



Legal Reasoning of Judges Towards Inheritance Decision Making in the Religious Court of Bone District (Case Study of the Settlement of Tirkah Ampikale In the Customs of Inheritance of the Bone Society)

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Introduction

Inheritance problems often arise in everyday life and can arise because there are heirs who are not satisfied with the portion they receive. There are still many people who do not understand the inheritance distribution system based on Islamic law, resulting in the method taken according to their wishes without paying attention to the signs of the division of inheritance that are justified. So it is not surprising that conflicts over the division of inheritance always occur and become social problems in people's lives. The customary inheritance system in Indonesia until now still shows its existence due to the accommodation with Islamic law. Ilyas et al., stated that there are two factors that cause the accommodation of customs in Islamic law, namely the dynamic, elastic, and flexible nature of law, as well as the sociological conditions and personality of the community that support this integration.

Abstract

This study discusses the legal reasoning of judges in making ampikale inheritance decisions at the Religious Court of Bone Regency. Several research problems discussed are the facts of ampikale inheritance, the process of legal consideration by judges in deciding ampikale inheritance cases at the Religious Court and the implications of judges' considerations in making ampikale inheritance decisions in the Bone Regency community. This study was conducted using qualitative descriptive field research at the Religious Court of Bone Regency, South Sulawesi Province. The data source in this study is primary data obtained from interviews with informants in Bone Regency including academics, religious court judges, religious figures and ampikale recipient communitie. The results of the study indicate that the tradition of inheriting ampikale assets in old age is indeed rooted in the families of some Bugis people. Related to the problematic division of ampikale assets, in society there are still sometimes conflicts between heirs and ampikale recipients. Disputes over the division of ampikale assets resolved in religious courts require the judges who try to provide legal considerations through legal reasoning. From the cases of ampikale assets tried by judges at the Watampone Religious Court, they are generally directed to wills and ampikale cases are generally granted based on evidence and witnesses. Ampikale can be classified as a will if the ampikale is not more than 1/3 according to the law. The public response related to the judge's decision in the ampikale tirkah case tends to follow and support the judge's decision. Through the judge's decision, the public can act more carefully in the distribution of ampikale assets. This study suggests that judges should explore the case in depth with proper consideration. The public is expected to always pay attention to the laws in the distribution of assets and pay attention to legal limitations so that there is no conflict between heirs. The government is expected to educate the public regarding the distribution of inheritance so that the distribution of inheritance is carried out in accordance with the rules and it is hoped that there will be no conflict.

Keywords: Legal Reasoning, Decision Making, Tirkah Ampikale



One of the areas that implements the customary inheritance system is Bone Regency, South Sulawesi, with the characteristic of the existence of ampikale property in the Bugis inheritance tradition. The ampikale distribution system is not divided like the Islamic inheritance law system. In the Bugis tradition, ampikale property is stored until the time of inheritance distribution. Ampikale assets are usually owned and stored by the person who financed or paid for the testator's care until death. In the event that the ampikale assets are not used up to finance the testator, then the ownership of the ampikale will fall to the heirs who lived with and cared for the testator during his/her lifetime. However, sometimes the division of inheritance assets that is carried out ends in conflict and results in bad relations between the heirs.

customary inheritance distribution indicates that there is still a risk of conflict in inheritance. This can happen because the level of satisfaction of the heirs with the ampikale inheritance varies, especially for heirs who receive the ampikale portion. Some do not mind if other heirs receive the ampikale portion, but there are also those who ask for the ampikale portion to be distributed equally to all heirs. This is what is interesting and is the basis for further studying ampikale inheritance cases and their settlement system in court through legal considerations by judges. In making a decision, the judge makes legal considerations based on the contents of the lawsuit, witness statements, the defendant's defense and evidence, then gives the fairest possible decision. In the case of an inheritance dispute in court where the legal basis has not been found legally, then in this condition the judge is required to make considerations and legal considerations in making a decision. The same is true for inheritance disputes in the ampikale tradition which are resolved in religious courts, requiring the judge's ijtihad before making a decision.

The legal reasoning of judges in inheritance cases has been conducted in several previous studies. For example, in the case of stepchildren's inheritance, some judges' decisions grant inheritance rights to stepchildren through a mandatory will. Apart from the issue of stepchildren's inheritance, there are other cases which are decided by legal findings from the judge. Among the judge's ijtihad in inheritance cases is that the restrictions on successors do not only apply to second degree descendants, but to all descendants. The daughter becomes the asabah in inheritance even though she is not accompanied by a man or son. From this case, it is very clear that in giving a decision, the judge made legal considerations in accordance with the case being resolved.

Legal considerations in inheritance cases from community traditions according to Syukri et al., are something that should be done. The judge's considerations in dealing with inheritance cases do not only follow formal and material law enforcement procedures as regulated in applicable laws and regulations. The panel of judges also needs to explore the legal values of customary law that apply in society. Similarly, the ampikale inheritance case which departs from the inheritance tradition of the Bone Regency community can be explored in terms of customary law and used as a consideration in making a decision. Finally, the legal reasoning carried out by the judge can produce various decisions.

However, so far the study related to the judge's legal reasoning in giving a decision in the Ampikale inheritance case has not been explored in depth, especially since the ampikale inheritance system is not regulated legally. So that the decision given by the judge is very interesting to examine in terms of the legal consideration process, the basis of the judge, and the implications of the judge's decision for the parties in dispute in the ampikale inheritance. This is intended to analyze the judge's decision from the perspective of justice and conformity with Islamic law. The judge's legal considerations can also have implications for the existence of the ampikale property distribution tradition what the Bugis community has done, whether it



reflects justice or not. For that reason, the legal reasoning of the judge in giving a decision on the inheritance of ampikale is very important to be studied so that it can be a legal consideration in the same case in a different place and time.

This research aims to analyze the facts of the ampikale inheritance, the legal consideration process by the judge in deciding the ampikale inheritance case in Religious Court and the implications of judges' considerations on the decision-making of ampikale inheritance in the Bone Regency community. The results of this study contribute to the resolution of customary inheritance cases resolved in religious courts through legal considerations from judges so that they can be a reference for similar customary inheritance cases that occur and are resolved in different courts. In addition, the results of this study are expected to be used as a guideline in the distribution of inheritance if the system is carried out according to custom. This research is also expected to be a guide in resolving inheritance division disputes, whether resolved in court or out of court.

Research Methodology

This research is a qualitative descriptive field research conducted at the Religious Court of Bone Regency, South Sulawesi Province. The location was chosen because the primary data in this study were found in the Class 1A Watampone Religious Court, namely the decision of the ampikale inheritance case which is the customary inheritance of the Bone Regency community. There are four approaches used, namely; the juridical-formal approach, theological-normative (syar'i), sociology and legal philosophy. The juridical-formal approach is carried out by examining the legal reasoning of judges in deciding ampikale inheritance cases in the customary inheritance of Bone Regency. The theological-normative approach refers to religious provisions as the legal basis that is used as a comparison for the legal considerations made by judges in ampikale inheritance decisions. The sociological approach is used as a reference in observing the behavioral patterns of the Bone Regency community who apply the ampikale inheritance tradition. on one of the heirs. The legal philosophy approach is used as a perspective in describing the judge's legal reasoning.

The data source in this study is primary data obtained from interviews with informants in Bone Regency including academics, Religious Court judges, religious figures and ampikale recipient communities. As for secondary data obtained from literature such as books, journal articles and other scientific works related to legal matters. reasoning judge and tirkah ampikale. Furthermore, data collection in this study used interviews, observations and document studies. Data analysis in this study uses qualitative descriptive analysis techniques considering that this study is a qualitative field study. Data processing and analysis techniques are carried out through three stages, namely: data reduction, data presentation and drawing conclusions. The validity of the data is tested using triangulation which is divided into three, namely data or source triangulation, observer triangulation and method triangulation.

The analysis method used in this study is based on the concept or theory of 'urf. This is because the inheritance of ampikale is based on the inheritance tradition carried out by the Bugis community in Bone Regency. For this reason, the study based on 'urf is used because the case studied is not specifically contained in Islamic law but must be based on ijtihad. Including the judge's ijtihad in deciding the ampikale inheritance case faced by analyzing the considerations of 'urf used. Likewise, the status of the heir who receives ampikale is returned to 'urf because the heirs of ampikale come from the customary inheritance system.

Analysis and Result

Facts about Tirkah Ampikale in the Customary Inheritance of the Bone Regency Community



Tirkah ampikale in the customary inheritance of the Bone Regency community is a tradition of inheritance that has existed for a long time. On that basis, this ampikale tradition is still maintained until now. Related facts about tirkah ampikale in Bone Regency are explained through the following discussions.

System The Division of Tirkah Ampikale in Bone Customary Inheritance

amp kalale property in the inheritance of the Bone Regency community has its own way. The tradition of inheriting ampikale property in old age is indeed rooted in the families of some Bugis people. This was explained by H. Asnawi Muhammadiyah that:

So actually the issue of ampikale has indeed become a tradition in families during their old age. Especially if the children have been married and have their own families, and have their own places. So what has been collected by parents who feel they have children who are mature enough and ready to be independent to distribute their wealth to them. So the ampikale that we call as the wealth that is still in the control of the parents was intended for the parents at that time during their old age until treatment, the cost of managing their death, even as it is said, salary or compensation to the person they died in, that is the origin of this tirkah.

This wealth is useful for the costs they need, such as medical expenses, funeral expenses, and also as a thank you to the people who care for them. The concept of ampikale or will as wealth intended for the needs of parents in their old age has actually been around for a long time. This wealth not only covers the costs of care and death management, but also includes the provision of compensation to those who care for them. This concept then developed in the Bugis community in Bone Regency.

The Bugis people have a tradition of setting aside part of their wealth as ampikale . The amount of wealth set aside is flexible, it can be half, a third, or a quarter of the total wealth, depending on the needs and economic capabilities of each individual. The main purpose of ampikale is to ensure the welfare of parents in old age, including the cost of care when sick and the cost of administration after death. This is explained by Asnawi Muhammadiyah that:

While the Bugis people's custom there is to leave some of the rest as it should be tolerated by the law, whether it is half, a quarter, or a third, of course based on the provisions of the conditions that in essence this ampikale is actually a desire in old age. So the parents make or prepare for themselves a guarantee for their old age without wanting to burden their children again so they leave some of their wealth. From there they eat from there, just enough for their daily needs. In old age for care during illness before death until after care after death, they term it as ampikale or support. Then the parents choose one of their children to be placed to meet their death. Usually this ampikale is worked on together by the child, the property owned by the parents from this ampikale in Bugis activities.

Likewise in the research of Ira Hasnita and Asni Zubair, it is explained that ampikale has basically been carried out by people in the past or has been passed down from generation to generation so that it is often carried out in the midst of the Bugis indigenous community. This method has indeed become a habit of the community, but not all people do ampikale , but until now there are still many who do ampikale, especially in the Bone Regency community.

ampikale custom is known as the Bugis community custom. For some researchers, ampikale is one way of transferring assets from the testator to the heirs. In addition, the terms pabbere, manaa , and paseng are also known . Pabbere can be interpreted as a grant, namely a gift from one person to another. Manaa is referred to as an inheritance, namely the transfer of assets from the testator to his heirs after the testator dies, while paseng is interpreted as a will from one



person to another. Ampikale comes from two words, namely ampi and kale. If combined, it can be interpreted as a form of self-protection for someone in the form of assets left for the benefit of his old age and expenses after death.

Classification of ampikale inheritance in inheritance law

Ampikale has two main legal implications. First, as an unconditional gift, ampikale is used first to finance all the needs of parents, including care during illness and old age. Second, in accordance with the principles of Islamic law, the obligation to pay all debts must be prioritized before the distribution of inheritance. The remaining assets after deducting the costs of ampikale and debt are then referred to as tirkah or inheritance. This is explained directly by Asnawi that:

Well, this ampikale has two legal impacts. First, ampikale is said to be a gift without any other statement of rights, so the last expenditure of this ampikale property is from all costs, its care during illness, old age and so on, that is the limit of ampikale. Second, according to the word of God, including paying all debts to other people. Well, the rest is what is said to be pure tirkah, but if there is a language from the parents that this is ampikale, if I am sick or die then it is taken from the results of my land to be sold or used in everyday life. Later, whoever I live in dies, it means he owns the property.

In such conditions, the property in question is no longer included in the category of inheritance but has become an object of a will. The rights to the property are fully transferred to the person appointed to take care of the death. However, if there are heirs who object to the provisions of the will, then the will grant is considered void. As explained by Asnawi that:

So this is no longer a tirkah but this is a will that becomes an absolute right to the deceased or the person who takes care of his death. Unless there is one family who does not accept the will, then the law of inheritance grants that were previously divided to all heirs plus and divided equally is considered a tirkah as a whole because the cancellation of the inheritance grant is based on the inheritance verse. So the inheritance law states that the inheritance grant is like that.

If the will clearly states who will receive the property after the parent dies, then the property is no longer an ordinary inheritance, but has become the absolute right of the person appointed. But if there are family members who disagree, then the will is considered invalid. As a result, the property will be divided equally among all heirs according to the applicable inheritance rules. In Islam, if someone has made a clear will regarding the distribution of his property, then the will must be obeyed as long as it does not conflict with sharia. However, if there are heirs who feel disadvantaged and file objections, then the will can be canceled. This is in line with the verse related to wills as in QS al-Baqarah/2:180.

كُتِبَ عَلَيْكُمْ إِذَا حَضَرَ أَحَدُكُمُ الْمُؤْمِنُ إِنْ تَرَكَ خَيْرًا الْوَصِيَّةُ لِلْوَالِدِينَ

Translation:

It is obligatory on you, if someone among you is visited by (signs of) death and he has left behind good things (a lot of wealth), to make a will to his parents and close relatives in a way that is appropriate (as) an obligation for those who are pious.

From the verse it is explained that it is obligatory if signs of death or dying are about to come to a person such as old age, graying hair, falling out teeth, sagging skin, if he leaves a lot of wealth, then he should make a will and give a message that is conveyed to others to be carried out after death. The will is for both parents who are prevented from receiving inheritance, because of different religions or slaves/prisoners of war and for relatives who are not entitled



to inheritance, with the provision that the will is carried out in a good way and does not harm the heirs. In order not to harm the heirs, the will should not be more than one third of the assets left by the testator. The provisions of this will law are an obligation for pious people who obey Allah's commands.

This is in line with the research of Ira Hasnita and Asni Zubair which explains that ampikale is not included in inheritance because ampikale is kept when wanting to divide the inheritance. However, ampikale is almost the same as a will and ampikale is a custom that has been carried out by people in the past. Ampikale may be carried out as long as it does not conflict with Islamic law, but seen from the implementation of ampikale there are some things that are different from the division of inheritance in Islamic law because in Islamic law before the division of inheritance is carried out, the costs of the testator's care, the testator's grant, the testator's will and the testator's debt are first issued while the division of inheritance in Bugis society, the testator keeps some of his assets to be used as the testator's ampikale when dividing the inheritance. Because in Islam it is taught that Islam glorifies customs that do not conflict with its law, so in Islam ampikale is permissible.

Ampikale property division conflict in society and the forms of solution

ampikale property is often a source of dispute among heirs, especially when there is no clear message from the parents regarding who is entitled to the property. The common understanding is that children who care for their parents are entitled to ampikale property as a form of recompense for their care. However, other heirs often feel unfair because they also have rights as heirs. As explained by Asni Zubair as an academic in the field of inheritance law, he explained that:

Usually ampikale depends on the heirs, sometimes they have conflicts if there is no message from the parents about who owns the ampikale , sometimes they think that the one who takes care of it is the one who takes it . Whereas on the other hand they also feel entitled because they consider it to be their inheritance too. Well, there is also no communication from the parents that whoever takes care of it is the one who takes the ampikale. So that's where the difference of opinion occurs because so far they consider that the inheritance that is kept by the parents is the part of the child who takes care of his parents until they die.

Disputes regarding the division of ampikale property involve not only legal aspects, but also psychological and social aspects. Children who care for their parents often feel they have a strong emotional bond with their parents, so they feel they have more rights to the ampikale property. On the other hand, other heirs also have hopes and expectations regarding the inheritance. The unclear message from parents, coupled with psychological and social factors, makes this problem even more complex and difficult to resolve.

Ampikale is a form of property management that aims to meet the needs of parents during their lifetime. However, after the parents pass away, disputes often arise regarding the distribution of the remaining ampikale property. The existence of a message or will from the parents regarding the distribution of the remaining property is crucial in resolving this problem. Furthermore, Asni Zubair as an academic in the field of Islamic inheritance law explained that:

Ampikale is an asset that is intended as an asset to care for parents and the rest is sometimes a dispute. There is no message from the parents that if there is a remainder then give this or that. If there is a message from the parents then the other heirs may not have a problem because. If there is no message then the other heirs also want the rest of the ampikale assets, this is one of the differences of opinion.



Ampikale, as a form of inheritance, has an important role in maintaining family harmony. The case that occurred shows that by prioritizing consensus, family values can be maintained even in difficult situations. Furthermore, Nasaruddin said that:

Do not misuse the will of the parents because it can damage the relationship of brotherhood. Including ampikale is justified in sharia because it is part of the will in Bugis customs. Previously there was tension because they each defended their rights, but then it was successfully calmed down through deliberation. The youngest child explained that the house was his ampikale but not including the land. Then the eldest child arranged that the youngest child was also given the land to build a house. Finally the youngest child felt very happy because he could occupy the house and the land that had been given based on the agreement with the heirs.

ampikale property does not require only certain parties to receive it, for example only heirs can receive ampikale property. Ampikale property can be received by anyone, be it heirs, relatives, or even other people who are not blood relatives of the person who owns the ampikale property. The main requirement to receive ampikale is that the person is truly the person who cares for, accompanies, helps with treatment when sick, pays for the administration of the corpse and other costs incurred after the death of the owner of the ampikale property. This is done so that in his old age he does not experience difficulties in meeting his living expenses while ensuring that the person who helps and cares for him will receive compensation in the form of the remaining ampikale property. Thus, the status of the ampikale will be different if the heir is still alive then the assets are used as old age security, whereas if the heir dies and the ampikale assets still remain then they will be handed over to the person who cares for them.

Legal Consideration Process by Judges in Deciding Ampikale Inheritance Cases in Bone Regency Religious Court

Based on the investigation of inheritance cases, there are also ampikale inheritance cases that were resolved at the Watampone Religious Court so that in resolving them, legal reasoning by the judge is required. In judicial practice, the concept of ampikale is often closely associated with the concept of a will. When a dispute arises regarding ampikale property, the judge will try to find out whether the property has the same characteristics as the will. The presence of witnesses who can provide information regarding the will of the testator or the existence of written documents that strengthen the claim to the ampikale property are important factors in decision making. If the evidence submitted by the plaintiff is strong enough, the judge will tend to grant the request to recognize the ampikale property as a will. However, it should be remembered that in order for the ampikale property to be recognized as a valid will, its value must be in accordance with legal provisions, namely it must not exceed one third of the total inheritance. This was explained by Sitti Husnaenah as a judge at the Watampone Religious Court that:

Ampikale is directed or alluded to a will, especially in cases tried by a judge. As for inheritance cases ampicale generally, the average is granted based on evidence and witnesses . If the evidence and witnesses meet the requirements, the judge will grant the disputed ownership of the ampikale . The ampikale can be recognized as a will as long as it is not more than 1/3 according to the law. So everything related to wills also applies to ampikale tirkah if its status is classified as a will.

Furthermore, Sitti Amirah as a judge at the Watampone Religious Court explained that:

Ampicale can be classified as will , but basically a will can be cancelled if there are heirs who object. In addition, a will is allowed as long as it does not harm the heirs. This is what causes



bequests to only be limited to a maximum of 1/3 of the assets so that the remaining assets of the heir can be distributed to the rightful heirs. Through these considerations, the judge saw the similarities between the elements of an ampikale and a will based on witness statements and reliable evidence.

Although ampikale is often associated with a will, not all ampikale assets can automatically be considered a valid will. There are legal restrictions that apply to wills, one of which is regarding the value of the will. The law stipulates that the value of the will cannot exceed one-third of the total inheritance. Therefore, if the value of the claimed ampikale assets exceeds the specified limit, the judge will reject the application. However, if the value of the ampikale assets is still within the permitted limit and there is sufficient evidence, the judge will tend to grant the application to recognize the ampikale assets as a will.

Related research was also conducted by Febriyanti et al., who reviewed the legal status of wills that are not in accordance with the inheritance laws that have been established in Islam, because parents do not understand the distribution of inheritance that is fair and in accordance with Islamic inheritance law. A will is a document that records a person's wishes regarding the distribution of assets after death. However, if the heirs do not know about the will, the distribution of assets can be carried out without paying attention to the will. Especially if the will is not divided fairly and amicably. However, if the assets have been distributed, the cancellation of the distribution can be submitted to the court by the heirs. From this it is learned that an understanding of inheritance law and wills that cannot be distinguished will have an impact on errors in the distribution of inheritance.

In addition, the balance of each heir's share in the distribution of grants or wills must be considered because it can trigger conflict if it clashes with inheritance rights. There are heirs who receive grants or wills before the testator dies, then after the testator dies, the heirs also receive a share of the inheritance. As a result, there is jealousy from heirs who do not receive grants or wills before the testator dies because their share is not balanced and actually benefits the heirs who receive the will or grant. Wills or grants are a way of distributing assets that is different from inheritance so that wills and grants are regulated separately in their distribution systems. In Islamic inheritance law, assets can be distributed in the form of grants or wills but the proportions must be balanced.

A grant can be given to someone and immediately become the property of the grantee even though there has been no inheritance or will distribution. Because the main difference between a grant, will and inheritance is that a grant is given while the grantor is still alive and is directly owned by the grantee, while a will and inheritance are only distributed if the testator has died. The amount of assets that can be granted in Islamic law is not specifically regulated because the grant is a voluntary gift. However, in the case of a grant from parents to their children that can be counted as part of the inheritance, the grant should be distributed fairly to all children without favoritism. As for the will, the amount has been regulated, namely it is not recommended to be more than 1/3 of the inheritance because there are also the rights of the heirs that must be fulfilled and the will is more intended for relatives who are not included in the group of heirs. That is how Islamic law protects a person's rights and pays attention to justice in the distribution of property.

cause that triggers conflict over inheritance is property that is distributed through gifts or wills that are not evenly distributed. The transfer of inheritance through a will that is not implemented fairly often results in disputes over the portion received. unequal heirs. There are still other problems that arise, namely that sometimes a will is made without written evidence (deed) so that it is very easy to sue and prosecute. Factors that influence the less than optimal



making of a will or testament include minimal knowledge related to the procedure for making a testament, there is an unfair distribution between heirs and making a testament is considered difficult. In fact, with written evidence it will strengthen the status of ownership of assets and can be used as evidence if a dispute occurs at any time.

In carrying out his duties, a judge must have good reasoning in examining and giving sufficient consideration. In this case, a legal reasoning process is required or referred to as legal reasoning. Judges play a very important role in resolving legal problems that occur in society, especially those resolved through legal channels through the trial process. Based on Article 5 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power, it states "Judges and constitutional judges are required to explore, follow, and understand the legal values and sense of justice that live in society." Based on the explanatory article, this provision is intended so that the decisions of judges and constitutional judges are in accordance with the law and the sense of justice of society. For this reason, in deciding a case or legal problem, a judge as a law enforcer must not only know what legal basis will be used in deciding the case. A judge must also understand the legal values that live in society using reasoning in his mind.

For this reason, a good understanding of this legal reasoning is needed by law enforcers, because it will make it easier for law enforcers, especially judges, to make a decision that provides a sense of justice, benefit and legal certainty that can be accepted rationally by the parties and the community, so that it can be concluded that this legal reasoning plays a very important role in every decision-making by judges. In the social community, there are still quite a large number of dispute cases related to inheritance settlement because among those who often claim inheritance adjust to their respective personalities. One way to resolve the conflict is through mediation or legal channels, basically this conflict is a private conflict therefore resolving it is sufficient with the family based on applicable policies.

Disputes over the division of inheritance can be resolved in court in a structured and systematic manner in accordance with the law. Settlement of inheritance disputes is part of the absolute authority of the religious court which is included in civil cases. The court resolves inheritance conflicts by means of mediation for the disputing heirs where mediation in the settlement of civil cases can be carried out at the beginning of litigation or during litigation. Before the plaintiff and defendant seek justice, the panel of judges first has an obligation to mediate/advise both parties, where the panel of judges makes every effort to provide the best advice or resolution to the plaintiff or defendant. Religious courts conduct mediation as a procedure in resolving civil cases.

Settlement of cases in court involves consultation, negotiation, mediation, and conciliation before litigation or court decision. Since the beginning of the litigation, the mediator has tried to reconcile the disputing parties and mediation is said to be successful if the disputing parties have agreed not to continue the case any further. However, if mediation fails, the case will be continued and the inheritance will be distributed according to the provisions of Islamic inheritance law or mawāris fiqh which is determined through a judge's decision. In addition, deliberation and collaboration are needed to overcome this problem as an effort to find the best solution.

This is in line with research conducted by Karjoko et al., related to the legal considerations of judges in deciding land grant disputes at the Selong Religious Court, West Nusa Tenggara. In deciding land grant disputes in inheritance, judges always consider the legal validity of the land grant in the case submitted. In addition, judges also use verses of the Qur'an, hadith, opinions of scholars, and fiqh rules as their legal considerations. This is because the science of fiqh and interpretation can be studied to solve various legal problems faced by the community with their



respective approaches and methods.

In resolving ampikale inheritance disputes, the judge will rely heavily on the strength of the evidence and witness statements. The credibility of the evidence submitted by the parties, be it written evidence such as a will, deed of sale, or statements from witnesses who know about the ampikale property, will be the main consideration in making a decision. The judge will conduct a careful examination of all available evidence to ensure that the decision taken is based on true and accountable facts. Moreover, if there is no strong written evidence to support the claim to the ampikale property, the judge will be even more careful in making a decision. This was explained by Sitti Amirah as a judge at the Watampone Religious Court that:

The basis for making decisions on ampikale inheritance is based on evidence and witnesses. Evidence and testimony are the main considerations of the judge in making a decision. Moreover, if the recognition of ampikale assets is not based on written evidence or there is no clarity. This is where the judge must dig up facts and information comprehensively so that his decision is in accordance with applicable regulations.

ampikale inheritance case must always be based on the applicable legal rules. In this case, the judge must refer to the legal provisions governing inheritance, wills, and valid evidence. If there is any ambiguity or conflict in the application of the law, the judge can ask for expert opinion or conduct a more in-depth legal study. This aims to ensure that the decision taken is not only fair, but also in accordance with the applicable legal corridor. The judge handling this case is required to have a deep understanding of the applicable customary law, and be able to integrate it with positive law. As explained by Sitti Amirah as a judge at the Watampone Religious Court that:

The legal sources that are considered in adjudicating ampikale inheritance cases cannot be separated from the applicable customary law. Customary law as one of the laws that applies in Indonesia so that it has power. Moreover, the ampikale inheritance dispute originates from traditions in society so that in providing legal considerations it must also be returned to customary law. This will strengthen the judge's decision not only in the legal aspect but also in the social aspect.

ampikale inheritance the judge only refers to positive law without considering customary law, then the resulting decision may not be in accordance with the values and beliefs of the local community. This can cause dissatisfaction and distrust of the community towards the judicial institution. Therefore, in cases involving customary law, the judge must have a deep understanding of the customary law applicable in the area. Thus, the resulting decision not only meets the legal aspects, but also has strong social legitimacy.

This is also understood from the provisions of Islamic law based on the fiqh principle "al-ādah muḥakkamah" or customs that can be used as law. Islamic jurists (fuqaha) who conduct ijtihad with urf argue that, both words and actions that are common in the customs of the Muslim community where the matter is considered good, then the matter is also good in the sight of Allah and can be practiced. In addition, according to Abu Zahrah, both in terms of analogy and purpose, it shows that every matter that has become a tradition among Muslims and is seen as a good matter, then the matter is seen as good in the sight of Allah. Likewise, the concept of dividing ampikale as mentioned in the previous discussion has philosophical and welfare values.

Implications of Judges' Considerations on Ampikale Inheritance Decision-Making in Bone Regency Society



Implications of the judge's considerations regarding the decision of the Ampikale inheritance case can influence the implementation of this tradition in society. This can mean that, through the judge's decision, society can act more carefully in the division of ampikale property. With the cases resolved in religious courts, it can be an example and if the same case occurs in society, then society will use the judge's decision as a basis for making decisions. Further discussion of the implications of the judge's decision in ampikale inheritance cases will be explained in several parts as follows:

Public response regarding the judge's decision in the Tirkah Ampikale case

In deciding cases related to ampikale, the judge has a central role in determining whether the property is truly ampikale or is actually part of the inheritance. If the heirs agree that the property is ampikale and have met the applicable requirements, then the judge will respect the agreement. However, if there is a dispute or insufficient evidence to prove that the property is ampikale, then the judge will tend to categorize it as inheritance and divide it fairly according to the provisions of inheritance law. This is explained by Asnawi Muhammadiyah that:

When the Judge decides on an ampikale case, the judge must ask whether this is an ampikale or not if it is agreed then it is not a problem but if this is problematic then it will be divided by inheritance. In court it is usually returned as an inheritance because if it is to be considered a will there is not enough evidence such as witnesses or records so this is resolved as a form of division of inheritance. People when dividing by inheritance even though there is still a will that has not been fulfilled while this will is said to be a debt that must be fulfilled so it is a sin for people who do not fulfill the debt of that person.

The judge's decision in a will case must be based on mature legal considerations and take into account the interests of all parties involved. Asni Zubair, an academic in Islamic inheritance law, further explained that:

If for example there is a message that it can be used as a will, of course the judge also sees whether the will is more or exceeds one third of the part. Meanwhile, the other heirs do not agree so that the judge based on the existing rules then the will cannot be fully implemented meaning a maximum of one third of the part that can be bequeathed. If the heirs do not object, then the will in question can be implemented in the sense that the other heirs agree yes even though basically the judge agrees but if it exceeds one third and the expert objects then it can be canceled.

The judge has a very important role in deciding on a will. The judge will consider various factors, such as the contents of the will, the value of the inheritance, and objections from other heirs. If there is a discrepancy between the will and the provisions of the law or if there is an heir who is harmed, then the judge has the authority to cancel part or all of the will. The goal is to protect the rights of other heirs. The distribution of inheritance must be done fairly and transparently to avoid inheritance disputes. If the value of the will exceeds the specified limit and there are heirs who object, the judge will seek a fair solution for all parties. The judge will try to balance the wishes of the testator and the rights of the heirs. However, if all heirs agree to the will, the judge can grant the request for the will.

Compliance Judge's considerations regarding the decision on ampikale inheritance with the ampikale tirkah custom in Bugis Bone society

In the view of Islamic law, ampikale can be categorized as a form of will. Therefore, the provision of ampikale to the party who has cared for the testator is a legitimate and legally binding right. As explained by Manatang as the recipient of ampikale, he said that:



In sharia, ampikale is included in the will, so that this ampikale becomes the right of the person who is given it. Even the court also knows if there is an ampikale asset in the inheritance of the Bugis community. If the testator's assets have a remainder, then this is what becomes the share of the person who cares for it, whether it is taken to the hospital in which case the assets can be given. Sometimes there is no excess but there is still some for the ampikale because sometimes the children go away and all go away so that there is no one to take care of their parents. So whoever takes care of the parents is the one who receives the ampikale as a replacement for the inheritance from the testator's child.

ampikale tradition in Bone society has been going on since the kingdom era and has a recognized legal force. The court's decision regarding the granting of ampikale is final and binding, so it cannot be challenged by any party, including the heirs. This was explained by Bustamin as one of the ampikale recipients explaining that:

In the Bone community inheritance tradition, it has been done since the kingdom era. If someone sues in court and is then accompanied by evidence, it cannot be corrected. So when I was in court, I was determined to be the recipient of the ampikale. So the heirs cannot interfere with the ampikale portion because the heirs already have their own share of the inheritance. Ampikale is interpreted as an expression of gratitude for taking care of the testator during his life. However, there is also ampikale given to their children. However, it is made a special portion for children who take care of their parents in addition to also getting a share as heirs. If someone responds that it is the child's obligation to take care of their parents, so there is no need for ampikale. However, not all children can take care of their parents, so children who take care of their parents have given up on this because the recipient of the ampikale has helped take care of their parents while they are away from home.

In Bugis society, ampikale is a reflection of noble values such as caring, compassion, and appreciation for the services of others. Giving ampikale is not just a transfer of property, but also a form of social recognition of someone's devotion. Although children have the right to inheritance, if there is someone else who has cared for their parents with great love, then that person has more right to ampikale. This shows that Bugis society highly values the services and sacrifices of someone in caring for their family members.

The concept of ampikale has the potential to be developed into a law that applies nationally. This is in line with the principles of justice and humanity that underlie inheritance law. Furthermore, Asnawi Muhammadiyah explained that:

Ampikale applies nationally in my opinion this is tabarruk if there is a law that can be built without reducing the value of the message contained in the inheritance itself. Moreover, in fact in the distribution of property even though there is the term far'ul wajib or mandatory distribution, it actually still prioritizes the benefits and goodness. Which actually prioritizes the benefits such as a child, for example leaving one child, because leaving one child is okay, here there is a legal solution. How can this incapable child be equalized, therefore in contemporary inheritance law there are actually several references to inheritance law.

The concept of ampikale reflects the noble values of Indonesian society, namely mutual cooperation and concern for others. By making ampikale a nationally applicable law, these values can be strengthened and a more harmonious society can be created. In addition, ampikale can also be a solution to social problems that often occur in families, such as disputes regarding the distribution of inheritance. This is because customary values in society can influence the legal system that applies in a region, including its regulations.

The Judge's consideration in deciding this ampikale, he granted it as the recipient of the



ampikale as a will based on the evidence of those who have it, maybe there is a special message or there is a witness who is indeed the will for the ampikale. This was explained by Asni Zubair as an academic in the field of Islamic inheritance law that:

If a person gives an ampikale to someone else then the judge grants it as a will and then there are heirs who object, then it can be canceled. When there is a message from the parents in the form of a will and ampikale in fact, in classical jurisprudence it is explained that there cannot be a will for the heirs. So actually ampikale is more of a thank you for taking care of the elderly in their old age. But if the judge determines it as a will, then even more so in contemporary Islamic law it is not forbidden to make a will to the heirs. But you have to consider the consent of the other heirs because if there is an objection then the judge gives consideration that all the heirs already have their share so there is no problem because this will is more of a service to the parents so the heirs do not have to claim.

In Islamic law, a will to an heir is permitted on condition that it does not harm the rights of other heirs. However, the granting of an ampikale which is considered a will often causes debate, especially if there are heirs who feel disadvantaged. In this case, the judge needs to consider legal, social, and justice aspects. If there are heirs who object, the judge should give the parties the opportunity to deliberate and find the best solution. The main goal is to achieve justice and maintain family harmony. Therefore, in carrying out all forms of seeking other sustenance must be done with a fair concept, not in a way that harms one party only or benefits one party only, but must be based on a path that is approved by Allah SWT. Including the rights of others that should not be ignored because this can be detrimental both economically and psychologically.

A will regarding the ampikale can be a middle way to fulfill the wishes of the testator while maintaining the rights of the heirs. However, it is important to remember that the will must not be contrary to the law and the principles of justice. If there is a dispute regarding the division of the ampikale, then the resolution must be through deliberation or legal channels, taking into account the interests of all entitled parties. Ampikale is a special property that is often resolved through deliberation in the family environment. However, if there is a dispute that cannot be resolved through deliberation, then the settlement can be done through legal channels. It is important for all parties to respect each other and find the best solution that can be accepted by all parties. The main goal of resolving ampikale cases is to achieve justice and maintain family harmony.

Implications of judges' considerations in making decisions regarding ampikale inheritance in the Bone Regency community

The concept of ampikale not only provides financial security for parents in old age, but also has positive psychological and social implications. For parents, the existence of ampikale provides a sense of security and peace because they do not need to worry about burdening their children, especially daughters who already have their own families. This was explained directly by H. Asnawi Muhammadiyah that:

In Bugis culture, ampikale is not just a property, but also a symbol of affection and care between family members. The existence of ampikale creates a harmonious relationship between parents and children. In addition, ampikale also teaches about the importance of appreciating the services of others and returning favors. Through ampikale, parents become calmer because they have savings for their old age. Children also feel more relieved because they do not have to worry about thinking about their parents' needs. In addition, people who care for their parents also feel more secure in their lives, so that all parties feel happy and helped.



The concept of ampikale emerged as a form of anticipation of future uncertainty. An individual who has reached old age and has sufficient financial ability, often feels the need to manage his property in order to guarantee his welfare in old age. The provision of ampikale can be considered as a form of will, where the testator gives part of his property to the person he considers entitled to receive it. As according to H. Asnawi Muhammadiyah explains that:

So the conclusion is that this ampikale arises because of the caution of a parent who already feels old and is already considered a capable person who has donated some of his/her property to his/her child and left some for himself/herself as a guarantee for his/her old age. It can be said as a tirkah but it can also be said as a will. Now it depends on how the fiqh arranges the law there if the custom applies like in Sulawesi then automatically related to the ampikale becoming a will is no longer a tirkah so there are no more inheritance rights in it. Well that depends later on how the legal problems develop in a region and how the judge's understanding sees the side of justice regarding the division of property. Because in verse 9 about the verse of inheritance it is said not to forget the rights of people you know better who are closer to you. Don't even waste the presence of people, meaning don't show off even though basically he/she has no rights or even though he/she is only a child of a sibling, give it as much as possible.

Ampikale is an additional gift from an heir to a party other than the heirs, such as a nephew, as a form of appreciation. Unlike inheritance whose distribution is regulated by Islamic law, ampikale is voluntary and not legally binding. Heirs have clear rights to the inheritance based on the provisions of the Qur'an. Therefore, the provision of ampikale should not reduce the rights of the heirs. Ampikale emphasizes more on social and humanitarian aspects. In addition, it is important for the community to know the science of inheritance and explain it to the family so that it can reduce the impact of disputes in the distribution of inheritance.

Law functions in society as a tool to prevent conflicts based on interests. Including aiming to prevent Muslims from taking legal actions arbitrarily and according to their desires. Law is also the basis for solving problems that occur based on policies and norms in society. Law is a vehicle for realizing the social and political ideals of Islam and *maqāṣid al-sharī'ah* is an analytical tool as well as the goals to be achieved.

Then Islamic law will see or see how the forms of Indonesian legal products are used. Islamic law assesses that the configuration of legal products in Indonesia is in accordance with what is stated in Islamic law. Because, the configuration of Indonesian legal products has the same vision, namely creating welfare for the wider community. The current goal of Islam continues to undergo transformation by making the concept of *maqāṣid al-syarī'ah* an analytical tool in solving legal problems. Including the problem of inheritance distribution which still occurs today and requires a *maqāṣid al-syarī'ah* approach in solving it.

Findings and Conclusion

The fact of tirkah ampikale in the inheritance customs of the Bone Regency community found that the tradition of inheriting ampikale property in old age has indeed been rooted in the families of some Bugis people. This property is useful for the costs they need, such as medical expenses, funeral costs, and also as an expression of gratitude to the people who care for them. Ampikale according to Islam is permissible as long as its implementation does not conflict with Islamic law. Related to the problems of the division of ampikale property, in society there are still sometimes conflicts between heirs and recipients of ampikale. However, most of the conflicts that occur are resolved non-litigation through deliberation and a small part is resolved in religious courts or through litigation. Disputes over the division of tirkah ampikale that are resolved in religious courts require the judges who try must provide legal considerations



through legal reasoning. From the cases of tirkah ampikale tried by judges at the Watampone Religious Court, they are generally directed to wills and ampikale cases are generally granted based on evidence and witnesses. However, a will can be cancelled if there are heirs who object and if it does not harm the heirs. In addition, ampikale can be classified as a will if the ampikale is not more than 1/3 according to the law. Therefore, in determining the legal status of ampikale property, it must be based on the case tried by the judge. Therefore, the judge must explore the facts and traditions that apply in society as well as witness statements so as to produce a just decision. The sources of law considered by the judge include customary law.

The implications of the judge's considerations regarding the decision-making of ampikale inheritance in the Bone Regency community can influence the implementation of this tradition in the community. The community's response to the judge's decision in the ampikale tirkah case tends to follow and support the judge's decision. Through the judge's decision, the community can act more carefully in the distribution of ampikale property. With the cases resolved in the religious court, it can be an example and if the same case occurs in the community, the community will use the judge's decision as a basis for making decisions. Conformity The judge's consideration of the decision-making of ampikale inheritance with the ampikale tirkah custom in the Bugis Bone community is basically appropriate. This shows a correlation between the judge's consideration and the ampikale tradition in society. The people of Bone Regency highly value tradition and it will be strengthened if customary law can be used as a consideration in resolving disputes in religious courts. So in this condition, customary law will show its existence as one of the legal systems that apply in Indonesia.

This study recommends that judges should dig deeper into the case with proper consideration. Including considering the facts and witness statements and considering the customary values that apply in society. From the ampikale inheritance case that has been tried, it is hoped that it can be used as a reference for decisions in other cases but has similarities. Especially for the community, it is hoped that they will always pay attention to the laws in the division of property and pay attention to legal limitations so that there is no conflict between heirs. Also as a reminder related to the ownership of property that in reality it is not permissible to pursue a larger share, especially in a prohibited manner. As for the government, it is expected to always pay attention to the division of inheritance carried out by the community by becoming a witness or as a mediator in the division of inheritance including ampikale property. That way, the opportunity for conflict can be minimized with direct involvement from the government. The government is also expected to educate the community regarding the division of inheritance so that the division of inheritance carried out is in accordance with the rules and it is hoped that there will be no conflict.

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