

Legal Protection For Heirs Of Land Deeds Which Only Use The Name Of Their First Child In The Perspective Of Islamic Inheritance Law and Civil Law

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Abstract: This study is entitled Legal Protection for Heirs of Land Deeds Using Only the Name of the First Child in the Perspective of Islamic Inheritance Law and Civil Law. There are two formulations of the problem. 1 (one) What is the status of the heirs' rights to the land deed that only uses the name of their first child? 2 (Two) How is the legal protection of heirs for land deeds that only use the name of their first child from the perspective of Islamic inheritance law and civil law? The type of research used is normative juridical, namely research that refers to legal norms contained in statutory regulations. The nature of the research is analytical descriptive through a statute approach. The results of this study, the status of heirs' rights to land deeds that only use the name of their first child is that in principle all heirs are entitled to an equal share of inheritance, regardless of gender. So even though the land deed only uses the name of the first child, the other heirs are still entitled to receive inheritance from the heir. is in the form of good faith among heirs in the implementation of an application for determination of heirs, on the one hand to seek justice, on the other hand, to determine who will become the heir, to determine the inheritance, to determine the share of each heir, and to carry out the distribution of the inheritance. the second is repressive legal protection aimed at resolving disputes. In this study, the cancellation of the deed, with the aim that when there is a dispute or physical possession of property controlled by one of the heirs on the pretext that he has a deed given by his parents on his behalf, then the deed must be canceled, with the aim that the other heirs do not someone is harmed.

Keywords: Legal Protection, Land Deed, Inheritance

1. Introduction

There are frequent cases in my village, especially in Banyuwangi district, an example of this case is the name Mr. A who died in 2012 without leaving a will or grant. Mr. A has 4 heirs, the first named Mr. B, the second child named C, the third child named D and the last child named E. When he died, Mr. A died, and Mr. A left a land property of 14,000 M2, Interval three years after the death of Mr. A, there was a dispute over ownership rights to a land area of 14,000M2, if it was resolved in amicable way, the land would certainly be finished when it was divided into 4 (four) plots of land according to the number of heirs, but this problem arose because Mr. B as a child first claimed that the land with an area of 14,000m2 absolutely belonged to him or was inherited by Mr. Gimana as the first child, because in his land book his status only contained the name of Mr. A (as his biological father) and the name of Mr. B as his first biological child, while the heirs the other three were not recorded in the land book, therefore Mr B argued that the land left

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by his father which was 1400m² was left by his parents only for Mr B, even though in his custom most people used to write land books mostly side by side or attributed to to his first child because he is believed to be the fairest child, while the next child who is an heir has not yet been born, this is commonplace because people used to think or aim to give their land rights to their child if at any time he dies, but over time there are many mistakes or assumptions regarding the purpose of the status of the land book, resulting in a prolonged dispute. Until now, Mr. Gimman is still adamant that he wants to take over the 1400m² land left by the deceased Mr. A. Meanwhile, the other heirs opposed Mr B, who seemed to want to control the inheritance, which should have been jointly owned by the four heirs. And in this matter the village head is still trying to reconcile the dispute by mediating with Mr. Gyman and all the heirs. Based on the problems above, the writer is interested in analyzing and writing scientific work in the form of a thesis "Legal Protection of Heirs for Land Deeds Using Only the Name of the First Child from the Perspective of Islamic Inheritance Law and Civil Law"

2. Method

The type of research used is comparative and normative juridical, namely research that refers to legal norms contained in statutory regulations. The nature of the research is analytical descriptive through a statute approach. The nature of descriptive analytical research is used to describe an ongoing condition or situation (conditions of problems in practice which tend to include exoneration clauses in agreements) whose purpose is to be able to provide data regarding the object of research so that it can be analyzed based on legal theories or statutory regulations. invitation used.²

The research method includes the type of juridical-normative research, the problem approach used in this thesis is the statutory approach (statute approach), comparative approach (comparative approach), and conceptual approach (conceptual approach) as well as the legal principle approach (legal principles). Sources of legal materials, the preparation of this thesis uses primary legal materials and secondary legal materials. The analysis of the research material is then described in the discussion in order to answer the problems raised to arrive at a conclusion.

3. The Status Of The Heirs' Rights to Land Deeds That Only Use The Name Of Their First Child In The Perspective Of Islamic and Civil Law

Inheritance law is very closely related to the scope of human life, because every human being will definitely experience a legal event called marriage and death, as well as inheritance. The legal consequences that then arise with the occurrence of these legal events for someone include the problem of how to manage and continue the rights and obligations of someone who has died. Settlement of rights and obligations as a result of a person's death, is regulated by inheritance law.

In Inheritance Law can be seen in Islamic Inheritance Law, Customary Law and the Civil Code (BW). These three legal systems have their own characteristics and

² Wiranto Surakhmad, Fundamentals and Research Techniques, Bandung: Transito, 1978, p. 132.

characteristics resulting in differences between one and the other and the three systems of inheritance law that apply in Indonesia, namely:³

- a. The Western Civil Inheritance Legal System is regulated in the Indonesian Civil Code called "Western Inheritance" which applies to groups of Chinese and Foreign Eastern descent and is sometimes even applied to Islamic Indigenous Heirs who choose calculations according to Western Inheritance with simple calculation reasons.
- b. The customary inheritance law system, which is governed by customary law in each region, applies to Indigenous people who live and submit themselves to the customary law area.
- c. The Islamic Inheritance Law System which applies to Indonesian Citizens who believe in Islam, and the Compilation of Islamic Law which was issued according to Presidential Instruction No. 1 of 1991 on June 10, 1991 which became the basis for the Religious Courts in deciding on inheritance, waqf and marriage.

As a result of the various systems of inheritance law in force in Indonesia, there are often very striking differences between who is entitled to inherit, for example inheritance related to land ownership or acquisition, wills, grants, inheritance statements and the portion received by the heirs.

a) According to Civil Law

In a marriage a child plays an important role in a household life, because the initial goal when getting married is to build a happy household, to unite two large families, and to continue offspring. Soetojo Prawirohamidjojo stated that the main purpose of a marriage is to have children, fulfill human instincts, form and manage a household on the basis of love and affection, protect people from crime, and foster seriousness in seeking lawful fortune and increase responsibility.⁴

In addition, when the heir dies, it has a very important influence due to the provision (Article 1083), that each heir, after the distribution and splitting of the inheritance is carried out, is considered to receive directly when the heir dies. So there is known retroactive legal action (*terugwerkende kracht*). Such provisions also apply to buyers of inherited goods according to Article 1076 of the Civil Code.

Provisions for testamentary inheritance are found in Article 894 of the Civil Code, which means "several people, one of whom is the heir of another", is for example: between father and children. If the father dies, the children are his heirs and vice versa, if the child dies without leaving a wife and offspring, then the father is the son's heir. Husband and wife are also included in the group mentioned above; in certain circumstances it can also occur between two brothers. It has been stated that in the Civil Code the right of inheritance does not differentiate between the gender of a woman or a man or the citizenship status of the heirs. As well as the rights obtained by a person does not depend on his citizenship status.

According to the Civil Code, the principles of inheritance are:

- a. New inheritance is open (can be inherited by other parties) when a death occurs (Article 830)

³ Irma Devita Purnamasari, Smart, Easy and Wise Tips for Understanding Customary Law Issues, (Bandung: Kaifa, 2014), p. xix

⁴ Soetojo Prawirohamidjojo, Codified Inheritance Law, Airlangga University Press, Semarang, 2005, p. 28-29.

b. There is a blood relationship between the heir and the heir, except for the husband or wife of the heir, provided that they are still bound by marriage when the heir dies. (Article 832) It is said that the principle of inheritance is that there is a blood relationship between the heir and the heir, so that in the inheritance of blood relations it is very important that the only difference is how close the blood relationship is.

There is a classification of heirs which will later differentiate the portion of each heir. The Civil Code contains certain guarantees from the inheritance of the heir. The blood relationship is so close to the heir that if his inheritance rights are revoked, it is considered something that is not fair.

Heirs can exercise their rights to a minimum amount which is called *legitima* and the minimum portion of the heirs is called *legitime portie*. The absolute part (*legitime portie*) is a part of the inheritance that must be given to the heirs who are in a straight line according to law. The heir is not allowed to determine something, either as a gift between the living or as a testament. This is one form of protection for the inheritance rights of the heirs.⁵

Furthermore, with regard to inheritance rights, Article 852 of the Civil Code has determined that the first people who according to law are entitled to receive an inheritance are children and the husband or wife living the longest. The portion they receive is also equal to one another. There is no difference between men and women, and there is also no difference between the first born and the next born. Thus, it can be said that children and husband or wife get an equal share between them.

The above description illustrates that in principle all heirs are entitled to inheritance for an equal share, regardless of gender. So even though the land deed only uses the name of the first child, the other heirs are still entitled to receive it inheritance from the heir.

b) According to Islamic Law

Islamic Inheritance Law is a law that regulates everything related to the transfer of rights and or obligations over a person's assets after he dies to his heirs. Thus, in inheritance law there are three main elements that are interrelated, namely the heir, inheritance, and heirs.

The Compilation of Islamic Law (*KHI*)⁸ which is contained in a statutory format governing inheritance provisions is used as a guide in Islamic inheritance law as well as being the legal basis for Islamic Inheritance Law in Indonesia. In the provisions of Article 171 point a KHI it is stated that: "The law of inheritance is the law governing the transfer of ownership rights to heirs' inheritance (*tirkah*), determining who has the right to be the heir and how much is each share".⁶

Islamic Shari'a has established provisions regarding inheritance that are very good, wise and just. Rules relating to the transfer of property belonging to a person left after death to his heirs, both female heirs and male heirs. According to the provisions of Article 171 point c KHI, heirs are people who at the time of death have blood relations or marital relations with the heir, are Muslim and are not hindered by law from becoming heirs.

⁵ Irma Fatmawati,. Civil Inheritance Law, Accepting and Rejecting Inheritance by Heirs and the Consequences, Deepublish, Yogyakarta, 2020, p.79

⁶ Directorate of Development of Religious Courts, Compilation of Islamic Law in Indonesia, Humaniora Utama Press, Bandung, 1992, p. 73.

It is further explained that the heirs found in the KHI as mentioned above are basically the same as the heirs in the books of Islamic fiqh, with the exception of men and women who free slaves, because in Indonesia there is no slavery, but it is possible for additional heirs substitutes such as grandsons or daughters of daughters together with sons, where the daughter has died earlier than the heir.

Therefore, the status of heirs in Islam is entitled to inheritance according to their respective parts, namely according to gender, namely male and female, heirs who are possible as substitute heirs and heirs who are not hindered by law to become heirs, this matter in Islamic law is called *Furudhul Muqaddara*. So even though the land deed only uses the name of his first child, the other heirs are still entitled to receive inheritance from the heir in accordance with the distribution of Islamic inheritance law.

4. Legal Protection of Heirs Against Land Deeds That Only Use the Name of Their First Child The Perspective of Islamic Inheritance Law and Civil Law

a) According to civil law

According to R. Soeroso, law is a set of regulations made by the authorities with the aim of regulating the order of social life which has the characteristics of governing and violating and has the nature of coercion by imposing sanctions on those who violate them. Legal protection consists of 2 (two) syllables, namely "protection" and "law" which means legal protection according to applicable law. Legal protection is a means to realize and maintain justice which is the soul and purpose of law. Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, states that "Indonesia is a state of law", meaning that the administration of the state in all fields must be based on fair and definite legal rules so that it is not based solely on economic interests. In this case every citizen has the same position before the law and every citizen has the right to obtain adequate legal protection. Furthermore, Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia states that "everyone has the right to recognition, guarantees, protection and fair legal certainty and equal treatment before the law", meaning legal recognition, legal guarantees, legal protection and legal certainty given to every citizen must be based on the principles of justice and legal equality.

According to Philipus M. Hadjon, legal protection for the people is known in two forms, namely preventive protection and repressive protection. Repressive legal protection for citizens is given the opportunity to submit objections or opinions before a government decision gets a definitive form. Thus, preventive legal protection aims to prevent disputes from occurring. whereas conversely repressive legal protection aims to resolve disputes.⁷

In this study, the first legal protection is preventive in nature, namely prevention, and the form of prevention of assets left by heirs in the form of land deeds that only use the name of their first child is in the form of good faith among heirs in the implementation of the application for determination of heirs.

After the enactment of Law Number 3 of 2006 concerning the first amendment to Law Number 7 of 1989 concerning the Religious Courts, the settlement of inheritance

⁷ Hilipus M. Hadjon. 2012, Legal Protection for Indonesian People. Surabaya: PT. Science Development. p. 2.

cases in the Religious Courts can be pursued in two ways, namely through requests for voluntary determination of heirs and through continuing lawsuits.

This is based on the elucidation of Law Number 3 of 2006 Article 49 letter (b) that "The so-called "inheritance" is determining who is the heir, determining the inheritance, determining the share of each heir, and carrying out the division the inheritance, as well as the decision of the court at the request of a person regarding the determination of who is the heir, the determination of the share of each heir.

The sentence that reads "What is called 'Heir' is the determination of who is the heir, the determination of the inheritance, the determination of the share of each heir, and carrying out the distribution of the inheritance." There is a clause "Determination regarding inheritance" means the judge determines the object of the inheritance dispute. In this case the settlement must be through a contentious lawsuit because there is a dispute regarding the inheritance and the judge will make a decision.

Then the next sentence "As well as a court decision at someone's request regarding the determination of who is the heir, the determination of the share of each heir". In this sentence there is no clause "Determination regarding inheritance", so the judge only determines who is the heir, who is the heir and determines the share of each without mentioning the object of the inheritance. Thus the application for determining the heir must be without dispute, and does not determine the ownership status of the heir.⁸

Whereas the application case may not determine the status of ownership also refers to the decision of the Supreme Court Number 1391 K/Sep/1974, April 6, 1978, which reads, among other things: "The court is not authorized to examine and adjudicate requests for determination (voluntair) of land rights without any dispute over land ". And the two Supreme Court decisions No. 10K/Pdt/1985, "The Court's decision that determines the status of land rights through an illegal voluntair lawsuit has no legal basis, because there is no statutory provision that authorizes the court to examine such an application, so from the start the application must declared unacceptable".

The question arises, why is the share of each heir determined if the object of the inheritance is not determined? The answer is because all the heirs have unanimously stated that there is no dispute related to the object of inheritance, they only want to divide the inheritance according to Islamic law, so they ask for a determination from the Religious Court which has the authority to settle the distribution according to Islamic law. In fact, most justice seekers apply for inheritance to court because of the interests of one of the heirs or the interests of carrying out legal actions in the form of transferring land rights or dealing with financial institutions (banking) where the inherited assets will be used as collateral for credit. The official who made the land deed, the National Land Agency and the Notary who made the credit agreement required that the court determine the deceased's assets as inheritance.

From the explanation above, there are two possible legal implications (unexpected involvement of other parties) for the determination of heirs:

1. On the one hand, justice seekers request that the court determine the inheritance of assets for their legal purposes simply, quickly and at low cost unilaterally. On the other hand, judges are prohibited from determining ownership status through the voluntair

⁸ Karuniawan Nurahmansyah, "The Principle of Legal Certainty Against the Cancellation of Deeds of Officials Making Tanahpung Deeds", Journal of Lawyers, Legal Consultants Jember, 2021.

application process. The implication if the ownership status is determined through a voluntair case does not rule out the possibility that the property is related to the rights of other parties;

2. It is common to find applicants or applicants deliberately or because of their ignorance only include some of the heirs to apply. The legal implication is that perhaps after the panel of judges renders a verdict later on, those claiming to be heirs who were not invited/included in the application may appear, resulting in a new application for the same case or heir or even a contentious lawsuit against a case that has been terminated. There are two solutions offered by the speakers in this forum, first, a prudent solution in examining inheritance applications and second, a solution directing all inheritance applications to an inheritance lawsuit through peace or called a peace lawsuit.⁹

If the court still accepts voluntary cases relating to the determination of heirs, then it must be ensured that they do not determine the ownership status of the inherited assets. It only determines the heir, heirs and can be added to determine the share of each. Remain careful and careful in examining who is the heir and who is the heir according to the time (year and month) of each death, especially in munasakhot/multilevel inheritance cases. seminal relationship. And what is no less important, the judge must explore through the applicant/applicants and witnesses about the possibility that there are other heirs and/or other heirs besides the applicant/applicants.

In addition, the judges must sharpen the legal interests or the reasons for the applicant submitting the application so that it cannot be used for free interests, that is, it must be clear what the determination of heirs is being proposed for, for example to carry out the distribution of inheritance according to Islamic law or for the transfer of land rights. or for Taspen's claim, the injunction is only for that purpose, not used for other interests.

If justice seekers come to submit an application for determination of heirs to court, the court must have the courage to direct them to contentious cases. If they argue that there is no dispute then the court can help direct them to take the path of the peace agreement by providing an explanation regarding the peace deed. Regarding how to make a peace agreement out of court, who are the parties involved or positioned as the plaintiff and the defendant, how to apply for a peace agreement to be stipulated in the form of a peace deed, what are the advantages of a peace deed compared to stipulation and so on.

The court provides a solution for justice seekers who will apply for inheritance to first make an agreement between the heirs. This agreement must be supported by valid data or strong evidence. After there was an agreement/reconciliation agreement supported by valid evidence, they filed a lawsuit with the Religious Courts. Furthermore, the judge will examine and confirm the agreement with a Peace Deed Decision (Acta Van Dading). Directing the parties to take a simple, fast and low-cost process is still within the corridors of an active Court, which is prohibited when the Court intervenes in formulating the legal subject and object as well as the principal of the dispute because this has violated the provisions of a passive judge.

⁹ Abdul Gani Abdullah, Religious Courts in Islamic Government in the Bima Sultanate 1947-1957, p. 35.

Peace is the format of dispute resolution that has the highest value, because peace requires a win-win solution for dispute resolution, no one loses or wins so that everyone feels happy. Therefore, in any law, peace must take precedence over a judge's decision. In positive law as formulated in Article 1851 BW that peace (*dading*) is an agreement in which both parties hand over, promise or hold an item, ending a case that is dependent or preventing a case from arising. Furthermore, it is stated in Article 1858 BW that, a peace has the power as a judge's decision at the final level. Peace cannot be denied on the grounds that there has been a mistake regarding the law or on the grounds that one of the parties has been harmed.¹⁰

a) According to Islamic Law

In essence, everything in the heavens and on earth, including the land, belongs to Allah SWT. Then Allah as the ultimate owner, gives power (*istikhlaf*) to humans to manage this property of Allah according to His laws. This individual property right is recognized based on the principle of *hifz al-mal* (maintaining property). So humans have the right to use and manage existing land on earth with the condition that these individual property rights are limited by the rights of other people.

The principle of land acquisition in Islam can be equated with the principle of *tijarah* (transaction), which in simple terms can be interpreted as the transfer of rights and ownership from one hand to another. The principle of *tijarah* must have an element of consensuality and no element of deception. Likewise with land acquisition, when someone's land is to be transferred, an agreement between the two parties is needed so that no one feels disadvantaged. Islam really protects and respects one's property rights. Islam also forbids if someone eats the property of another in a vanity way.

In Islamic Inheritance Law There is the Principle of *Ijbari*, Etymologically "*Ijbari*" means coercion, namely doing something against one's own will. In terms of inheritance law, it means that the transfer of the assets of someone who has died to someone who is still alive occurs automatically. This means that without any legal action or statement of will from the heir. In other words, if the heir dies, the assets automatically transfer to the heirs. The principle of *Ijbari* can be seen from various aspects, namely: 1) From the transfer of assets; 2) in terms of the amount of transferred assets; 3) in terms of to whom the property will be transferred. The provisions of the principle of *Ijbari* can be seen, among others, in the provisions of the Qur'an, letter An-Nisa verse 7 which explains that: for a man or a woman there is fate from the inheritance of their parents or from close relatives, the word fate in the verse in the sense of shares, shares or allotments of the inheritors' assets.

Then in Islamic Inheritance Law there is an individual principle, namely: each heir (individually) has the right to the portion obtained without being bound to other heirs. Thus the portion obtained by the heirs individually is entitled to all the assets that have become their share. This provision can be found in the provisions of the Al-Qur'an letter An-Nisa verse 7 which states that the share of each heir is determined individually. In addition, the principle of balanced justice means a balance between rights and obligations and a balance between what is obtained with needs and uses. In other words, it can be stated that the gender factor does not determine inheritance rights. The legal

¹⁰ Karuniawan Nurahmansyah, "The Principle of Legal Certainty Against the Cancellation of Deeds of Officials Making Tanahpung Deeds", Journal of Lawyers, Legal Consultants Jember, 2021.

basis for this principle is in the provisions of the Al-Qur'an letter An-Nisa verses 7, 11, 12 and 179. It can be understood together with the legal bases above which are the Al-Qur'an, Hadith, Qoidah Fikhiyah and Legal Principles Islamic inheritance is a form of legal protection for heirs against land deeds that only use the name of their first child if the first child wants to control the heir's inheritance.

5. Conclusion

The status of the rights of the heirs to the land deed that only use the name of their first child are entitled to absolute inheritance rights from the heir (*legitieme portie*) which are in accordance with the Civil Code, namely using the Class system and Islamic Inheritance Law Using the *Furudhul Muqaddarah* System. So even though the land deed only uses the name of the first child, the other heirs are still entitled to receive the inheritance from the heir.

In this study, the first legal protection is preventive in nature, namely prevention, and the form of prevention of assets left behind by heirs in the form of land deeds that only use the name of their first child is in the form of good faith among heirs in implementing the application for determination of heirs, unified side to seek justice on the other hand determining who is the heir, determining the inheritance, determining the share of each heir, and carrying out the distribution of the inheritance. Then the second is repressive legal protection aimed at resolving disputes. In this study, the cancellation of the deed, with the aim that when there is a dispute or physical possession of property controlled by one of the heirs on the pretext that he has a deed given by his parents on his behalf, then the deed must be canceled, with the aim that the other heirs do not someone is harmed.

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Legislation

Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia,
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