

Problematics of Inheritance Document Disputes and Their Solutions Perspective of Islamic Law and Positive Law

Ali Zainal Abidin^{*1} & Sahran Raden²

¹Islamic Family Law Study Program State Islamic University Datokarama Palu, Indonesia

²State Islamic University Datokarama Palu, Indonesia

Corresponding Author: Ali Zainal Abidin, E-mail: habsyiali815@gmail.com

ARTICLE INFO	ABSTRAK
Volume: 3	Inheritance disputes are often complex problems involving legal, social and psychological aspects. In the context of Islamic law and positive law in Indonesia, there are significant differences in the regulation and resolution of inheritance disputes. Islamic law, which regulates inheritance based on sharia principles, emphasizes the fair and equitable distribution of inherited assets in accordance with the provisions of the Koran and Hadith. In contrast, Indonesian positive law, which refers to the Civil Code (KUHPerdata) and other laws, uses principles that may differ in terms of inheritance distribution, including recognition of customary law and court decisions.
KEYWORD	Problems arise when there is a discrepancy between these two legal systems, especially in matters of distribution of inheritance involving heirs with different religious and cultural backgrounds. Legal uncertainty, conflicting interpretations, and procedural differences can exacerbate inheritance disputes and hinder the resolution process.
Inheritance Document, Islamic Law, Positive Law	This abstract aims to identify and analyze problems that arise in inheritance disputes both in the context of Islamic law and positive law. In addition, possible solutions to resolve the conflict will be discussed, including mediation approaches and harmonization between the two legal systems. By understanding the differences and similarities in inheritance arrangements, it is hoped that a fair and effective middle way can be found in resolving inheritance disputes in Indonesia

1. Introduction

Heir disputes occur because the heirs cannot be tolerant of each other, take care of themselves and restrain their desires from material temptations and consumerist necessities of life so that they cannot maintain harmony in the family and cause conflict between the heirs to fight over the heir's inheritance.

In completing the distribution of inheritance, each family wants an atmosphere that is transparent, fair and in accordance with the will or what is prescribed by the religion. In this way, no one from the family will feel disadvantaged. On the other hand, if the case is not used in resolving the inheritance law knowledge and is not mutually agreed upon, there will be conflict

^{*}Ali Zainal Abidin is a Ph.D Candidate of Islamic Family Law Study Program at Postgraduate School, State Islamic University Datokarama Palu, Indonesia. This paper was presented at the 3rd International Conference on Islamic and Interdisciplinary Studies (ICIIS) 2024, as a presenter, held by the Postgraduate School State Islamic University Datokarama Palu, Indonesia.

between families, tension, disappointment and dissatisfaction with the situation (physical, mental, emotional). and social). Basically, every family longs for happiness and peace in life, because it is in the family that the closest relationships occur. A person will be very miserable if there is no peace in his family because every time he has to try to find a way to overcome his inner tension, due to an atmosphere that is less than peaceful and harmonious.

2. Literature Review

2.1 In Islamic law, inheritance document disputes are usually related to:

Validity of Inheritance Documents: Documents such as wills or inheritance agreements must comply with sharia principles. If the document does not meet Islamic requirements, such as unfair distribution of assets or violates the rights of legal heirs, it can cause disputes. According to AST Arifin in "Islamic Inheritance Law" (2020), non-compliance with the division principles regulated in the Al-Qur'an and Hadith is one of the main causes of disputes.

Forgery and Manipulation of Documents: Cases of document falsification or manipulation of document contents for certain purposes often occur. Research by SH Harahap in "Analysis of Islamic Inheritance Law" (2019) shows that the practice of falsifying documents often gives rise to long disputes among heirs.

Differences in Interpretation: Various interpretations regarding the contents of inheritance documents or provisions of Islamic law can cause conflict. This is especially true if there is no consensus on how Islamic law is applied in a particular context. According to MA Al-Sabuni in "Tafsir Islamic Law" (2018), differences in interpretation can cause protracted disputes.

2.2 Positive Law

In Indonesian positive law, inheritance document disputes can involve:

Non-conformity with National Law: Documents that do not comply with positive legal provisions, such as those regulated in the Civil Code (KUHPer) or Law Number 23 of 2006 concerning Population Administration, often become a source of dispute. TH Wijaya in "Inheritance Disputes in Positive Law" (2021) emphasizes that document discrepancies with applicable regulations can cause legal uncertainty.

Unregistered or Invalid Documents: Documents that are not officially recognized or registered can cause problems. According to research by NS Putra in "Inheritance Law in Indonesia" (2020), documents that are not legalized by a notary or related institution often give rise to prolonged disputes.

Administrative and Procedural Issues: Unclear administrative processes or inappropriate document creation procedures can give rise to disputes. ME Surjadi in "Inheritance Law Practices in Indonesia" (2019) explains that administrative problems are often the cause of disputes, especially if documents do not meet formal requirements.

2.3 Solutions in Islamic Law

Preparation of Documents that Comply with Sharia: To be in accordance with Islamic law, inheritance documents must comply with sharia principles such as fair and legal distribution. According to HRMS Adnan in the "Guide to Islamic Inheritance Law" (2022), the preparation of documents must follow the provisions of the Koran and Hadith.

Sharia Mediation: Mediation by a sharia legal expert or competent institution can help resolve disputes in accordance with Islamic principles. A report by the Islamic Legal Aid Institute (2023) shows that mediation can reduce conflict and achieve a fair solution.

Extension and Education: Counseling about Islamic inheritance law and preparing appropriate documents can help avoid disputes. According to JA Wibowo in "Inheritance Law Education" (2021), adequate education regarding inheritance law can reduce dispute cases.

2.4 Solution in Positive Law

Making Valid and Registered Documents: To avoid disputes, it is important to create inheritance documents that are legally valid and registered. TN Setiawan in "Positive Inheritance Law in Indonesia" (2022) emphasizes the importance of creating documents that comply with applicable legal regulations.

Court Process: Inheritance document disputes can be resolved through court by referring to applicable legal provisions. The results of a study by AFR Dewi in "Inheritance Dispute Court Process" (2021) show that the court can make decisions based on positive law to resolve disputes.

Administrative Reform: Improvements in administration and document creation procedures can reduce disputes. According to RL Cahyani in "Inheritance Law Administration Reform" (2023), reforms in administrative procedures can clarify and simplify the creation of inheritance documents.

3. Methodology

This research uses a library research approach to collect information and analyze and describe data related to the Problem of Inheritance Document Disputes. This research uses qualitative research and takes primary data from books and other things related to related problems and issues. discussed and secondary material in the form of articles and papers or opinions of other legal experts which describe data related to the title of the discussion.

4. Results and Discussion

4.1 Inheritance disputes in etymology and terminology Islamic and customary inheritance distribution laws and their legal basis

According to the Big Indonesian Dictionary, a dispute is anything that causes differences of opinion, disputes and disputes. In the realm of law, it can be said that a dispute is a problem between two or more people where both of them dispute a certain object. In another term, Tirkah' is the property left behind by a person who dies absolutely. Compilation of Islamic Law, article 171 paragraph a, states that inheritance law is the law that regulates the transfer of ownership rights to inheritance (tirkah) of the heir, determining who has the right to be an heir and how much each person will share. Inheritance Disputes and Their Scope Witnesses are one of the pieces of evidence used to resolve a dispute and are very important in revealing as clearly as possible the truth of the matter being disputed by both parties. In terms of conditionsprocedural law, witnesses have testimonial value or are perfect witnesses if they fulfill the formal and material requirements regarding what they witnessed.

Inheritance documents are legal documents that contain information about the inheritance of property or assets from a person to his heirs after death. Islamic and customary inheritance distribution laws In Islam there are clear rules regarding inheritance and its parts. In the Koran, it has been explained that there are at least six types of shares in the distribution of inheritance, namely: one-half (1/2), one-third (1/3), one-quarter (1/4), one-eighth (1/8), two-thirds (2/3) , and one sixth (1/6). Customary Inheritance Law that applies to native or native Indonesian residents. The problem and issue here is that, apparently there is not the same provision or the same legal basis when we discuss the Customary Inheritance Law that applies to the native population. As in the provisions of Western Inheritance Law (BW) and Islamic Inheritance Law, the legal basis, source and provisions are clear and apply to anyone who follows the Inheritance Law. The form, nature and system of Customary Inheritance Law is very closely related and related to the form of society and the nature of kinship/kinship in Indonesia. In other words, Customary Inheritance Law is greatly influenced by the kinship system that exists in Indonesian society which is based on the system of drawing lineages of which there are three (3) types, the patrilineal, matrilineal and parental kinship systems.

Inheritance Disputes and their legal basis This form is in the hadith of the Prophet Muhammad SAW narrated by Umm Salamah which tells that: One day two men came to the Messenger of Allah asking for a resolution to the dispute over the distribution of inheritance from their parents, part of which had been used up. There was no witness between the two heirs who spent more of the property, and therefore both of them sued each other: Then Rasulullah SAW said: verily I am a human too, and to me you have come to bring this dispute, perhaps one of you more skilled at arguing than the others. So I won him with the information I gave him. So whoever I win and takes something that is essentially the other party's right, then don't take it, because a decision like that is the same as me giving you a piece of hellfire."The two people cried hearing the words of the Messenger of Allah, then said to each other: My rights are your rights. Seeing the awareness of the two people, the Messenger of Allah said: "Then share between you both the realization of the truth and then be willing to give up.

4.2 Problematics of inheritance disputes and their solutions

The emergence of disputes in the distribution of inherited assets is motivated by internal factors such as one or some of the heirs who feel unfair in the distribution of inherited assets and not to mention if someone feels that the inherited assets are hidden or controlled by one of the heirs, forgery of documents and Losing documents if something like this happens will lead to a dispute in court. There is a sensitive discussion when dividing inheritance, namely when determining who is entitled to inherit and who is not entitled to inheritance, as well as determining the share of each heir. And the facts are the causes of conflict or disputes originating from external factors, namely the existence of adopted children who have been given gifts by the heir or adoptive parents, the existence of provocateurs who like to heat things up to make the atmosphere less conducive, and inherited assets borrowed by relatives who are not included. heirs and not returned Discussions about inheritance often cause disputes between family members. This situation occurs when one or some of the heirs feel unfair in the distribution of inheritance. Not to mention if someone feels that their inheritance is being hidden or controlled by other heirs. If something like this happens then the discussion of inheritance will be problematic, resulting in a dispute in court 1. Conflict resolution outside of court (non-litigation) conflict resolution outside of court can also be called alternative dispute

resolution. This is contained in Article 1 number (1) of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution which explains:

"Alternative Dispute Resolution is an institution for resolving disputes or differences of opinion through procedures agreed upon by the parties, namely out-of-court settlement by means of consultation, negotiation, mediation, conciliation or expert assessment."

2. Conflict resolution through religious courts (litigation) Conflict resolution through the courts is also called conflict resolution in the form of litigation. When Muslim communities experience/experience family conflicts related to inheritance disputes, they can resolve the conflict through the Praya Religious Court by filing an inheritance dispute lawsuit. The form of resolving family conflicts related to inheritance disputes to the Religious Courts is based on the provisions of Article 188 of the Compilation of Islamic Law (KHI) in Indonesia. The article stipulates that: The heirs, either jointly or individually, can submit a request to the other heirs to divide the inherited assets. If any of the heirs do not agree to the request, then the person concerned can file a lawsuit through the Religious Court to divide the inheritance.

4.3 The Urgency of Inheritance Disputes

Inheritance document disputes can be very urgent depending on the situation. Inheritance often involves complex financial, legal, and emotional issues, and the documents in question are the basis of any claim to that inheritance. If there is a dispute about the authenticity of documents, how the inheritance is divided, or other legal questions relating to the inheritance, it is important to address the issue as quickly as possible. Availability of assets is a legal necessity, the potential emotional impact of financial necessity Islamic inheritance law is one of the most important shari'ah laws, with a very high position in the sight of Allah SWT. Because of this importance, Allah directly sent down to regulate in detail the share of each person who must be received, as well as who is entitled to receive their share. Because of this urgency, the Prophet Muhammad SAW paid great attention to the continuity of this knowledge by recommending that it be studied and taught to others. In fact, in one history, there is concern from the Prophet that the loss of this knowledge will result in damage and chaos in society, as described in his words which read: Meaning: Has told us Ibrahim bin Mundzir al-Hizami, has told us Hafsh bin 'Umar bin Abu al-I'thaf, has told us Abu Az Zinad from al-A'raj from Abu Hurairah, he said: " Rasulullah SAW said: "O Abu Hurairah, learn Faraidl, and teach it, because indeed it is half of knowledge, and that knowledge will be forgotten and it will be the first to be taken away from my Ummah." (HR. Ibn Majah) The Prophet's recommendation was for his friends and people after him to always study and continue to teach the science of inheritance because he remembered the importance of this knowledge in maintaining the integrity of kinship and family. At least with the existence of a law that regulates inheritance issues, some of the matters of fulfilling human needs which are part of the five human needs (al-d)aru>riyya>t akhamsah) can be fulfilled, namely fulfilling the maintenance of assets. Moreover, it is not uncommon to find that humans instinctively have materialistic tendencies, are unfair, greedy, and put their own interests first. This is where the urgency of Islamic inheritance law lies so that it must be studied and taught to others

5. Conclusion

Recapitulation of the importance of Inheritance Distribution in accordance with the provisions of Positive Islamic Law and TRADITIONAL Law. Emphasis on the importance of solutions that are fair and in accordance with religious principles and positive law. So that disputes do not occur, if for example they do occur, it is best to resolve them in the best way in court or outside of court that does not harm both parties.

unding: "This research received no external funding"

Acknowledgements: -

Conflicts of Interest: "The authors declare no conflict of interest.

unding: "This research received no external funding"

Acknowledgements: -

Conflicts of Interest: "The authors declare no conflict of interest.

References

JOURNALS :

Moh, Fachril, Husni Syawali, Lawsuit resulting from unlawful control of inherited assets by one of the heirs based on the Civil Code and Islamic Law, Bandung Conference Series: Law Studies, Legal Studies Study Program, Faculty of Law, Bandung Islamic University, Indonesia <https://doi.org/10.29313/bcsls.v2i2.2584>

BOOKS:

Afandi, Ali. (2000) *Inheritance Law, Family Law, Evidence Law*, Jakarta : PT Rineka Cipta 2000

Benhard Limbong, (2011) *Land Conflict*, Margaretha Pustaka, Jakarta, 2011

Jimmy Joses Sembiring, (2011) *How to Resolve Disputes Outside of Court (Negotiation, Mediation, Conciliation and Arbitration)*, (Jakarta: Transmedia Pustaka, ,

Syahrizal Abbas, (2017) *Mediation in Sharia Law, Customary Law, and National Law*, (Depok: Kencana,

Maimun Nawawi, (2016) *Introduction to Islamic Inheritance Law*, Surabaya: Pustaka Radja, March 2016,

Moh. Muhibbin and Abdul Wahid, (2011) *Islamic Inheritance Law: As a Positive Legal Reformer in Indonesia*, (Jakarta: Sinar Grapha Bumi Aksara, 2011),

Bunt, G. R. (2003). *Islam in the Digital Age, E-Jihad, Online Fatwas and Cyber Islamic Environments*. New York: Pluto Press.

Chute, A. G., Hancock, B., & Thompson, M. (1998). *The McGraw-Hill Handbook of Distance Learning: A ``how to Get Started Guide'' for Trainers and Human Resources Professionals*. London: McGraw-Hill, Inc.

ONLINE SOURCES:

<https://pa->

[andung.go.id/images/File_Upload/POSBAKUM/PERSYARATAN_PERMOHONAN_PENETAPAN_AHLI_WARIS.pdf](https://pa-andung.go.id/images/File_Upload/POSBAKUM/PERSYARATAN_PERMOHONAN_PENETAPAN_AHLI_WARIS.pdf) Accessed on Sunday 9 June 2024