



Jurisdictional Review of the Supreme Court's Decision Number 2185/K/PDT/2008 Concerning the Distribution of Health Assets According to the Book of Civil Law

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Abstract

Human life which has been regulated by the legal order, and even regulations, basically humans still have complex problems, one of which is about inheritance. The problem of inheritance is a very important issue and has always been one of the main topics of discussion, because it always exists in every family and this inheritance problem is vulnerable to problems/conflicts in society due to distribution that is considered unfair or there are parties who feel aggrieved. Inheritance is a never-ending problem, because each party feels they have more rights than the other party, then this will cause a dispute for the heirs regarding the distribution based on the Class of Heirs based on the Civil Code. The problems examined in this thesis are: 1) How is the arrangement of inheritance distribution according to the Civil Code? 2) What is the judge's consideration of the division of inheritance on the division of inheritance in the Supreme Court Decision Number 2185/K/Pdt/2008? The approach method used in this research is the normative juridical method. This research uses an approach to the principles of law and legislation. The data used are primary data and secondary data. The data sources in this research are library research and field research. Data is collected through the study of documents or library materials. The data obtained were processed through editing and coding, then analyzed using qualitative analysis. Furthermore, the data is presented descriptively. Based on the results of the study, the authors conclude: 1) The distribution of inheritance based on the Civil Code is an inheritance distribution based on the class of heirs, where group one prevents the second group and so on. In terms of inheritance distribution from this study, the marriage of the testator until he finally died was never registered in the Civil Registry. In this case the state does not recognize the existence of such marriages. If viewed from the Civil Code, the children and wives of the heirs should not get the inheritance portion as stated in the legislation. 2) The judge's consideration in giving a decision regarding the distribution of the inheritance is divided based on the Legitime Portie based on the class in the Civil Code, taking into account that the heir and all his heirs are a legal family based on the recognition of neighbors, other families and witnesses.

Keywords: *Heirs; Inheritance; Supreme Court Decision*

Background of Research

Inheritance law is a law that regulates the wealth of the person who dies and the consequences for his heirs. Indonesia is a multicultural country. Even the existing rules cannot compartmentalize the

existing culture. In Indonesia, there is no national inheritance law. The existence of inheritance law in Indonesia is customary inheritance law, Islamic inheritance law, and civil inheritance law. Each inheritance law has different rules.

Customary Inheritance Law: Indonesia is an archipelagic country consisting of various ethnic groups, religions, and customs that differ from one another. This affects the law that applies in each community group known as customary law.

Customary inheritance law is heavily influenced by social or kinship structures. In Indonesia, inheritance law recognizes several kinds of inheritance systems:

- a. The hereditary system, this system is divided into three types, namely the patrilineal system, namely based on the father's lineage, the matrilineal system based on the maternal lineage, and the bilateral system, namely the system based on the lineage of both parents.
- b. Individual system, based on this system, each heir gets or owns the inheritance according to their respective share. In general, this system is applied to people who adhere to a bilateral social system such as Javanese and Batakese.
- c. Collective system, the heirs receive the inheritance as a unit which is not divided into control or ownership and each heir only has the right to use or get the proceeds from the property. An example is heirlooms in a particular society.
- d. Mayorat system, in the mayorat system, inheritance is transferred as an undivided unit with control rights delegated to certain children. For example, for the eldest child who serves as the leader of the family to replace the position of the father or mother as the head of the family, as in the people of Bali and Lampung, inheritance is transferred to the eldest child and in South Sumatra to the eldest daughter.

Islamic Inheritance Law applies to Indonesian people who are Muslim and is regulated in Articles 171-214 of the Indonesian Law Compilation, namely Islamic law material written in 229 articles. In Islamic inheritance law adheres to the principle of bilateral individual inheritance, not collective or majority. Thus, the heir can come from the father or mother.

According to Islamic inheritance law, there are three conditions for inheritance to exist so that it can entitle a person or heir to receive an inheritance:

- a. The person who inherits (the heir) has died and it can be legally proven that he has died. So, if there is a distribution or gift of property to the family while the heir is still alive, it is not included in the category of inheritance but is called a grant.
- b. The person who inherits (the heir) is still alive when the person who inherits dies.
- c. People who inherit and inherit have a descendant or kinship relationship, both straight-up ties such as father or grandfather and straight-down ties such as children, grandchildren, and uncles.

Civil Inheritance Law or what is often called western inheritance law applies to non-Muslim communities, including Indonesian citizens of Chinese and European descent whose provisions are regulated in the Civil Code (KUHPer). Civil inheritance law adheres to an individual system in which each heir gets or owns inheritance according to their respective shares. In civil inheritance law there are two ways to inherit:

- a. Inheriting under the law or inheriting without a will is called *Ab-instentato*, while the heirs are called *Ab-instaat*. There are 4 groups of heirs based on the law: Group I consists of husband and wife and children and their descendants; Group II consists of parents and siblings and their descendants; Group III consists of grandfather, grandmother and so on and above; and Group IV consists of families in a more distant lateral line, including relatives of group III heirs and their descendants.

- b. Inheriting based on a will is in the form of a person's statement about what he wants after he dies which the maker can change or revoke as long as he is still alive in accordance with Article 992 of the Civil Code.

In the process of inheritance, problems often arise due to a sense of injustice that occurs between several parties which often causes disputes. The government anticipates this by making a regulation whereby a person can sue and be sued regarding inheritance through the civil law rules that apply in Indonesia. When viewed in terms of the subject of inheritance based on the Civil Inheritance Law itself, it does not distinguish the share that is obtained by men and women. However, to obtain justice, the court through its jurisprudence can assess the services performed by the heirs to the heir during his lifetime which may affect the amount received later.

Basically, inheritance occurs when there is a legal event, namely death. The death of the heir will result in the transfer of the rights of the heir to the heirs, one of which is regarding inheritance. Inheritance assets that are left behind according to the Civil Law contained in the Civil Code, hereinafter referred to as the Civil Code, are divided according to their respective groups.

However, in this case the Civil Code regulates the group of heirs for people whose marriages are registered in the Civil Registry, because based on Law Number 1 of 1974 concerning Marriage, one of the obligations of citizens must register their marriages, which is the purpose of recording the marriage. the other is to provide legal certainty to husband and wife and to their descendants.

In this paper, the author wants to conduct a study on the distribution of inheritance according to the Civil Code, where the distribution of inheritance must also be based on marriages that should have been registered after Law Number 1 of 1974 concerning Marriage was promulgated, because of state recognition of the occurrence of a marriage, based on marriages that are legally binding. has been recorded. If it is not recorded, according to statutory regulations, the state considers that there has never been a marriage, as well as the descendants of the marriage are considered legally illegitimate, even though according to religion and customs the marriage is legal.

Similar to the description above, what happened to the family of Chinese descent in Indonesia, namely the family of Tjung Kam Siong/Amdjaja Tahar, where in the end the heir Tjung Kam Siong/Amdjaja Tahar died, the marriage was never registered in the Civil Registry. Therefore, there was a problem between the heirs, where there was dissatisfaction with the distribution of the inheritance, so that the inheritance dispute reached the stage of cassation in the Supreme Court.

Based on the Supreme Court Decision No. 2185/K/Pdt/2008 which befell the family of the late Tjung Kam Siong/Amdjaja Tahar where he died in 1990. Leaving a wife named Thio Af Nio and has been blessed with ten children, Thio Tjen Moy (1), Tjung Tjen Liang/Thio Tjen Liang (2), Tjung Tjen Wah/Thio Tjen Wah (3), Thio Tjen Lan (4), Thio Tjen Lian (5), Yanti Thio/Thio Tjen Nio (6), Tjung Tjen Liong/Thio Tjen Liong (7), Tjung Tjen Wie/Thio Tjen Wie (8), Tjung Tjen Lie/Thio Tjen Lie (9) and Thio Tjen Sian (10). Their marriage took place in 1947 in a Confucian manner, and the public recognized him as a legal husband and wife. During their lifetime, their marriage had never been registered at the local Civil Registry Office, thus legally the position of the children they gave birth to was categorized as a child out of wedlock. This separation between husband and wife occurs due to death. As is well known, when a person has left for good, then all of his property, both rights and obligations, will immediately become heirs whose distribution has been regulated in the applicable laws and regulations.

It is known that Tjung Kam Siong / Amdjaja Tahar left an inheritance in the form of an undivided inheritance. In the form of a plot of land belonging to the girik C.1096 adat, Persil 90 Blok d-1, covering an area of 2,250 M2 located in Kampung Rawa Bebek RT.003/RW.001 Kamal Village, Kalideres Subdistrict, West Jakarta and another parcel of land belonging to the adat girik C.1096 Blok C. s-III, with

an area of 21,140 M2 located on Jalan Kamal Raya Rawa Melati, Penjaringan Subdistrict, Kamal Muara Village, North Jakarta.

Due to economic pressure and the increasingly difficult cost of living, an unfavorable situation has arisen. Nine out of ten children of Tjung Kam Siong/Amdjaja Tahar and Thio Af Nio want the inheritance from Tjung Kam Siong/Amdjaja Tahar to be divided fairly and each of them gets an equal share. In this case, nine of the ten children of the late Tjung Kam Siong/Amdjaja Tahar is the plaintiff and the fifth child of the late Tjung Kam Siong/Amdjaja Tahar, Thio Tjen Lian is a defendant because he has controlled a part of the inherited land area of approximately 780 M2 and above it there is a house with an area of 140 M2 located in Kampung Rawa Duck RT.003/RW.001 Kamal Village, Kalideres District, West Jakarta. Meanwhile, Thio Af Nio, the wife of the late Tjung Kam Siong/Amdjaja Tahar in this case, is also a defendant. The absence of agreement between these families made the Tjung Kam Siong/Amdjaja Tahar family finally decide to resolve this issue through legal means. Until now, this case has been submitted to the Supreme Court of the Republic of Indonesia.

The phenomenon that attracts attention here is that children who are born are legally illegitimate. Because during his life the late Tjung Kam Siong/Amdjaja Tahar never registered their marriage with the local Civil Registry Office. The status of the child who was born was considered illegitimate. Consequently, the child born only has a civil relationship with the mother and her mother's family. This means that he does not have a civil relationship with his father. Based on the law, those who are entitled to the inheritance of the late Tjung Kam Siong/Amdjaja Tahar are blood relatives or brothers or sisters of the deceased Tjung Kam Siong/Amdjaja Tahar.

Neither the plaintiff nor the defendant and co-defendants have made a Deed of Distribution of Inheritance before a Notary as has been mentioned in Article 1121 of the Civil Code which reads "blood families in the upper line may divide and separate their property, by a will or by a notary deed, between their descendants or among their descendants and their husbands or wives who live the longest."

As mentioned above, the inheritance of the late Tjung Kam Siong/Amdjaja Tahar is an undivided inheritance. Thus, the plaintiff, defendant and co-defendant do not have the capacity as heirs. As stipulated in Article 362 of the Civil Code, the case above is only one of the many inheritance issues that go to court. Given the number of cases like this, it's good for us to know how this problem is actually solved by the Inheritance Law according to the Civil Code (KUH Perdata).

Based on the above background, the author conducted research entitled "**Juridical Review of the Supreme Court's Decision Number 2185/K/Pdt/2008 Regarding the Distribution of Inheritance According to the Civil Code**".

Research Methods

The approach method used is the Juridical Empirical approach, the Juridical Empirical Approach is an approach taken to analyze the extent to which a legal regulation is effective so that the scope of research is a positive legal inventory which is a preliminary activity, here the researcher does not only reveal the negative aspects of a problems but also positive aspects so that a solution can be given.

In this approach, it is actually how to find law in action from a regulation so that real behavior can be observed as a result of the implementation of positive law and is evidence of whether or not it has behaved in accordance with normative legal provisions (codification or legislation).

Therefore, in addition to using a juridical approach, an empirical approach based on primary data analysis obtained from field research through the interview method is also carried out, in order to obtain more in-depth information on matters relating to various driving factors relating to the implementation of

a regulation. In a juridical approach, this research is based on the analysis of primary data obtained from research using the interview method. Thus, the object of analysis is the Supreme Court of the Republic of Indonesia Decision No. 2185/K/Pdt/2008 concerning the Distribution of Inheritance of the late Tjung Kam Siong/Amdaja Tahar according to the Book of Law. -Civil Law Law.

Research Result

Basically, only legal rights and obligations in the field of wealth or property can be inherited. There are some exceptions, for example the right of a father to deny the legitimacy of his child to demand that he be declared the legitimate child of his father or mother (both rights are in the field of family law), stated in the law of inheritance by his heirs.

In the law of inheritance also applies a principle, that a person dies, then immediately all rights and obligations shift to all his heirs. An heir has wealth in the form of two forms, namely property (material) and property (non-material). Property is a tangible legacy, in the form of material rights, such as usufructuary rights, billing rights (debts) and other rights. While intangible assets, such as position or copyright.

However, in Indonesian law, inheritance adheres to an individual system, where the inheritance must be immediately distributed and each heir gets the inheritance distribution to be able to control or own the inheritance according to their respective shares. The inheritance is then held which results in the heirs being able to control and have a share to be enjoyed, cultivated or transferred to relatives, or other people.

The division of inheritance often creates complicated problems among the heirs. This conflict is caused because the heirs cannot tolerate each other, protect themselves and hold back their lusts from the temptation of material goods and consumptive necessities of life so that they cannot maintain harmony in life in the family and cause conflict between the heirs to fight over the inheritance of the heirs.

In the distribution of inheritance is usually carried out by the widow who lives the longest or the eldest son of the heir with the agreement of all the heirs. The division must be transferred fairly with all the heirs getting their respective shares. This is done to avoid the emergence of fraternal conflicts and enmity because of inheritance. However, if the distribution of inheritance cannot be carried out fairly by mutual agreement because there are heirs who are in dispute, some even want to get a larger share of the property than the share that should be obtained. So to get a fair solution, the dissatisfied party can take the case to the District Court if the kinship deliberation and the customary court fail to resolve the problem.

The legal event that has occurred has given rise to a juridical consequence, namely a legal relationship that forms the basis for the rights and obligations of the parties. Disclosure of the facts can be done by deeds, statements, writings, documents, testimonies, or electronic mail. The question and answer of the parties or between the parties and the panel of judges before a court session is a form of the process of disclosing the facts, namely to convince the panel of judges that a legal event has actually occurred, which gives rise to rights and obligations for the litigants.

Disclosure of facts as stated above creates types of forms of evidence, such as deeds, confession of oaths, documents and letters. The forms of the evidence can be in the form of;

- a. Deeds;
- b. Statement;
- c. Writing;
- d. Document;
- e. Testimony;

f. Electronic Mail.

Proof is needed because there is a rebuttal or denial from the opposing party regarding what is being sued or justifying a right. Generally, the source of the dispute is an event or legal relationship that supports the existence of rights. So, what needs to be proven is about legal events or relationships, not about the law. The truth of the event or relationship that must be proven. If the defendant has acknowledged or confirmed what the plaintiff is claiming, then proof is no longer needed.

The end of the Supreme Court's judicial process is the Supreme Court's decision. Contents of Supreme Court Decision No. 2185/K/Pdt/2008/ in deciding the case regarding the distribution of inheritance to the inheritance of the late Tjung Kam Siong/Amdaja Tahar are as follows:

Granted the cassation request from the Cassation Petitioner: 1. Thio Tjen Moy; 2. Tjung Tjen Liang (Thio Tjen Liang); 3. Tjung Tjen Wah (Thio Tjen Wah); 4. Thio Tjen Lan; 5. Yanti Thio (Thio Tjen Nio); 6. Tjung Tjen Liong; 7. Tjung Tjen Wie; 8. Tjung Tjen Lie and 9. The Thio Tjen Sian. Canceling the decision of the DKI Jakarta High Court No. 155/PDT/2007/PT.DKI dated August 22, 2007 which overturned the decision of the West Jakarta District Court No. 487/Pdt.G/2005/PN.JKT.BAR dated 19 September 2006;

To declare the Defendant's exception in the Convention/Plaintiff in the Convention is unacceptable;

Judge's consideration of the division of inheritance against the Division of Inheritance. It is in accordance with the reasons:

1. *Judex factie* (High Court) does not misapply the law; *judex factie* is wrong in applying the law. Whereas the reasons for the cassation of the Petitioner for Cassation No. 1 and 2, the reasons can be justified, reason No. 3 is not true, because the heir who leaves the inheritance, half of the inheritance still belongs to the wife/husband who is left behind;
2. For marriages that were enforced before the enactment of the Marriage Law, then for the Chinese group, S 1917 No. 130 jo S1919 No. 81 with all its changes;
3. Articles 101, 102, 261, 262 of the Civil Code are no longer valid as Article 66 of Law no. 1 of 1974 concerning Marriage clearly states:

"For marriage and everything related to marriage based on this law, with the entry into force of this law the provisions stipulated in the BW, HOCI and GHR and other regulations governing marriage to the extent that it has been regulated in This law is declared null and void."

That the marriage of Mr. Tjung Kam Siong (late) with Thio Af Nio (also the original Defendant) which was carried out in 1947 in a Confucian manner, and the public recognized him as husband and wife was legal even though it was not recorded at the Civil Registry Office. The validity of a marriage is determined by the fulfillment of the provisions of the belief / custom / religion of the bride and groom.

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