

Constructing Sustainable Justice in Indonesia: Judges' Legal Considerations in Grant and Inheritance Disputes

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Abstract

Inheritance and gift disputes, common in Indonesia, often lead to social tension and legal uncertainty. The decisions made by the courts in these cases have significant implications for the parties involved and the realization of substantive justice in society. This article analyzes the construction of judges' legal reasoning in resolving inheritance and gift disputes from a sustainable justice perspective. The research method used is a normative juridical approach, analyzing court decisions, positive legal provisions, and relevant Islamic and customary legal principles. The research findings indicate that an ideal judge's legal reasoning should integrate legal certainty, substantive justice, humanitarian values, and social sustainability. This integration will not only strengthen the legitimacy of court decisions and prevent structural injustice but also has the potential to significantly influence the development of responsive national law, offering hope for a more just legal system.

Keywords: *Sustainable Justice, Judges' Legal Reasoning, Inheritance Disputes, Gift Disputes, Indonesia.*

Introduction

Disputes over inheritance and gifts are one of Indonesia's recurring civil law phenomena [1]. The practice of unequal inheritance distribution, gifts made without the consent of all heirs, and an inadequate understanding of the rights and obligations of the parties often lead to prolonged internal conflicts. These disputes are not only technical legal issues, but also reflect complex social, economic, religious, and cultural tensions. Legal professionals, scholars, students, and policymakers must delve deeper into these issues, as gifts, which should be a voluntary transfer of rights, often trigger disputes. At the same time, the distribution of inheritance, which should strengthen family ties, gives rise to new conflicts between heirs. This issue shows that substantive justice has not been fully achieved, even though a formal legal framework exists.

Empirical data show an upward trend in court disputes over grants and inheritance. Based on a report by the National Law Development Agency in 2022, more than 3,500 inheritance disputes were filed in court, an increase of around 15 percent compared to previous years [2]. This trend indicates that inheritance and gift issues are not merely a local phenomenon, but also a national issue that requires serious attention. On the other hand, field research in various regions shows that the practice of gifts integrated into the customary inheritance distribution mechanism can minimize the potential for disputes if done with utmost transparency and fairness to all heirs [3]. However, in reality, there are still many cases where gifts are used as an instrument to transfer assets unilaterally, triggering lawsuits to cancel the gifts by the heirs.

Previous studies have examined the issue of inheritance or gift disputes, but generally focus on only one aspect. For example, research on the cancellation of gifts from an Islamic law perspective

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examines judges' considerations in the context of the Compilation of Islamic Law [4]. Some studies examine judges' considerations in inheritance disputes involving claims of fictitious death or the psychological status of the parties [5]. Although all of these studies are important and contribute to our understanding, most of them have not comprehensively combined the analysis of gift and inheritance disputes, have not viewed them in the framework of sustainable justice, and have not made an in-depth comparison between national positive law, Islamic law, and customary law as the basis for judges' considerations. In practice, judges face complexities that unite these three dimensions at once.

The significance of this research is evident in three areas. In the theoretical realm, this research is expected to enrich the study of Indonesian civil law by providing an in-depth analysis of the construction of judicial reasoning. Thus, this research will add to the body of thought on substantive justice and sustainable justice in civil court practice [6]. In the normative and legal policy realm, the results of this research can serve as input for developing judicial guidelines for judicial decisions to ensure more consistent, fair, and adaptive court decisions [7]. In the practical realm, the results of this research are expected to provide legal practitioners, the parties, and the broader public with an understanding of the factors considered by judges, thereby strengthening the legal position of the weaker party and helping resolve disputes more expeditiously and fairly. Importantly, this research is expected to be a tangible contribution to strengthening the rule of law and public trust in the judiciary, providing reassurance and confidence in the Indonesian legal system.

This research aims to analyze in depth how judges in Indonesia construct legal reasoning in gift and inheritance disputes by combining formal legal certainty with substantive justice. This research also aims to identify factors influencing judges' deliberations, including formal regulations, the characteristics of the parties, and the cultural and social aspects inherent in specific cases. Furthermore, this research aims to review judges' decisions in gift and inheritance cases in various regions with varying religious and customary backgrounds to identify similarities and differences in legal reasoning patterns. Ultimately, this research is expected to offer normative and practical recommendations to ensure that judges' deliberations in gift and inheritance disputes are fairer and more transparent, resulting in decisions supporting sustainable justice for the Indonesian people.

Research Method

This research is distinctive in its use of a qualitative approach and a normative-empirical legal research approach. The normative aspect delves into the positive legal norms governing gifts and inheritance, such as the Civil Code, the Compilation of Islamic Law, customary law, Supreme Court decisions, and other relevant regulations. On the other hand, the empirical aspect scrutinizes the application of these norms in judicial practice, particularly the construction of judges' legal reasoning in inheritance and gift disputes in district and religious courts.

The research data sources are diverse, encompassing primary legal materials (statutory regulations, court decisions, official judicial documents), secondary legal materials (law books, scientific journals, research results, relevant theses and dissertations), and tertiary legal materials, legal dictionaries, encyclopedias, and other supporting sources [8]. This comprehensive approach ensures the thoroughness of the research. Data were collected through a literature review and case studies of selected court decisions representing various gift and inheritance disputes in Indonesia.

Data analysis was conducted descriptively and qualitatively using content analysis techniques. Judges' legal reasoning patterns were mapped, compared with positive legal norms, and linked to substantive justice and sustainable justice theories. Data validity is maintained through source triangulation, which involves comparing the results of the analysis of court decisions with academic doctrine and relevant literature.

This method is expected not only to yield a comprehensive picture of the construction of judges' legal reasoning in gift and inheritance disputes but also to significantly contribute to the development of sustainable justice in civil court practice in Indonesia. This potential impact underscores the practical relevance of the research and its potential to influence legal practice.

Results and Discussion

Profile of Gift and Inheritance Disputes in Indonesia

Gift and inheritance disputes are a persistent civil law phenomenon in Indonesian judicial practice. Both disputes are closely related to family relationships, asset distribution, and the fulfillment of civil rights regulated by positive law, Islamic law, and customary law. Gifts, as gifts given freely during the

donor's life, often create problems when heirs feel their rights have been violated. Inheritance, on the other hand, concerns the distribution of inherited assets after the testator's death, which often triggers disputes between heirs. The resulting tensions reflect legal conflicts and complex social, economic, and cultural issues.

Data from the National Legal Development Agency (BPHN) of the Indonesian Ministry of Law and Human Rights (2025) shows an increasing trend in gift and inheritance disputes in court. In 2022, more than 3,500 inheritance dispute cases were filed with the courts, an increase of approximately 15% compared to 2020–2021. Most cases are filed in religious courts with jurisdiction over matters of Muslim inheritance. In contrast, the remainder are filed in district courts regarding gifts or inheritance, based on Western civil law. This trend demonstrates that family property disputes are a real and growing issue. Broadly speaking, data from the Indonesian Supreme Court, through its Decision Directory, shows thousands of decisions related to gifts and inheritance each year, with issues ranging from the cancellation of gift deeds, objections by heirs to willed gifts, to disputes over the status of children in inheritance distribution.

A concrete example of a gift dispute is seen in the Bengkulu District Court Decision Number 09/Pdt.G/2023/PN.Bkl, in which an heir sued to annul a gift deed executed before the testator's death, claiming it violated the rights of other heirs. The panel of judges, in their deliberations, declared the gift valid as long as it did not violate inheritance law. However, if it were proven to violate the heirs' absolute rights, the gift could be annulled. This case vividly demonstrates the crucial role of judges in determining substantive justice, not merely formal certainty, and the importance of their role in maintaining justice.

Another example is seen in the 2022 ruling of the Slawi Religious Court regarding a lawsuit against the heirs for the annulment of a gift. In this case, the judge considered evidence in the gift deed, witnesses, and the Compilation of Islamic Law (KHI) doctrine, which limits gifts to heirs to a maximum of one-third of the estate unless agreed by all heirs. The ruling emphasized that gifts must not prejudice legitimate inheritance rights, per Article 210 of the KHI.

Furthermore, empirical research indicates specific patterns in inheritance disputes. For example, many disputes arise when the heir fails to clearly plan the inheritance or when assets are divided without considering the status of heirs, such as illegitimate children or heirs who have changed their religion. Conflicts become more complex when gifts are made through a notarial deed but not communicated to all heirs, leading to disputes after the testator's death. These disputes underscore the urgent need for regulatory clarity and substantive justice in court decisions. From a positive legal perspective, the Civil Code (KUHPerdara) regulates gifts under Articles 1666–1693 and inheritance under Book II, Articles 830–1130. In Islamic law, provisions on gifts are regulated under Articles 210–214 of the Compilation of Islamic Law, while inheritance is regulated under Articles 171–214. These provisions interact with customary law, where kinship systems and inheritance distribution vary widely across regions. Judges in district and religious courts must consider these various legal bases in an integrated manner.

Socioeconomic factors also influence the increasing trend of gift and inheritance disputes [9]. The growth of the middle class, urbanization, and the increasing value of family assets (especially land and buildings) make the issue of property distribution increasingly sensitive. The National Agency for the Protection of the Nation (BPHN) report highlights that inheritance disputes frequently arise regarding waqf land, residential homes, and gardens or rice fields inherited from generation to generation. Furthermore, people are increasingly critical of their civil rights, making them more willing to take matters to court rather than resolve them amicably.

In dispute resolution, judges play a pivotal role in developing just legal reasoning [10]. Their legal reasoning encompasses formal legal aspects and considers substantive justice, socio-cultural values, and the principle of expediency. The importance of considering these social aspects is highlighted by the fact that sustainable and just decisions are not just a matter of law, but also a determinant of the long-term stability of family and social relationships. Judges are also entrusted with upholding proportionality, legal certainty, and public benefit in their decisions. Recent research has shown that decisions that overlook these social aspects often lead to new disputes, even after the decision has been legally binding.

The data and examples above illustrate Indonesia's dynamic and multidimensional nature of gift and inheritance disputes. This complexity necessitates a significant shift in judicial practice. On one hand, there is a need to bolster normative aspects to reduce decision disparities. On the other hand, it is crucial to emphasize substantive and sustainable justice to prevent the recurrence of disputes and uphold public trust in the judiciary. Developing more comprehensive guidelines for judicial reasoning

could be a key solution to ensure court decisions are consistently just, transparent, and adaptable to the social context of Indonesia's pluralistic society.

Judges' Legal Considerations: Between Legal Certainty and Justice

The legal considerations of judges in gift and inheritance disputes in Indonesia are central to the civil justice process [11]. Judges are tasked with formally enforcing applicable regulations and ensuring substantive justice for the disputing parties. Judges often face a dilemma between upholding legal certainty and providing substantive justice. This dilemma is evident in court decisions regarding gifts and inheritances, where legal certainty derived from laws or official deeds often clashes with the principle of justice for heirs or injured parties.

According to Gustav Radbruch's theory of the "triad idea of law" (justice, legal certainty, and utility), ideal law should balance all three [12]. However, in practice, these three values often conflict with each other. In cases of gifts and inheritance, a formally valid deed of gift (fulfilling Articles 1666–1693 of the Civil Code or Articles 210–214 of the Compilation of Islamic Law) may violate the heirs' sense of justice. For example, in the Bengkulu District Court Decision Number 09/Pdt.G/2023/PN.Bkl, the judge faced a lawsuit for the annulment of a gift from an heir who felt aggrieved. The court annulled the gift deed, which formally met the requirements, for violating the heirs' absolute rights. The judge's legal reasoning in this decision demonstrates the application of the principle of substantive justice, namely, protecting the rights of the weaker party even if it reduces the legal certainty of the officially executed deed.

Another example is the Slawi Religious Court decision (2022) regarding the annulment of a gift by an heir. In that decision, the judge referred to Articles 210–214 of the Compilation of Islamic Law, which limit gifts to heirs to a maximum of one-third of the estate unless all heirs agree. The judge's considerations here clearly demonstrate the integration of Islamic norms in maintaining a balance between the rights of the heir and the rights of the beneficiary. Although the deed of gift is legally valid, the judge still considers substantive justice according to Islamic legal principles to ensure that the rights of the heirs are not violated.

Compared to Islamic legal principles, gifts and inheritance have strict rules regarding the limits of each party's rights. Gifts in Islam may only be given up to one-third of the estate without the heirs' consent. Inheritance is expressly regulated in the Quran (Surah An-Nisa: 7, 11, 12) and the Prophetic traditions, such as the hadith narrated by Abu Dawud: "No one may give a gift to his child and then withdraw it, except a parent with respect to his child." This principle emphasizes the importance of justice and transparency in granting gifts and distributing inheritance. Therefore, aligned with this principle, the judge's considerations strengthen the social and religious legitimacy of the court's decision.

In customary law, the distribution of inheritance and gifts is often regulated based on kinship systems (patrilineal, matrilineal, or parental) and local norms [13], [14]. For example, in Bali, inheritance is often given to sons according to the purusa system, while in Minangkabau, the matrilineal system prioritizes maternal lineage. Gifts in the customary context are often considered part of a transfer mechanism that is not always formally recorded. Judges in district courts often must consider customary evidence or statements from traditional leaders to determine the validity of gifts and inheritance distribution. Therefore, the judge's legal considerations, which consider customary law, essentially implement the 'living law' principle. As proposed by Eugen Ehrlich, this principle suggests that the law that lives within a community, including customary norms, must be considered in court decisions [15].

The theory of legal pluralism is also relevant to analyzing this phenomenon. As a country with legal plurality, Indonesia recognizes the coexistence of national, Islamic, and customary law. Judges' legal considerations in gift and inheritance disputes cannot be separated from the interaction of these three legal systems. When judges rely solely on formal legal certainty (e.g., the Civil Code) without considering Islamic or customary norms, their decisions will likely be rejected by the community or cause dissatisfaction. Conversely, legal certainty will be compromised when judges only consider substantive justice based on custom or religion without a basis in positive law. Therefore, judges must implement proportional legal integration. This means they should balance legal certainty with substantive justice, considering the norms and values of all three legal systems.

An analysis of several decisions, such as the Bengkulu District Court Decision Number 09/Pdt.G/2023/PN.Bkl and the Slawi Religious Court decision (2022) show a pattern where judges prioritize substantive justice when there is a serious conflict between the formal and material rights of heirs. Judges' legal considerations are based not only on statutory regulations, but also on general legal

principles, academic doctrine, and socio-cultural values. This pattern aligns with Satjipto Rahardjo's view of "progressive law," which prioritizes human dignity and substantive justice over legal texts alone [16]. The judges' consideration of socio-cultural values in their legal reasoning demonstrates their cultural sensitivity and understanding of the diverse Indonesian society.

Constructing judges' legal reasoning considering legal certainty and substantive justice can result in sustainable justice. This means that judges' decisions not only resolve current disputes but also reduce the potential for future conflict, maintain family harmony, and increase public trust in the judiciary. With their proactive approach, judges can reduce the potential for future conflicts by considering legal certainty and substantive justice in their legal reasoning. This approach resolves current disputes and prevents future ones, maintaining family harmony and increasing public trust in the judiciary.

This analysis demonstrates that judges' legal reasoning in gift and inheritance disputes in Indonesia lies at the intersection of legal certainty and substantive justice. Court decisions such as those in the Bengkulu District Court and the Slawi District Court demonstrate concrete examples of how judges strive to balance these two values. Comparisons of Islamic and customary law principles demonstrate the importance of legal pluralism and a contextual approach in producing decisions that are not only legally valid but also socially acceptable. Therefore, the direction of civil law reform in Indonesia should emphasize the integration of formal, religious, and customary norms so that court decisions not only resolve disputes but also establish sustainable justice.

Building Sustainable Justice through Judicial Reasoning

The legal reasoning of a judge in every decision is not merely legal reasoning expressed in a ruling, but rather a reflection of the judge's perspective on how the law should be applied in society. In gift and inheritance disputes, the judge's reasoning is a "bridge" between positive legal norms and Indonesia's pluralistic society's social, cultural, and religious values. Therefore, judges must develop criteria for responsive, progressive, and just legal reasoning to validate the resulting decisions and foster sustainable justice formally.

The first criterion is responsive judicial reasoning: the judge's pivotal role in responding to society's changing needs and context. As Lawrence M. Friedman's theory of the 'legal system' underscores, the effectiveness of law is determined by the substance of the law, its structure, and its culture [17]. As part of the legal structure, judges play a crucial role in adapting the law's substance to the society's culture. In gift and inheritance disputes, a responsive judge will consider customary and religious norms, the status of the weaker party (for example, illegitimate children or women in particular indigenous communities), and the interests of future generations. This responsive consideration makes decisions more legitimate because it aligns with living law.

The second criterion is the judge's progressive judgment. Satjipto Rahardjo emphasizes that law is not a rigid institution but a means to humanize people through his concept of Progressive Law [18]. Progressive judges dare to go beyond the text of regulations as long as it serves substantive justice. In cases of gifts and inheritances, progressive judges can, for example, interpret the provisions limiting gifts in the Compilation of Islamic Law so that they are not merely formal figures (one-third) but also prioritize equal access to family assets, especially for heirs from socio-economically disadvantaged backgrounds. This progressive stance does not mean violating the law, but rather translating legal principles (e.g., justice, expediency, and proportionality) into concrete societal decisions, underscoring the importance of these principles in guiding judges' decisions.

The third criterion is the judge's fair judgment. John Rawls's theory of justice emphasizes two principles of justice: equal liberty for all and the difference principle, which protects the most vulnerable [19]. In the context of gift and inheritance disputes, this principle is relevant when judges consider ensuring that the distribution of assets does not disadvantage certain heirs simply because of their marginal status. Similarly, Radbruch's theory (the triad of legal ideas) states that justice, certainty, and utility must be integrated. A just judge can balance all three, not simply choosing legal certainty for a deed of gift but also considering whether the deed violates the heirs' absolute rights. Thus, substantive justice is achieved without excessively sacrificing legal certainty, highlighting the complexity and nuance of judicial decision-making [20].

Another important aspect is the integration of the values of substantive justice, human rights, and the principle of sustainability. Progressive and responsive judges must not ignore human rights as a universal standard. Article 28H of the 1945 Constitution guarantees everyone's right to property, while

Article 28D affirms the right to fair legal protection. In the context of gifts and inheritance, human rights integration means ensuring that every heir is treated equally without discrimination based on gender, religion, or birth status. The principle of sustainability also means that judges consider the long-term impact of decisions on family harmony and the sustainability of family assets. Fair and sustainable decisions will reduce future conflict and increase public confidence in the courts, enhancing the judicial process.

Conceptually, sustainable justice can be understood as the intersection of substantive justice (giving rights to those entitled according to their social context), social sustainability (maintaining family and community harmony), and legal sustainability (creating consistent precedent). For instance, a judge deciding a gift dispute not only determines the validity of the deed of gift but also guides the parties to mediate and redistribute the property proportionally to preserve family ties. This practice underscores the pivotal role of judges in upholding societal balance, a restorative approach now being embraced in various areas of civil law.

Analysis of decisions such as Bengkulu District Court No. 09/Pdt.G/2023/PN.Bkl and Slawi District Court (2022) shows that judges have begun to apply this approach. In both decisions, judges considered the validity of the gift deed and the rights of heirs according to the Compilation of Islamic Law (KHI), the Civil Code, and local customary law. As a result, decisions are more acceptable to the public, significantly enhancing public trust in the courts, as they are not solely legal and formal but also consider social and religious values.

Therefore, establishing sustainable justice through judicial considerations is not merely rhetoric, but a concrete step towards strengthening the judiciary's function as guardians of the constitution and social justice. Judges must possess the intellectual courage and moral integrity to go beyond simply applying legal texts. By integrating the values of substantive justice, human rights, and the principle of sustainability, court decisions will be better able to maintain social cohesion, a crucial aspect of societal unity, protect the rights of the vulnerable, and set positive legal precedents for developing Indonesian civil law. This legal reasoning model will bring the court closer to the vision of "law for people," not "people for law."

Conclusion

This study demonstrates that judges' legal considerations in gift and inheritance disputes in Indonesia are at the intersection of legal certainty and substantive justice. On the one hand, judges are bound by formal norms derived from the Civil Code, the Compilation of Islamic Law, and official notarial deeds. On the other hand, judges must consider the values of substantive justice, human rights, and customary norms prevailing in society. An analysis of the decisions of the Bengkulu District Court No. 09/Pdt.G/2023/PN.Bkl and the Slawi Religious Court (2022) demonstrate a promising trend. Judges are increasingly responsive and progressive, willing to annul or limit the effect of formally valid gift deeds to protect the rights of heirs and maintain social balance, even if it means challenging established norms. This progressive approach can significantly promote social justice and equity in the legal system.

Radbruch's theory of the triad of legal ideas, Satjipto Rahardjo's progressive legal ideas, Rawls's concept of justice, and Eugen Ehrlich's living law perspective provide a normative basis for judges not merely as mouthpieces of the law, but as the guardians of substantive justice. By integrating substantive justice, human rights, and sustainability principles, judges' legal reasoning becomes more legitimate from a social, religious, and formal legal perspective. This means that responsive, progressive, and fair judges' reasoning has the potential to not only resolve current disputes but also to prevent future conflicts. More importantly, it can significantly increase public trust in judicial institutions, building a more sustainable legal system.

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