

Implementation Of Decisions On Inheritance Disputes Resolved Through Mediation At The Lhoksukon Syar'iyah Court: Case Study On Decision Number: 493/PDT.G/2015/MS-LSK

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Info Articles	Abstract
<p>Article History Received : 2017-09-05 Revised: 2017-09-15 Published: 2017-09-30</p> <p>Keywords: <i>Islamic Law, Inheritance Disputes, Mediation, Sharia Court, Aceh</i></p>	<p>The division of inheritance sometimes runs smoothly without any dispute at all, sometimes it must go through a dispute. The division of inheritance that is carried out through a dispute can often be resolved through peace but sometimes it must take legal action through a lawsuit to the court. The division of inheritance that runs without dispute also needs to be determined by the court, this is to avoid undesirable things. This type of research is normative legal research conducted at the Lhoksukon Syar'iyah Court. The nature of this research is descriptive, namely defining systematically, factually and accurately which focuses on discussing the implementation of decisions on inheritance disputes resolved through mediation at the Lhoksukon Syar'iyah Court. The theory used in writing this thesis is <i>maslahah</i>. The results of the study indicate that the submission of the lawsuit uses a request method addressed to the Chief Justice of the Court. The mediation resume is formulated by the parties immediately after the case title hearing and discussed with the Mediator during the first mediation, the Mediator reports it to the Case Examining Judge in writing by attaching the peace agreement. The examining judge issued a decision to the parties to the case in the form of an order to comply with the contents of the agreement in the peace deed and to pay court costs.</p>

I. INTRODUCTION

By nature, humans generally experience three important periods in their lives, each of which will influence their own legal status. These three periods are birth, marriage or family, and death. These three periods will influence their legal status as bearers of rights and obligations.

Regarding someone's death and leaving assets whose status is transferred to them the separation of heirs often presents a legal disaster in itself, especially if the heirs cannot reach a consensus on the distribution of the inheritance. In such circumstances, it is the state's responsibility to ensure that every rightful owner receives their rights. This guarantee falls under the jurisdiction of the judiciary, the institution holding judicial power in Indonesia. In its implementation, to obtain their rights as above, heirs sometimes have to resort to lawsuits filed with the Religious Court or the Sharia Court for Aceh Province, sometimes they can also be resolved through family

deliberations, whether involving village officials or not. In connection with filing a lawsuit with the Sharia Court, as is generally the case with the Religious Court and the District Court that handles civil disputes, it is very possible to resolve the case through mediation (Ja'far, 2010).

How is the application process carried out? How does the mediator attempt to reconcile the disputing parties? How do the parties divide the inheritance after the reconciliation is achieved? And how does the examining judge decide on the dispute resolved through mediation? These are the aims of this simple work.

II. RESEARCH METHODS

This study employed a qualitative research method with a descriptive-analytical approach. The research was conducted at the Lhoksukon Sharia Court, Aceh, with the objective of examining the mechanism for filing inheritance lawsuits, the role of mediators in resolving

inheritance disputes, and the implementation of judicial decisions resulting from mediation settlements. Data were collected through field research and library research. Field data were obtained through interviews with judges, mediators, court registrars, and other court officials involved in inheritance dispute cases at the Lhoksukon Sharia Court. In addition, documentary analysis was conducted on court decisions, peace deeds, relevant case files, and applicable legal regulations. Library research involved the examination of legislation, including Law Number 3 of 2006 concerning Religious Courts, Qanun Number 9 of 2008 concerning the Development of Customary Life and Customs, Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in Court, as well as books, journals, and other scholarly sources related to inheritance law and mediation. The collected data were analyzed qualitatively through descriptive and analytical methods to evaluate the effectiveness of mediation in inheritance dispute resolution and its implementation within the judicial system of the Lhoksukon Sharia Court.

III. RESULTS AND DISCUSSION

A. Mechanism for Filing an Inheritance Lawsuit at the Lhoksukon Sharia Court

Aceh, as an autonomous province, has Qanun Number 5 of 2003 concerning Village Government. One of the key issues within this Qanun is the preservation of customs and traditions in the villages. Subsequently, in 2008, Aceh issued Qanun Number 9 of 2008 concerning the Development of Customary Life and Customs.

Article 4 letter Qanun Number 5, which regulates the function of the Village, explains that one of the authorities of the Village Government is "the settlement of legal disputes in the event of disputes or customary and traditional matters in the Village. Furthermore, according to Article 13 paragraph (1) letter b Qanun Number 09 of 2008

concerning the Development of Customary Life and Customary, the cases that must be resolved in the Customary Court in the Village are "disputes between families related to faraidh." Thus, "based on the two Qanuns, inheritance cases that can be submitted to the Syar'iah Court are cases that have previously been examined and tried in the Customary Court in the Village but cannot be resolved."

Next, to find out the authority of the Lhoksukon Sharia Court in relation to with inheritance and the mechanism for filing a lawsuit to the Lhoksukon Syar'iah Court after the enactment of Qanun Number 09 of 2008 concerning the Development of Customary Life and Customs in Aceh, the author met and interviewed Mr. Drs. Syarwandi (Registrar of the Lhoksukon Syar'iah Court) on Wednesday, June 8, 2016. To make it easier to get answers related to the problem being studied, the author divided the questions into several sub-problems, namely; first: those related to the authority of the Lhoksukon Syar'iah Court in the field of inheritance cases, second: the mechanism for filing a lawsuit, and third: those related to the formal requirements of a lawsuit. To get an answer regarding the sub-issue of the authority of the Lhoksukon Sharia Court in the field of inheritance disputes, the author asked "is there a reduction in the authority of the Lhoksukon Sharia Court (especially in the field of inheritance) after the enactment of Qanun Number 9 of 2008?" He answered "substantially there is actually no, the Religious Court/Sharia Court still has the authority to examine, decide, and resolve inheritance cases for people who are Muslim." Next, the author asked again "besides deciding inheritance disputes, are there still other authorities related to inheritance?" He answered "there are still, namely determining who becomes the heir, determining the share of each heir.

To clarify the difference between a decision and a determination, the author asks again, "What

is the actual difference between a decision/deciding in the first question and a determination/determining in the second answer?" He answers, "The term decision is used for cases that contain disputes and are followed by a lawsuit, while a decision does not start from a dispute, it only starts from a request from a person or several people regarding their existence as heirs."

Usually the determination this is closely related to the management of the heir's assets stored in banks and other financial institutions, which cannot be taken except by the heirs, and the heirs must be able to prove themselves as the legitimate heirs with authentic evidence.

The author then asked again, "So what is the situation with inheritance disputes resolved in the Customary Court in the Village?" He answered: "The Customary Court in the Village is currently running well, but if there are parties who want to get support (after their case has been decided in the Customary Court) from the Religious Court/Syar'iah Court, they must still submit a peace agreement to the Court by filing a lawsuit." But I need to add that "the filing of a lawsuit must be accompanied by a peace agreement and documents as evidence that show the legal relationship of the parties to the object of the dispute."

Through the answers the author got from the interview above, the author tried to analyze it as follows:

Mr. Drs. Syarwandi's answer regarding the authority of the Religious Court/The Sharia Court examines, adjudicates, and decides inheritance cases for Muslims. This is in accordance with Article 49 of Law Number 3 of 2006 concerning Religious Courts:

"The religious court has the duty and authority to examine, decide and resolve cases in "The first level between Muslims in the fields of marriage, inheritance, wills, grants, endowments, zakat, infaq, shadaqah, and sharia economics."

Concerning with his answer which relates to other authorities of the Sharia Court, namely determining who the heirs are, determining each person's share heirs, according to the author, this refers to the explanation of Article 49 of Law Number 3/2006 above: "...as well as the court's decision on a person's request regarding the determination of who the heirs are, the determination of each heir's share. Thus the Sharia Court, like the Religious Court, apart from having the authority to decide disputes based on lawsuits, also has the authority to determine heirs based on applications (Yahya, 2007).

As for those who have inheritance disputes that have been decided in the Customary Court, then a decision from the court is required, they are permitted to submit a claim. A peace agreement can be submitted to the court by filing a lawsuit. According to the author, this refers to Article 36 of the Supreme Court Regulation of the Republic of Indonesia Number 1 of 2016 concerning the Mediation Process in Court:

- 1) The parties, with or without the assistance of a certified Mediator who successfully resolve the dispute outside the Court with a Peace Agreement, can submit an Agreement. Peace to the competent court to obtain a Peace Deed by filing a lawsuit.
- 2) Submission of a lawsuit as referred to in paragraph (1) must be accompanied by an Agreement peace and documents as evidence that show the legal relationship of the Parties with the object of the dispute.
- 3) The Judge Examining the Case before the Parties will only strengthen the Peace Agreement to become a Peace Deed, if the Peace Agreement is in accordance with the provisions of Article 27 paragraph (2).

B. Mediator's Efforts to Reconcile Inheritance Disputes at the Lhoksukon Sharia Court

A mediator is a judge or other party who has a Mediator Certificate as a neutral party who helps the parties in the process negotiations to

find various possible dispute resolutions without resorting to the method of deciding or forcing a resolution. So, to find out how the Mediator helps the parties in dispute in resolving the dispute, the author on June 9 2016 at 14.00 conducted research at the Lhoksukon Sharia Court and met directly and interviewed Mrs. Evawaty, S.Ag. She was the Mediator in inheritance dispute Number 439/Pdt.G/2015/Ms-Lsk. In this case, Mrs. Evawaty, S.Ag succeeded in reconciling the disputing parties to reach an agreement which was stated in the Peace Deed.

In order to answer the core problem that the author is researching well and efficiently, the author divides the problem into five sub-problems, namely; first: those related to the legitimacy of the Mediator, second: those related to the nature of the mediation process, third: those related to the Mediator's duties, fourth: those related to the process of summoning the parties, and fifth: those related to the stages of the mediation process and results. The author began the interview by asking, "in accordance with Article 1 paragraph (2) of the Supreme Court Regulation of the Republic of Indonesia. No. 1 of 2016 concerning the Mediation Process in Court, in this case, are you a judge at the Lhoksukon Sharia Court or another party outside the Court?", he answered, "I am a judge at this Court." Next, the author asked again, "in accordance with Article 1 paragraph (3) as a mediator, do you have a certificate issued by the Supreme Court or another institution?", he answered briefly, "not yet, neither issued by the Supreme Court nor another institution." Then, to end the interview on this sub-problem, the author asked the question, "based on Article 1 paragraph (5), who appointed you to be the Mediator in this case?", he answered, "Initially, I was chosen and agreed upon by the parties, then appointed by

the Chief Justice of the Lhoksukon Sharia Court."

Based on the answers in this interview, the author tries to analyze as follows:

That Mrs. Evawati, S.Ag is a Mediator who comes from a judge at the local Court/Tribunal, and this is very possible based on Article 1 paragraph (2) PERMA No. 1 of 2016, as stated: "A Mediator is a Judge or other party who has a Mediator Certificate as a neutral party who helps the parties in the negotiation process to find various possibilities for resolving disputes without using methods of deciding or forcing a resolution."

As for his/her existence, he/she does not yet have a Mediator Certificate, this is also permissible as long as he/she is appointed by the Chief Justice/Court, this is in accordance with Article 13 paragraph

(2) which reads: "Based on the decision letter of the Chief Justice, the Judge is not certified can carry out the function of Mediator in the event that there are no or limited numbers of certified Mediators." In connection with his appointment as mediator by the Chief Justice/Court, it is in accordance with Article 3 paragraph (5) "The Chief Justice appoints a Judge Mediator who is not the Case Examining Judge who decides.

C. Implementation of the Decision on Inheritance Disputes Settled through Mediation at the Lhoksukon Sharia Court

As is known, in every civil case examination, the Panel of Judges is required to first attempt to reconcile the parties involved, whether the settlement will be made outside the court system or not, and/or whether the settlement will involve a mediator or not. If the case in question can be resolved through settlement, the Panel of Judges will issue a decision in the form of a Peace Deed. Meanwhile, if settlement cannot be achieved through mediation, the Panel of Judges will

continue the examination of the case and enter into the case itself and so on, and so on.

In relation to this matter, to find out the steps taken by the Panel of Judges in implementing the decision in the form of a Peace Deed where the case was successfully resolved through mediation, the author conducted research (regarding inheritance cases) at the Lhoksukon Syariah Court on June 9 2016 at 15.00 WIB.

The author interviewed Mr. Nurhadi, SHI as one of the members of the examining judges in the inheritance dispute between Applicant 1 to Applicant 8, hereinafter referred to as the plaintiff, against Respondents 1 to Respondent 4 hereinafter referred to as the defendant.

The lawsuit in question was registered on November 19, 2015, under the number 493/Pdt.G/2015/Ms-Lsk. The case concerned an inheritance that had not been divided since the testator's death on May 23, 1998. The panel of judges then held a hearing, and the parties agreed to end the dispute and pursue a peaceful, deliberative, and family-friendly path with the assistance of a mediator.

Furthermore, on January 19, 2016, in front of Mediator Evawaty, S.Ag, the contents of the peace agreement were read out to both parties, and each party stated that they agreed to and accepted the contents of the Peace Agreement. Therefore, on February 16, 2016, the Panel of Judges decided:

- 1) Punish both parties in the case, namely the Plaintiffs and Defendants-Defendants to comply with and implement the Peace Deed as mentioned above;
- 2) Punish the Plaintiffs must pay the costs incurred in this case amounting to Rp. 1,041,000. (one million forty one thousand rupiah).

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IV. CONCLUSION AND SUGGESTIONS

A. Conclusion

From the above explanation, the following conclusions can be drawn. First, inheritance disputes between the parties can be resolved through mediation. Second, the mediator is able to guide the parties to divide the inheritance between them in accordance with Islamic teachings. Third, the examining judge does not interfere with the contents of the formulated agreement by the parties together with the Mediator. Fourth, the Judge Examining the Case determines and orders the parties to comply with and implement the results of the agreement.

B. Suggestions

Based on the findings of this study, it is recommended that the Lhoksukon Sharia Court continue to strengthen the implementation of mediation as an effective mechanism for resolving inheritance disputes in a peaceful, family-oriented, and efficient manner. The Court should also increase the number of certified mediators through specialized mediation training programs to enhance the quality and professionalism of mediation services. Furthermore, greater cooperation between customary institutions and the Sharia Court should be encouraged to ensure that inheritance disputes are resolved effectively at the community level before proceeding to formal litigation. Public awareness regarding the legal procedures for inheritance settlement and the benefits of mediation should also be improved through legal education and community outreach programs. Finally, future researchers are encouraged to conduct further studies on the effectiveness of mediation in various types of Islamic family law disputes in order to contribute to the development of a more responsive, accessible, and justice-oriented dispute resolution system.

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