



Analysis of Inheritance Law Regarding Inheritance Disputes in the Decision of the Supreme Court of the Republic of Indonesia Number 793 k/Ag/ 2018

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ABSTRACT

Inheritance law covers the transfer or assignment of a person's assets to the procedures for their distribution and settlement as stated in the Decision of the Supreme Court of the Republic of Indonesia Number 793 K/Ag/2018. In this writing, the research was conducted to determine the legal position of the plaintiff and defendant regarding the distribution of inheritance and to determine how the legal protection for the defendants regarding the ownership of inherited assets in the case of the distribution of inheritance assets in the Decision of the Supreme Court of the Republic of Indonesia Number 793 K/Ag/2018. The legal research method used in this research is normative legal research which is research that is conducted or aimed only at written regulations with a literature study method. which functions to describe or provide an overview of the object being studied. The data source used is secondary data with qualitative data analysis. The legal position of the Plaintiff Drs Sangkala Msi is the first class heir from his parents, namely Pamaling bin Tala and Debo binti naro, which is based on Article 174 paragraph (1) of the KHI is a son. The legal position of the Defendant Nurbaya binti Basang and Ahmad bin Jumasang is a substitute heir. Article 185 of the KHI states that the heirs who die rather than the testator's position can be replaced by their children. The legal position of the plaintiff and defendant is regulated in Article 171 of the KHI which regulates that the heirs are blood relatives or marital relations with the testator, are Muslim and are not prevented by law from becoming heirs.

INTRODUCTION

Inheritance law has legal limitations that regulate the regulations regarding the transfer of inheritance left by a person after death and the legal consequences that will be received by a person because they receive the inheritance, either in relation to a third party or between them alone. Inheritance law itself exists to assist in the transfer of a person's assets and the method and distribution so as not to cause a dispute between heirs regarding the distribution of inheritance.

Inheritance law is a rule that is part of family and civil law. Inheritance law has an important relationship in regulating the assets that will be left by a person so that they can be given to an heir. Inheritance law also regulates the rights and obligations that will be received by an heir due to receiving inheritance from the testator. The definition of inheritance law cannot actually be defined and cannot be found because we will not be able to find the definition of inheritance law in the Civil Code. The Civil Code does not provide an absolute understanding of what inheritance law is but only writes about how the inheritance process to heirs and divides the groups who are entitled to receive and are not entitled to receive and so on.

Zainuddin Ali argues that an heir is a person who dies, either male or female, who leaves behind assets or rights and obligations that can be obtained and must be carried out during his/her lifetime, either with a will or without a will. Wirjono Prodjodikoro argues that inheritance law itself is a regulation that contains regulations that contain the process of transferring inheritance in the form of objects, whether tangible or intangible, from a deceased person to his/her heirs.

Inheritance law is a law that has a broad scope because it regulates the process of transferring the assets of a deceased person to heirs who have rights and obligations and have a relationship to be entitled to obtain the inheritance. A. Pitlo argues that inheritance law is a statutory regulation that regulates ownership rights resulting from a person's death, namely the transfer of inheritance left by the deceased person and the consequences of the transfer to the people who receive it, both in their relationship with themselves and between themselves and third parties.

Islamic inheritance law is one of the 3 positive laws in force in Indonesia. The other two laws are customary inheritance law and civil inheritance law. Islamic inheritance law itself is adopted and used by adherents of Islam where this inheritance law is stated in the Qur'an. Islamic inheritance law itself studies the distribution of inheritance, prospective heirs and people who are not entitled to become heirs and the principle of justice because justice is an important principle in Islamic inheritance law. Islamic inheritance law examines the transfer of property from a deceased person to the living to the procedures for its distribution and settlement. Civil inheritance law tends more towards the distribution of inheritance in a balanced and even manner to the heirs, while Islamic inheritance law tends more towards sons with a two-to-one inheritance division for daughters and the existence of living law or customary law which also covers inheritance. Customary inheritance law itself is more flexible in the distribution of inheritance following the traditions, culture and beliefs of the

community itself. Differences in the procedures for the distribution, provision and transfer of inheritance certainly exist if we look more deeply at civil, Islamic and customary inheritance law. Differences of opinion among heirs regarding the distribution of inheritance assets are often encountered, even to the point of suing for inheritance assets for the sake of satisfaction and greed to obtain a larger amount.

LITERATURE REVIEW

A. Definition of Marriage

Marriage comes from the word "marriage" which means a marriage that occurs between a man and a woman which results in legal consequences between them both in terms of their relationship to society and their relationship regarding their wealth, whether obtained before, after and during the marriage. Marriage according to Prof. MR. Paul Scholten is a legal relationship between a man and a woman to live together and is recognized by the state, while marriage according to Heriyanti is a legal bond between a man and a woman based on the will of both parties so that it becomes a characteristic that binds one another.

Marriage according to article 1 of Law No. 1 of 1974 concerning Marriage states that marriage is a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a harmonious household based on the One Almighty God. Marriage according to article 26 of the Civil Code has the view that marriage is just a relationship. This relationship can be considered valid if it has met the requirements contained in the Civil Code. The definition of marriage according to the Civil Code and Law No. 1 of 1974 is different because according to the Civil Code, marriage is considered only a legal relationship between a man and a woman, while according to the Law on Marriage, marriage is considered to be a spiritual relationship between a man and a woman according to religion and aims to build a harmonious and happy household with its guidelines, namely the first principle of Pancasila which reads "Belief in the One Almighty God". Marriage, if traced according to history, was first carried out in 2035 BC in the Iraq region, marriage at that time was carried out heterosexually or marriage between two different sexes, namely men and women and not marriages carried out homosexually or same-sex. Marriage at that time had become a common thing to do and occurred heterosexually.

The purpose of this activity is to fulfill the sexual desires of every human being and to continue the offspring. Marriage is the process of forming a household carried out by two heterosexual human beings, namely a man and a woman. However, if the marriage is carried out between the same sex, it cannot be called a marriage. Humans instinctively have the desire to spend the rest of their lives with someone. This is called sexual desire which is possessed by every human being to show interest and encourage themselves to seek and find objects and engage in sexual activity. Marriage itself is carried out not only to fulfill the desires and interests of both parties but also as an important aspect in community life, namely by having offspring or children. Every belief or teaching certainly teaches that marriage is not only to fulfill desires but with the main goal of continuing the lineage. According to Soedharyo Saimin, marriage is two individuals with different genders, namely a man and a woman who make an

agreement to marry with the aim of forming a family based on God Almighty in accordance with the first principle of Pancasila.

Marriage is also called marriage in the view of belief or religion which has the meaning of the process of binding promises between two individuals, namely a man and a woman through a wedding ceremony with the aim of forming a harmonious household with the grace of God Almighty. Marriage in Indonesia is greatly influenced by various types of cultures and religions in Indonesia. Marriage is not only to fulfill the interests of one's own desires and interests, but marriage is also a form of action to maintain the existence of descendants as well as the existence of a country as well. Marriage also contains culture such as how the contract or traditional ceremony is held according to the beliefs of each religion and the religion practiced by the local community. Marriage plays an important role in a country because it helps in maintaining and preserving culture, customs and beliefs and protecting the existence of a country because a country starts from a small unit, namely the family. During the Dutch colonial period, the VOC (Vereenigde Oost-Indische Compagnie) brought Western Law into Indonesia in 1596. The purpose of the VOC to enter Indonesia at that time was not only to trade but over time also played a role as a government agency in Indonesia. The role of the VOC as a government body at that time was to make legal provisions related to marriage law. During the VOC's reign, there was a legality of Islamic civil law that was enforced positively. The implementation of Islamic civil law was enforced and contained marriage law and inheritance law known as the *Compendium Frijer*.

B. Valid Conditions for a Marriage

Marriage cannot be carried out immediately even though it has obtained trust and approval from each party, namely the male party and the female party. Marriage according to law cannot be carried out by someone because there are several aspects and conditions that must be met and obeyed in order for a marriage to take place. Some of the conditions for marriage are as follows:

1. According to the Republic of Indonesia Law Number 16 of 2019 concerning Marriage, the age requirement for a valid marriage is that the man and woman are 19 years old. This age limit is considered to have fulfilled the aspect of mental and physical maturity of the man and woman. This aims to ensure that the marriage can take place properly and avoid divorce and can produce offspring who are considered healthier and of better quality at that age. This is different from the previous provisions, namely Article 7 paragraph 1 of Law Number 16 of 2019 concerning Marriage, which states that the age requirement for marriage is 19 years for men and 16 years for women. This change is expected to reduce the high birth rate and the risk of maternal and child death due to pregnancy at a young age.
2. There is agreement from both parties.
3. Women who are going to get married must first pass 300 days since their previous marriage.

4. There is no prohibition in the Law that is intended for both parties, such as committing incest.

If a party wants to get married, they must get approval from their parents first. If one party has become an orphan, it is permissible to obtain consent from the surviving parent. However, if one of the parties has lost both parents, he can obtain approval from a guardian or relative who is related by blood to give consent.

METHODOLOGY

The type of research used by the author in writing this research is Normative Juridical research. This type of research is used because according to the author it is suitable for researching and discussing the problems in this research. Normative juridical research is used by the author because the author compares inheritance dispute decisions with inheritance laws in Indonesia. Sudarto argues that research is an effort made to formulate problems, ask and answer questions about the problems being studied to find answers based on facts. The theories used to help find answers to these problems will also help the author in writing research in order to find answers to problems in a study.

Primary legal material is legal material obtained by researchers in writing research results. Primary legal material is used by the author to understand the phenomenon of inheritance disputes and how to resolve disputes. Primary legal material itself can be in the form of laws and regulations and notes that help the author in understanding and solving problems related to inheritance disputes.

Normative legal research uses a data collection method through literature studies related to inheritance laws in Indonesia. Both in the form of the Civil Code, Compilation of Islamic Law, Law of the Republic of Indonesia Number 1 of 1974 concerning Marriage, Law of the Republic of Indonesia Number 16 of 2019 concerning Marriage In addition to these regulations, materials from books, journals, articles and documents containing information related to inheritance law are also used in this study. Other supporting sources are their meanings and also as a translator of foreign language terms. Language dictionaries whose function is to improve Indonesian grammar, encyclopedias, and others. The approach used by the author in writing this research is a qualitative approach. Qualitative research itself is basic or naturalistic. Qualitative research produces descriptive data in the form of spoken or written words from the observed phenomena. The qualitative approach is carried out through an approach to the Law and an approach to legal cases in writing this research. This approach is considered suitable by the author for the study of the topic of this scientific work. Data Analysis used in writing this research is Qualitative Data Analysis where each formulation of the problem and discussion in the research is based on law, norms, principles and theories.

RESEARCH RESULT

The inheritance dispute contained in the a quo decision, the legal status of the heirs is that they are heirs in the first group, namely the group of heirs who receive inheritance from the inheritance of their parents in this case based on the

Decision of the Supreme Court of the Republic of Indonesia Number 793 K / Ag / 2018, namely Pamaling bin Tala and Debo binti naro who are the parents of the plaintiff Drs Sangkala Msi while the defendant Nurbaya binti Basang and Ahmad bin Jumasang are substitute heirs of Besse bin Pamaling who is the daughter of Pamaling bin Tala and Debo binti naro

Joint property according to article 1 letter f of the Compilation of Islamic Law states that "marital property or *syirkah* is property obtained, either individually or together with husband and wife during the marriage and hereinafter referred to as joint property, without questioning registered in anyone's name". The purpose of marriage when viewed from a religious aspect is divided into 3 aspects, namely:

1. Marriage is a strong bond between husband, wife, and descendants.
2. Marriage is one of the *sunnah* of the prophet and they are role models in life.
3. A wife is the best mistress.

Marriage between a man and a woman gives rise to joint rights between husband and wife. These rights can be divided into 3 parts of joint rights, husband's rights and wife's rights. Joint rights are as follows:

1. It is permissible for husband and wife to socialize and each can have fun with each other.
2. There is a *mahram* relationship between the marriage.
3. There is an inheritance relationship between husband and wife since the marriage contract was carried out. The wife has the right to receive inheritance from her husband's inheritance. Likewise, the husband has the right to receive inheritance from his wife's inheritance. Even though they have never had intercourse with each other.
4. Children who are born are of the husband's lineage (if conception occurs as a result of intercourse after marriage).
5. Socializing between husband and wife so as to form a harmonious household.

The inheritance relationship mentioned in number 3 in the joint rights of husband and wife arises as a result of a marriage. Marriage between husband and wife gives rise to legal consequences for both parties where the assets in the marriage are formed as well as the position of children and inheritance relations. Assets in marriage are explained in article 1 letter (f) of the Compilation of Islamic Law (KHI) which states that "wealth assets in marriage or *syirkah* are assets acquired either individually or jointly by husband and wife during the marriage bond and are hereinafter referred to as joint assets without considering whether they are registered in anyone's name."

The legal basis for joint property in marriage according to Islam is contained in Surah An-Nisa verse 32 which contains:

"And do not be jealous of what Allah has given some of you more than others. (because) for men there is a portion of what they earn, and for women (too) there is a portion of what they earn, and ask Allah for some of His bounty. Indeed, Allah knows all things."

Joint property according to article 85 of the Compilation of Islamic Law states that "The existence of joint property in a marriage does not preclude the possibility of property belonging to each husband and wife". Joint property in a marriage is property brought by each party into the marriage, but both husband and wife still have the power or authority in managing their respective property. The wife's rights remain the wife's rights, as well as the husband's rights to recognize the power of property.

Article 87 number 2 of the Compilation of Islamic Law states that both husband and wife have full rights to carry out legal acts on property in marriage. Legal acts regarding property here can be in the form of grants, gifts, alms and so on. However, if there is a debate in the inheritance division process, the inheritance dispute can be processed in court.

Inheritance disputes where the distribution uses Islamic inheritance law, the dispute resolution will be carried out in the Religious Court according to Law Number 7 of 1989 concerning Religious Courts. The settlement of Islamic inheritance disputes is carried out in two ways, namely through litigation and non-litigation. Litigation is resolving problems through the courts, while non-litigation is resolving problems outside the courts, non-litigation can also be in the form of mediation.

When we talk about inheritance issues, we will come to 2 main issues in inheritance, namely the deceased who leaves behind assets as an inheritance and the people who will receive the inheritance. The people who will receive the assets are referred to as heirs where the heirs are people who have a relationship with the testator. Islamic inheritance law explains the pillars and conditions of inheritance that must be met in carrying out inheritance.

Analysis of the Legal Position of the Plaintiff and Defendant Regarding the Distribution of Inheritance in the Decision of the Supreme Court of the Republic of Indonesia Number 793 K / Ag / 2018

The distribution of inheritance contained in the Decision of the Supreme Court of the Republic of Indonesia Number 793 K / Ag / 2018 uses Islamic inheritance law, therefore the settlement of cases in the distribution of inheritance must also use Islamic inheritance law. The position and the amount of the portion obtained by the heirs must be in accordance with the provisions contained in Islamic inheritance law.

Pamaling bin Tala and Debo Binti Naro in this case are a husband and wife who are in the position of heirs or Al-Muwaris. Pamaling bin Tala and Debo Binti Naro are a husband and wife who are bound by marriage. When a marriage occurs, there is joint property in a marriage, although according to Islam joint property is not known, but joint property in Islam is better known as "Syirkah abdan mufawwadhah" which means "unlimited partnership and partnership". However, joint property is generally acceptable to Indonesian scholars because some husband and wife work together to earn a living to meet their daily needs and with the aim of saving or saving to guarantee their old age. Regarding this joint property, both husband and wife have the right to take legal action against this inheritance. This legal action can be in the form of a grant or other, with the note that the grant must be based on the agreement and mutual knowledge of

the husband and wife. Property in Islamic inheritance law can be divided into three types, namely:

1. Grants or gift property is property that is given free of charge by someone. Gifts can only be made if the giver and recipient are alive.
2. Inherited assets are assets left by an heir or person who has legally died which will then be transferred to their heirs.
3. Testamentary assets are assets that are willed by someone before they die and these assets will only be obtained by the heirs when the testator dies.

Marital assets can also be divided into several types. One of them is a definite inheritance share. The various parts of definite inheritance in Islamic inheritance law are as follows:

1. Half for husband, daughter, biological sister, half-sister
2. One-quarter for husband and wife.
3. One-eighth for wife
4. One-third for mother, half-brother or half-sister.
5. One-sixth for mother, father, grandfather, grandmother, granddaughter of son, half-sister, half-brother.
6. Two-thirds for daughter, granddaughter of son, biological sister, half-sister.

Pamaling bin Tala and Debo Binti Naro have two children consisting of one son and one daughter. The son is named Drs. Sangkala, M.Si (Plaintiff) and the daughter is named Basse bin Pamaling. In this case, Basse bin Pamaling has two children named Nurbaya binti Basan (daughter) who is the first defendant and Ahmad bin Jumasang (son) who is the second defendant. In the decision of Drs. Sangkala, M.Si is the plaintiff and Nurbaya binti Basang is the first defendant and Ahmad bin Jumasang is the second defendant. Drs. Sangkala, M.Si and Basse bin Pamaling are the biological children of the couple Pamaling bin Tala and Debo Binti Naro so that in this inheritance case they are the heirs (Al-Waris) of Pamaling bin Tala and Debo Binti Naro. The distribution of inheritance in Islamic inheritance law can only occur if the testator dies because that is the main requirement for an inheritance to occur. If the inheritance occurs due to the death of the testator, then this inheritance is in accordance with one of the principles contained in Islamic inheritance law, namely the Ijbari Principle. The principle of Ijbari is an inheritance that occurs automatically when the testator dies which causes the transfer of property from the testator to the heirs. The transfer of property from the testator after the testator dies to his heirs will be divided according to Allah's provisions.

Sangkalan who is a son in the lineage of Pamaling bin Tala and Debo Binti Naro. According to Islamic inheritance law, the portion of inheritance obtained by Sangkala is twice the portion of his sister, Basse. This is stated in the verse of the Al-Quran, Surah al-Nisa verse 7 which reads:

"For men there is a right to a share of the inheritance of their parents and relatives, and for women there is a right to a share (also) of the inheritance of their parents and relatives, whether small or large according to the portion that has been determined"

Sangkala who is male is included in the group of heirs according to article 174 of the Compilation of Islamic law, specifically paragraph 1 which classifies heirs based on blood relations and marital relations. Sangkala is included in the group based on blood relations and male group so that legally Sangkala is included in group one when viewed from the straight line of descent so that Sangkala is one of the legitimate heirs of the couple Pamaling bin Tala and Debo Binti Naro. While his sister, Basse, is also in the position of heir because according to Islamic inheritance law she is included in group one of the heirs and the amount of inheritance that Basse will receive is half of her brother's share which is in accordance with the division of inheritance in article 176 of the Compilation of Islamic Law. In this case, the inheritance that Basse received has been transferred to her two children because Basse has died and the conflict or dispute in the inheritance arose after Basse died.

Changes in the ownership status of joint property when the testator has been declared dead result in the joint property changing into inheritance. This inheritance will then be passed on to the legitimate heirs according to the inheritance law used. If the testator is Muslim, then the inheritance law used is Islamic inheritance law. The distribution of inheritance will be carried out based on the provisions contained in the inheritance law used.

The position of the defendant as a substitute heir is specifically regulated in Article 185 of the KHI. In the Compilation of Islamic Law (KHI), the rights of an heir who has died are given to his descendants who are still alive. This rule is stated in Article 185 of the KHI, the full text of which is as follows:

- a. Heirs who die before the testator, then their position can be replaced by their children, except for those mentioned in Article 173.
- b. The share of the substitute heir may not exceed the share of the heir who is equal to the one who was replaced. Judging from its purpose, the renewal of inheritance law is intended to resolve problems and avoid disputes. In relation to this, Soepomo in his book even said that the emergence of the institution of change of place was based on the school of thought that property in the family from the beginning was indeed provided as the material basis of the family and its descendants. If a child dies while his parents are still alive, the children of the deceased will replace their father's position as heirs of their grandfather's property.

It is explicitly stated in the Guidelines for the Implementation of Duties and Administration of Religious Courts regarding the principle of direct heirs and the principle of Substitute heirs.

- a. Direct heirs (*eigen hoofed*) are heirs referred to in Article 174 of the KHI.
- b. Substitute heirs (*plaatvervulling*) are heirs regulated based on Article 185 of the KHI, namely substitute heirs/descendants of heirs referred to in Article 174 of the KHI. Among the substitute heirs mentioned in Book II are:
 1. Descendants of children inherit the portion they replace.
 2. Descendants of brothers/sisters (blood, father and mother) inherit the portion they replace.

- c. The paternal grandfather and grandmother inherit the portion from the father, each sharing equally.
- d. The maternal grandfather and grandmother inherit the portion from the mother, each sharing equally.
- e. The paternal uncle and aunt and their descendants inherit the portion from the father if there is no paternal grandfather and grandmother.
- f. The maternal uncle and aunt and their descendants inherit the portion from the mother if there is no maternal grandfather and grandmother. Other than those mentioned above are not included as substitute heirs.

The position of the defendant in the *a quo* case as a substitute heir according to Islamic law has the position as a substitute heir from his mother or a female heir so that even though the defendant is not an heir of the child of Pamaling bin Tala and Debo binti Naro, the defendant has the legal position and inheritance rights as a substitute heir as a blood relation.

Apart from the above, the defendant's position as a substitute heir is based on the principle of equal rights and equal status, the provisions of article 185 KHI. which emphasizes "Heirs who die before the testator can have their position replaced by their children", the sentence 'children' can be understood to mean that both the descendants of sons and daughters who have died before their parents have the same position.

Analysis of Legal Protection for Defendants Regarding Ownership of Their Inheritance in the Case of Distribution of Inheritance in the Decision of the Supreme Court of the Republic of Indonesia Number 793K/Ag/2018

The granting of a gift in Islamic inheritance law requires the testator to present witnesses in the granting in order to minimize and avoid disputes between heirs in the future in fighting over the inheritance left by the testator. Pamaling bin Tala and Debo Binti Naro gave a gift to their daughter named Besse bin Pamaling in the form of a wooden house which was then demolished and rebuilt at the expense of both parents. The granting of this house was attended by 2 witnesses, namely Marliang and Abd. Karim where this testimony became a fact of the incident or legal fact in the field. Testimony by Marliang stating that Basse binti Pamaling was given a wooden house that was almost collapsed by her mother.

The house was then rebuilt into a stone house and Basse binti Pamaling's mother advised her to live in the house with her because she would take care of her mother until the end of her life. In Islamic inheritance law, a gift is considered valid if attended by witnesses so that the house lived in by Basse and her husband is a valid inheritance in the eyes of the law and belongs to her. Although Islamic inheritance law recognizes a gift that is only attended by at least 2 witnesses, it is different in civil law where a gift will only have legal force if it has a notarial deed.

The gift according to article 211 of the Compilation of Islamic Law has been improved where the gift must be attended by 2 witnesses in order to guarantee the security and legal force of the legal act. The act of giving a gift to Besse in the form of a house will be considered an inheritance according to Islamic inheritance law. This gift can be made because the house is included in

the joint property in the marriage between Debo Binti Naro and her husband. The gift can be justified and has legal force because it is regulated in article 87 paragraph 2 which reads:

"Husband and wife have full rights to carry out legal acts on each other's property in the form of gifts, alms or others"

The gift to Besse can be justified according to law because the gift in the form of a house was made with mutual consent and knowledge. The granting of a gift can be legally void if the granting of the gift is not known or approved by one of the parties. The agreement on joint property is regulated in Article 92 of the Compilation of Islamic Law which reads:

"A husband or wife without the consent of the other party is not allowed to sell or transfer joint property".

Nurbaya binti Basang and her mother took care of Debo Binti Naro who was in the position of heir (Al-Muwaris) so that the grandmother gave a gift to her daughter, Besse, in the form of a wooden house which was then renovated into a stone house. The renovation of the wooden house into a stone house was carried out using funds from Debo Binti Naro and her husband. The grant given by Besse bin Pamaling's parents to her can be called an inheritance because in Islamic inheritance law and stated in the Compilation of Islamic Law, precisely in Article 211 which reads:

"Grants given by parents to children can be considered as inheritance".

This gift is considered to have become a bundle in the inheritance that will be obtained by Besse bin Pamaling in the future. This gift was also attended by 2 witnesses, namely Marliang and Abd. Karim who supported the validity of a gift from the testator to his heirs even though in Islamic inheritance law this action is carried out to support evidence if there is an inheritance dispute in the future.

Sangkala as a son did not receive the results of the inheritance division because he only received 149.92 ares of land and the area of land obtained by his sister was 96 ares. According to him, this division does not describe the provisions in Islamic inheritance law where men are entitled to receive twice as much as daughters while daughters receive half of the son's share.

Sangkala sued his niece who was the heir of his younger sister, namely Besse binti Pamaling, where he demanded the return or reduction of the inheritance from the defendants because he received an inheritance amount that exceeded his share or portion. The action taken by Sangkala is actually the right action as a form of inheritance claim rights because he is a son and legitimate heir so he has the right to claim the inheritance deficiency because he did not receive an inheritance according to the appropriate amount according to Islamic inheritance law. However, the lawsuit filed by Sangkala was rejected by the court. It is true that the distribution of inheritance in this case is not in accordance with Islamic inheritance law, but the judge's consideration in deciding a case must be based on a sense of justice also because the panel of judges must also see and hear testimony and collect evidence to find out what the basis and reasons are and the beginning of a case.

The judge's action in rejecting the lawsuit from Drs. Sangkala, M.Si was due to the judge's consideration that the defendant's niece, Nurbaya binti Basang

and her mother had been devoted, guarding and caring for Debo Binti Naro as the heir so that the panel of judges decided that Nurbaya binti Basang and her brother who were the heirs of Besse bin Pamaling had the right to receive the inheritance left by their mother even though in the realm of Islamic inheritance law. The reason why the panel of judges approved the distribution of the inheritance was to uphold the principle of justice. The division of inheritance according to Islamic inheritance law is indeed 2:1 but that can happen if in normal conditions while according to the inheritance dispute above the woman devotes her life to guarding and caring for her parents so that giving more inheritance to the woman can be justified.

Giving excessive grants to daughters can also be justified according to Islamic law if the daughter makes many sacrifices for her parents, both in material and moral form. If the daughter makes many sacrifices for her parents, then the inheritance that will be received by the daughter is entitled to receive more of her share until she gets the same amount as the son. According to experts, giving grants that are considered inheritance according to article 211 is a shortcut or way out to avoid inheritance disputes in the distribution of inheritance.

The grant given by Debo Binti Naro to her daughter in the form of a wooden house which was then renovated into a stone house is a legal act that results in the heirs receiving the inheritance first or preceding other heirs in receiving the inheritance. The grant received by Basse is actually valid in the eyes of Islamic inheritance law so that the land given to her is counted as inheritance and is already hers. As for Article 211 which states that a grant can only be considered as an inheritance if the grant is only given to one child and the other child does not receive a grant. Basse who received a grant from his parents in the form of a house which was then renovated while his brother, Sangkala, did not receive a grant from his parents so that automatically the house has become an inheritance owned by his sister Basse.

Article 211 also explains that if one of the heirs does not agree with the distribution of the inheritance, the grant can be considered null and void as an inheritance, taking into account that if one of the heirs experiences a deficiency in obtaining the inheritance, the grant that should have been received by the other heirs must be null and void. However, if the heir who receives the grant is still lacking in the amount of his inheritance, then he only needs to add to the deficiency and if the grant exceeds the portion of the inheritance, then the excess from the grant can be withdrawn and transferred to the heir who is reduced from the portion that should have been received. The panel of judges can order the cancellation of the grant along with the reduction of the inherited land obtained by the defendant when viewed from the perspective of Islamic inheritance law and then force the defendant to return the inheritance to Sangkala as the son and legitimate heir.

However, the grant in the form of a house to the late Besse has been going on for approximately 20 years, but recently his brother has questioned the stone house. According to Article 24 paragraph 2 of PP No. 24 of 1997 concerning land registration, it is stated that a person who physically controls a land for a period of 20 years can register as the holder of the rights to the land. The female

descendants in this dispute cannot be sued by Sangkala because control of the house or land has passed the waiting period or physical control has exceeded 20 years which automatically becomes the property of the defendants. Sangkala asked the panel of judges to reduce the amount of inheritance from the female party because according to him the inheritance obtained by the female heirs has exceeded the portion regulated in Islamic inheritance law. The considerations of the panel of judges in deciding this case and winning the defendant according to the author are 4, namely as follows:

1. The female heir has been devoted to her parents by looking after and caring for them so that the panel of judges approves the distribution of excess inheritance to the female party.
2. Although the distribution of inheritance to women exceeds that stipulated in Islamic inheritance law, the amount controlled by each party according to the panel of judges can still be calculated roughly and in accordance with the distribution of inheritance according to Islamic inheritance law, which is 2:1 parts.
2. Inheritance law is a muamalah, not a mahdhah worship or worship whose terms and conditions have been determined in Islamic law. So according to the author, the law in practice when encountering certain cases can change in order to uphold the principle of justice. An heir who gives more inheritance to one of the heirs because he has looked after and cared for the heir during his lifetime.
3. The use of customary inheritance law of the Bugis/Makassar people (al aadatul Muhakkamah) which is customary law for the surrounding community where the heir has the right to give more inheritance to one heir than the inheritance of other heirs on condition that the heir will look after, care for and even take care of the funeral of the heir in the future.

CONCLUSIONS AND RECOMMENDATIONS

Conclusion

Based on the description in the research results and analysis in the previous section, the following conclusions can be drawn:

1. The legal position of the Plaintiff Drs Sangkala Msi is the first class heir from his parents, namely Pamaling bin Tala and Debo binti Naro, which is based on Article 174 paragraph (1) of the KHI which regulates the class of heirs according to blood type, one of which is a son. The legal position of the Defendant Nurbaya binti Basang and Ahmad bin Jumasang is a substitute heir based on Article 185 of the KHI which states that an heir who dies before the testator, then his position can be replaced by his child. In general, the legal position of the plaintiff and defendant is regulated in Article 171 of the KHI which regulates that an heir is a person who at the time of death has a blood relationship or marital relationship with the testator, is Muslim and is not prevented by law from becoming an heir.
2. Legal protection for the defendants regarding inheritance rights in the a quo case has been regulated in the KHI as a substitute heir. Article 211 of the KHI emphasizes that a gift from parents to their children can be counted as an inheritance. The KHI also provides limitations on the assets to be received as per Article 185 paragraph (2) which states: "The portion

of the substitute heir may not exceed the portion of the heir who is equal to the one who was replaced". by stating 'may not exceed'. Which indirectly limits the portion received by the heir. Although the amount of inheritance received by the defendant exceeded the amount determined in the KHI, according to the Judge, this action can be justified by upholding the value of justice, considering the contribution of the defendant's mother who cared for her parents.

B. Suggestions

The suggestions based on the results of this study can be given as follows:

1. The legal position of the plaintiffs and defendants has been clearly regulated in the Compilation of Islamic Law, but in resolving the division of inheritance, the parties or the community should take the path of deliberation or mediation in resolving the division of inheritance.
2. Legal protection for Islamic inheritance rights is currently clear and sufficiently regulated in the compilation of Islamic law, including legal protection for substitute inheritance rights, but in its regulation, further regulation is needed regarding which parties have the right to become substitute heirs.

ADVANCED RESEARCH

In writing this article the researcher realizes that there are still many shortcomings in terms of language, writing, and form of presentation considering the limited knowledge and abilities of the researchers themselves. Therefore, for the perfection of the article, the researcher expects constructive criticism and suggestions from various parties.

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