

Review Article

Legal Analysis of the Procedure for Determining Contentious Heirs at the Banda Aceh Sharia Court

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Abstract: The determination of contentious heirs at the Banda Aceh Syar'iyah Court is a legal procedure carried out when not all heirs are involved in submitting an application for determination of heirs. However, in practice, this application is still rarely submitted and is poorly understood procedurally. This study aims to analyze the Application Procedure for the Determination of Contentious Heirs applied at the Banda Aceh Syar'iyah Court and the obstacles and obstacles faced in the implementation of the Application Procedure for the Determination of Contentious Heirs at the Banda Aceh Syar'iyah Court. This research uses a type of empirical juridical research, which is research that examines law not only as a written norm but also as real behavior in judicial practice. Data were obtained from field research, interviews, and literature. Data analysis uses qualitative methods. The results of the study show that the contentious procedure includes the stages of summoning the respondent, mediation, reading of the application, answers, replicas, duplicates, proof, conclusions, and decisions by the panel of judges, as well as opening up opportunities for legal remedies such as appeals, cassation, and review. The submission of an application for the determination of heirs in a contentious manner is often constrained because the defendant refuses to participate or his whereabouts are unknown, thus hindering the court process and the fulfillment of inheritance rights.

Keywords: Heirs, Contention, Sharia Court.

1. Introduction

Disputes between heirs regarding the distribution of inheritance are still a common phenomenon in Indonesian society. It is not uncommon for disputes to arise because the heirs feel that the distribution is not done fairly or there is a difference of opinion about who is entitled to receive a certain part of the inheritance. A proper understanding of the proportion of rights to inheritance and the identification of legal subjects who are authorized as heirs are fundamental prerequisites to avoid or reduce the potential for inheritance disputes in the future (Siti Musdah Mulia, 2010).

This is understandable considering that inheritance problems are legal consequences that must be experienced by every individual who dies, and at the same time has a high potential to cause disputes, both between the heirs and with third parties who feel an interest in the legacy. In this context, legal principles are present to protect the interests of individuals and groups in society, including in terms of inheritance. The main purpose of the rule of law is none other than to create order in society. When everyone's legal interests are protected, then the social order can be well maintained. Therefore, the law functions to create balance in social life and provide legal certainty, so that social order is achieved as a fundamental goal of the legal system itself (Subekti, 2011).

In a narrow sense, legal rules can be understood as normative values contained in a concrete regulation. This means that in every legal event that is analyzed, there is always a general legal norm that describes what should be done according to the law. For example, in the case of inheritance, the heirs should voluntarily (*voluntair*) submit an application for the determination of heirs before the court to obtain legal certainty and protect the common interest.

However, in practice, there is often a discrepancy between these legal norms and social reality, where one of the parties is reluctant or refuses to voluntarily submit an application for the determination of joint heirs which ultimately has the potential to cause tension and

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disputes between the parties. The determination of heirs is regulated in various laws and regulations, including Law Number 50 of 2009, Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning Religious Courts, and the Civil Code (Civil Code) (Hans Kelsen, 1998).

The application for the determination of heirs is a legal step commonly taken by the community to obtain legal certainty regarding the status and position of the heirs regarding the inheritance. The application is submitted voluntarily to the competent judicial institution depending on the religion of the interested parties. If the parties who apply for the determination of Muslim heirs, the absolute authority lies with the Religious Court or the Sharia Court in the Aceh Province area. On the other hand, if the parties are non-Muslims, the authority lies with the District Court in accordance with the general civil jurisdiction.

In general, an application for the determination of heirs can be submitted by interested parties to the competent court in accordance with the religion of the parties. If the parties are Muslim, the application is submitted to the Religious Court or the Sharia Court in Aceh Province, while for non-Muslim parties, the authority is in the District Court. In court, there are various forms of applications for determination, but the focus of this study is on the legal product issued by the Religious Court or the Banda Aceh Syar'iyah Court in the form of the determination of heirs submitted by Muslim heirs in non-disputed cases (*voluntair*).

This application should ideally be submitted jointly by all heirs as applicants, as is the general provision in voluntary cases. However, in practice, obstacles often arise when one of the heirs is not willing to participate in the submission. This rejection can be in the form of absence, unknown existence, or an attitude that deliberately avoids the legal process. Such conditions create obstacles in the determination process, because basically this kind of application requires the joint participation of all heirs for the sake of legal certainty and protection of the rights of the parties.

As emphasized in the Supreme Court Circular Letter (SEMA) Number 5 of 2021, especially the Legal Formulation of the Religious Chamber point 2 letter b, an application for the determination of heirs must be submitted by all heirs, or by some heirs who have obtained power of attorney from other heirs. The formulation emphasizes that if there is an heir who does not give a power of attorney, then the case can no longer be processed as a voluntary case, but must be filed as a case *Contention* (dispute). Thus, the presence or granting of power of attorney from all heirs is a formal requirement to maintain the suitability of the application with a non-dispute nature in the case of determining heirs (Yahya Harahap, 2017).

In judicial practice, it is often found that applications for the determination of heirs submitted are not in accordance with applicable regulations. For example, the absence of all heirs, or the existence of one heir who refuses to participate and even disappears from the domicile to avoid legal proceedings. In such circumstances, the panel of judges may declare the application inadmissible (*declared inadmissible*) because they do not meet the formal requirements for voluntary cases as stipulated in SEMA Number 5 of 2021. As a result, one party's refusal can hinder legal certainty and the exercise of other heirs' rights over the heir's legacy.

Based on data obtained from the Banda Aceh Sharia Court on October 8, 2024, it shows that in the period from 2021 to 2024 there are still many applications for the determination of heirs that end in an unacceptable verdict (*Niet Ontvankelijk Verklaard*). This is generally due to the incompleteness of the applicant, namely the existence of one of the heirs who is not listed in the application. In practice, to avoid the burden of wasted case costs, judges often take a policy by suggesting to the applicant to withdraw the application, because if it is still examined and decided, the application will be declared unacceptable as stipulated in the voluntary case.

As a result of the non-fulfillment of these formal requirements, the process that has been carried out has become useless, both in terms of time and cost. Because, if the application is decided with an amar that is not acceptable, then the applicant must resubmit the application for the determination of heirs by completing it according to the applicable provisions, including listing all heirs and preparing relevant evidence so that it can be considered by the judge in the examination and decision-making.

2. Research Method

This research uses a type of empirical juridical research, which is research that examines law not only as a written norm but also as real behavior in judicial practice (Soerjono Soekanto, 2006). And using a legislative approach, an approach that is carried out by

examining various regulations that are reproduced with studies. Data were obtained from field research and literature. Data analysis using qualitative methods is the process of interpreting, understanding, and examining the meaning of the collected data and connecting it with existing theories and problems (Sugiyono, 2017).

3. Results and Discussion

3.1 How is the Application Procedure for the Determination of Contentious Heirs applied at the Banda Aceh Syar'iyah Court

An application is a form of submission of a written request to the authorized authority to obtain certain permits, determinations, decisions, or legal protection. Applications can be submitted to courts or government agencies in accordance with their authority, and are generally non-contentious, i.e. do not involve disputes between the parties. There are various types of applications that can be submitted to the court, including applications for child adoption, guardianship appointments for minor children, support for adults who are legally incapable due to memory impairment or inability to manage property, applications for marriage dispensation, as well as applications for determination of heirs, and other types of non-contentious applications (Sudikno, 2019).

The Supreme Court of the Republic of Indonesia has consistently used the term "application" to refer to non-contentious cases. Deep *Guidelines for the Implementation of Duties and Administration of the Court*, explicitly on page 110 number 15, the term *Voluntary Jurisdiction*, which refers to cases that are not in dispute between the parties. In this type of case, the judge does not render a verdict (*Verdict*), rather giving a determination (*decree*) in response to the application submitted (Supreme Court of the Republic of Indonesia, 2007).

The application must basically be submitted in writing in the form of an application letter that contains in detail and clearly the matters requested to the authorized institution. The application letter is a legal means used to submit certain interests, without any dispute between the parties. In the case of an application for the determination of heirs, an application letter must be submitted in writing to the Religious Court or the Syar'iyah Court in accordance with the authority based on the religion of the interested parties.

In principle, the application for the determination of heirs is submitted in the form of *voluntair* Namely without any dispute between the parties, the application follows the procedural stages as per the Civil Procedure Law, which includes submitting an application in writing, proving the status and relationship of inheritance, and ending with a determination by the judge as a form of final decision. Meanwhile, special conditions which are one of the conditions that must be prepared in successfully obtaining a verdict that is acceptable and can be considered by the panel of judges in examining the case of the application for the determination of heirs *Contention*.

According to the Deputy Chief Justice of the Banda Aceh Syar'iyah Court, Fauziati, the application for the determination of heirs submitted without dispute, but does not involve all heirs, is referred to as a "request for the determination of heirs in a contentious manner". This refers to SEMA Number 5 of 2021, Legal Formulation of the Religious Chamber 2.b, which states that the application must be submitted by all heirs or by some who have a power of attorney. If there are heirs who do not give a power of attorney, then the application must be submitted as a contentious matter. This provision serves as a guideline for judges in ensuring justice, certainty, and legal protection in the case of determining heirs.

Unfortunately, the provisions regarding the determination of heirs in a contentious manner as contained in SEMA Number 5 of 2021 are not widely known by legal practitioners, including judges and advocates. This is because these provisions are not regulated in the law, but only sourced from the Supreme Court Circular, which is generally known to be limited to the judicial environment. As a result, when an application is submitted in the form of contention, it is often a new thing for judges and advocates, and at the evidentiary stage often faces obstacles in convincing the panel of judges.

There is a fundamental difference between the application for the determination of ordinary heirs (voluntary) and those submitted contentiously, both in terms of procedures and special conditions. Procedurally, the contentious application follows stages such as the lawsuit, namely summoning the respondent, mediation, reading the application, answers, replicas, duplicates, proof, conclusions, and decisions. The examination is carried out by a panel of judges and is open to the possibility of legal remedies such as appeal, cassation, and review. Meanwhile, the special conditions for a contention application include a condition where one of the heirs refuses, does not grant a power of attorney, or his or her whereabouts

are unknown. This application must also not contain a dispute over property rights, because the decision is solely a determination of inheritance status, not property ownership.

According to Juni Kurnia, the Substitute Registrar of the Banda Aceh Syar'iyah Court, there is a difference in recording between voluntary and contentious determination of heirs in the electronic case registration system. For voluntary applications, the code recorded is "P3HP/determination of heirs," while for contention applications, the data is only recorded as "other." This condition makes it difficult to identify specific types of cases when accessed through the Directorate of the Supreme Court's website, because the "other" category includes various other types of applications. The same thing was also conveyed by Ratna Juita, Registrar of the Banda Aceh Syar'iyah Court, who stated that based on data after the enactment of the Supreme Court Circular Letter (SEMA) Number 5 of 2021 concerning the Legal Formulation of the Religious Chamber 2.b, there are still many parties who do not understand that the application for the determination of heirs can be submitted contentiously if there are deficiencies in the submission.

Based on case registration data at the Banda Aceh Syar'iyah Court, applications for the determination of heirs contentiously are still very rare. From 2021 to 2024, only three cases were recorded, namely Registration Number 152/Pdt.G/2023/MS. Bna and 56/Pdt.G/2024/MS. Bna whose decision was granted, as well as Registration Number 199/Pdt.G/2024/MS. Bna whose decision was revoked. Therefore, it is recommended that parties who do not understand this procedure can consult with a Legal Advisor to facilitate the processing of the application. In addition, after consultation, the application can also be submitted in person without going through the power of attorney of the Legal Advisor.

3.2 What Are The Obstacles And Obstacles Faced In The Implementation Procedure For The Determination Of Contentious Heirs At The Syar'iyah Court Of Banda Aceh

In submitting an application for the determination of heirs in a contentious manner, obstacles are often found that come from the unwillingness of the sued party to participate or give incidental power of attorney to the applicant. These obstacles include the refusal of the invited party to submit an application because they feel that they do not need to be recognized as heirs, as well as the existence of a party who disappears from domicile and whose whereabouts are unknown, making it difficult to submit the application process at the Religious Court or the Sharia Court. If this condition occurs, the process of submitting the determination of heirs becomes hampered, so that legal certainty and the fulfillment of the rights of heirs over the inheritance's estate are difficult to obtain. According to Herwansyah, there are also external and internal obstacles in the application for the determination of heirs *Kontesius* (Taufik Bin Yahya, interview)

To overcome obstacles in submitting an application for the determination of heirs contentiously, several steps can be taken. First, the heirs should consult with a lawyer or legal advisor to obtain clear information and, if necessary, provide a power of attorney to take legal action related to inheritance rights. Second, the collection of important documents such as death certificates, death certificates, family genealogy, and heirs' identities must be carried out in full to strengthen the application. Furthermore, it is necessary to seek family mediation to find out the reasons for the parties who refuse to participate and encourage them to give incidental power of attorney to other heirs, so that the application can be submitted voluntarily without going through a contentious process (Herwansyah, Interview).

If the party concerned is still reluctant to follow the voluntary procedure, then the submission of an application for the determination of heirs must be done contentiously. In this situation, the collection of strong evidence is very important to support the position of all parties, both the applicant and the respondent, so that the rights of each heir can be ensured and legally protected fairly. According to Rahmat, who had submitted an application for the determination of heirs contentiously at the Banda Aceh Syar'iyah Court, there were obstacles during the trial process. The heir died leaving behind two wives who are both still living. From the marriage, the heir has children who are also heirs. All the wives and children must take care of the distribution of inheritance, but differences in interests and selfish attitudes from each party cause obstacles in the settlement of the determination of heirs.

Then, Rahmat took the step of submitting an application for the determination of heirs contentiously after consulting with legal counsel. At that time, the application was submitted without a legal representative. The applicants, namely Rahmat, his mother Fatimah, and his brother Farid, sued Siti Murni and Rifkiansyah who are the heirs of different mothers. However, the process faced obstacles when the defendant was summoned, because the

respondent refused to attend the trial and was not represented by a lawyer. This condition makes it difficult for the panel of judges to make a determination.

The panel of judges then considered that in the absence of strong and convincing evidence, the court could not issue a determination of the heirs on the application submitted. Therefore, the panel of judges suggested that this case be revoked and resolved familiarly first. This deliberation approach is considered more effective in addressing the problems that arise among the heirs, given the complexity of the situation and the absence of sufficient evidence to support the applicants' claims at trial (Rahmad Farid, interview).

Hearing these considerations, Rahmat, along with his mother Fatimah and his brother Farid, decided to withdraw the lawsuit they had filed. The panel of judges also officially determined that the application for the determination of the heirs contentiously was withdrawn. As the next step, the judge recommended that the parties resolve this inheritance issue through the family route, by involving village officials as facilitators in mediation. It is hoped that this settlement through family deliberation can provide fair results and avoid the heirs from a long and complicated legal process.

4. Conclusions

The application for the determination of contentious heirs occurs when not all heirs are involved or give power of attorney in submitting the application, so they must follow a more complex lawsuit procedure than a voluntary application. The contentious procedure includes the stages of summoning the respondent, mediation, reading the application, answers, replicas, duplicates, proof, conclusions, and decisions by the panel of judges, as well as opening up opportunities for legal remedies such as appeals, cassation, and review. In contrast to voluntary applications that are non-disputed and resolved through determination, contentious applications require more in-depth examination because they involve parties who disagree or are not present, even though the decision only affirms the status of inheritance without resolving property disputes. Although it has been regulated in the Supreme Court Circular Letter Number 5 of 2021, this procedure is still poorly understood by many legal practitioners, so consultation with legal counsel is highly recommended for the smooth process.

The submission of an application for the determination of heirs in a contentious manner is often constrained because the defendant refuses to participate or his whereabouts are unknown, thus hindering the court process and the fulfillment of inheritance rights. To overcome this, it is recommended to conduct legal consultations, gather complete documents, and try family mediation so that the application can be submitted voluntarily. If it fails, a contentious application with the lawsuit procedure must be taken, with strong evidence as support. The case at the Banda Aceh Syar'iyah Court shows that without evidence and the presence of parties, it is difficult for the judge to make a determination, so it is recommended to resolve disputes through family deliberation for more effective results and avoid lengthy legal proceedings.

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