

CERTAINTY REGARDING LEGAL CHOICES BETWEEN RELIGIOUS COURTS AND DISTRICT COURTS REGARDING APPLICATIONS FOR DETERMINING HEIRS

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ABSTRACT

In accordance with the research title listed above, Indonesia has three legal systems that regulate inheritance, namely; Islamic inheritance law which is based on and uses the holy book Al-Quran as its source, western civil inheritance law which originates from Burgerlijk Wetboek (hereinafter referred to as the Civil Code), and finally customary inheritance law based on the customs of the community itself, this cannot be separated from the role of each court that handles it. Therefore, the author needs to conduct research on the certainty of legal choices between religious courts and district courts regarding applications for determining heirs. The aim of the research is to analyze the role of the district court and religious court in the application for determining heirs, after that this study will also analyze how legal certainty is provided regarding the legal choice between the district court and the religious court. The results obtained from this research are that the implementation of Law no. 50 of 2009 regarding every application for determining Islamic heirs must be handled and under the authority of a religious court, in fact this does not mean that the district court is of the opinion that it no longer has the right and authority to adjudicate applications for inheritance, this is because the authority possessed by the district court still has power. law in an effort to adjudicate applications for determining inheritance for Muslims. However, what needs to be underlined is that the difference between religious courts is that when it comes to resolving inheritance cases, religious courts are guided by the complications of Islamic law, while district courts are based on the Civil Code, namely western law.

Keywords: District Court, Religious Court, Inheritance, Petition, Determination

INTRODUCTION

Inheritance is one of the important topics in law which is currently being hotly discussed and is an important part of the legal system. When someone dies, questions regarding asset management and other issues will definitely arise. Inheritance-related laws regulate settlements and responsibilities that arise after a person is declared dead, in this case inheritance law is included in an area that is considered important by society. Therefore, inheritance can be interpreted as a rule that controls the process of inheritance and the transfer of tangible and intangible assets from the heir to his heirs.

There are three legal systems in Indonesia that discuss inheritance, namely Islamic inheritance law which is based on and sourced from the holy book Al-Quran, the western civil inheritance law system which originates from Burgerlijk Wetboek (hereinafter referred to as the Civil Code), and finally the customary inheritance law system which is based on on the customs of the community itself.¹

Thus, inheritance can be interpreted as a regulation that regulates the mechanism of inheritance and transfer of property, both tangible and intangible, which is obtained from the heir to the heirs, while the *Ius Constitutum* (current law) is a guideline for

judges. in Indonesian district courts is the Civil Code). Regarding inheritance issues listed in book II regarding property and chapter

1. The legal basis is based on law (ab intestato or wettelijk erfrecht)
2. Based on the will of the testator (testamenteir erfrecht)

Based on the law (ab intestato or wettelijk erfrecht) the heir obtains inheritance due to family relationships if seen based on descent (832 of the Civil Code), but if the heir has determined who gets the inheritance then in this regard the heir will make and draft a will (testamenteir erfrecht) (899 Civil Code).² Meanwhile, in religious courts, the complications of Islamic law are used as a basis for material law by judges in an effort to resolve cases addressed to them.³

Religious courts now have the authority to enforce laws on Islamic products, this is supported by Law no. 50 of 2009 amendments to Law no. 3 of 2006 and amendments to Law no. 7 of 1989. Wills, inheritances and gifts are some of the Islamic products that are taken over by religious courts, therefore inheritance issues, whether in the form of applications for determining inheritance or disputes that occur between

¹ Muhamad Syaifullah Abadi Manangin, Leni Dwi Nurmala, and Nurmin K Martam, "Transfer of Inherited Property in Indonesia," *DiH: Journal of Legal Studies* 16, no. 2 (2020) [_2.pdf&Expires=1692611408&Signature=X~QBxQHZkGo4kxy213RLp2Z8RC~e0Mg](#).

² Elviana Sagala, SH, M.Kn, "Inheritance Rights According to the Provisions of Civil Inheritance Law," *Scientific Journal "Advocacy"* 6, no. 1 (2018).

³ Ninda Cahya Rosanda, "Determination of Muslim Heirs from Non-Muslim Heirs (Determination Study Number: 4/Pdt.P/2013/PA.Bdg.)" (2018).

Muslims, can be carried out and resolved in religious courts.

In substance, inheritance law in Indonesia regulates the parties who obtain the right to become heirs; shares or portions obtained from heirs; assets left by the heir; system for distributing inheritance left behind (tirkah); choice of law in the court's determination to which the application is directed; determining the distribution of rights of heirs. Regarding the role of the judiciary in inheritance, it has become increasingly strengthened and established with the enactment of Law no. 50 of 2009, which regulates the increase in one of the judicial authorities, namely the religious court which has the task of determining inheritance matters for people who adhere to the Islamic religion, to be resolved in the religious court.⁴

Therefore, with the diversity of Indonesia's inheritance systems, there are legal options in submitting applications to the court in handling applications for determining heirs, so this study will discuss the role of district courts and religious courts in applications for determining heirs, which we already know. District courts are subject to the Civil Code while religious courts are subject to the complications of Islamic law. After that, this study will also analyze how legal certainty is provided regarding the legal

choice between district courts and religious courts.⁵

METHOD

The research method used in the preparation of this article is the library method or often known as library research with qualitative data types. The research stages are carried out by presenting data sourced from libraries through literature related to the subject of discussion such as books, journals and applicable laws and regulations in Indonesia. This article groups the data obtained as a formula for research, citing references used to obtain complete information, so that it will produce understanding in drawing ideal conclusions.

RESULTS AND ANALYSIS

Application for Determination of Inheritance in the Religious Court

The development of Islamic law in Indonesia resulted in the birth of complications of Islamic law, with the support of the existence of religious courts which received recognition in Law no. 50 of 2009 concerning religious courts. Complications of Islamic law are books that contain a series of Fiqh or collections, other supports which are

⁴ Hamzah, "The Role of Religious Courts in the Growth and Dynamics of Inheritance Law in Indonesia," *AL-SYAKHSHIYYAH: Journal of Islamic Family Law and Humanity* 2, no. 2 (2020).

⁵ Salma Suroya Yuni Yanti, Mulyadi, and Yunanto, "Division of Inheritance Assets to Heirs of Different Religions and the Legal Consequences," *Diponegoro Law Journal* 5, no. 3 (2016): 1–12.

used as material law by religious courts in dealing with and resolving problems related to inheritance.

The complications of Islamic law are divided into three parts which discuss book I on marriage, book II on inheritance and book III on endowment. One of the factors that gave birth to complications in Islamic law was due to the uncertainty and confusion found in decisions from religious courts that handle issues within their authority. This was triggered because the decisions obtained by religious courts were based on the opinions and views of the ulama listed in Fiqh books can produce different opinions on the same matter from one scholar to another, so that it is often found that there are different decisions between one court and another that discuss the same issue.⁶

Islamic law itself has established mechanisms relating to inheritance and legal measures in dealing with property left behind by heirs in the fairest and best manner possible. Islamic law has of course determined the rights of each person to inherited property, whether it is intended for men, -men and women regarding the transfer of property rights while the testator is still alive or the transfer of property that occurs to the heir as a result of the testator's death.

It is believed that the determination of the distribution of inheritance in Islamic law does not discriminate or differentiate between

⁶ Lim Fahimah, "History of the Development of Inheritance Law in Indonesia," *Nuansa* 11, no. 2 (2018): 107–16.

small children and adults, apart from that, in Islamic law it is mandatory that the distribution of inheritance that is carried out will not be separated from or separated from aqeedah and faith, as for the distribution of inheritance. in Islamic law as follows:

1. The distribution of inheritance from the male side is; Son, son's grandson, father, grandfather, sibling, father's brother, the mother's brother, and the sibling's son
2. The division of inheritance from the female side is daughters, grandsons, mothers, paternal grandmothers, maternal grandmothers, sisters.
3. biological, father's sister, mother's sister, wife, and women who freed their slaves.⁷

The following are verses in the Qur'an that discuss inheritance issues, both directly and indirectly, which can be found in the following letters and verses:

1. Regarding the responsibilities of parents and children can be found in letter 2 verse 233
2. Regarding inheritance or inheritance from the heir can be found in letter 4 verses 4-7, 34 and verse 176
3. Regarding the addition of explanations regarding inheritance, this contains helpful understanding.⁸

⁷ Hidayat Anwar, Gagarin Akbar M. Gary, and Guntara Deny, "Comparative Study of the Distribution of Inheritance Based on Islamic Law and Customary Law," *Journal of Legal Justice* 3, no. 1 (2018).

⁸ Wati Rahmi Ria and Muhamad Zulfikar, "Inheritance Law Based on the Civil System and Complications of Islamic Law," 2018.

The application for determining heirs is one of the cases where there is no dispute, in this case the applicant or applicants have the sole aim of asking for the role of the religious court to determine the parties who will be the heirs of the heir who has died.⁹

In the event that the application for determining heirs in the religious court has received full authority and power to resolve inheritance for Muslim communities, this is strengthened by the existence of Law NO. 50 of 2009. Thus, if the applicant has a religion other than Islam, then it can be resolved in the district court, but if he is Muslim then it will fall under the authority of the religious court.¹⁰

The authority possessed by religious courts in examining, deciding and resolving cases involving Islamic law products includes:

1. Determine the party entitled to be the heir
2. Determine the inheritance of the heirs left behind
3. Determine the size of the share of each heir
4. Method or mechanism for dividing inherited assets

⁹ Diana Zuhroh, "THE CONCEPT OF HEIRS AND SUBSTITUTE HEIRS: Study of Religious Court Judges' Decisions," *Al-Ahkam* 27, no. 1 (2017): 43, <https://doi.org/10.21580/ahkam.2017.27.1.1051>.

¹⁰ Ilham Thohari, "Conflict of Authority Between District Courts and Religious Courts in Handling Islamic Inheritance Disputes," *Universum* 9, no. 2 (2015).

5. Determination of heirs from the religious court regarding the application submitted by the applicant or applicants

Regarding the application for determining heirs submitted to the religious court, this can be done by submitting a letter of application whose contents have been signed by the applicant or applicants who are considered valid, then the application letter will be addressed to the chairman of the religious court where the applicant is domiciled, this letter is valid for all assets to be inherited. For applicants who are not proficient in reading or writing, it is recommended to submit an oral application before the chairman of the religious court, this is stated in article 121 paragraph 4 of Law no. 50 of 2009 concerning religious justice. After the application is submitted, the judge will take a role in examining the application case, then the judge will issue a letter determining the heir.¹¹

The conditions given by the religious court to be fulfilled by the heirs are useful as material for consideration in the religious court, namely:

1. Registration: Made in the form of a document containing an application letter, if the applicant has given power of attorney to another party, it must be accompanied by a special power of attorney; if you use the services of a lawyer, you must include a photocopy of the lawyer's membership; include proof

¹¹ Rahmatullah, "Authority of Religious Courts in Resolving Inheritance Disputes," *Jurisprudentie* 3, no. 1 (2016).

of the death certificate of the deceased heir; photocopies of all heirs; photocopy of family cards of all heirs; If the heir is married then include a marriage certificate with your partner

2. Legal Fee Rate: This rate is aimed at registration fees, financial management book owners, and other financial books
3. Registration or Case Data Collection: At this stage the application as an heir will be registered, taking into account the provisions that have been determined and apply in the registration book
4. Planning for Methods: Determination of jury, appointment of officials in case of replacement, determination of trial schedule, summons to parties
5. Application of Trial: Obligations of the panel of judges, appointment of a replacement clerk, determination of trial date, summons of the parties

After the above provisions are implemented, an original minutes will be prepared which will be sent and submitted to the Chief Justice of the Supreme Court, and if the application has been determined then it will enter the document storage stage for archiving.¹²

Application for Determination of Inheritance in District Court

The inheritance system that adheres to civil inheritance is contained in book II of the

¹² Rindang Dwi Putri Nirmala, "Heirs for Adopted Children: Implementation of Requests for Determination in Religious Courts," *Jurnal Kertha Semaya* 11, no. 8 (2023).

Civil Code. There are 300 articles discussing inheritance law, starting from article 830 of the Civil Code to article 1130 of the Civil Code in Chapter 12 to Chapter 18 of the Civil Code containing:

1. Regarding inheritance due to death (CHAPTER XII)
2. Regarding wills (CHAPTER XIII)
3. Regarding the method of executing a will and how to manage the inheritance of the heir (CHAPTER XIV)
4. Concerning Privileges in the details of the heir's inheritance (CHAPTER XV)
5. Regarding accepting and rejecting inheritance (CHAPTER XVI)
6. Regarding how to separate inherited assets (CHAPTER XVII)
7. Regarding the heir's inheritance which is not managed

The Civil Code defines inheritance law as a rule that focuses on the transfer of sources of wealth left behind by someone who has died.¹³Based on legality, only rights and obligations in terms of wealth in the form of property can be inherited or inherited. If we refer to the Civil Code, it can be understood that there are three elements that must be fulfilled, namely:

1. There is an Heir, someone who has been declared dead and has inherited assets to leave to the heirs

¹³ Indah Sari, "Division of Inheritance Rights to the Heirs of AB Intestato and Testamentair According to Western Civil Law (BW)," *Scientific Journal of Aerospace Law - Faculty of Law, Suryadarma University* 5, no. 1 (2014).

2. Inheritance, property and assets owned by the heir and will be transferred to the heirs after the heir dies
3. Heir, someone who is deemed to have the right to receive some or all of the inheritance left by the testator, taking into account statutory provisions.

Indonesian citizens who do not follow the Islamic religion can submit an application for determining heirs in the district court. The meaning of the district court is a general court body whose task is to carry out examinations and make decisions at the first level regarding criminal and civil cases for all groups. Meanwhile, according to the Big Indonesian Dictionary, court is defined as something related to judicial cases, and can be interpreted as a process of guaranteeing and providing justice from institutions.

So it can be seen that the role of the district court is to examine and decide criminal and civil cases, provide information, and consider and advise on the law. The district court is located in the district/city regional capital.¹⁴ District courts have the authority to handle lawsuits and petitions, a lawsuit is a case where there is a difference of opinion between two or more parties, thus triggering a dispute and are usually referred to as plaintiff and defendant, while a petition is a situation in which there is no difference of opinion and no there is a dispute but in it there is one party called the applicant. This

¹⁴ Catur Oktavianto, "Authority of District Courts in Settlement of Civil Cases" (2019).

application will later be submitted in the form of a letter accompanied by the applicant's signature. This letter will then be addressed to the district court in the relevant location. After the court processes it, a legal product will be issued and is referred to as the determination of the heir. Cases that do not involve disputes are known as voluntary cases, while cases that involve disputes are known as contentious cases.¹⁵

The application for determining heirs does not require a long process because this is in the form of an application, but you need to remember that when submitting the application, all heirs are required to be involved in the application submitted to avoid disputes so that there is no position as plaintiff or defendant, but all parties have the same position, namely as the petitioner. Typically, a request for determining heirs is to fulfill the interests of collecting or redeeming inheritance related to the inheritance left behind, which basically requires an administrative determination of inheritance by the heirs in order to minimize and avoid the occurrence of disputes with parties who claim to be heirs in the future. .

Regarding the process of applying for heirs to be submitted to the district court, the experts must make a letter containing information about the heirs in the local sub-

¹⁵ Ilham Tohari, "Questioning the Authority of District Courts in Resolving Inheritance Cases of Muslim Communities After the Birth of Law No. 3 of 2006 Concerning Religious Courts," *Journal of Legal Thought and Islamic Law* 9, no. 1 (2018): 2–36.

district, this letter will then be confirmed by the sub-district, and there is no need to check the will first, there are several conditions that must be fulfilled as an expert inheritance:

1. RT/RW cover letter (Original)
2. Copy of death certificate (can be death certificate/death certificate from sub-district/funeral certificate)
3. Copy of KTP of the deceased/deceased
4. Copy of marriage certificate (for those who are married)
5. Copy of KTP, Family Card, Wife/Husband's birth certificate
6. Copy of KTP, KK, child's birth certificate
7. Copy of KTP, KK will take care of it if authorized
8. Copy of KTP of 2 (two) witnesses who are not in the same household or same family

Meanwhile, the procedures that will be followed in submitting an application in the district court are as follows:

1. Proof of being an heir, where this proof must be in accordance with applicable laws and regulations
2. Family tree: heirs are asked to request a letter from the village head describing the family tree in chart form
3. Supporting documents, these documents contain the heir's form of ownership in the form of a title certificate, sale and purchase deed and others, by showing proof of ownership

4. If the heir does not have written evidence, they can present witness evidence, usually the witness's role is to know the history and history of the inheritance directly

Legal Certainty Regarding the Choice of Inheritance Law System Between Religious Courts and State Courts

Implementation of Law no. 50 of 2009 concerning the authority of religious courts, designated as courts for Islamic communities, has had an impact on the existence of courts in accordance with the proportions stipulated in article 1 paragraph 5 of Law no. 48 of 2009. It has been strictly regulated that judicial bodies in Indonesia, including religious courts, have been designated as legal bodies which in fact stand on an equal footing with other legal courts such as military courts, general courts, and state administrative courts.

Implementation of Law no. 50 of 2009 regarding every application for determining Islamic heirs must be under the authority of a religious court, in fact this does not make the district court feel that it no longer has the right and authority to adjudicate inheritance property applications, this is because the authority possessed by the district court remains has legal force in trying to adjudicate requests for determination of inheritance for Muslims, whether it is a request for determination regarding ownership

rights of inherited assets and not regarding the issue of distribution of inherited assets.

According to the Jurisprudence of the Supreme Court of the Republic of Indonesia Number 11.K/AG/1979, it firmly states that in cases relating to the division of inheritance and it is found that there is a dispute over property rights, then the case is not considered to be the authority of the religious court to examine it, but will be the authority of District Court. If we refer to the law, there is no prohibition on the authority of district courts to adjudicate inheritance matters for Muslims. This is confirmed by the provisions of article 10 paragraph 1 of Law no. 48 of 2009, which states that based on this article, the district court has the obligation to examine, try and decide every case that has been filed on the grounds that the law is unclear or does not exist, but is obliged to continue to examine and try it.¹⁶

Because the district court has the legal authority to hear civil and criminal cases relating to society in general, the district court is considered to have the authority to try cases involving the community at large, because of its general nature, the court has the authority to decide cases relating to inheritance involving the general public. However, what is different is that district courts are regulated by the Civil Code in handling inheritance

cases, while religious courts are regulated and guided by the complications of Islamic law. If you refer to article 49 paragraph 1 letter B of Law no. 7 of 1989 states that religious courts have the authority to decide all inheritance issues involving Muslims. However, if we look closely, the article above seems to contradict the general explanation, which states that before submitting an application for determining inheritance, the parties can first consider the legal action that will be taken regarding the application for determining inheritance.

From the use of the term can, it can be concluded that the heirs have the authority to choose the legal action they will apply to decide and determine the heirs for the application they have submitted. So, if parties are found to be Muslim, they have the right to determine the inheritance law system that will be used, whether it is inheritance law according to the Civil Code or Islamic inheritance law which is guided by the Complications of Islamic Law. If it has been determined, the parties can make a joint statement accompanied by signatures.

The existence of legal options for the court will be seen more clearly if the parties, especially those who are Muslim, submit a request for determination of inheritance to the district court so that the district court assumes that it has the authority to hear the request. Of course, this can cause problems because there are differences in the guidelines that are used

¹⁶ Marwan Busyro, "Authority of District Court Judges in Adjudicating the Distribution of Inheritance Assets After the Enactment of Law 50 of 2009 concerning Religious Courts," NUSANTARA: Journal of Social Sciences 6, no. 1 (2019).

as sources or benchmarks in applications for determining heirs.¹⁷

CONCLUSION

1. The development of Islamic law in Indonesia has resulted in the birth of guidelines and references, namely complications of Islamic law, with support from the existence of a religious court institution which has been recognized in Law no. 50 of 2009 concerning Religious Courts. In the case of an application for determining heirs in a religious court, the religious court has received full authority and power to resolve inheritance for the Muslim community.
2. For residents of Indonesia who do not adhere to and adhere to the Islamic religion, they can submit an application for determining heirs in the District Court. The definition of a district court is a general court institution, which has the task of examining cases and deciding a case at the first instance, whether it is civil cases, criminal cases for all groups. Regarding the application process for determining heirs submitted to the District Court, the experts must make a letter containing information about the heirs in the local sub-district, this letter will then be confirmed by the sub-

district, and there is no need to check the will first.

3. The authority possessed by the district court still has legal force in trying to adjudicate applications for determining inheritance for Muslims, whether it is a request for determination regarding ownership rights of inherited assets and not regarding the issue of distribution of inherited assets. However, what is different from religious courts is that in resolving inheritance cases, religious courts are guided by the complications of Islamic law, while district courts use the Civil Code, namely western law.

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¹⁷ Eka Susylawati, "Disputes over Court Authority in Inheritance Cases Due to Choice of Law," *Al-Ihkâm* 1, no. 1 (2006).

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