

## **JURIDICAL ANALYSIS OF LEGAL CONSIDERATIONS FROM THE JUDGE IN CANCELING THE DETERMINATION OF THE HEIRS NUMBERS 89/PDT.P/2020/PA.BN AT THE CLASS IA BENGKULU RELIGIOUS COURT**

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### **ABSTRACT**

*The purpose of this research is to examine and analyze the legal considerations of the Panel of the Judges in Canceling the Determination of Heirs Number 648/Pdt.G/2022/PA.BN towards the Cancellation of the Determination of Heirs Number 89/Pdt.P/2020/Pa.Bn at the Class IA Bengkulu Religious Court. The method used in this research is normative method by analyzing existing decisions and statutory regulations. The results of the research show that the legal considerations of the Panel of the Judges in Canceling the Determination of Heirs Number 648/Pdt.G/2022/PA.BN towards the Cancellation of the Determination of Heirs Number 89/Pdt.P/2020/Pa.Bn at the Class IA Bengkulu Religious Court was done based on the Islamic and Positive Law in Indonesia, by looking at written evidence and witnesses at the trial, and has fulfilled the elements of legal certainty and justice for all parties.*

**Keywords:** *Legal Considerations, Cancellation of the Determination of Heirs, Religious Court*

### **INTRODUCTION**

Inheritance law according to the *Mawaris Fiqh* (Islamic law) is a law relating to the distribution of inherited assets, knowing the calculation of the share of inherited assets and the portions that must be received from inherited assets for each person who is entitled to receive

them.<sup>1</sup> The aim of Islamic Inheritance Law is to regulate the procedures to distribute inherited assets so that they are beneficial to the heirs. Islam does not only give inheritance to the husband or wife, but also from both parties, either up, down

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<sup>1</sup> Hasbiyallah, *Belajar Mudah Ilmu Waris*. Ctk. Pertama, PT. Remaja Rosda Karya, Bandung, 2007, page 1

or sideways. Inheritance law is part of the family which is closely related to the scope of human life because every human being will definitely experience a legal event called death.<sup>2</sup>

The definition of inheritance is the transfer of rights and obligations over everything, both assets and dependents, from someone who dies to someone who is still alive. Inheritance Law is the law that regulates the transfer of assets left by someone who dies and the consequences for their heirs.<sup>3</sup> Determination of heirs as aforementioned must be carried out in a religious court with the legal result of a decision on determining heirs. Determination of heirs is carried out by making an application, attaching evidence and witnesses at the trial.<sup>4</sup>

Determination of heirs that have permanent legal force can cause conflict if the determination is submitted by someone who is not supposed to know the parties. This is interesting because the determination of heirs can be cancelled by equal court judges and local courts.

One example of the cancellation of the determination of heirs occurred at the

Class IA Bengkulu Religious Court with Decision Number **648/Pdt.G/2022/PA.BN.**

The cancellation lawsuit was filed by Balqis CS as the heir of the late Juremi and the late Nurlela Bahar with the determination of Decision Number 87/Pdt.P/2020/PA.Bn. That cancels the determination of heirs determined by Class IA Bengkulu Religious Court with Decision Number: 89/Pdt.P/2020/PA.Bn. on behalf of Lilis. Based on the chronology of the lawsuit, the heirs determined through Number: 87/Pdt.P/2020/PA.Bn. which is Balkis Cs, felt that Decision Number: 89/Pdt.P/2020/PA.Bn. on behalf of Lilis, is invalid and false. Lilis is a foster child, not a biological child, but in that determination Lilis is said to be a biological child.

This is categorized into the criminal case and and for that reason she was found guilty. Based on the aforementioned descriptions, the author is finally interested in conducting further research and analyzing the research results obtained in the field through interviews, literature reviews, and files which the author then compiled in a journal entitled: Legal Considerations from the Judge in Canceling the Determination of the Heirs Number 89/Pdt.P/2020/Pa.Bn at the Class IA Bengkulu Religious Court.

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<sup>2</sup> Maman Suparman, *Hukum Waris*, Sinar Grafika, Perdata, Jakarta, 2015, page 7

<sup>3</sup> Effendi Perangin, *Hukum Waris*, Rajawali Pers, Jakarta, 2008, page 3

<sup>4</sup> The Results of Pre-Research conducted by researchers at the Bengkulu Religious Court

## Identification of the Problem

The formulation of the problem in this journal is: What are the Legal Considerations from the Judge in Canceling the Determination of the Heirs Number 89/Pdt.P/2020/Pa.Bn at the Class IA Bengkulu Religious Court?

## METHOD

The method used in this research is qualitative research according to its trait. The qualitative research is research that uses a holistic approach, which means an approach that requires a variety of information to be analyzed, so that certain aspects of human attitudes can be understood.<sup>5</sup> Peter Muhammad Marzuki stated that normative legal research is a process of finding legal rules, legal principles, and legal doctrines in order to answer the legal issues.<sup>6</sup> The legal research method used in this research is normative research which is library research, based on secondary data.<sup>7</sup>

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<sup>5</sup> Sirman Dahwal, *Pelaksanaan Perkawinan Beda Agama (Studi Berbagai Kasus Di Indonesia Priode Tahun 1986-2010)*, Jurnal Ilmu Hukum Bengkoelen Justice, Program Pasca Sarjana Ilmu Hukum vol.2.No.2.2012, page 464-465.

<sup>6</sup> Peter Mahmud marzuki, *Penelitian Hukum*, Kencana, jakarta, 2010, ,page 35

<sup>7</sup>J.Supranto *Metodologi Penelitian Hukum Dan Statistik*, Rieneka Cipta Jakarta, 2003, page 2

## RESULTS AND ANALYSIS

### **The Legal Considerations from the Judge in Canceling the Determination of the Heirs Number 89/Pdt.P/2020/Pa.Bn at the Class IA Bengkulu Religious Court**

Mechanistically, the civil lawsuit process begins with registration of the lawsuit, then it is continued with the trial process by summoning the parties and providing the evidence. The mechanism for applying to cancel the determination of heirs is as follows:

#### 1) Lawsuit Registration

Lawsuit Registration is carried out by the party who feels disadvantaged regarding the determination of the heir by completing the lawsuit letter, conditions, and payment of the predetermined case down payment fee.

#### 2) Trial Day

Determination After the requirements are complete and registered, the Religious Court determines the day and date of the trial.

#### 3) Summons of the Parties

Both the plaintiff and the defendant are officially summoned by the bailiff of the religious court at the listed address.

#### 4) Trial I and Mediation Determination

When the first trial is held, the lawsuit is not read directly, but mediation is carried out.

#### 5) Parties Mediation

Based on the Supreme Court of the

Republic of Indonesia Regulation Number 1 of 2016 regarding Mediation Procedures in Court which is the result of a revision of Supreme Court Regulation Number 1 of 2008 mediation was carried out with several points as follows:

- a. In every civil case, if both parties are present at the trial, the judge is obliged to reconcile the two parties. The efforts to reconcile the two parties involved in the case are not limited to the first trial, but they can be carried out at the next trials even at a further level of examination. (Article 130 of HIR /Article 154 of RBg).
- b. If the peace effort is successful, a peace deed is drawn up which must be read first by the judge in front of the parties before the judge passes a decision punishing both parties to comply with the terms of the peace agreement.
- c. The peace deed/decision has the same force as a judge's decision which has permanent legal force and if it is not implemented, execution can be requested from the Head of the Related Court.
- d. The peace deed/decision cannot be subject to appeal, cassation or judicial review.
- e. If peace efforts are unsuccessful, this must be recorded in the trial minutes.
- f. In seeking peace, the Supreme Court Regulations Number 1 of 2008 concerning Mediation Procedures in Courts is used which requires that all cases submitted to the first instance court must be resolved through peace with the help of a mediator. (Article 2 paragraph (3) of Supreme Court Regulations).

Then the examination of the case is continued by reading the lawsuit letter in a language understood by the parties, if it is necessary, a translator can be involved to help. (Article 131 of HIR/Article 155 of RBg).

#### 6) Lawsuit Reading

The reading and examination of the lawsuit is carried out because mediation efforts have been unsuccessful or failed.

#### 7) Response

After reading the lawsuit and there are no improvements in the lawsuit, a response process is carried out as stipulated in the statutory regulations.

#### 8) Evidentiary

The evidentiary process involves both the plaintiff and the defendant presenting witness and written evidence at trial to strengthen the arguments and objections that have been submitted.

#### 9) Decision

After the process of proving, concluding,

and reviewing the existing facts of the trial, the panel of judges held deliberations and read out the decision on the lawsuit to cancel the determination of heirs.

Based on the arguments in the lawsuit stated in the lawsuit for canceling the determination of heirs as stated in point 17, there are actions carried out by the Defendant which have harmed the Plaintiffs, so it is appropriate that all the rights attached to the Defendant stated in the determination of Heirs at Class IA Bengkulu Religious Court Number 89/Pdt.P/2020/PA.BN are revoked and cancelled.

Based on the legal considerations of the panel of judges in canceling the determination of heir Number 648/Pdt.G/2022/PA.BN towards the Cancellation of the Determination of Heir Number 89/Pdt.P/2020/Pa.Bn at Class IA Bengkulu Religious Court as aforementioned, Cancellation is carried out with several considerations and trial facts as follows:

1. The convention defendant or reconvention plaintiff is not a biological child as stipulated in the Determination of Heirs Number 89/Pdt.P/2020/Pa.Bn at Class IA Bengkulu Religious Court and is

proven from documentary evidence and witnesses at the trial;

2. The cancellation was granted by the panel of judges with the consideration that there was no legal relationship between the Reconvention Plaintiff/Convention Defendant and the Reconvention Defendant/Convention Plaintiff, so the Reconvention Plaintiff/Convention Defendant's claim could not be accepted;

3. According to the considerations of the panel of judges, by analyzing the answers and evidence, it was stated that the Reconvention Plaintiff/Convention Defendant (Lilis Suharti) was neither the biological child nor the foster child of the late Juremi son of Paman dan the late Nurlela Bahar daughter of Baharudin. However, she is only a foster child. This is proven by the evidence P.6, P.9 and the statements of the witnesses of the Reconvention Defendants/Convention Plaintiffs.

4. The consideration is also based on the provisions of Article 171 letter (b) of the 1991 Compilation of Islamic Law, which states that an heir is a person who, at the time of death, or who is declared dead, based on a court decision, is Muslim, leaving heirs and inheritance. Meanwhile, an heir, as in

letter (c), is a person who, at the time of death, has a blood relationship or legal marriage relationship with the testator, is Muslim, and is not prevented by law from becoming an heir.

Based on these considerations, according to the author's analysis, the panel of judges has considered matters based on Islamic law and positive law and has provided legal certainty and given rights to parties who are truly entitled. Based on these considerations, the entitled party is not hindered in obtaining his or her rights and decisions that are unfounded or through deception have no legal force. The legal considerations of the panel of judges in canceling the determination of heir Number 648/Pdt.G/2022/PA.BN towards the Cancellation of the Determination of Heir Number 89/Pdt.P/2020/Pa.Bn at Class IA Bengkulu Religious Court, if it is viewed from utility theory according to Utilitarianism, it is stated that the aim of the law is to provide benefits to as many people as possible.

So that the cancellation of the determination of heir Number 648/Pdt.G/2022/PA.BN towards the Cancellation of the Determination of Heir Number 89/Pdt.P/2020/Pa.Bn at Class IA

Bengkulu Religious Court provides benefits to parties who truly have rights and does not create new conflicts.

According to the author's analysis, reviewed from justice theory, the legal considerations of the panel of judges in canceling the determination of heir Number 648/Pdt.G/2022/PA.BN towards the Cancellation of the Determination of Heir Number 89/Pdt.P/2020/Pa.Bn at Class IA Bengkulu Religious Court have been in line with the theory of justice in which the justice cannot be felt by the same feeling and and the same intention.

According to Hans Kelsen in his book general theory of law and state, law as a social order can be declared fair if it can regulate human actions in a satisfactory way so that they can find happiness in it.<sup>8</sup> The scales of justice vary greatly from a place to another place. Each scale is defined and completely determined by society in accordance with the general regulations of that society.<sup>9</sup> According to those matters, the legal considerations of the panel of judges in canceling the determination of heir

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<sup>8</sup> Hans Kelsen, *General Theory of Law and State* diterjemahkan oleh Rasisul Muttaqien. Penerbit Nusa Media, Bandung, 2011, page 7

<sup>9</sup> M. Agus Santoso, *Hukum, Moral & Keadilan Sebuah Kajian Filsafat Hukum*, Ctk. Kedua, Kencana, Jakarta, 2014, page 85.

Number 648/Pdt.G/2022/PA.BN towards the Cancellation of the Determination of Heir Number 89/Pdt.P/2020/Pa.Bn at Class IA Bengkulu Religious Court have been in line with the general regulations of the society. By cancelling the the Determination of Heir Number 89/Pdt.P/2020/Pa.Bn at Class IA Bengkulu Religious Court, it means that law and rights have been applied properly both from Islamic Law and from Indonesian Positive Law.

These considerations have proven that there was a mistake in the Determination of Heir Number 89/Pdt.P/2020/Pa.Bn at Class IA Bengkulu Religious Court which stated a foster child as a biological child and receives an inheritance. The determination process was also carried out by deception and it created mistakes. The legal considerations of the panel of judges in canceling the determination of heir Number 648/Pdt.G/2022/PA.BN towards the Cancellation of the Determination of Heir Number 89/Pdt.P/2020/Pa.Bn at Class IA Bengkulu Religious Court, if it is viewed from John Rawls' theory of justice, the main subject of justice is the basic structure of society or more precisely the way the main social institutions distribute fundamental rights

and obligations and determine the distribution of benefits from social cooperation.

According to the author's analysis, the panel of judges has distributed rights and obligations according to whom they belong and has closed the opportunity for other to create conflicts by cancelling the Determination of Heir Number 89/Pdt.P/2020/Pa.Bn at Class IA Bengkulu Religious Court. Based on the aforementioned analysis, the conclusion is the legal considerations of the panel of judges in canceling the determination of heir Number 648/Pdt.G/2022/PA.BN towards the Cancellation of the Determination of Heir Number 89/Pdt.P/2020/Pa.Bn at Class IA Bengkulu Religious Court was made in accordance with Islamic and Positive Law in Indonesia and through considerations with the written evidence and witnesses at the trial and had fulfilled the elements of legal certainty and justice for all parties.

## **CONCLUSION**

Based on the aforementioned result and description of the research, the legal considerations of the panel of judges in canceling the determination of heir Number 648/Pdt.G/2022/PA.BN towards the Cancellation of the Determination of

Heir Number 89/Pdt.P/2020/Pa.Bn at Class IA Bengkulu Religious Court was made in accordance with Islamic and Positive Law in Indonesia and through considerations with the written evidence and witnesses at the trial and had fulfilled the elements of legal certainty and justice for all parties.

### **Suggestion**

1. In the future, the Religious Courts should be more careful and thorough in accepting and deciding cases so that the final decisions do not create the same decisions towards the same objects and subjects.
2. The Council should state the legal in its considerations more clearly and carefully so that they do not cause conflicts in the future.

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