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Authority of Religious Courts: Establishing Heirs for Non-Muslims

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Abstract

The socialization of the regulation of the mayor of Surabaya, which was carried out in the Candra Kencana women's building on Kalibokor Street in Surabaya City, turned into a cross-opinion discussion between resource persons and the Lurah and Camat; in essence, the Lurah and Camat objected to signing the Certificate of Inheritance (SKAW) made by the parties. SKAW making is currently done in several ways: making itself known to the headman for Indigenous people, both Muslims and non-Muslims; notaries for Europeans and Chinese; and the Heritage Hall (BHP) for foreign eastern descendants. At first glance, it does not matter, but when the authorized institution turns out to be refused, it becomes an important issue to be discussed. For Muslims, if making SKAW in Lurah is rejected, they can apply to the Religious Court, but for people other than Muslims (non-Muslims) who are rejected in the village or whose existence is not accepted by the intended agency because the agency asks for an authentic certificate-shaped letter, what legal remedies can be taken? Non-Muslims initially submitted SKAW to the District Court, but based on the letter MA. No. 26/1993, it was prohibited, meaning that the District Court is not authorized to make SKAW. This caused a legal vacuum, and The Void was answered by Law No.3/2006 on religious courts by giving non-Muslims the opportunity to apply for the determination of heirs by subjecting themselves. Article 49 of the law says, "What is meant by 'between people of the Muslim religion' includes persons or legal entities that themselves voluntarily submit to Islamic law on matters under the authority of the religious courts in accordance with the provisions of this article."

Keywords: Heirs, Non Muslims, Religion

INTRODUCTION

The need for an inheritance certificate today is very urgent to be resolved. This is because the letter is very necessary at any time when dealing with banks, disbursing funds for deceased people, dividing inheritance, behind the name of land vehicles, and so on. There are several forms of inheritance certificates, as PP 24 of 1997 on Land Registration described in the agrarian regulation/head of BPN number 3 of 1997, which is amended by ATR Regulation Number 16 of 2021, which contains it. Proof that an heir can be a will, court decisions and court decisions can also be in the form of a certificate of heirs in the form of (Affairs, 1997):

“1) for the original Indonesian citizens made by the heirs, witnessed by 2 (two) witnesses, corroborated by the head of the village and Sub-District Head at the place of residence of the testator died; 2) for Indonesian citizens of Chinese descent in the form of a certificate of inheritance rights from a notary; 3) for Indonesian citizens of other foreign Eastern descent”

The provision explains that the certificate of inheritance can be made by yourself before the Village Head, made by a notary, The Heritage Hall (BHP), and can also be made by the court, but the provision leaves a very basic problem. For example, if someone submits a skaw to the Lurah, it is rejected. For natives who are Muslims, it does not matter because they, while for natives who are not Muslims, it will be a problem because they cannot apply for the determination of heirs to the Religious Court, and applying to the District Court is also prohibited (Suryani, Muhtar, Rahman, Jaya, & Al Khalaf, 2023).

Prohibition against natives who are not Muslims filed a case for the determination of heirs in court because the determination of heirs for non-Muslims who were originally submitted to the District Court is now prohibited.

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It is in accordance with SKMA number 26/TUADA.AG/III-UM/VII/993, dated July 8, 1993, which contains that the Religious Court and the District Court are not authorized (Adji, 2008) to the letter emphasizes the prohibition contained in jurisprudence number 1210 of 1985, which prohibits the District Court from dealing with land rights without a dispute (Dungga, Muhtar, & Djaafar, 2023). Whereas previously, the determination of heirs could be made in the district court, as mentioned in Article 236A HIR. "At the request of all the heirs or former wives of the deceased, the District Court will grant assistance to establish the separation of budel among Indonesians of any religion, as well as to make its act, even if there is no dispute (H.I.R, 1941)."

Different from the situation where the religious courts are prohibited by the letter of the Supreme Court No. 26 / TUADA. AG/ III-UM/VII/993, they have now been allowed again because there is a law that appears kemudian, namely Law No. 3 of 2006, on religious courts, in the explanation of Article 49 letter b about the core inheritance, inheritance that can be submitted (Govenment, 2006).

As a result of the ban, people who are not Muslims are disadvantaged because they do not get the same treatment before the law (equal treatment before the law). There is a village chief in Surabaya village who requested information from the local police because it has confirmed the Certificate of Inheritance (SKW) under which the property of the testator falls under the inheritance rights of the children of the testator. And some of the events that occurred caused concern for the Lurah and Camat in the city of Surabaya.

Finally These concerns were responded to by the Surabaya city government with an attempt to make a draft regulation of the mayor of Surabaya about the procedures for the service of the Certificate of Heirs. The background of this activity is to optimize administrative activities. The activity began with the socialization of the draft regulation of the mayor of Surabaya on the procedures for the service of the Certificate of Heirs (SKAW).

The activity was held on September 24, 2018 at the Candra Kencana women's building, south Kalibokor street number 2, Surabaya city, with the agenda of equating perceptions, namely that the Certificate of Heirs must be made by Lurah witnessed the making of the next known by the sub-district, but the event did not meet the consensus even that developed in the question and answer. Session of the lurah more agreed that SKAW was made by the parties, the village only noted in the sense of the sub-district, and the headman did not want to be involved in making SKAW. or all activities of making SKAW, either Muslims or non-Muslims, submitted to the Religious Court of Surabaya; thus, what should be discussed is whether non-Muslims can file a PAW in a religious court and what are the juridical implications of the arrangement regarding the application for the determination of heirs in a religious court..

RESEARCH METHODS

In this study, normative research methods are used because the study is aimed at legal norms, theories, and legal doctrines, then analyzed in a normative juridical manner, namely by criticizing the legal norms contained in the law (IUs constitutum), namely analysis that bases or rests on legal reasoning, legal interpretation, and legal argumentation. Also called menggunakan comparative system or comparative, it is very important in order to find answers to the problems that have been described. So that the analysis can provide prescriptions in the form of recommendations that are in accordance with legal science and the legal ideals of society (Razak, Muhtar, Rivera, & Saragih, 2023).

RESULTS AND DISCUSSION

The discussion of submission needs to be preceded by the exposure of several important norms including Article 236a HIR "at the request of all heirs or former wives of the deceased, the District Court will provide assistance to hold a separation of budel among Indonesian people of any religion, and make an act, although there is no dispute" while the Supreme Court decision dated 30-6-1987 no.1210 K/Pdt / 1985 the consideration States "the District Court that has examined / decided the application for land rights without a dispute, exercise voluntary jurisdiction for which there is no legal basis for the application must be declared inadmissible " (Y. Harahap, 1990). And in addition with the assertion Sema No.26 / TUADA / AG / III-UM/VII / 93, District and religious courts are not authorized to give inheritance fatwas (Adji, 2008).

Meanwhile, after the ban, there is a new law, Law No. 3 of 2006, in the explanation of Article 49, letter b, states that “what is meant by “inheritance” is the determination of who is the heir, the determination of the inheritance, the determination of the share of each heir (Govenment, 2006), and carrying out the division of the inheritance, as well as the determination of the court on someone's application about determining who is the heir, the determination of the share of each heir.” Whereas again religious Justice is only for Muslims as explained in Article 2 LAW No 3 year 2006 ”Religious Court is one of the actors of judicial power for the people of justice seekers who are Muslims regarding certain cases as referred to in this law." But the explanation becomes broad because it concerns people other than Muslims, more clearly quoted from the explanation of Article 49 of Law No.3 year 2006 “what is meant by between people who are Muslims is to include persons or legal entities that themselves voluntarily submit themselves to Islamic law regarding matters that are authoritative (Govenment, 2006).”

Determination of Heirs is a court decision made due to the application of a person or several persons for the benefit of the status of the deceased (Pewaeiris) and the status of the person left behind (heir). The heir, as described in KHI Article 171(b), is “the person who, at the time of death or who is declared dead based on a While the heir is “the person who at the time of death had a blood relationship or marital relationship with the testator, Muslim and not hindered by law to become an heir,” actually substance SKAW, there are similarities between the court decision, certificate of inheritance rights made notary, certificate of inheritance (SKW) from The Heritage Hall (BHP), and “Certificate of heirs made by the heirs themselves known to the village head and Sub-District Head, but the legal force of the SKAW proof letter made by themselves under hand does not include an authentic deed.

Legal subjects who can apply for determination of heirs in religious courts are only Muslims, while those who can take care of SKAW at notaries are only Europeans and Chinese, and those who can take care of SKAW at BHP are foreign Easterners, while for natives who are not Muslims, if they encounter obstacles in taking care of SKAW in villages or village heads.

INSTITUTIONS AUTHORIZED TO MAKE SKAW

As stated by the Chief Justice in response to the question of Mrs. Sri Redjeki Kusnun, SH, on making skaw in court, according to the answer of the Supreme Court of the Republic of Indonesia (MARI) dated May 8, 1991, No. MA / kumdil/171/V/K / 1991, the Supreme Court explained the making of inheritance evidence for W.N.I.: 1. Western (European) and Chinese descent, made by Notary 2. for the natives, a certificate by the heirs, reinforced by the headman and sub-head; and 3. for other foreign Eastern descendants, by The Heritage Hall, “ the answer refers to agrarian provisions. According to Dpt number 12/63/12/69 dated December 20, 1969, the substance of SKAW is still tied to the classifications of population ranging from European, Chinese, Arab, and Indigenous groups (Online, 2022), and as a result of the classification has implications for the authority of institutions that handle it, as for institutions that can make SKAW.

Religious Courts

The absolute authority of the religious court in dealing with inheritance cases is more extensive, namely contentious inheritance and voluntary inheritance (Puluhulawa, Muhtar, Towadi, Swarianata, & Apripari, 2023). These provisions are regulated in the explanation of Article 49 (b) of Law No. 3 of 2006 on religious courts, amendments to Law No. 7 of 1989 stated on Elucidation:

“What is meant by “inheritance” 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 division of the inheritance, as well as the determination of the court on the application of a person about the determination of who is the heir, the determination of the share of each heir.”

That is, the Supreme Religious Court has absolute authority in resolving inheritance cases, namely disputed inheritance cases, contentious inheritance cases, and inheritance filed without dispute (voluntary). Cases of inheritance without dispute are submitted by the heirs jointly to the Religious Court only at the stage of determining the death of the testator, determining who the heirs are, and determining their respective shares.

Therefore, the type of case, application, and decision handed down in the form of determination. Inheritance disputes are cases filed because there is a dispute between heirs.

The discussion in the inheritance dispute case is the determination of the death of the heir, the determination of the inheritance, the determination of the share of each heir, and the implementation of the division of inheritance, meaning that the dispute case is the absolute authority of the law used as applied law or material law in religious courts is Islamic law, which is based on "Al-Quran, As-Sunnah, and AR-rayu, or Ijtihad Ulil Amri carried out by Fuqoha (Zulkarnaen, 2017)." Therefore, the religious courts often use the doctrine of the books of jurisprudence, often cited as legal considerations in deciding disputes. Even before Law No. 7 of 1989, the books of jurisprudence were the most important source of law. As a reference to deciding the case, it is evidenced by the letter of the Bureau of Religious Affairs of the Ministry of Religion No. B/1/1735, dated February 28, 1958, as the implementation of PP 45 of 1957, on the establishment of religious courts outside Java and Madura. As a guide to procedural law, books of jurisprudence should be used, among others (Ernawati, 2020):

1) Albajuri, 2) Fatkhul Mu'in, 3) Syarqawi Attahrir, 4) Qalyubi Mahalli, 5) Fatkhul wahab dan syarahnya 6) Tuhfah, 7) Targhibul Musftaq, 8) Qawaninus Syariyah li sayyid bin Yahya, 9) Qawaninus Syariyah li sayyid Sadqah Dahlan, 10) Syamsuri Fil Fara'id 11) Bughyatul Mustarsyidin, 12) Al-Fiqh ala Madzahibil Arba'ah, 13) Mughnif Muntaj

District Court

The authority of the District Court actually covers all cases submitted and is very broad, all disputes must be able to be tried in the District Court without exception even the judge may not reject the case submitted to him on the pretext that there is no law or the law is not clear (Bakung, Abdussamad, Muhtar, Aripri, & Hadju, 2023), these provisions are set out in Article 10 LAW No. 48 of 2009, on judicial power "the court is prohibited from refusing to examine, try and decide a case filed under the pretext that the law does not exist or is poorly defined, but is obliged to examine and try it" (Govenment, 2009).

In adjudicating inheritance cases, the District Court actually has the authority to resolve contentious inheritance cases and voluntary inheritance cases as reflected in Article 236a HIR (Mohamad Hidayat Muhtar & Kasim, 2023):

Article 236a HIR (H.I.R, 1941) "at the request of all heirs or ex-wives of the deceased, the District Court shall grant assistance to establish the separation of budel among Indonesian people of any religion, as well as to make its act, even if there is no dispute"

But since the release of Sema No.26 / TUADA / AG / III-UM/VII / 93, which states that the District Court and the religious court are not authorized to give inheritance fatwas, and until the time of this writing there has been no change, the product of the District Court against inheritance cases is only contentious inheritance that can be used as heir information because in the decision of the District Court there is.

Notary

A certificate of right of inheritance (SKHW) from a notary is intended "for Indonesian citizens of European and Chinese descent in the form of a certificate of right of inheritance made by a notary at the place of residence of the testator at the time of death (Susantio & Oeripkartawinata, 1992)," this means that the authority of Notaries is also limited to the instructions that can apply for a Certificate of inheritance rights to notaries only people of European descent and Chinese descent, so notaries do not have the authority to make SKHW for the indigenous group.

Heritage Hall (BHP)

The Certificate of inheritance (SKW) issued by The Heritage Hall (BHP) is valid "for citizens of foreign Eastern descent, namely Arabs and Indians, by completing the specified requirements to be able to obtain a certificate of inheritance from The Heritage Hall, regulated in agrarian regulation no. 3 Th 1997 and candy ATR No. 16 Th 2021 (M. H. Muhtar & Gobel, 2023).

Village Head

The head of the village and sub-district heads are not authorized to make a Certificate of Inheritance, or SKAW, and there is no authority given by law or other regulations to make a Certificate of Inheritance or Certificate of Heirs. There is an obligation for the institution but only to know the maker. In Agrarian Regulation No. 3 Th 1997 and Candy ATR No. 16 Th 2021 on Land Registration, it is stated that the certificate of evidence as an heir for the indigenous or indigenous population can be in the form of a certificate of heirs made by the heirs themselves, witnessed by two witnesses, and known by the head of the village or lurah and camat where the heir lived at the time of death (M.H. Muhtar, Putri, & Tuharea, 2022).

SUBMISSION TO ISLAMIC LAW

Socialization of the regulation of the mayor of Surabaya on the making of inheritance certificates shows the problems that exist so far that need serious treatment as a way out of the difficulties of obtaining a statement of inheritance in practice (Gobel, Husnan, Nggilu, Adnan, & Muhtar, 2022b). However, the proposal in the meeting wants that the task of the village head is only to record, administratively (T. K. Harahap et al., 2023) not involved in the signing of the certificate of inheritance made by the heirs, on the grounds that they do not want to bear the risk. Even at that time, there were those who proposed that the entire issue of the certificate of inheritance be made in the religious court (Gobel, Husnan, Nggilu, Adnan, & Muhtar, 2022a).

The authority of the District Court to make a certificate of inheritance either contentious or voluntarily, regulated in Article 833 BW. this means that all inheritance distribution activities can be carried out in the District Court either because of a dispute about inheritance or not, so that the distribution of inheritance without dispute can be done in the form of a petition as well as HIR as the law of judicial procedure in Article 236A clearly states, the District Court can provide assistance in the separation of inheritance from any religious person even though there is no dispute/peacefully, but the authority has been lost since the jurisprudence of the Supreme Court of Indonesia.

Number 1210 Of 1985, followed by Sema No.26 / TUADA/AG/III-UM/VII / 93, forbidding religious courts and District Courts to handle inheritance application cases voluntarily. Law No. 3 of 2006 requires that all inheritance cases for Muslims be resolved in court, especially religious courts, either voluntarily or contentiously, to meet the needs of the population, which is of course mostly Muslim. In terms of the existence of a state based on Pancasila, especially in Article 3, the unity of Indonesia and the national motto "Unity in Diversity," which means different but still united, show that the Indonesian nation, consisting of several racial and religious tribes, must remain united according to the motto (Mohamad Hidayat Muhtar, Kasim, & Suryani, 2023).

The motto embedded in the Garuda bird must be a grip on the nation and state. In the field of law, there must be no discrimination between one tribe and another or one religion and another; they must receive the same legal services despite their different forms, but the desired goal or achievement is equality in state service for all people seeking justice.

A review of the theory of justice in the understanding of self-submission can be seen from Aristotle's theory of justice, according to him justice is closely related to rational moral values that are concerned with equality, selflessness and not prioritizing others, for that the essence of Aristotle's justice rests on three things that characterize the main natural law, namely: *alterum non laedere* (not to disturb others), *suum cuique tribuere* (give to each person his share) then the law as a twin of justice is a practical tool to achieve a good life, just and prosperous so that if there is no tendency in the hearts of social-ethical good to citizens then there is no hope of achieving the highest justice even though the wise rule with good laws though.

Furthermore, Aristotle also understood justice in terms of equality even he divided the equality into two, namely numerical equality which gave birth to the principle of everyone being equal before the law and proportional equality which gave birth to the principle of giving everyone what is his right. In addition, Aristotle also proposed another understanding of justice, namely distributive justice and corrective justice, in fact, distributive justice is synonymous with Justice on the basis of proportional equality, while corrective justice (remedial) focuses solely on correcting something that is wrong (Tanya, Simanjuntak, & Hage, 2013).

The Indonesian nation is a nation whose mayor or supervisor comes from several ethnic races, religions, and customs. From the legal side, they must be able to establish legal cells that exist between them to be able to establish justice that applies to all groups because, according to Savigni, "law is one of the factors in the common life of, "by legal pluralism," I mean justice in the field of law with more than one legal system." That legal pluralism is because with more than one legal system in one social arena, its identity becomes contrary to one with another (Ali, 2009), even so, a state of law is beyond the justice of the people (law is an expression of the will of the people).

Legal efforts that can be passed so that the service in making a certificate of heirs can reach out to everyone, including non-Muslims, by maximizing the Religious Court by giving the opportunity to submit the determination of heirs for non-Muslims to obtain a certificate of heirs (PAW) by way of submission to Islamic law, because its authority in addition to being guaranteed by law, there is an urgent need for the service of application for the determination of non-Muslim badi heirs.

The general explanation of Article 49 Law No. 3 on 2006, if read carefully, shows that the determination of heirs under the authority of the religious court can be submitted by Muslims and non-Muslims to the religious court, which means that other than Muslims, they can submit the determination of heirs by subjecting themselves to Islamic law. The filing of cases such as this has never been done by non-Muslims in the case, and the result is that the submission of the determination of heirs for non-Muslims to the religious court is still constrained by the paradigm that in the religious court only for Muslims, whereas in the explanation or Elucidation of Article 49 written (Govenment, 2006):

“What is meant by “between people of the Muslim faith” includes a person or legal entity that itself voluntarily submits itself to Islamic law regarding matters under the authority of religious courts in accordance with the provisions of this article” .

Settlement of cases of determination of heirs in religious courts that reach Non-Muslims who are subject to Civil Law (BW). in terms of formal law has been determined in Article 49 of the law. 3 of 2006 and in terms of material about the determination of heirs and pembagiannya, not problematic because the actual way and limits to determine the heir and heir there are similarities between Islamic law and civil law BW. for example, in Islamic inheritance law the division of Men 2 parts and women 1 Part (Two to one), if they agree then it can be done 1=1 (one one / equal), then for adherents of civil law BW can also do the division equally, or in Islamic law known as assulhu (peace), in Islamic law there is a replacement heir in civil law BW. There is a term plaatsvervulling. therefore, the submission of an application for the determination of heirs to the Religious Court can be done, because in terms of formal law and in terms of material law it is acceptable.

In the review of the material law as applicable law in the religious courts actually there is no difference between Islamic law and Civil Law BW, especially in the determination of Heirs and penenntuan heirs while the determination of the respective parts there are differences but because the proposed inheritance is a voluntary case without any dispute, the division of inheritance according to Islamic, starting from 1-2 between men and women or 1-1 can be done because of the principle of being done peacefully (islah) so that the discussion of how many parts on the basis of peace is not disputed, it is left to the parties. Furthermore, what needs to be studied is the similarity of elements or characteristics of Heirs and heirs according to Islam and Civil Law BW.

BASIS AND REASONS FOR NON-MUSLIMS IN SUBJECTION TO ISLAMIC LAW

Similarity of The Concept of Islamic Law Material Law with Civil Law BW.

Elements of Islamic inheritance as material law applied in religious courts with elements of inheritance in Civil Law BW concerning heirs and heirs and for which there are similarities; In Islamic law the pillars of inheritance are; a) heir, B) heir, c) Tirkah, Islamic law is meant, especially in the compilation of Islamic law (KHI) as for the discussion of submission to Islamic law by other Muslims is about the application for the determination of heirs, the usurpation of inheritance described is only limited to determining the heir, determining the heir and determining the share of each heir, so there is no need to elaborate on tirkah. Testator in Islamic law: “the person who at the time of his death or who was declared dead by a Muslim Court decision, leaving heirs and legacy. So that the deceased person must be real or real, or died hukmi due to a court decision, meaning that

the existence of the deceased person can be proven. Heir: "a person who at the time of the death of the heir has a blood relationship or marital relationship, is Muslim and is not prevented by law to become an heir" (Ali, 2009).

The Civil Code (BW) formulates the terms of the heir and the characteristics of the heir are in common with Islamic law, as formulated, the heir is "someone who died either male or female by leaving a number of assets in the form of rights and obligations that can be distributed to his heirs" while the heir according to civil law BW. there are two of them ;

He is the heir to the law, or heir without a will (in *Abstatu*), namely : a. husband or wife (widower or widow) of the testator (deceased) b, the legal blood family of the testator. C. Natural blood family of the testator (Saebani, Mayaningsih, & Wati, 2016).

Heirs due to a will (testamentary) as stated in Article 876 KUH Per. among them because the heirs are appointed heirs because there is a will or *erfstelling* (Simanjuntak, 2019).

From the comparison of inheritance elements according to Islamic law with inheritance elements according to civil law BW, it can be ascertained that these elements have fundamental similarities because the equation emphasizes the existence of the heir and the existence of the heir, so that efforts to subjugate themselves from people other than Muslims to Islamic law can be done in addition to the existence of the Religious Court as an institution authorized to resolve cases PAW has been specially appointed by law precisely contained in the explanation of Article 49 of Law No. 3 of 2006 on religious courts.

The Reach of the Court's Authority in Resolving Inheritance Cases.

Indonesia is a country of law, an archipelagic country, inhabited by various racial and religious tribes, of course everyone from any tribe of any race from any religious group has the same right before the law to obtain justice, in accordance Law No 29 Th 1999 on the ratification of the International Convention on the Elimination of All Forms of Racial Discrimination 1965 in its consideration letter a, stated "the state upholds human dignity and guarantees all citizens the same position in law, so that all forms of racial discrimination must be prevented, and prohibited (Govenment, 1999). Thus it should be any religion, any tribe is not limited to filing a case in court, but in fact who gets court services in the service of the Certificate of heirs in court is limited to Muslims only, and the benchmark for a person can or not in filing a case of inheritance dispute or application for determination of Heirs is the religion of Islam.

Potential violations of the law in the state can occur because the state should be able to provide services to all people, but it was not done just for the reason that there is no law that regulates it or there is a partial prohibition of certain rules, for example on formal law on civil inheritance law.

Formal law or Civil Procedure Law used by the District Court to resolve inheritance cases previously, regulated in Article 236 a.HIR. that at the joint request of the heirs or ex-wives of the deceased, the District Court gives assistance also to hold the separation of property between Indonesian people of any religion, as well as to make a letter (deed) from it outside the dispute. With these rules, the determination of heirs can be submitted voluntarily to the District Court without any dispute, but after the letter of the young chairman of the Supreme Court dated July 8, 1993 Number 26/TUADA-AG/III-UM/VII/1993, the determination of heirs in court is prohibited. affirmed that the District Court and religious courts are not authorized to provide inheritance fatwa (Adji, 2008).

The ban is directed to all courts including religious courts. But since the publication LAW No. 3 On 2006, the religious court again received the authority to prosecute cases of inheritance both contentious and voluntary and the authority became very broad, namely against Muslims and other Muslims who need a certificate of heirs through the religious court, as a result the Religious Court became the only judicial institution with absolute authority to prosecute cases of application for determination of heirs.

Religious Court Procedural Law

In general, the religious court procedural law is the same as the state court procedural law, regulated in Article 54 of Law No. 7 of 1989 "the procedural law applicable to courts within the Religious Court is the Civil procedural law applicable to courts within the General Court, except those specifically regulated in this law . This means that the law of general judicial procedure is used in religious courts except those that have been specifically regulated this applies the principle of *Lex Specialis Derogat Legi Generali*, that special rules override rules that are general in nature.

Procedural law is "a legal regulation that regulates how to ensure the observance of material civil law through the mediation of judges", according to Wiryono Projodikoro "a series of regulations that contain ways how people should act before the court and ways how courts should act with each other to implement civil law regulations" (Manan, 2000), thus the Procedural Law of religious courts is a series of rules how people act in front of religious courts and how religious courts act to enforce Islamic law under their authority.

Juridical Implications of PAW Application in PA.

Application for determination of heirs (PAW) in religious courts was originally intended for Muslims, but since the Act No. 3 of 2006 on religious courts, in its explanation pointing to the ability of other than Muslims to submit themselves and take care of their PAW in religious courts, the next is no less important to explain the implications of the determination of the "involvement or circumstances involved," while according to Silalahi, the implication is "the consequences of the application of a program or policy that is not good or good for those targeted by the program or policy."

Legal Remedies Against the Determination of Heirs In Religious Courts

The decision in the voluntary case in the form of determination to answer about the applicant's application (declaratory) as well as the determination of heirs (PAW) only with a statement or declaration not with a condemnatory or constitutive decision because the decision is not involved in a dispute with another party, even so if there are other parties or third parties feel.

Legal Remedies of the Parties Against The Determination Of Heirs

The parties who are dissatisfied with the decision of the court of first instance cannot appeal, this provision is contained in Article 364 of the KUH.Civil Code "resolutions of the District Court on guardianship cannot be appealed, unless there is a provision to the contrary" means that the resolution or so-called determination of the court cannot be appealed, but for the parties there is still a cassation legal remedy.

Cassation against the application for determination of heirs may be made because it refers to Article 43 paragraph (1) of law no. 14 of 1985, on the Supreme Court, which was amended by law No. 5 On 2004. Article 43 (1) a cassation application may be filed only if the applicant against his case has used an appellate remedy unless otherwise provided by law. The provision is used to provide an opportunity for a decision of the court of first instance that cannot be appealed.

Third Party Legal Remedies Against the Determination of Heirs,

Third parties who are harmed by the determination of the Religious Court (voluntary decision) the case for the determination of heirs can make legal remedies, there are several legal remedies in resolving this case:

Resistance to The Application If the Case Has Not Been Decided

As long as the application has not been decided by the court, a third party who feels aggrieved against an application in the case of volunteers can fight, according to Yahya Harahap, called *derden verzet*, because "the legal basis for resistance to the application that harms the interests of others, referring analogously to Article 378 RV or Article 195(1) HIR, The resistance can be filed during the examination of the case if it has not been completed or has not been broken, with the aim that the application is rejected so that the application is resolved in a contradictory manner.

The party who filed the resistance is called the opponent, while the applicant is opposed. In this case, the opponent makes a merger or intervention based on Article 279 of the regulation of de Rechtsvordering (RV). that is, "whoever has an interest in a civil case in progress between the other parties may demand to merge or intervene." So the injured party to the application for the determination of heirs before the case is terminated can merge, because the merger, if it is done against all existing parties, makes an effort.

Filing a Civil Lawsuit

Against the case of the application that has been decided, because the principle of the application is a case that is not subject to legal remedies, the case immediately has permanent legal force, even though the decision is only binding on the applicant or the applicant, but there are third parties who have been harmed just knowing while the case has been completed and the examination has been decided. According to Yahya Harahap, "the aggrieved can make an ordinary lawsuit." The civil lawsuit is based on Article 378 RV. Which reads "third parties have the right to contest a judgment to the detriment of their rights."

Supreme Court Circular (SEMA)

Submission Even though it has been regulated in Article 49 of Law No. 3 of 2006, setrta will not necessarily be implemented, even though the rules are clear, but in practice in general, there has been no case of subjection to paw. While the prevailing understanding so far is that the article is limited to Syriac economic cases, the article is clearly not limited to the scope of Sharia economic cases, so in time there needs to be guidance from the Supreme Court. A Circular Letter of the Supreme Court is a rule of law issued by the Supreme Court in the form of a circular letter addressed to all levels of the judiciary that contains instructions for the implementation of the settlement of cases both in administration and judicial practice, usually SEMA made by the Supreme Court Meeting Room, which discusses crucial matters. The Supreme Court Circular (SEMA), as a product made by the Supreme Court, is a non-technical policy that is a guide for judges in the face of legal problems, while the reach of the SEMA is for the internal Supreme Court. But if the SEMA is about procedural law, then the circular is binding on judges but not binding outside the Supreme Court.

CONCLUSION

The application for the determination of Heirs is submitted to the religious court by Muslims, in addition to Muslims, they can apply for the determination of heirs in the Religious Court by submitting to Islamic law. And the implementation of the settlement of the determination of heirs in the Religious Court may have implications for the practice of religious courts so that the Supreme Court needs to make a circular of the Supreme Court (SEMA) as an affirmation of the authority of religious courts against non-Muslims who submit to Islamic law.

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