



Decision analysis number 23.pdt.g/2015/pn. GST concerning legacy in Chinese ethnics associated with traditional law perspective

Shafira Adzana M¹, Ilyas², Novi Sri Wahyuni²

¹ Student, Faculty of Law, Syiah Kuala University, Banda Aceh, Indonesia

² Lecturers, Faculty of Law, Syiah Kuala University, Banda Aceh, Indonesia

Abstract

The Chinese community in Indonesia is one of the population groups which according to Article 131 IS applies to the Civil Code, but in implementation not all the provisions stipulated in the Civil Code are followed and sometimes even ignored. In the distribution of inheritance in Chinese customs, the position of sons and daughters is different. Boys have a higher position in the family, while in the Civil Code the distribution of inheritance between girls and boys is the same. In this case it brings legal consequences, namely about which law should apply. The purpose of this study is to find out and explain how to resolve disputes over the distribution of inheritance among Chinese people who do not agree to the distribution based on customary law, the judges' judgments on inheritance disputes for ethnic Chinese and the principles of justice, benefits and legal certainty of the decision of the Gunung Sitoli District Court. The research method used is normative juridical which is supported by empirical data. The results of the study found that the Chinese community did not entirely regulate family inheritance using Chinese customs. Family disputes that are resolved in court using civil law. The position of the heirs in the distribution of inheritance in the form of a guesthouse is in accordance with the rules. The distribution of inheritance in the decision No.23/PDT.G/2015/PN.Gst already reflects the principle of justice for both parties, contains the principle of benefit for both parties but for legal certainty using civil rules not according to Chinese customary law. It is recommended to the court to pay attention to considerations regarding the settlement of inheritance disputes in Chinese customs. Because it involves customs and specifically regarding aspects of the division of inheritance.

Keywords: inheritance, Chinese, customary law

Introduction

Background

During the colonial period, the Dutch East Indies government divided the Indonesian population into 3 (three) groups, namely: the European Group, the Indigenous Group, and the Foreign Eastern Group. The classification of the population also causes each population group to use its own civil law, namely for the European group and the Foreign East group, the West Civil Law (*Burgerlijk Wetboek*) applies, while for the Indigenous or native Indonesian group, customary law applies. So based on the classification of the population, it is known that ethnic Chinese use the provisions of Western Civil Law (*Burgerlijk Wetboek*/ Book of Civil Law Laws (hereinafter abbreviated as the Civil Code).

Indonesia is a country that recognizes the validity of customary law. Customary law is a rule or norm that exists in society, comes from habits and is carried out from generation to generation. Customary law is implicitly recognized in the 1945 Constitution of the Republic of Indonesia which reads "The 1945 Constitution is a written law, while in addition to the Constitution, the unwritten legal basis is also applicable. basis that arises and is maintained in the practice of state administrators, even though it is not written down."

Inheritance law is one part of civil law as a whole and is the smallest part of family law. In the inheritance law system in Indonesia, there is still a plurality of legal orders because currently there are 3 (three) kinds of inheritance law systems that are applicable and accepted by the people of Indonesia,

namely: Islamic Inheritance Law, Western Inheritance Law, and Customary Inheritance Law. Each of these laws has a different character from the others.

In some regions in Indonesia, the distribution of inheritance for heirs of Chinese descent uses traditional Chinese inheritance and then raises a problem regarding inheritance to Chinese heirs, this problem regarding the distribution of inheritance in Chinese customs where the position of sons and daughters is not the same.

The Chinese community in Indonesia is one of the population groups which according to Article 131 IS applies to the Civil Code, but in implementation not all the provisions stipulated in the Civil Code are followed and sometimes even ignored. Even though they have become part of Indonesian society, in terms of the distribution of inheritance, they still use Chinese customs, as it is known that the distribution of inheritance in Chinese customs is different for boys and girls. Boys have a higher position in the family, while in the Civil Code the division of inheritance between girls and boys is the same. This is contrary to the provisions of Article 852 of the Civil Code which reads (Book of Civil Law). "Children or all of their descendants, even if they are born from other marriages, inherit from their parents, grandfather, grandmother or all of their next blood relatives in a straight line upward, with no difference between male or female and no difference based on birth first."

In the Chinese family, boys have a higher position than girls, while in the Civil Code the distribution of inheritance to the heirs of girls and boys is the same. Of course, in this

case it brings legal consequences, namely about which law should apply.

The implementation of inheritance does not rule out the possibility of disputes or disputes. Inheritance dispute itself can be interpreted as a conflict between two or more parties who have different interests towards one or more objects of inheritance which can cause legal consequences for both. The existence of differences of opinion or disputes regarding inheritance can lead to disputes in inheritance. Inheritance problems often arise because one of the heirs is dissatisfied with the distribution of inheritance he receives.

In the decision of the Gunungsitoli District Court No. 23/pdt.g/2015/PN.GST stated that the plaintiff requested an explanation from the District Land Agency. Nias related to land ownership which is located on Jln. Diponegoro, No. 432, Miga Village, Gunungsitoli District, Gunungsitoli City (formerly Nias District), which is better known as Wisma Soliga, based on a SHM. No. 154, an area of 7,204 m², and the District Land Agency. Nias in accordance with his letter Number: 71/600/12.04/IV/2015, dated 30 April 2015, explained that the SHM. No. 154, dated January 22, with a letter measuring 37/Miga/2001, dated December 19, 2001, with an area of 7,204 m², still registered in the name of Gandra Quin (parent of the Plaintiffs).

The plaintiffs have also asked the Defendant to divide the inheritance belonging to the Plaintiffs' parents along with the results of the Wisma Soliga business in a fair and transparent manner, but the Defendant did not respond and even Defendant Philips Gan expelled Plaintiff I Venny Gan, so that he would not stay anymore. at Wisma Soliga, and of course this was not carried out by Plaintiff I Venny Gan considering that Wisma Soliga belonged to Plaintiff I Venny Gan's parents.

As a result of the actions carried out by the Defendant by not dividing the inheritance, as well as not being transparent about the results of the Wisma Soliga business and even expelling Plaintiff I Venny Gan, of course it shows the bad faith of the Defendant who wants to own the inheritance of the late Gandra Quin, even though the Plaintiffs are entitled because they are also the heirs of the late Gandra Quin.

As a result of the actions carried out by the Defendant by not dividing the inheritance, as well as not being transparent about the results of the Wisma Soliga business and even expelling Plaintiff I Venny Gan, of course it shows the bad faith of the Defendant who wants to own the inheritance of the late Gandra Quin, even though the Plaintiffs are entitled because they are also the heirs of the late Gandra Quin.

Article 832 of the Civil Code states "According to the law, those who are entitled to become heirs are blood relatives ... etc.", then of course the article explicitly explains that the Plaintiffs, who are biological children of the late Gandra Quinn and the late Imelda, are also legal heirs legal rights to the inheritance of Wisma Soliga object of dispute.

Gunungsitoli District Court Decision No. 23/pdt.g/2015/PN.GST there was an inheritance dispute wherein the plaintiffs, namely Venny and Stevenson, asked the defendant, namely Philips, to share the inheritance belonging to the parents of the plaintiffs along with the results of their efforts, one of which was Wisma Soliga fairly. and transparent, but the defendant did not respond and even the defendant Philips Gan expelled the plaintiff I Venny Gan, so that he would no longer live at Wisma Soliga, and of course this was not carried out by the plaintiff I Venny gan, considering that the Soliga guesthouse

belonged to the parents of the plaintiff I Venny bro. The actions carried out by the defendant by not dividing the inheritance, and not being transparent about the results of the Wisma Soliga business and even expelling the plaintiff I Venny Gan, of course showed the bad faith of the defendant who wanted to own the inheritance of the late Gandra Quin, even though the The Plaintiff is entitled because he is also the heir of the late Gandra Quin.

In this case, inheritance disputes are not divided according to Chinese customs, even though both parties adhere to Chinese customs. In the decision of the Gunung Sitoli District Court No. 23/pdt.g/2015/PN.GST the witness also stated that the wealth distribution system for the Chinese community, especially those of Chinese descent in Gunungsitoli, was usually given to sons, where the eldest son had a bigger share, while the daughter was given a larger share. only a gift from their parents.

Research Methods

The research method used is normative with an empirical approach (normative-empirical) with the approach method used is a statutory approach (statue approach), and a conceptual approach (conceptual approach). The sources of legal materials in this study are primary legal materials, secondary legal materials, and tertiary legal materials related to Chinese inheritance.

Discussion

1. Settlement of Inheritance Distribution Disputes in Chinese Society

a. Division of Inheritance According to Civil Law

In civil law regulations there are rules regarding family law while inheritance law itself is one part of family law, so hereby declares that inheritance law has a close relationship with the family environment where members are humans because every human being will experience events. nature called death every person who has died must have someone who becomes the transfer of his wealth Death that cannot be known causes the emergence of a legal consequence, namely the procedure for transferring the rights and obligations of someone who has died which is regulated in inheritance law. Indonesia still has not reached a point to agree on the definition of inheritance law itself, so that the definition of inheritance law is still very diverse in Indonesia.

In the Civil Code, what is meant by heirs are family members who are legal or out of wedlock as well as husbands and wives who live outside of marriage and husbands and wives who live the longest (Article 832 of the Civil Code). all heirs automatically by law obtain ownership rights over all goods, all rights and all receivables who died. According to the Civil Code there are two ways to obtain inheritance, namely heirs determined by law and heirs determined by a will.

According to Article 914 of the Civil Code, the amount (*Legitieme portie*) is as follows:

1. If only one child has an absolute share of (half) of the share that must be received
2. If two children the absolute share is 2/3 (two thirds) of what should be inherited by each
3. Three or more children who are left behind by an absolute share of each child is (three quarters) of the share that each of them would have received according to the law.

In case No.23/PDT.G/2015/PN.Gst stated that Wisma Soliga the object of the a quo dispute must be divided into 3 parts, with the distribution as follows:

1. The land and the building in it with an area of approximately 2,401 m², belong to the Plaintiff I Venny Gan, along with all the legal consequences;
2. The land and the buildings therein with an area of approximately 2,401 m² belong to Plaintiff II Stevenson, along with all the legal consequences;
3. The land and the buildings therein with an area of approximately 2,401 m² belong to the Defendant Philips Gan, along with all the legal consequences;

b. Division of Inheritance according to Chinese Customary

Law Indigenous Law Communities in Indonesia exist or can be divided into 2 (two) groups according to the composition of society, namely based on the regional environment (territorial) and based on kinship (genealogy). From this, it can be seen that the Chinese community in the Nias area has a community system that is based on genealogy, where the people believe that they come from the same lineage, namely Chinese descent from both the Khek and Hokkian tribes, so they believe and carry out things in accordance with prevailing customs, beliefs and customs. Because it is known that indigenous peoples are a society that forms a common life, whose citizens live together for a long period of time, resulting in culture.

In Chinese Customary Law, only sons are considered as the legitimate successor of the lineage. A daughter because she is considered to one day go to her husband's place and provide offspring for her husband's clan, she is not considered as the successor of the lineage. A daughter has no right to inherit because she will marry a man from another family, using her husband's surname, and her offspring are brought into the man's family. If she is given an inheritance, the inheritance will go to someone else, namely her husband's family. To daughters, parents only give what is called "dowry" in the form of furniture, clothes, jewelry, some money when she gets married, but never in the form of land or houses.

Inheritance rights in Chinese Customary Law are accompanied by a set of obligations, such obligations as:

1. If the parents concerned are old and unable to work, it is the son who is obliged to take care of, protect and support his parents.
2. After the parents die, the boys are obliged to take care of the graves, ash houses or ash tables of their parents and ancestors in the form of holding certain ceremonies at certain times.
3. After the parents die, the son is obliged to replace the parent's role as a role model, leader and adviser, especially for the eldest son.

In case No.23/PDT.G/2015/PN.Gst, witness Tapak Wong as one of the Chinese Traditional Leaders who is considered to understand and know about the Customary Inheritance Law that applies to the Chinese community in Gunungsitoli is basically of the opinion that according to Chinese custom regarding There is a difference in the division of inheritance, namely still giving the eldest child more than the others, this happens because the Chinese take their descendants from the father's side or the family system is Patrilineal, so the eldest child is considered a substitute for

the parents so that he is responsible to the family so that their share is more but all children are entitled to receive a share.

c. Settlement of Inheritance Disputes in Chinese Society

Regarding inheritance in Chinese customs, it is different from the Civil Code system. Where the distribution of inheritance in Chinese customs, the position of boys and girls is different. Boys have a higher position in the family. This makes the position of women in receiving inheritance weak. So there was a dispute.

Disputes as a form of actualization of a conflict or conflict between two or more parties cannot be left alone, but must find a way out or a solution so that it is not prolonged and causes greater losses. The dispute can be in the form of:

1. The inheritance law system used As in the inheritance law system in Chinese customary law, the distribution of inheritance rights for boys is greater than for girls, while in the Civil Code it is considered the same share for boys and girls. In this case, girls do not get their rights as heirs. Some Chinese families have differences in the distribution of the inheritance law system used, for example during their lifetime the heir has not distributed his inheritance so that after death the heir's children have their own opinion on which law to use.
2. The settlement there are two ways, namely by mediation in the family or resolved in court. If a girl wants to claim her inheritance rights then she can take this matter to the Court because the Court will use the legal basis, namely the Civil Code while in the Civil Code the distribution of inheritance for boys and girls is distributed equally. Unfair distribution In a case where the eldest son controls most of the heir's property because he feels he has managed and developed the assets of the heir, he feels entitled to a bigger share than the other heirs. This division is considered unfair to the other heirs, although the other heirs also have sons but the eldest son does not give inheritance rights to other sons. If all the inherited assets are reversed by the eldest son, but the eldest son has agreed to share his inheritance fairly, the settlement method is by buying and selling without payment or buying and selling for free between the eldest sons (experts). first heir) with another son (other heirs).
3. form of inheritance Not all tangible inheritance, as well as the obligations imposed on the heirs, namely caring for the ashes of the ancestors. There are several cases where the heirs are unwilling or negligent in carrying out their obligations in caring for the ancestral ashes of the heirs. Settlement of this inheritance dispute by means of heirs can be reprimanded through family mediation if they do not carry out their obligations then the inheritance rights can be transferred.

In case No. No.23/PDT.G/2015/PN.Gst, Chinese people in general often have inheritance disputes. If there is, then the settlement of inheritance disputes according to Chinese custom is by way of deliberation within the family, with a mediator or neutral who can also give instructions, namely the person who is elder in the family or the person who is considered to be able to mediate the inheritance dispute.

2. Judges' Considerations on Chinese Ethnic Inheritance Disputes

a. Analysis of Judge's Consideration No.23/PDT.G/2015/PN.Gst Against Inheritance Disputes in Chinese Ethnic

The judge's consideration is one of the most important aspects in determining a judge's decision that contains justice and legal certainty, and contains benefits for the parties concerned so that the judge must be thorough, kind and careful in addressing a case.^[12]

The Gunungsitoli District Court which examines and hears civil cases at the first level has rendered the following decisions in cases between:

1. Venny Gan, female, Indonesian citizen, having her address at Jln. Diponegoro, No. 432, Miga Village, Gunungsitoli District, Gunungsitoli City, hereinafter referred to as CONVENTION I Plaintiff / REKONPENSION I ACCUSED;
2. STEVENSON, Male, Indonesian citizen, having his/her address at Jln. Binaka Airport, Simpang Pastoral Km. 15, Hotel Malaga, Kec. Idanoi, Gunungsitoli City, hereinafter referred to as Plaintiff of CONVENTION II / ACQUISITION OF REKONPENSION II;
3. PHILIPS GAN Als. PHILIP, Male, born in Gunungsitoli on July 10, 1973, Indonesian citizen, having his address at Jalan Diponegoro, No. 432, (Wisma Soliga), Miga Village, Gunungsitoli District, Gunungsitoli City,

The object of dispute in case No.23/PDT.G/2015/PN.Gst is the inheritance of the parents of the Plaintiffs and Defendants as stated in the SHM. No. 154, dated January 22, 2002 with an area of 7,204 m², An. GANDRA QUIN with an area of 7,204 m², it is in the field of lodging under the name WISMA SOLIGA.

The essence of the case is as follows:

1. Whereas on May 23, 1973, a marriage, both customary and governmental, was held between GANDRA QUIN (late) and IMELDA (late) in Gunungsitoli;
2. That from the marriage between GANDRA QUIN and IMELDA, 3 (three) children have been born, namely 1). PHILIPS GAN (Defendant), 2). STEVENSON (Plaintiff II), who was born in Gunungsitoli on April 4, 1975, and 3). VENNY GAN (Plaintiff I), who was born in Gunungsitoli on October 7, 1976;
3. Whereas IMELDA, who is the biological mother of the Plaintiffs (Plaintiffs I and II) and the Defendants, passed away on September 21, 1997 in Gunungsitoli;
4. Whereas furthermore, the biological father of the Plaintiffs and Defendants, passed away on March 1, 2014 in Gunungsitoli, due to his illness;
5. Whereas the parents of the Plaintiffs and Defendants who have passed away, also left a plot of land along with the building therein which is located on Jln. Diponegoro, No. 432, Miga Village, Gunungsitoli District, Gunungsitoli City, which is better known as WISMA SOLIGA, with an area of 7,204 m², which was previously purchased by the parents of the Plaintiffs and Defendants, with the following boundaries:
 - To the north it borders the house of INA ELI JHONSON.
 - In the east, it is bordered by DIPONONEGORO RAYA ROAD.
 - To the south, it is bordered by IBU NUR.

- In the west it is bordered by LAND OWNED BY PHILIPS GAN
6. Whereas the Plaintiff once asked for an explanation from the District Land Agency. Nias related to land ownership which is located on Jln. Diponegoro, No. 432, Miga Village, Gunungsitoli District, Gunungsitoli City (formerly Nias District), which is better known as WISMA SOLIGA, based on a SHM. No. 154, an area of 7,204 m², and the District Land Agency. Nias in accordance with his letter Number: 71/600/12.04/IV/2015, dated 30 April 2015, explained that the SHM. No. 154, dated January 22, with a letter measuring 37/Miga/2001, dated December 19, 2001, with an area of 7,204 m², STILL RECORDED IN THE NAME OF GANDRA QUIN (parent of the Plaintiffs);

The Panel of Judges is of the opinion that from the testimony of witness Tapak Wong as a leader of the Indigenous Chinese community in the Nias Islands, the Chinese adhere to a patrilineal kinship system based on lineage from the father or the male side, so that sons have the highest position in the family, compared to children. women, as well as in the acquisition of assets given to sons, the majority are greater than daughters, because sons are the continuation of the lineage and in the past, according to Chinese custom, what daughters received from parents' property was only jewelry, but there has been a shift in the acquisition of Indigenous Chinese people are based on the progress of education and the development of the times, so that they can be obtained other than property in the form of jewelry, the transfer of which is carried out through grants, buying and selling, and others made by parents to their daughters.

Associated with the description of the Patrilineal Kinship System above, the Certificate of Property Rights Number: 02. 11. 01. 09. 1. 00154 which is better known as Wisma Soliga Plaintiff of Convention I / Defendant of Reconvention I (Venny Gan) has no rights, because the Plaintiff of the Convention I/Defendant of Convention I (Venny Gan) is a daughter, which according to Chinese custom, girls get property in the form of jewelry from their parents, and Plaintiff of Convention I/Defendant of Convention I (Venny Gan) cannot prove the transfer of rights to Certificate of Ownership Number: 02. 11. 01. 09. 1. 00154 who is better known as Wisma Soliga from Gandra Quin to Plaintiff of Convention I/Defendant of Convention I (Venny Gan).

In essence, in case No.23/PDT.G/2015/PN.Gst the judge decided that the plaintiff's claim was only partially granted, stating as a law that the Plaintiffs Venny Gan and Stevenson, as well as Defendant Philips Gan, are the heirs of the late Gandra Quinn and the late Imelda and declared as law the Death Certificate Quotation, An. Gandra Quin issued by the Population and Civil Registration Office of Gunungsitoli City, on March 17, 2014.

3. Decision No.23/Pdt.G/2015/Pn.Gst Reflecting A Feel Of Justice, Usefulness And Legal Certainty

a. Analysis of the Principles of Justice, Benefit and Legal Certainty in Decision No.23/PDT.G/2015/PN.Gst

Judges' decisions that reflect justice are not easy to find benchmarks for the disputing parties. Because fair to one party is not necessarily fair to the other party. The task of the judge is to uphold justice in accordance with the instructions made on the head of the decision which reads

"For Justice Based on the One Godhead". The justice meant in the judge's decision is impartial to one of the parties to the case, acknowledging the equality of rights and obligations of both parties. In making a decision, the judge must comply with the existing regulations so that the decision can be in accordance with the justice desired by the community. In order to uphold justice, the judge's decision in court must be in accordance with its true purpose, namely to provide equal opportunities for litigants in court. The value of justice can also be obtained when the case settlement process is carried out quickly, simply, at low cost because delaying the settlement of cases is also a form of injustice.

The aspect of justice in the decision No.23/PDT.G/2015/PN.Gst is that the judge decided that not all of the plaintiff's claims were granted. There are several things that are not granted from some of the petition petitions. In this case, the judge does not lean towards one side. The judge has considered the things that existed at the trial to determine a decision. Therefore, the judge only partially granted the plaintiff's claim.

The judge's decision that reflects legal certainty, of course, in the process of resolving cases in the trial has a role to find the right law. Judges in making decisions do not only refer to the law, because the law may not regulate it clearly, so judges are required to be able to explore legal values such as customary law and unwritten law that lives in society. In this case the judge is obliged to explore and formulate it in a decision. Legal certainty as outlined in the judge's decision is a product of law enforcement that is based on juridically relevant trial facts from the results of the case settlement process in court.

The aspect of legal certainty in the decision No.23/PDT.G/2015/PN.Gst is that the judge decides in a civil manner for the case No.23/PDT.G/2015/PN.Gst regarding inheritance. In fact, a Chinese customary witness was presented who said that the families of the plaintiff and the defendant were still preserving Chinese customs. The judge should have considered Chinese customs from the settlement method to the distribution of inheritance.

The judge's decision that reflects the benefits is when the judge not only applies the law textually, but the decision can be executed in real terms so as to provide benefits for the interests of the litigants and benefit the community in general. The decision issued by the judge is a law which must maintain balance in society, so that the community returns to have confidence in law enforcement officers as a whole. Basically, the principle of expediency lies between justice and legal certainty, where judges are more concerned with the purpose or usefulness of the law in the interests of the community. The emphasis on the principle of expediency tends to be more economic.

The aspect of expediency in the decision No.23/PDT.G/2015/PN.Gst was not clearly seen where the judge decided to reject some cases. From the plaintiff's perspective it can be said to be of little use. Although from the defendant's point of view, it is also not useful because the exceptions submitted by the defendants are also rejected. As for the mitigating factors for the plaintiff, the judge declared as law that the Plaintiffs Venny Gan and Stevenson, as well as the Defendant Philips Gan, were the heirs of the late Gandra Quinn and the late Imelda. Therefore, the defendant could not control the property left by the late. Gandara Quin alone.

Conclusion

According to Article 914 of the Civil Code, the amount (*Legitieme portie*) is if three or more children are left behind, the absolute share of each child is (three quarters) of the share, but according to Chinese customary law only boys are considered as the successor of the line. legitimate lineage. The judge in deciding the case in case No.23/PDT.G/2015/PN.Gst stated that the plaintiff's claim was only partially granted, stated as law that the Plaintiffs Venny Gan and Stevenson, as well as Defendant Philips Gan, were heirs and declared as law Death Certificate Quote, An. Gandra Quin issued by the Population and Civil Registration Office of Gunungsitoli City, on March 17, 2014. Aspects of Justice in case No.23/PDT.G/2015/PN.Gst the judge decided that the plaintiff's claim was only partially granted, this is unfair to plaintiff. The aspect of legal certainty in the decision No.23/PDT.G/2015/PN.Gst is that the judge decides in a civil manner for the case No.23/PDT.G/2015/PN.Gst regarding inheritance. Even though the Chinese traditional witnesses have been presented. The usefulness aspect of the decision No.23/PDT.G/2015/PN.Gst is not clearly seen where the judge decided to reject some cases.

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