of the solutions. Because then you will find mutual acceptance or sincerity so that there is no war between brothers. However, there are also deficiencies in it. Such as an element of unilateral interest with the intention of controlling or and wanting to get more assets.
- b. *Choice of Law* in an inheritance case at Tanjung Pura
1. Case : in 2018 the village of Teluk Bakung there was an inheritance dispute where before his parents died the property was divided equally, but after one of the world's deaths, Bahri sued so that the inheritance could be divided by Islamic law
Heir : Pak Abdurrahman and Mrs. Fadhillah
Inheritance : Hasna, Syamsul Bahri, Faridah, M.Srifin, Siti Murdiah, M. Efendi and Irmansyah
The solution : through non-legality, deliberation with the Village Government, Community Leaders, Hamlet Heads and Faraid Ulama
 2. Role of customary stakeholders: customary stakeholders do not participate because heirs choose Islamic law in the settlement of inheritance disputes
 3. Analysis of inheritance dispute resolution through the choice of law: researchers analyze from the information and what happens in the field that the settlement of inheritance disputes through the choice of law is one of the solutions. Because then you will find mutual acceptance or sincerity so that there is no war between brothers. However, there are also deficiencies in it. Such as an element of unilateral interest with the intention of controlling or and wanting to get more assets.
- c. *Choice of Law* in an inheritance case at Tanjung Pura
1. Case : in 2017 in Pakubuan Village the inheritance was divided Based on Islamic law, after one year one of her children, Siti Rahmi, asked that the inheritance be divided equally.
Heir : Mr Must and Mrs Supiah
Heir : Sarian, Sairi, Samsuri, Jamiah, Sugiarto, Sanusi, Sahibuk Rahman, Siti Rahimi
The solution : legality, consultations with the Village Government, Community Leaders, Hamlet Heads and Faraid Ulama to be resolved by means of Islamic law
 2. Role of customary stakeholders: customary stakeholders do not participate because heirs choose Islamic law in the settlement of inheritance disputes
 3. Analysis of inheritance dispute resolution through the choice of law: researchers analyze from the information and what happens in the field that the settlement of

inheritance disputes through the choice of law is one of the solutions. Because then you will find mutual acceptance or sincerity so that there is no war between brothers. However, there are also deficiencies in it. Such as an element of unilateral interest with the intention of controlling or and wanting to get more assets.

V. Conclusion

Based on the analysis that has been carried out from the previous chapters, it can be concluded that:

1. Some of the inheritance distribution systems in Tanjung Pura are divided equally, some are through family agreements, some represent the oldest children to share inheritance, some use Islamic law. If an inheritance dispute occurs, the heirs resolve it through the mediation of the village head and community leaders.
2. Choice of law in inheritance disputes in Tanjung Pura based on Law No. 3 of 2006 is described in relation to the amendment to Law No. 7 of 1989 concerning religious courts which states that before litigating parties can consider choosing what law to use in the distribution of inheritance. So the choice of law is used by the people of Tanjung Pura in inheritance disputes.
3. The settlement of disputes regarding the distribution of inheritance using the choice of law is a solution that can be applied in the Tanjung Pura Langkat community, because with this the heirs feel they are not being disadvantaged.

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