

Mediation as Alternative Disputes Resolution for Land Heritage of Madurese Society

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Abstract. Mediation is a negotiation process to settle disputes in which a third party, called as a mediator, acts neutrally, and impartially. Mediators are required to actively participate in the process of negotiation as they shoulder a crucial role at the beginning of the mediation process. The mediators should identify the cause of disputes and the right approach to address it. Law Number 30 the Year 1999 has arranged mediation inside the court, but it does not stipulate regulations of the mediation outside of court. Based on this condition, this study examines why inheritance cases are rarely filed to the court and who holds a vital role in resolving heritage disputes in Madura. The socio-legal method is used in this research by implementing a factual approach. In-depth interviews and observations were carried out as data collection techniques. The primary and secondary data are obtained then further analyzed by qualitative descriptive study. The results indicate that inheritance disputes are rarely taken to both district and religious courts because religious leaders called "*keyae*," who act as the mediators, play a significant role in settling inheritance disputes among the Madurese, including the disputes of land inheritance.

Keywords: Mediation, Alternative Dispute Resolution, Land Heritage Process, Madureses

1. Introduction

Of the myriad civil cases filed in the district courts, inheritance cases are the rarest ones. Similarly, in religious courts, they ranked the lowest compared to divorce and polygamy cases. The Religious Court of Sumenep noted that there are 8 cases of inheritance from 9369 cases admitted to the religious court of Sumenep in the last five years (2012-2016).

Article 2 of Law Number 3 the Year 2006 sets forth, "religious courts are one of the judicial powers for the Moslems concerning certain matters." Therefore, the district court has the authority to adjudicate inheritance cases for the Moslems. Article 49 of the law provides that the religious courts are in charge and authorized to examine, decide, and resolve matters of 1) marriage, 2) inheritance, 3) wills, 4) grants, 5) waqf, 6) zakat, 7) infaq, 8) shadaqah, and 9) sharia economics. The existence of the religious courts that have the authority to resolve the inheritance disputes for the Islamic community has contributed zero significance for the increase of the cases in the courts. The majority of Madurese who has embraced Islam rarely or rarely filed their inheritance disputes to the religious courts available. Such phenomenon aroused the curiosity of the researchers to find the factors affecting the Madurese's choice in settling their inheritance disputes.

The philosophy is deemed as a justification for them to stand against a degrading-dignity insult from other people, such as harassing one's wife. This vigilante action is called *carok*. Although *carok* is a habit for some Madurese in resolving disputes, none of the inheritance cases has been settled through this action.

The Madurese are known for their harsh characteristics, but to settle the inheritance disputes, not through *carok* or courts is a compelling case to study. Under these circumstances, this research examines why such cases are rarely filed to the courts and who mainly takes a prominent role in settling the inheritance disputes in the Madurese society.

2. Methodology

This is socio-legal research that fully comprehends law enforcement in society. The law of life is the manifestation of life in society. Thus, it is necessary to understand the nature of the mind that lives within society [3]. Adler strengthens the socio-legal paradigm can adopt an external perspective to the legal process that seeks to analyze administrative justice in terms of concepts and categories that are derived from the social sciences [5].

Therefore, this study examines the laws of social life in resolving inheritance disputes, particularly land inheritance cases. The informants are the Madurese residing in Sumenep Regency. The data sources consist of primary data, which is the public attitudes towards the settlement of inheritance disputes, and secondary data that consist of the researches' relationship and perspective on the disputes.

Data collection techniques are conducted by observation and in-depth interviews with village heads, community leaders, and local people involved in the disputes. The data is then analyzed by qualitative description method.

3. Findings

3.1 Reason of inheritance cases are rarely filed to any courts

Inheritance presented in the customary law system does not only restrict the shares and recipients of the inheritance but also determines the forms of property that shall be distributed to the heirs. The customary inheritance law is a regulation of the process of devolving and transferring tangible assets as well as the intangible form from one to the next generation. Property (a tangible asset) can manifest as land, jewelry, weapons, etc., whereas intangible asset consists of things like titles or status [4].

The inheritance process could begin when parents are still alive, and it shall continue until the next generation of the family. In other words, the process of inheritance carries on until the new generation is independent enough (*mental*) or having its own family (*car*). The new family is either formed by owning personal possession with/without receiving the shared wealth from their parents. The death of the parent (father or mother) is an essential event in the process of inheritance. However, it does not radically interfere with the process of devolving and transferring the property.

The indigenous Madurese is still known as an agrarian society. Therefore, the customary law stipulates inheritance objects into two forms: land and non-land. Weiner also stated that local courts stayed local, embodied customary sensibilities and reactions in their judgments, and made their contribution (a process that is ongoing and of course will never finish) towards the acceptance of a general customary law in PNG [1].

The society considers land as a property with great value and significance as it is a place of birth, life, and death. The land is believed to have a magical religious value for the people as well.

In the Madurese society, the process of inheritance is possible to start even if the parents are still alive. The inheritance division usually is arranged based on equality of rights between sons and daughters. Both of them can inherit the property of both parents. All children, regardless of their sex or the order of birth (older or younger), deserve the same shares of the property of their father and mother. Also, there is no distinction of heritage origins; of one spouse's side or a joint asset of their marriage.

For the land inheritance, Madurese people distinguish the type of land into moorland, home soil, and paddy fields. Each type of land has different values. The local people always devolve the land with house building to the daughters. It is regarded as provisions for the wives so that their husbands are liable to furnish the house and live together.

In Banbaru village, Giligenting District, the eldest boy replaces the parents' position after they passed away, meaning that all demises such as land certificates are in the boy's authority. However, the daughter also accepts the same amount of inheritance as well or gets even more from the treasure when they live together and take care of their parents during their life span [5].

So, in the law of hereditary in Madura, the land certificate and demise are conferred to the boys to manage the heredity division. The daughter, however, can substitute the boy's position, such as holding the land certificate when he stays far away from his house (*merantau*) or lives in his wife's house.

When an inheritance causes disputes, particularly the land type, as a society with fervent mystical or sacred beliefs, they consider lands relate closely to the environment which its *restitution in integrum* shall be maintained. Hence, the settlement of land disputes should be done through discussions.

Indonesian law has regulated the settlement of the inheritance disputes through litigation and non-litigation procedures. Between these two settlements, litigation procedure is considered time-wasting and unprofitable [6] because the jury, as the legal basis for civil proceedings, does not determine the time limit for civil disputes to decide. As a result, litigating dispute resolution is always time-consuming, exhausting, and costly, which will affect legal certainty and justice [7].

Therefore, many people prefer resolving cases through non-litigation (outside of court) mediation by following procedures agreed by the disputing parties. The involvement of third parties is required in order to encourage the disputing parties to reach an agreement peacefully [8]. Mediation is a peaceful way of resolving disputes through a negotiation process with the assistance of a third party.

The article 1 (10) of Law Number 30 the Year 1999 states that alternative dispute resolution is an institution of dispute resolution procedures which were agreed by the parties out of court settlement. Mediation is an effort to find the resolution of disputes outside of court based on the existence of a negotiation between the two parties. Broadbent argued that alternative dispute resolution (or "ADR") processes, so that inevitably a proportion of cases would settle rather than having to be decided by a judge in a courtroom [2].

Mediator, as an outside party or third party, assists both parties involved in resolving the dispute in order to reach an agreement acceptable to both sides in an argument. If one of the parties owns a more dominant or powerful bargaining power than the other, the mediator has a vital role in neutralizing it [9].

Solving disputes through discussion is a universal value in Indonesia. Any frictions must be solved in peace. Seeking problem-solving through the third party is called mediation. It refers to the negotiation process on the ongoing conflict in which the third party puts in a neutral position called a mediator. This is to help the conflict to be resolved [10]. Although the settlement mechanisms are available through state courts, the Madurese community prefers to seek a peaceful settlement, especially for land disputes. The decision is made with the foundation of the local wisdom by leaving the matters to the village head who later invites community leaders i.e., *keyae* to cooperate with.

The settlement by discussion and reconciliation is the necessary foundation of resolving the law of inheritance. For the Madurese society, the land is an invaluable asset, and it gains more values and holy power as it is inherited from the ancestry [11].

The Madurese have a unique view on the land heritage despite being an invaluable asset. They highly respect the land to preserve its holiness as an honor to the deceased parents who have inherited it to them. Creating peace in a dispute is crucial as it satisfies every party as they do not have to think about losing or winning. It helps them to set their mind at rest and tie emotional attachment between the parties involved [12].

In a cooperation culture, peace is relevant to be developed, especially in a homogeneous culture like Indonesia. The people should be well informed of the importance of peace notion that helps solve the problems [13].

Based on the customary law, the head of the village should maintain the law in the community, making the law executed adequately. The people will consult the head of the village when they had a conflict.

The culture of discussion in Madura is usually done by getting a mediator involved. The mediator plays a significant role in the mediation process. Therefore, they should identify any contributing factors to overcome the conflict. Mediation aims to: (a) look for a second opinion about the dispute and which is acceptable for all parties; (b) achieve healthy communication [14]. The mediators facilitate a discussion to end the disagreements [15].

The Madurese people usually position the village officers as a mediator when they are having a dispute. However, they prefer to consult religious experts or priests when heritage disputes arise [16].

Klebun is a term given for the village heads as formal leaders, which include those who gain both social and legal mandates. From a social perspective, *klebun* is the personification of the village community as *primus inter pares*. From a legal perspective, *klebun* has a vital role in the law. Villages are authorized to organize and manage the interests of the local community based on the origins and customs recognized in the national system of governance [17]. Therefore anytime a dispute arises, the local people will take it to the village head (*klebun*). *Klebun's* primary functions, according to the customary law, are maintaining public order, restoring a situation to gain harmony, and making legal decisions [18]. In its development, the function of the village head as the customary head has been legitimated with the provision that considers villages as the origin of customary law [19].

For the Madurese in particular, although they formally file their disputes to the village head *klebun*, *klebun* will not seek for settlement without involving community leaders called "keyae." This is by their religious nature and the values of honor for the *ghuru*, *keyae*. Thus "keyae" has a central and prominent position and role for the Madurese society as well as in settlement of inheritance disputes.

Dealing with the conflict of land legacy, the Madurese people have unique perspectives due to their deference that they show to their ancestor (*bhuppa' bhabhu*). Meaning that they need to respect their antecedents, including the sacred heredity.

Also, the forebears should live in peace in heaven so that they agree to solve the problem by discussion, not report it to the court as to family attachment tied. Inheritance dispute settlement based on local wisdom in land legacy between the heirs and the regional government prioritizes the respect to *bhuppa' bhabhu* (parents).

The previous research in 2017 (unpublished) resulted that the Madurese sincerely accepted the compensation given by the regional government to respect their ancestors' wishes to share a good deed by expecting the God's will because their land was used for educational purposes and one of the heirs were allowed to work as a gardener in the given school [20].

The solution to the land conflict based on the discussion is local wisdom believed by the Madurese to maintain the family's closeness. This goes with the life principle of the Madurese community, which is reflected in the saying of *bhuppa' bhabhu' ghururato*. It means that Madurese must first obey and the *bhuppa' bhabhu'* (both parents), then to the *ghuru* (keyae/ ulema), and lastly to the *rato* (state leaders). The figure of *ghuru* is fixed on *keyae* as it closely relates to the belief of seeking knowledge for the afterlife (*ngajhibandhanaakherat*).

The *ngaji* is conducted by a teacher or instructors *ghuru* who are normally *keyae* (religion leaders). That explains why *ghuru* plays a role in morality and the sacred world [21] and serves as role models. Therefore, every piece of advice from *ghuru*, including settlement of disputes, is always obeyed and followed by their students [22]. Besides as a manifestation of respect for the elderly (as stated in *bhuppa' bhabhu' ghururato*), the main reason the Madurese prefer mediation as the settlement of land inheritance dispute is to carry on the honor of the parents even though they have deceased.

Muhammad, an informant, residing in West Kalianget, explained: "because the land is a parent's inheritance then that honor must also be done even if the parents have died." For this reason, the community considers mediation as the best way to end the disputes. Discussion and reconciliation are the necessary foundations of the settlement of inheritance disputes for the Madurese society. They will meet the village head to be a facilitator of negotiation.

Then, the village head will help encourage his people to negotiate as an effort to seek resolution. Later, during the settlement process "klebun" will invite "keyae" as a mediator in the land's inheritance dispute.

Mediators usually implement the basics of Islamic laws on inheritance, then a discussion is commenced. In Islamic law, inheritance shares of women remain inferior to those of men. In practice, however, men usually have been provided more facilities than women. Although women gain fewer shares than men during the inheritance division, through the discussion and agreement reached, the men will sincerely give their shares to the sisters. It is in line with the statement of Rahmat Hasan, the village head of LaokJangjang, Arjasa district, Sumenep regency: the daughter who cares for her parents will get a higher share than the other child, that is by the family agreement. This type of division through discussion and reconciliation is in line with the basis of Emile Durkheim's theory that corresponds to the characteristic of a community with an organic solidarity form.

The social life of the organic-solidarity community is developed and maintained by its law to manage the local life in establishing an internal order of the community. The dispute settlement is done through reconciliation assisted by a mediator to create a restitutive recovery, not punitive retribution [23].

Madurese people usually invite the head of the village's interference to solve the conflict. This is a form of deference to *rato* (formal leader). One of the functions of the head of the village based on the customary law is to preserve social order, resolve the social problems, maintain peace, tranquility, and balance in society. Therefore, they prefer to solving their internal disputes by employing the local wisdom or having the head of the village to mediate

the parties involved. They will see the priest when a conflict related to religious issues arises. The figure of *ghuru* (*keyae*) is a role model for morality and religion. The land conflict is considered to be a religious polemic since it is regulated in the customary law. Therefore, they will first and foremost meet the head of the village as a form of respect to the figure of *rato*, then the head of the village seeks help from the priest (*keyae*) as a form of deference to the figure of *ghuru* to be a mediator for the conflict they are experiencing. It is thus clear that the local wisdom of Madurese people, well known as *bhuppa' bhabhu' ghururato* become guidance for their society. Dealing with the conflict of land legacy, which is considered as a religious area, *keyae* significantly contributes to resolving the problem. This is a form of respect to *keyae* as a role model so that they are loyal to *keyae's* advice including in the land cases.

Furthermore, the head of the village as a formal leader will be required to assist the conflict after the parents passed away. Since the problem deals with the land issues and is considered to be religious stuff, then the head of the village is going to see *keyae* as a mediator. The given local wisdom guides the people of Madura to resolve the conflict of the land. It leads to harmony and the preservation of peace values in society. Thus, the settlement of land inheritance disputes in the indigenous people of Sumenep regency is facilitated by "klebun" and the mediator "keyae" or community leader.

The mediator resolves the dispute by applying the law that goes along with the justice living within the community. Also, upholding the local wisdom as the settlement of land inheritance disputes provides the Madurese community a peaceful atmosphere and maintains communal values within the society.

4. Conclusion

The inheritance cases are rarely filed to court as the Madurese society commonly uphold the values of *bhuppa' bhabhu' ghururato* which encourage them to seek for settlement through discussions and reconciliations as the honor to the deceased parents, teachers or *keyae*, and formal leaders. The village head (klebun) who acts as the facilitator, holds the significant role of inheritance dispute settlement in the Madurese society, together with the mediators responsible for settling the disputes called "keyae."

Acknowledgments

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