

UNVEILING THE ROLE OF LOCAL CULTURAL CONSIDERATION IN JUDICIAL DISCRETION: An Analysis of Inheritance Decisions in the Religious Courts of South Kalimantan

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Abstract: In Religious Courts, numerous cases within the sphere of absolute authority are not exclusively fortified by material legal sources through legislation. The ingenuity of judges becomes indispensable in extracting the essence of the law from various sources, including the rich tapestry of local cultural customs inherent within the community. The concept also leads to the emergence of cases decided through the discretionary methods employed by judges. Therefore, this study aimed to discuss the local cultural forms that served as points of reference for judges when exercising their discretion in rendering verdicts on inheritance disputes within the Religious Courts of South Kalimantan. The existence of judicial discretion in the decision-making process was unravelled, particularly when legal considerations aligned with the mandates of the heirs, emanating from the local culture of the Banjar people residing in the region. Furthermore, the translation of the heir's mandate, resembling a testament, exemplified the exercise of unrestrained discretion by the judges. Local culture was viewed as an indispensable component of the living law that pervaded society, with its ability to adapt and engage with the ever-changing landscape.

Keywords: Culture, Discretion, Judges

Abstrak: Di Peradilan Agama, banyak perkara dalam lingkup kewenangan mutlak yang tidak secara eksklusif dibentengi oleh sumber hukum materil melalui peraturan perundang-undangan. Kecerdikan hakim menjadi sangat diperlukan dalam menggali hakikat hukum dari berbagai sumber, termasuk kekayaan permadani adat budaya lokal yang melekat dalam masyarakat. Konsep tersebut juga mengarah pada munculnya kasus yang diputuskan melalui metode diskresi yang digunakan oleh hakim. Oleh karena itu, penelitian ini bertujuan untuk membahas bentuk-bentuk budaya lokal yang menjadi acuan hakim dalam melaksanakan diskresinya dalam menjatuhkan putusan atas sengketa waris di lingkungan Pengadilan Agama Kalimantan Selatan. Adanya diskresi peradilan

dalam proses pengambilan keputusan terurai, terutama ketika pertimbangan hukum selaras dengan amanat ahli waris, yang bersumber dari budaya lokal masyarakat Banjar yang berada di wilayah tersebut. Selain itu, penerjemahan mandat ahli waris, yang menyerupai wasiat, mencontohkan pelaksanaan diskresi tak terbatas oleh para hakim. Budaya lokal dipandang sebagai komponen tak terpisahkan dari hukum hidup yang melingkupi masyarakat, dengan kemampuannya beradaptasi dan terlibat dengan lanskap yang selalu berubah.

Kata Kunci: Budaya, Diskresi, Hakim

Introduction

Religious Courts rely on a comprehensive array of legal materials that serve as references, commonly known as sources of law in the exercise of its authority. These sources encompass formal and material laws, which dictate the procedural guidelines for litigation and fundamental legal foundation or point of reference in resolving cases. Within the domain of the courts, material law is referred to as *fiqh*, which manifests with certain variations and divergences.¹

The existence of the Religious Courts with their decisions has contributed greatly to the development of inheritance law in Indonesia. In addition to the verdicts, the dynamics of existing regulations also contribute to the framework. The growth of inheritance law cannot be separated from the development of the Courts as one of the perpetrators of judicial power in Indonesia.²

In the sphere of the Religious Courts, particularly in South Kalimantan, it is noteworthy that not all cases under their absolute authority, possess codified material legal sources in the form of legislation. This is because judges rely on the guidelines provided by Islamic inheritance law, derived

from the Qur'an and Hadith, which are elaborated in books of inheritance jurisprudence. The jurisprudential works govern the transfer of ownership rights to inheritances (*tirkah*) among heirs, specifying entitlements and determining the respective shares to be distributed.

Judges assume a paramount role as the linchpin of the judicial system within a court institution. They serve as vital figures entrusted with the crucial task of upholding and enforcing both formal and material laws. As the ultimate custodians of justice, they bear the greatest responsibility for safeguarding and preserving the rule of law, as well as occupying a position of immense significance while carrying a substantial workload. The judiciary serves as the crucible in which legal outcomes are forged, to deter and mitigate all forms of injustice, thereby ensuring the maintenance of public tranquillity. It is through the discerning rulings of judges that legal principles are applied, ultimately shaping the landscape and upholding societal harmony.

Judges are also key actors who functionally exercise judicial power, and must understand the scope of their duties and obligations as stipulated in laws and regulations.³ In the

¹ Basiq Jalil, *Pengadilan Agama di Indonesia* (Jakarta: Kencana Prenada Media Group, 2006), p. 147.

² Hamzah, "Peranan Peradilan Agama Dalam Pertumbuhan Dan Dinamika Hukum Kewarisan Di Indonesia," *Al-Syakhshiyah Jurnal Hukum Keluarga*

Islam dan Kemanusiaan 2, no. 2 (2020): 131DOI:10.35673/as-hki.v2i2.921

³ Kusumaatmadja Mochtar, *Fungsi dan Perkembangan Hukum dalam Pembangunan Nasional*, (Bandung: Lembaga Penelitian Hukum Dan Kriminologi

territory of Indonesia, they have duties and obligations normatively regulated in Law Number 48 of 2009 concerning Judicial Power. These include judging according to the law without discriminating against people (article 4 paragraph 1), and assisting justice seekers to achieve a simple, fast and low-cost trial (article 4 paragraph 2). Furthermore, judges are duty-bound to diligently examine and adjudicate cases without the option to refuse or dismiss them on the grounds of the purported absence or ambiguity of applicable laws (article 10 paragraph (1)),⁴ and should also provide information, considerations and advice on legal matters when requested (article 15). Judges are obliged to explore, follow and understand legal values and a sense of justice within the society (article 5 paragraph 1).

The concept of law extends beyond merely written statutes, encompassing the broader realm of legal values that thrive and evolve within society. It is imperative for judges to continually study and explore these values, as they contribute to the pursuit of justice. This exploration may lead to diverse interpretations and outcomes, reflecting the creative nature of judicial decision-making. However, within a legal system that has established codified legal sources, it is less likely to encounter significant discrepancies in decisions. The purpose of codification is to streamline the legal process, fostering certainty and uniformity or unification. By providing clear and standardized guidelines, codification minimizes variations in judicial outcomes and promotes consistency in the application of the law.

One of the authorities of the religious court without a codified source of law in a formal legal form is inheritance cases. The authority in resolving inheritance disputes is emphasized in Law Number 3 of 2006

concerning amendments to Law Number 7 of 1989 concerning Religious Courts. In the elucidation of Article 49 of the law, it states that:

“What is meant by inheritance is determining who is the heir, inheritance, share of each heir, and distribution process, as well as a court decision at the request of a person regarding the determination of who is the heir and share allocation.”

The enactment of Article 49 of Law Number 3 of 2006 also states the abolition of provisions concerning the choice of law for Muslims in the settlement of inheritance. The elucidation of the Law, which states: “The parties before the lawsuit can consider choosing what law will be used in the distribution of inheritance,” is declared removed.

Judges are always required to remain guided by the provisions of existing laws and regulations when faced with legal issues. However, when the law does not have the strength as a formal source in the form of legislation, creativity is needed to conduct legal research to realize a sense of justice, certainty and expediency.

Several discovery methods allow cases to be decided through the discretion of judges to realize progressive law. Due to the possibility of judicial discretion, judges are confronted with cases that occasionally create an impression of legal injustice despite conforming to established norms. Moreover, certain cases of inheritance within the Religious Courts system, lack any form of legal norms.

In the Big Indonesian Dictionary, discretion is defined as the freedom to make personal decisions in every situation

Fakultas Hukum Universitas Padjadjaran, Binacipta, 1986), p. 319-20

⁴ Yudha Bhakti Ardiwisastara, *Penafsiran dan Konstruksi Hukum*, (Bandung: Alumnus, 2012), p. 1

encountered.⁵ The word "decision" in English encompasses various meanings, including wise conduct, individual judgment, and the freedom of decision-making.⁶ Discretion is defined as the freedom to select, interpret, consider, or make decisions. In Dutch, it is referred to as "Descreationair," which, according to the Black Law Dictionary, means exercising wisdom in determining an action based on the provisions of legislation or applicable law, while considering discretion or fairness.⁷

Islamic studies include this discretion as part of *ijtihad* to address legal issues that exist in Muslim society. This indicates that the *mujtahids* when carrying out their *ijtihad* do not only focus on the texts of the Qur'an and hadith but also consider the rules behind the texts. In determining the law due to *ijtihad*, the provisions of the text should be considered by paying attention to the purpose of establishing the law or *maqasid syariah*.⁸

Discretion as an authority is regulated in laws and regulations related to the duties of government officials. The utilization of discretionary authority is justified by when the applicable laws and regulations do not address the matter, or when the existing regulations provide unclear guidance. However, these discretionary actions are primarily carried out in times of emergencies and urgent situations.⁹

In the realm of implementation and law enforcement, specifically in the judiciary,

discretion often arises when the law authorizes judges to select from several options. In the context of the judge's authority when trying a case, discretion is a form of freedom to determine attitudes and policies, freedom of thought and to take action on a problem. This is because the law has given sufficient discretion to the judge as a form of judicial independence.¹⁰

Following the settlement of inheritance cases (which do not have a formal legal basis and are codified in statutory regulations) at the Religious Courts in South Kalimantan, judges are required to explore legal sources as a basis for their considerations, including local community habits or culture. This is because when inheritance disputes are adjudicated, the verdict is expected to fulfil a sense of justice and benefit the seekers, without neglecting the aspect of legal certainty.

The sociological condition of the *Banjar* Muslim community in South Kalimantan has an inheritance phenomenon different from Muslim communities in other areas. Based on Gusti Muzainah's research, the community in South Kalimantan, known as the *Banjar*, has a varied inheritance system. In addition to adhering to the Islamic inheritance system (bilateral individual) as the first alternative, some *Banjar* people also use a combination of the individual and the mayoral inheritance systems.¹¹

From the results of an initial study, several decisions contained legal facts in the trial and

⁵ Indonesian Dictionary, *Kamus Besar Bahasa Indonesia*, (Jakarta: Balai Pustaka, 2011), p. 208

⁶ Bryan A. Garner, *Black's Law Dictionary, for the iPhone and iPad*, (USA: Thomson Reuters, 2009), p. 534

⁷ Darmoko Yuti Witanto, *Diskresi Hakim Sebuah Instrumen Menegakkan Keadilan Substantif dalam Perkara-perkara Pidana*, (Bandung: Alfabeta 2013), p. 67

⁸ Islamiyati, "Diskresi Dalam Penegakan Hukum Di Peradilan Agama (Studi Kasus di Pengadilan Agama Kota Semarang)," *Prosiding Seminar*

Nasional Hukum Islam, 19 September 2012, (Semarang: Fakultas Hukum Universitas Diponegoro, 2012), p. 70

⁹ Lutfil Ansori, "Diskresi Dan Pertanggungjawaban Pemerintah Dalam Penyelenggaraan Pemerintahan," *Jurnal Yuridis* 2, no. 1 (2015): 134-50. <https://doi.org/10.35586/v2i1.165>

¹⁰ Witanto, "Diskresi hakim sebuah instrumen menegakkan keadilan substantif dalam perkara-perkara pidana," 67.

¹¹ Gusti Muzainah, *Asas Kemanfaatan Tentang Kedudukan Perempuan Dalam Hukum Waris Adat*

paid attention to the local cultural values of the *Banjar* people. Based on the above background, this study focuses on the local culture considered by judges in their discretion in verdicts on inheritance disputes at the Religious Courts in South Kalimantan.

Results and Discussion

Religious Courts in Indonesia and Their Authority in Inheritance Cases

Judicial power is a position that always exists in every state administration. It is one of the state apparatuses with a fundamental function to resolve disputes between individuals, society, and the state.¹²

There are various problems faced when a country designs its justice system. In principle, Indonesia adheres to the ideology and conception of a rule of law, and a judiciary that is independent and free from the influence and interference of other state powers demanding different consequences. Law above all means the life of the state and society based on the rule of law is regulated and governed by law.

Independent judicial power can be viewed as a reflection of the 'Universal Declaration of Human Rights', and the 'International Covenant on Civil and Political Rights',¹³ which regulates an "independent and impartial judiciary". The Universal Declaration of Human Rights, states in Article 10, "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal in the

determination of rights and obligations". Everyone has the right in full equality to be heard in public and fairly by an independent and impartial court in terms of determining rights and obligations.

Article 1 number (1) of Law Number 50 of 2009 concerning the second amendment to Law Number 7 of 1989 on Religious Courts states that: "Religious Courts are trials for Muslims". According to the universal Islamic concept, justice covers all types of cases. The types of cases that become competent are according to the Islamic religion, but the Religious Courts are limited in nature as stipulated in Article 2 jo.¹⁴

The mention of Religious Courts is based on several foundations, namely: The theological foundation of the power and will of Allah SWT concerning law enforcement and justice, The historical foundation between the Religious and Islamic courts developed since the time of the Prophet Muhammad, Juridical foundation referring to the constitution and laws, and The Religious Courts as the product of interaction between Islamic and national elites.¹⁵ These special criteria concern the authority to adjudicate in certain fields of law or legal subjects.¹⁶ It is stated to be a special court because the Religious Courts specifically deal with certain cases concerning certain groups of people. The purpose of this specific case is to highlight that not all legal matters can be resolved. These courts exclusively handle specific civil and not criminal cases, except for those located in the Aceh Darussalam region. Furthermore, the particular civil case

Masyarakat Banjar (Yogyakarta: Pustaka Akademika, 2016), pp. 91-92

¹² Walter F. Murphy et al., *Courts, Judges, and Politics: An Introduction to the Judicial Process*, vol. 61 (Random House New York, 1961), p. 45

¹³ Oemar Seno Adji, *Peradilan Bebas Negara Hukum* (Jakarta: Erlangga, 1980), p. 251; International Covenant on Civil and Political Rights, Adopted and opened for signature, ratification and accession by General Assembly resolution 2200 A (XXI) of 16

December 1966, Entry Into Force: 23rd March 1976, in agreement with Article 49.

¹⁴ Roihan A. Rasyid and A. Roihan, *Hukum Acara Peradilan Agama*, (Jakarta: Rajawali Pers, 2016), p. 6

¹⁵ Hasan Bisri, *Peradilan Islam dalam tatanan masyarakat Indonesia* (Bandung: Remaja Rosdakarya, 1997), p. 41

¹⁶ M. Hadjon Philipus, *Perlindungan Hukum Bagi Rakyat Indonesia*, (Surabaya: Bina Ilmu, 1987), p. 116

is stipulated in Article 49 of Law Number 3 of 2006, which amends Law Number 7 of 1989 concerning the Religious Courts. The term "certain legal subjects" refers to specific groups of people.

The term Religious Courts is used to refer to Islamic Courts due to the nature of cases handled, which are exclusively related to Islamic law. The types of cases tried do not encompass the entire scope of the universal Islamic judiciary. Furthermore, the courts can be described as Islamic courts with limitations, as they have been adjusted (*mutatis mutandis*) to suit the conditions and circumstances specific to Indonesia.¹⁷

As one of the perpetrators of judicial power, the Religious Courts have relative and absolute competence, which is a term from the Latin language, namely *competentia* meaning the authority of a person.¹⁸ In Indonesian, the term is defined as the authority of the court or judiciary¹⁹ and known as *area* in Arabic.²⁰ The term competency can be used in two senses, first, relating to institutions or as the capacity of an agency to perform an activity. Second, relating to the mental ability to understand problems and make decisions. Therefore, competence is the granting of power, authority or rights to an institution, a person, or a court²¹.

Absolute authority is explained as the distribution of power between judicial bodies, seen from the type of court concerning the granting of powers to

adjudicate, and in Dutch, it is known as *attributie van rechtsmacht*. Absolute competence is power related to the types of cases and disputes concerning the distribution of power between judicial bodies, seen from the type of court concerning the granting of power to adjudicate. Article 2 of Law Number 3 of 2006 concerning changes to Law Number 7 of 1989 stated that: "Religious Courts are one of the perpetrators of Judicial Power for Muslims justice seekers regarding certain cases regulated in this Law."

Article 49 of Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 on Religious Courts includes marriage, inheritance, will, grant, *waqf*, *zakat*, *infaq*, *sadaqah*, and sharia economics. Therefore, the courts have the authority to receive, examine, decide, and resolve cases at the first level. The High Religious Courts have the authority to resolve at the appeal level, between Muslim justice seekers.

Judge's Discretion

The exercise of legal discretion referred to as judge discretion, represents an innovative approach. It embodies the freedom to independently render decisions in situations or cases where there are no adequately codified laws and regulations. This discretion emerges as a consequence of the perceived inadequacy of the principle of legality in fulfilling the aspiration for the law to generate welfare for its citizens.²² Discretion is a policy

¹⁷ Abdul Basiq Djalil, *Peradilan Agama Di Indonesia, Kencana* (Jakarta: Kencana, 2006), p. 10

¹⁸ Basah Sjahran, *Eksistensi dan Tolok Ukur Badan Peradilan di Indonesia*, Edisi ke-4 (Bandung: Akemui, 2010), p. 65

¹⁹ Zainul Bahri, *Kamus Umum Khususnya Bidang Hukum Dan Politik*, (Jakarta: Angkasa, 1996), p. 65

²⁰ Rahi Ba'albagi, *Al Maurid*, (Beirut: Dar al-Ilmi li al Malayin, 1996), p. 1247.

²¹ Syahran Basah, p. 66. When talking about the competence of judges in Islam, what is meant is the individual. This is because in Islamic history,

judicial institutions have not been formed as they are today. The Khalifah immediately appointed judges and assigned them to the regions. So the judges act individually, not representing an institution. However, when talking about the competence of judges at this time, what is meant is the granting of rights to institutions or institutions.

²² Nadhilah Filzah, "Kewenangan Hakim Menerapkan Diskresi dalam Permohonan Dispensasi Nikah (Studi Kasus di Mahkamah Syar'iyah Jantho)" *PhD Thesis*, UIN Ar-Raniry Banda Aceh, 2018, p. 452

divided into limited and free forms when viewed according to its nature.²³

Limited discretion: In this scenario, discretion arises when the law grants officials the freedom to select policies from a set of alternatives outlined by the law. Within this constrained discretion, officials are restricted from making decisions that deviate from the dictated regulations.

Free discretion. This discretion arises due to the absence of specific regulations governing the matter or the provisions of the law inflexible to be applied directly to a particular problem in its current form. In this case, an official can determine a policy to fill a legal vacuum or determine other attitudes based on the considerations to provide better benefits.

Similarly, when a judge interprets a mandate as a testament from the heir, discretionary authority is exercised. This is because, when referring to the provisions of wills in the laws and regulations, particularly in the Criminal Code, it is subject to the requirement stated in Article 931, where a testament must be in the form of self-written or olographic, public or secret, and closed deeds. However, many elements of the mandate process, as described in the decision, are not fulfilled. In these cases, the mandate is conveyed verbally or through messages directly by the heir during their lifetime.

The "mandate" used as the basis for determining the share of the heirs in the decisions which become legal material is more indicative of a more flexible embodiment of Islamic law. Within this realm of free discretion or authority, judges can address legal gaps or the absence of written laws by implementing other policies based on

their considerations. The primary objective of exercising this authority is to ensure justice and to provide benefits accordingly. Therefore, this method can be used as an alternative to overcome the absence of law when dealing with social problems that require a solution, including when judges are faced with legal facts.

The exercise of judicial discretion in decisions on the implementation of mandates incorporates the accommodation of local cultural values or local wisdom, referring to the concept of law. It encompasses legal values and a sense of justice within the society, which may manifest in the form of unwritten laws or customs. This recognition allows judges to consider the unique cultural context and societal norms when making decisions related to mandates²⁴. The values accommodated in subsequent decisions form jurisprudence, which can serve as a reference for other judges or policymakers. Over time, this jurisprudence can transform into positive law. Local wisdom is considered as capable of enduring and adapting to changes that take place in society. It remains relevant and continues to interact with evolving circumstances and contexts. Therefore, in resolving disputes in court, judges should consider various aspects, including local socio-cultural aspects or wisdom. This consideration is essential because it acknowledges the possibility of legal disputes involving local cultural values. The perceptions, attitudes, and behaviors towards the law are greatly influenced by the cultural values that exist and underpin the legal culture of the community. The concept of legal culture encompasses all forms of cultural behavior exhibited by humans. Recognizing and understanding these

²³ Witanto, "Diskresi hakim sebuah instrumen menegakkan keadilan substantif dalam perkara-perkara pidana," 71-72.

²⁴ Lilik Mulyadi, "Eksistensi Hukum Pidana Adat Di Indonesia: Pengkajian Asas, Norma, Teori, Praktik

dan Prosedurnya," *Jurnal Hukum dan Peradilan* 2, no. 2 (2013): 225-227
<http://dx.doi.org/10.25216/jhp.2.2.2013.225-246>

dynamics is crucial in addressing disputes and ensuring the harmonization of local values with the legal system.²⁵

As quoted by Sunarjati, Friedman argued that every society has different legal culture.²⁶ Banjar community possessed diverse manifestations of local culture. These cultural nuances can be duly considered by the judge as relevant factors when deliberating upon his decision.

Empirical evidence elucidates that the legal framework governing society encompasses legislative enactments (positive law) and incorporates religious and customary laws. From an anthropological perspective, the existence of self-regulatory mechanisms within communities serves as a localized legal system, serving the purpose of upholding social order.²⁷ Therefore, when the judge considers the sacredness and obligatory nature of a mandate under the wishes of the involved parties, it reflects a decision-making process that incorporates sociological aspects. This form of decision-making recognizes the independence of judges, aligning with the inherent essence of discretion, which encompasses their autonomy and authority as agents of legal enforcement. The role of judges in enforcing the law involves exercising discretion by making decisions solely dictated by rigid legal regulations and influenced by personal judgment. This perspective resonates with L. Wayne's reference to Roscoe Pound's theory, where discretion essentially navigates the

realms of law and ethical considerations narrowly defined as morals.²⁸

The essence of this discretion is in line with the position and authority of judges as law enforcers within the realm of judicial power actors. In legal science, *Contra Legem* is an expression, where judges have the authority to deviate from existing written legal provisions to realize justice and benefit. In using this *Contra Legem*, legal considerations must be sufficiently clear and sharp.²⁹

Discretion of Waris Case Judges at the South Kalimantan Religious Court

The deliberation of inheritance cases within the Religious Courts necessitates a comprehensive understanding of the law and the terminologies employed in this context. In the adjudication of such cases, the material basis often relies on the provisions outlined in Islamic Inheritance Law, commonly referred to as *Al-Faraidh*. *Al-Faraidh* as the plural of *lafazh faridha* is interpreted as the meaning of *lafadz mafrudha*.³⁰ This word is the plural of *faraidah* which means provisions, and in *syari'at*, it means the divisions determined for the heirs.³¹

The enactment of Law Number 7 of 1989 concerning Religious Courts solidified legal standing with the establishment of the Compilation of Islamic Law, which serves as a subsequent development in acknowledging the presence of Religious Courts. The Compilation of Islamic Law holds significant importance as a crucial legal reference used by the Religious Courts to substantively

²⁵ Hadikusuma Hilman, *Pengantar Antropologi Hukum*, (Bandung: Citra Aditya Bakti, 2004), p. 4

²⁶ Sunaryati Hartono, *Kapita Selekt Perbandingan Hukum*, (Bandung: PT. Citra Aditya Bakti, 1991), p. 9.

²⁷ Franz von Benda-Beckmann dan Keebet von Benda-Beckmann, "Islamic law in a plural context: The struggle over inheritance law in colonial West Sumatra," *Journal of the Economic and Social History of the Orient* 55, no. 4-5 (2012): 67-75 <https://www.jstor.org/stable/i40081133>.

²⁸ Wayne R. LaFave and Frank J. Remington, *Arrest: The decision to take a suspect into custody* (Little, Brown Boston, 1965), p. 4

²⁹ M. Fauzan dan Ahmad Kamil, *Kaidah-kaidah hukum yurisprudensi*, (Jakarta: Kencana Prenada Media Group, 2008), p. 9

³⁰ Fathur Rahman, *Ilmu Waris*, (Bandung: al Ma'arif, Cet. III, 1981), p. 31

³¹ Fathur Rahman, *Ilmu Waris*, (Bandung: al Ma'arif, Cet. III, 1981), p. 31

address cases under their jurisdiction, including inheritance-related matters.

The implementation of the Religious Courts' environment is carried out through a hierarchical system at the primary and appellate levels. In the specific context of South Kalimantan, which falls under the jurisdiction of the Banjarmasin Religious Court Environment, there are a total of 13 courts. This information is derived from a comprehensive study of legal materials extracted from the Directory of Supreme Court Decisions of Indonesia, accessible through the website: <https://decision3.SupremeCourt.go.id/dir/index/category/civil-religious-1.html>. A thorough examination of the legal materials, specifically focusing on inheritance cases spanning from 2018 to 2022, has shown a successful resolution of 47 cases. During the settlement process, judges exercised their discretion while considering different factors, including the unique cultural aspects of the local Banjar community.

To clarify the jurisdiction of the Religious Courts regarding inheritance disputes, Article 49, letter (b) of Law Number 3 of 2006, which amends Law Number 7 of 1989 concerning the Religious Courts, explicitly elaborates on their authority. This authority encompasses the following aspects, determining the rightful heirs, establishing the inheritance, assigning the respective share, and overseeing the distribution of the inheritance.

The analysis of various judgments shows that the judge's exercise of discretion is significantly influenced by the local culture of the Banjar community. Concerning the authority to determine the share of each heir, discretion is observed in instances where the validity of pre-trial inheritance distribution is recognized. This recognition is based on the testamentary wishes of the deceased, as evident in Decision Number:

0105/Pdt.G/PA.Amt, where inheritance is distributed between male and female heirs. Additionally, another Decision Number: 631/Pdt.G/PA.Mtp shows a case where inheritance is allocated disproportionately to one specific heir, exceeding one-third of the total assets.

In the case of the Amuntai Religious Court Number: 0105/Pdt.G/PA.Amt, the outcome of a legal dispute between siblings, who are heirs, has been determined. The contested inherited property had previously been apportioned equally among the sons and daughters of the deceased heir in the trial proceedings. This division was carried out under the testator's wishes, as expressed in their testamentary instructions before demise.

One of the factors considered was that the distribution of the inheritance was conducted before the trial, adhering to the principle of equitable allocation between male and female beneficiaries, as directed by the testator. After receiving a request for the distribution of the inherited assets, the judge acknowledged that the division of the estate had been executed in compliance with the testator's instructions. Consequently, the lawsuit on the contested inheritance was dismissed.

In line with the Martapura Religious Court Number: 631/Pdt.G/2019/PA. Mtp), the back/posita of this case illustrates that the heir died leaving several heirs consisting of a wife and four children. Furthermore, before dying, there was a mandate containing the distribution of inheritance to the heirs.

Based on the trial proceedings, it was established that a valid testamentary disposition existed, prescribing the distribution of the inheritance according to the ratio. The panel of judges ascertains the division of the estate under the established ratio. The testament of the deceased heir to the beneficiaries is considered a binding component of the inheritance, even though

one of the beneficiaries receives a portion exceeding the limit set by the will (1/3) of the total inheritance. Judges justified this decision by citing legal facts, namely that the other heirs, in their pretrial confessions, expressed no objection to carrying out the mandates of the testator. These legal considerations are grounded in the Compilation of Islamic Law, specifically Article 195, paragraphs (1), (2), (3), and (4), as well as Article 1926 of the Civil Code, on evidentiary matters involving confessions.

The aspect of these rulings lies in the exercise of discretion by the judge. Instead of adhering to the provisions outlined in the Islamic inheritance system, which has conventionally been employed, the allocated portion is determined based on the mandate of the heir as a fundamental element for legal deliberations. Furthermore, *Amanat* embodies a cultural practice within the *Banjar* society, denoting a message transmitted to the beneficiaries. The specific clause equalizes the portions assigned to sons and daughters (as exemplified in Decision Number: 0105/Pdt.G/PA.Amt), as well as the decision that assigns significantly divergent shares to different heirs (as evident in Number: 631/Pdt.G/2019/PA).³²

The consideration arises when judges uphold the distribution of inheritance based on the mandate, thereby exercising discretion influenced by the local cultural customs. Discretion refers to the exercise of wisdom, while decisions are based on regulations, laws, or applicable statutes, grounded in thoughtful deliberation, fairness, and equity.³³

Table 1. Cultural Considerations in the Discretion of Judge Decisions

Decision Judge	Discretion	Cultural Consideration
Decision Number: 0105/Pdt. G/PA.Amt	Distribute inheritance with equal processing between male and female heirs	<i>Amanat</i> (in Banjar society highly respected by heirs)
Decision Number: 631/Pdt.G /PA. Mtp	Distributing inheritance to one of the heirs whose level is much different from the others, even more than (1/3) one-third of the assets	<i>Amanat</i> (in Banjar society highly respected by heirs)

Conclusion

In conclusion, the investigation into the decisions of inheritance disputes at the Religious Courts in Kalimantan analyzes the crucial role played by the sociological aspect of local culture, specifically the inheritance's mandate, in the decision-making process. Judges often rely on the mandate of the heir, translated as the foundational basis for the division of the inheritance's value when faced with the task of distributing an object that does not conform strictly to the established Islamic inheritance system. The mandate of the heir holds immense reverence within *Banjar* society and is deemed paramount in terms of its completion and fulfilment. Consequently, judges exercise their

³² Muzainah, *Asas Kemanfaatan Tentang Kedudukan Perempuan Dalam Hukum Waris Adat Masyarakat Banjar*, p. 106

³³ Puspa Yan Pramadya, *Kamus Hukum*, (Semarang: Aneka Ilmu, 1977), p. 230.

discretionary powers in these matters. The exercise of judicial discretion represents a creative approach to render decisions that uphold justice and yield favorable outcomes, even though such decisions deviate from the previously upheld provisions.

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