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Deed of Settlement (*Dading*) for Muslim Inheritance: The Principle of *Ijbari* Vs Civil Code

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ABSTRACT

In practice, the settlement of inheritance disputes among Muslims is often carried out through a *Dading* Deed before a notary, the substance of which is not always consistent with Islamic inheritance law. This study aims to analyze the conformity of the *Dading* Deed as a means of inheritance distribution for Muslims from the perspective of both the Civil Code and Islamic inheritance law. The uniqueness of this research lies in its comparative approach between the two legal systems. Employing a descriptive and normative-empirical method, the study utilizes both primary and secondary data. Primary data were obtained through interviews with Notary X in Bantul Regency, while secondary data were derived from literature, legal instruments, and three *Dading* Deeds documents analyzed in this study. The findings indicate that the *Dading* Deed made by Notary X does not fully comply with applicable regulations, as it contains clauses equating it with a Settlement Agreement ratified by the court (*Acte van Vergelijk*). Moreover, it overlooks the principles of *Ijbari* and *Ishlah* in Islamic inheritance law, since it fails to include a clause confirming that the heirs understand and acknowledge their respective shares according to Islamic provisions.

INTRODUCTION

Inheritance law in Indonesia is pluralistic in nature because it consists of Islamic inheritance law, Western inheritance law (Civil Code), and customary inheritance law. For the majority of Indonesians, customary law applies, but it should be noted that for Muslims, there is a clear influence from the inheritance provisions in Islam itself.[1] In practice, it cannot be denied that the distribution of inheritance is often a source of problems or disputes among heirs. Disputes over the distribution of inheritance are usually resolved through the courts, but there are also heirs who resolve inheritance distribution issues by drawing up a Settlement Deed (*Dading*) before a Notary. The existence of settlement agreements is recognized in the Civil Code as an instrument for dispute resolution, while in Islamic inheritance law there is the concept of *Ishlah*, which allows heirs to settle the distribution of inheritance through agreement.

In the Civil Code, settlement is regulated in Articles 1851 to 1864. The definition of settlement according to Article 1851 of the Civil Code is "An agreement containing that by surrendering, promising or withholding an item, both parties terminate a case being examined by the court or

[1] Wirjono Prodjodikoro, *Hukum Warisan di Indonesia* (Jakarta: Sumur Bandung, 1980). 18-19.

prevent a case from arising if made in writing." Notaries are public officials authorized to draw up Settlement Deeds in this case, known as *Acte van Dading*. The *Acte van Dading* referred to is different from an Act of Settlement with the consent of a judge (Acte van Vergelijk), so it does not automatically have permanent legal force and risks being contested if the parties dispute the settlement that has been made.

In Islamic inheritance law, the distribution of inheritance has been determined according to the Quran and Hadith, through verses and sunnah that regulate it clearly and explicitly.[2] In Islamic inheritance law, there is a principle known as Asas *Ijbari*, which means that the transfer of inheritance occurs automatically, in accordance with Allah's law. However, in practice, Muslims tend not to implement this principle due to a lack of understanding of Islamic law and the principle that family comes before all other interests.[3] Contrary to this principle, Islamic inheritance law regulates reconciliation (*Ishlah*), which allows inheritance to be divided based on an agreement between the heirs after the deceased's death.[4]

Ishlah is regulated in Article 183 of the Compilation of Islamic Law (KHI), which explains that "The heirs may agree to settle the distribution of inheritance after each of them realizes their share." This provision opens up the possibility for heirs to divide the inheritance through deliberation. Therefore, it has given rise to the practice of settling inheritance disputes outside of court through a settlement agreement drawn up by a notary. Notary X, who is based in Bantul with a working area in the Special Region of Yogyakarta, is one of the notaries who has drawn up many settlement deeds (peace agreements) for the distribution of inheritance from Muslim heirs. However, the author's initial observation of the settlement agreement drawn up by Notary X, with the aim of dividing the inheritance among parties of the Islamic faith, did not follow the provisions of Islamic inheritance law itself, namely the absence of a clause in the deed or statement declaring that the heirs were aware of the share they were entitled to receive, as stipulated in Article 183 of the Islamic Family Law (KHI). In addition, the settlement deed, which was drawn up based on the Civil Code, is also interesting to analyze further because it positions the deed as a settlement deed confirmed by a court decision. This can be seen from one of the articles in the Settlement Deed based on the provisions of Article 1858 of the Civil Code, which reads, "A settlement between the parties has the force of a final court decision and cannot be contested on the grounds of legal error or because one of the parties has been harmed."

Previously, research related to the analysis of the *Acta Van Dading* had been conducted, such as in a journal entitled "Settlement of Inheritance Disputes Through the *Van Dading* Agreement: A Study of Jasser Auda's Maqashid Shariah Model" written by Khotifatul Defi Nofitasari in the Antologi Hukum journal in 2025. The journal aims to discuss the compatibility of peace decisions with Islamic legal principles such as justice, benefit, welfare, and social context. The conclusion of the study is that

[2] Eiga Irwana, *Pembagian Harta Waris Secara Kekeluargaan Ditinjau Dari Maqasid Syariah (Kajian Acte Van Dading 404/Pdt.G/2020/Pa.Bji)*, (Skripsi, Universitas Islam Negeri Syarif Hidayatullah, 2021), 46.
[3] *Ibid.*
[4] Elfia, "Ishlah Dalam Takhruj Menurut Hanafiyah Versus Ishlah Dalam Kompilasi Hukum Islam (Analisis Kebijakan Hukum)," *Jurnal Ilmiah Syariah* 17, no. 1 (2018): 1–33, https://doi.org/10.1234/juris.v17i1.1010.

the *Acta Van Dading* reflects the flexibility of Islamic law in responding to local social and cultural realities.[5] In addition, there is a thesis entitled "The Distribution of Inheritance Assets in a Family Context as Viewed from Maqasid Syariah (A Study of *Acta Van Dading* 404/Pdt.G/2020/Pa.Bji)" written by Eiga Irwana in 2021. This research aims to discuss the Islamic legal view of inheritance distribution through a decision in the form of an *Acta Van Dading*. The results of the study show that the peaceful distribution of inheritance without referring to *fara'id* law or KHI does not mean that it is not in accordance with sharia, but still takes into account the provisions that the heirs know their shares and the property is divided using a 2:1 formula, and the parties consciously and voluntarily make peace.[6]

Unlike previous studies, this research specifically analyzes the comparison of the substance of three Acta Van Dading made by Notary X in Bantul Regency with the provisions in the Civil Code and Islamic inheritance law, especially on the principle of Ijbari. In addition, this study discusses the fundamental differences between the Acta Van Dading drawn up by notaries and the Acte Van Vergelijk decided by judges. This specific focus has not been widely studied in previous research, which generally only discusses inheritance settlement agreements in general terms without linking them to actual notarial practice.

Based on the background described above, the problem to be addressed in this paper is how the substance of the *Dading* Deed as a settlement of inheritance distribution for Muslims by Notary X in Bantul Regency is reviewed from the perspective of applicable laws and regulations. The purpose of the legislation is that the author will examine the *Dading* Deed as a settlement of inheritance distribution for Muslims in light of the Civil Code and Islamic Inheritance Law.

METHODS

The type of research used in this study is normative empirical with a case study approach. The nature of the research in this study is descriptive, which is used to describe the practices that occur in the substance of the Peace Agreement in the form of inheritance distribution settlements by notaries, which are then analyzed based on the applicable laws and regulations. The techniques used in this study are a combination of document studies and interviews. The data collection tools used in the document study are through library materials, which include secondary data. Secondary data consists of primary legal materials and secondary legal materials. One of the primary legal materials is three Peace Agreements (*Dading*) made by Notary X in Bantul Regency, namely Peace Agreement (*Dading*) Number 11 of 2022, Peace Agreement (*Dading*) Number 5 of 2023, and Peace Agreement (*Dading*) Number 10 of 2024. Meanwhile, interviews were used to collect primary data by communicating directly with respondents and informants. The respondents were Notary X, while the informants were academics who understood peace agreements in the Civil Code and Islamic

[5] Khotifatul Defi Nofitasari, "Penyelesaian Sengketa Harta Waris Melalui Akta Vandanding," *Jurnal Antologi Hukum* 5, no. 1 (2025): 72–90, https://doi.org/10.21154/antologihukum.v5i1.5169.
[6] Irwana, "Pembagian Harta Waris Secara Kekeluargaan Ditinjau Dari Maqasid Syariah (Kajian Acte Van Dading 404/Pdt.G/2020/Pa.Bji)."58.

inheritance law. The data obtained was then analyzed using qualitative methods through systematization and classification of legal materials.[7] The results of the data analysis are then presented descriptively, describing the situation in the field to provide an overview of the issues studied and draw conclusions.

DISCUSSION

Settlement Agreement (*Dading*) in Positive Law in Indonesia

A settlement agreement is a type of agreement that is recognized and regulated in positive law in Indonesia. Although there is no specific regulation governing it, the existence of a settlement agreement is mentioned in several laws and regulations, namely in Book III of the Civil Code and Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in Court (PERMA 1/2016). A settlement agreement (*Dading*) is an agreement that is subject to Book III of the Civil Code and is therefore also subject to Article 1338 of the Civil Code, which states that "All agreements made legally are binding on those who make them."[8] The phrase "legally" refers to the validity requirements for agreements as stipulated in Article 1320 of the Civil Code. In addition, the *Dading* Deed also has specific requirements that distinguish it from general agreements, including:[9]

1. Peace must be based on the agreement of the parties involved
   Consent is one of the subjective requirements of an agreement according to Article 1320 of the Civil Code, namely an agreement between those who are bound by the agreement. Such consent/agreement is considered valid if there are no defects of consent in the agreement process.
2. Peace must end disputes
   The deed must be able to end the dispute between the parties. If not, then the deed is considered to not meet the formal requirements, and therefore is invalid and has no binding force on the disputing parties.
3. Peace is based on the existing dispute
   The condition for peace to be used as the basis for a decision is the existence of a dispute between the parties, whether it has already occurred or has the potential to be brought to court. In accordance with Article 1851 of the Civil Code, a settlement can be reached outside of court, which means preventing a dispute, and a settlement through court proceedings, which means resolving a dispute. Thus, a settlement can arise from a case even if it has not yet been formally brought before the court.
4. The settlement must be in writing
   A settlement agreement is valid not only by mutual consent, but must also be in writing. This requirement is mandatory, so that no settlement is valid if it is made orally, even in the

[7] Soerjono Soekanto, *Pengantar Penelitian Hukum,* (Jakarta: UI-Press, 1986), 251.
[8] Irene Svinarky, "Pembuatan Akta Perjanjian Damai (Dading) Melalui Proses Negosiasi Dalam Penyelesaian Sengketa Tanah di Kota Padang" (Thesis, Universitas Gadjah Mada, 2012), 44.
[9] Dhonny Tri Laksono, "Kewenangan Notaris Dalam Pembuatan Akta Perdamaian Terhdap Pihak Yang Bersengketa Di Kabupaten Sintang Provinsi Kalimantan Barat" (Thesis, Universitas Gadjah Mada, 2013), 32–33.

presence of an authorized official.

In addition, regulations regarding settlements, whether conducted in court or out of court, are contained in PERMA 1/2016. This regulation distinguishes between a settlement agreement and a Settlement Deed. According to Article 1 paragraph (8) of PERMA 1/2016, a settlement agreement is defined as "an agreement resulting from mediation in the form of a document containing the terms of dispute resolution signed by the Parties and the Mediator." Meanwhile, according to Article 1 paragraph (10) of PERMA 1/2016, a Settlement Deed is defined as "a deed containing the contents of the settlement agreement and the judge's decision confirming the Settlement Agreement." Therefore, a peace agreement is essentially like a general agreement because it does not yet have executory power, while a Peace Deed is a peace agreement that has been confirmed by a judge, so that the product is equivalent to a court decision that has executory power.

In this case, the parties entered into a settlement agreement (*Dading*) before a notary outside of court, resulting in an Authentic Deed. An Authentic Deed has full evidentiary force for the parties to prove the events or circumstances of the settlement as stated in the authentic deed.[10] t can be interpreted that the deed is a binding piece of evidence, meaning that if it is submitted as evidence in court, the judge must consider it valid, unless it can be proven otherwise or can be invalidated by the opposing party's evidence.[11] Referring to existing laws and regulations, it is not explicitly stated that the drafting of a Settlement Deed is the authority of a Notary, but a Notary is a public official who drafts authentic deeds concerning all acts, agreements, and stipulations required by laws and regulations and/or desired by interested parties. Therefore, Notaries are public officials who are authorized to draw up Settlement Deeds, in this case Settlement Deeds.[12]

Analysis of the Settlement Agreement (*Dading*) as a Resolution for the Distribution of Islamic Inheritance by Notary X in Bantul Regency as Reviewed by the Civil Code

The Settlement Agreement is specifically regulated in the Civil Code. Therefore, there are legal implications arising from its regulation in the Civil Code, both in terms of the validity of the agreement and its legal force. This section will discuss in detail the conformity of the Settlement Agreement (*Dading*) drawn up by Notary X in Bantul Regency with the validity requirements of an agreement according to Article 1320 of the Civil Code.

[10] Dhimas Haris Anggara Mukti, "Kekuatan Mengikat Akta Perdamaian (Acte Van Dading) yang Dibuat Diluar Pengadilan yang Isinya Berbeda Dengan Putusan yang Sudah Berkekuatan Hukum Tetap (In Kracht Van Gewijsde)," *Jurnal Hukum Dan Pembangunan* 53, no. 1 (2023): 49–84, https://doi.org/10.21143/jhp.vol53.no1.1546.

[11] Candella Angela Anatea Taliwongso, "Kedudukan Akta Otentik Sebagai Alat Bukti Dalam Persidangan Perdata di Tinjau Dari Pasal 1870 Kuh Perdata (Studi Kasus Putusan Nomor 347/Pdt.G/2012/Pn.Mdn)," *Lex Administratum* 10, no. 2 (2022): 1–15. https://ejournal.unsrat.ac.id/v3/index.php/administratum/article/view/40531/36293

[12] Bobby Kennedy, "Isi Akta Perdamaian Dalam Putusan Pengadilan Negeri Semarang Nomor 14/Pdt.G/2013/PN.Smg," (Skripsi, Fakultas Hukum Universitas Semarang, September, 2018), 59.

1. Agreement

   An agreement is a mutual consent between the parties involved in the agreement.[13] The agreement must be made purely, meaning that it must not be made due to error, mistake, fraud, or abuse of circumstances. One form of agreement to a contract is the signing of the contract by the parties involved, which serves as a manifestation of their agreement on the place, time, and content of the contract.[14]

   The agreement in the three Peace Agreements (*Dading*) drawn up by Notary X in Bantul Regency is indicated in the first sentence of Article 1, which states that "The parties have agreed to end the dispute between them and to restore relations between them, and the parties have made the following agreement...." The manifestation of the parties' agreement to the creation of the deed is evidenced by the affixing of the parties' signatures.
2. Proficiency

   In all three Deeds of Settlement, all parties were adults and none were under guardianship. This was proven in the comparison stating the date of birth of each party in the Deed of Settlement.
3. A Specific thing

   In the three settlement deeds that the author examined, the issues arose from the process of settling inheritance, so that the object of the agreement was the inheritance left by the deceased. This object was explicitly stated in the deed.
4. Halal Causes

   The three settlement deeds contain agreements on the peaceful settlement of the distribution of inheritance assets between the deceased and his heirs who are Muslim. The substance of these deeds does not violate generally applicable legal provisions, as inheritance matters can be settled peacefully outside of court.

In the context of the third Peace Agreement (*Dading*) drawn up by Notary X in Bantul Regency, the four requirements for a valid agreement have generally been met. The subjective requirements of agreement and competence have been fulfilled. The agreement between the parties is evidenced by the signing of the deed in the presence of a notary. The parties are also legal subjects who are legally competent to perform legal acts. The objective requirements, which are specific matters, have also been fulfilled. The object of the agreement in the form of land is specifically mentioned in each deed. The requirement of a lawful cause has also been fulfilled because it does not violate laws and regulations, morality, or public order.

Furthermore, regarding legal force, it is explicitly regulated in Article 1858 of the Civil Code, which states that a Settlement Agreement has legal force equivalent to a final and binding decision,

[13] Ridwan Khairandy, *Hukum Kontrak Indonesia Dalam Perspektif Perbandingan (Bagian Pertama)* (Yogyakarta: FH UII Press, 2013), 168.
[14] Ahdiana Yuni Lestari and Endang Heriyani, *Dasar-Dasar Pembuatan Kontrak Dan Aqad* (Yogyakarta: MocoMedia, 2009), 6.

has executory force, and cannot be appealed.[15] When viewed in the three Settlement Agreements that the author examined, all of them included a clause stating that the settlement agreement was based on the provisions of Article 1858 of the Civil Code, namely "A settlement between the parties has the same legal force as a final court decision and cannot be contested on the grounds of legal error or because one of the parties feels aggrieved." Normatively, the provisions of this article apply to Settlement Deeds that have been confirmed by a judge because, in essence, it is the court that can produce a decision that has the same force as a final decision. A settlement deed drawn up by a notary has permanent legal force and executory power if it is accompanied by a ruling from the Head of the District Court containing an order for execution, so that the settlement deed can be enforced. Therefore, the meaning of Article 1858 of the Civil Code is intended for Acte Van Vergelijk and cannot be confused with *Acte Van Dading.*

Out-of-court settlements differ from settlements conducted in court, because out-of-court settlements are not accompanied by legal considerations or provisions that can give additional weight to the content of the agreement.[16] A settlement reached outside of court is only valid as an agreement between the two parties. If one party fails to comply with the agreement, it must still be submitted to the court for processing.[17] A settlement agreement drawn up by a notary outside of court is considered an authentic deed and therefore has full evidentiary force for the parties to prove the events or circumstances of the settlement as stated in the authentic deed.[18] It can be interpreted that the deed is a binding piece of evidence, meaning that if it is submitted as evidence in court, the judge must consider it valid, unless it can be proven otherwise or is invalidated by opposing evidence.[19]

There are several risks that may arise from the inclusion of Article 1858 of the Civil Code in the Settlement Deed drawn up by Notary X, including the potential for misinterpretation, as if the deed had the same legal force as a court decision. Therefore, if one of the parties subsequently feels aggrieved, the Settlement Deed drawn up by Notary X is still open to a lawsuit for annulment in court, and the consequence for the notary is that he or she will be included as a defendant. For this reason, in order for the Settlement Deed to have the same force as a court decision, the notary or the parties must register the Deed with the relevant court.[20] The procedure for doing so is stipulated in Article 36 of PERMA 1/2016. Article 36 (1) of PERMA 1/2016 states that if a dispute has been settled out of

[15] Abdul Khair Razikin*, "Tinjauan Yuridis Akta Perdamaian Yang Dilakukan Para Pihak Di Hadapan Notaris,*" (Thesis, Universitas Gadjah Mada, 2011), 78.
[16] Triana Dewi Seroja et al., "Kekuatan Hukum Acta Van Dading Sebagai Hasil Kesepakatan Mediasi Dalam Gugatan Perdata," *Jurnal Hukum To-Ra: HUKUM UNTUK MENGATUR DAN MELINDUNGI MASYARAKAT* 6, no. 3 (2020): 265–281, https://doi.org/10.33541/JtVol5Iss2pp102.
[17] Retnowulan Sutantio and Iskandar Oeripkartawinata, *Hukum Acara Perdata Dalam Teori Dan Praktek Edisi Revisi* (Bandung: CV. Mandar Maju, 2019), 36.
[18] Mukti, "Kekuatan Mengikat Akta Perdamaian (Acte Van Dading) Yang Dibuat Diluar Pengadilan Yang Isinya Berbeda Dengan Putusan Yang Sudah Berkekuatan Hukum Tetap (In Kracht Van Gewijsde)," 56.
[19] Taliwongso, "Kedudukan Akta Otentik Sebagai Alat Bukti Dalam Persidangan Perdata Di Tinjau Dari Pasal 1870 Kuh Perdata (Studi Kasus Putusan Nomor 347/Pdt.G/2012/Pn.Mdn)," 14.
[20] Yanuar Rozi Firmansyah, "Kekuatan Hukum Akta Perdamaian Yang Dibuatdihadapan Notaris Danputusan Akta Perdamaian Pengadilan," *Jurnal Cakrawala Hukum* 8, no. 2 (2017): 220–229, https://doi.org/10.26905/idjch.v8i2.2114.

court through a settlement agreement, the settlement agreement may be submitted to the competent court to obtain a Settlement Deed by filing a lawsuit. Therefore, a settlement deed that has been confirmed by a judge will have the same force as a final decision that cannot be appealed or cassated.

Acte Van Dading can actually be an effective alternative for dispute resolution, but several things need to be considered. These include improving regulations related to Acte Van Dading, conducting outreach activities to the parties involved so that they have a good understanding of the procedures and legal implications, and establishing a mechanism to evaluate the implementation of Acte Van Dading to ensure that it is carried out in accordance with applicable laws.[21]

Analysis of the Settlement Agreement (*Dading*) as a Resolution for the Distribution of Islamic Inheritance by Notary X in Bantul Regency Reviewed from the Principle of *Ijbari* in Islamic Inheritance Law

The substance of the Settlement Agreement must be tailored to the main issues or disputes that form the basis for the agreement. This means that the content of the agreement must clearly describe the resolution of the issues or disputes between the parties, whether in the form of a transfer of rights or other agreements that can end or prevent the emergence of a case. The three Settlement Agreements examined have one thing in common, namely that they contain provisions relating to the settlement of inheritance distribution where the deceased and the parties to the agreement are Muslim. The application of Islamic inheritance law in Indonesia is actually one of the legal options available to the community, especially in the distribution of inheritance. However, for Muslims in Indonesia, Islamic inheritance law should be used as the main guideline and followed in resolving inheritance issues.[22]

There is a fundamental difference between inheritance law as regulated in the Civil Code and Islamic inheritance law. In the Civil Code, there is a right of succession for heirs, whereby upon the death of the testator, the rights and obligations of the testator are immediately transferred to the heirs without the need for formal transfer.[23] However, there are consequences of this right, namely if the deceased leaves behind more debts than assets, which could harm the heirs, then the heirs are given legal protection in the form of the freedom to accept or reject the inheritance. In the event that a person refuses an inheritance, this must be clearly stated in a declaration made at the District Court.[24] Meanwhile, in Islamic inheritance law, there is the principle of *Ijbari*, which states that the transfer of inheritance is absolute because it is determined by Allah SWT, regardless of the wishes of

[21] Asep Sapsudin et al., "The Van Dading Act As A Result Of Mediation Which Was Not Accompanied By A Court Ruling In Relation To The Executorial Value," *Tec Empresarial* 19, no. 1 (2024): 2329–43.
[22] Badriyah Harun, *Panduan Praktis Pembagian Waris* (Yogyakarta: Pustaka Yustisia, 2009), 4.
[23] Muh Yusuf et al., "Analisis Hukum Hak Legitime Portie Dalam Sistem Hukum Waris Perdata Indonesia," *Legal Dialogica* 1, no. 1 (2025): 1–15. https://jurnal.fh.umi.ac.id/index.php/legal/article/view/1416
[24] Fajar Nugraha et al., "Akibat Hukum Pewaris Yang Menolak Warisan," *Diversi Jurnal Hukum* 6, no. 1 (2020): 1–21, https://doi.org/10.32503/diversi.v6i1.634.

the deceased or the requests of the heirs.[25] As a system established by Allah SWT, Islamic inheritance law encompasses principles that differ from those created by humans. It not only regulates the distribution of inheritance but also conveys spiritual and moral values because it relates to social responsibility and ethics within the family.[26] Therefore, in Islamic inheritance law, there is no option for heirs to refuse inheritance and they will receive their inheritance in accordance with the provisions set forth in the Quran. If the deceased leaves debts that exceed the inheritance left behind, then those debts are settled to the extent of the inheritance and, legally, the heirs are not responsible for bearing the debts of the deceased.

Based on the results of an interview with Notary X, the Settlement Deed (*Dading*) drawn up in order to settle the distribution of inheritance is the entirety of the deceased's estate. This means that the inheritance is not divided in stages with different settlement deeds, but rather that one settlement deed contains the distribution of the entirety of the deceased's estate to all heirs. If the principle of *Ijbari* is applied by the heirs, then the heirs should receive their shares in accordance with the provisions of Islamic inheritance law. However, considering the three *dading* deeds drawn up by Notary X, when compared with the distribution of inheritance according to Islamic law, there are discrepancies.

In the first case contained in the Settlement Agreement (*Dading*) Number 11 of 2022, Mr. Z (the deceased) left three biological children as heirs, namely Mrs. A, Mr. B, and Mr. C. Mrs. A had died before the heir, so her position was replaced by Mrs. A's descendants, Mr. E and Ms. F, as substitute heirs. In the settlement of the Deed, the heir's assets were ultimately only given to Mr. B, Mr. C, and Mr. E, which means that Ms. F, as another substitute heir, did not receive a share. The settlement deed did not explain that Ms. F had already known her share according to Islamic inheritance law and subsequently donated her share to her brother (Mr. E). This means that settlement deed No. 11 deprived Ms. F of her rights as a legitimate heir.

In the second case, contained in Deed Number 05 of 2023, Mr. Y (the heir) left only one sibling, Mrs. M, and had previously gifted all of his assets to his stepchild, Mr. I. In accordance with the principle of gifting in Article 210 of the Civil Code and the jurisprudence related to the mandatory bequest to stepchildren, the gift to Mr. I may only be a maximum of 1/3 of Mr. Y's assets, and Mrs. M, as the sole heir, receives 2/3 of the inheritance. However, in the settlement of Deed Number 05, Mr. I received more than 1/3 of the estate, and it was not stated whether Mrs. M was aware that she was actually the sole heir entitled to 2/3 of Mr. Y's estate.

In the third case contained in Deed Number 10 of 2024, Mr. Q (the heir) had a wife but no biological children. The only remaining family members from the bloodline were seven cousins, namely the children of his aunt (the older sister of the heir's father) who had passed away earlier. The assets left by the heir are personal property. Among the seven cousins of the heir, Mrs. STY has

[25] Amir Syarifuddin, *Hukum Kewarisan Islam* (Jakarta: Kencana, 2011), 20.
[26] Putra Halomoan Hsb et al., "Inheritance in the Mandailing Community: Value Changes from a Legal Culture Perspective," *NURANI: Jurnal Kajian Syari'ah Dan Masyarakat* 25, no. 1 (2025): 83–108, https://doi.org/10.19109/nurani.v25i1.24870.

passed away and left four children, who are the heir's nephews and nieces. When viewed from the perspective of Islamic inheritance law, because the heir's wife, Mrs. N, is still alive, she is classified as a dzawil furudh, namely the primary heir whose share has been determined with certainty. Based on the provisions of Article 176 of the Compilation of Islamic Law (KHI) and Surah An-Nisa verse 12, a wife who does not have children receives a quarter (¼) of the heir's property. However, in the settlement of the *Dading* Deed, the inheritance was only given to the heir's nephew, Mr. H, so that the wife did not receive a share. It appears that the approach used is inheritance according to customary law, whereby the wife of the deceased is not entitled to inherit property that comes from the deceased's personal property. Meanwhile, in Islamic inheritance law, the inheritance is an accumulation of personal property and half of the joint property, after deducting the costs of funeral arrangements, medical expenses, and the deceased's debts, and the widow is entitled to ¼ of the property.

Based on an interview with Notary X, it is known that the reason the parties divided the inheritance through a *Dading* Deed was because they wanted to do so amicably without following the faraid provisions, thereby automatically not applying the principle of *Ijbari*. In principle, according to Islamic inheritance law, deviations from the principle of *ijbari* or faraid provisions are permissible by applying the principle of *Ishlah*, which is "after each party is aware of their share." This shows that, legally, before a peaceful/consensus division of inheritance takes place, the heirs must first be aware of their rights. Indeed, Article 183 of the KHI does not explicitly explain how this can be implemented in practice as a basis for the heirs to be aware of their shares. However, this can be done at least through legal counseling provided by a notary before the signing of the Settlement Deed (*Dading*).

In the process of drafting the settlement agreement, the parties reached an amicable settlement verbally. However, at that stage, the parties did not understand the inheritance they were entitled to according to the provisions of faraid, due to their limited understanding of Islamic law. Furthermore, after the agreement was to be recorded in an authentic deed, Notary X, in practice, only followed the wishes of the parties without providing legal advice regarding the distribution of inheritance according to Islam. Therefore, based on the three Settlement Deeds (*Dading*) that the author examined, no documents or supporting evidence were found stating that the heirs were aware of their shares or that the heirs willingly gave their inheritance shares to other heirs. The three deeds also did not contain any clauses stating that the parties were aware of their respective shares according to Islamic inheritance law.

As explained earlier, in the context of the third Peace Agreement (*Dading*) drawn up by Notary X in Bantul Regency, the four requirements for a valid agreement have generally been met. However, when viewed in relation to Islamic inheritance law, the substance does not reflect conformity with the principle of *Ishlah*, thus creating a legal loophole in the *Dading* Agreement. The practical risk that may arise is the potential for disputes, namely the cancellation of the *Dading* Deed at a later date, which may be filed by the heirs if there are parties who feel aggrieved or are not fully aware of their rights. This is because the *Dading* Deed drawn up by the Notary is still subject to challenge if it is not

registered with the court.[27] Unlike a Settlement Agreement that has been confirmed by a judge (Acte Van Vergelijk), it has permanent legal force, which means that the decision is final and cannot be appealed or reviewed.[28]

In addition, a practical risk arises if the Settlement Agreement is to be strengthened into a Settlement Deed (Acte Van Vergelijk), as the judge may refuse to do so. This is because Article 27 paragraph (2) of PERMA 1/2016 stipulates that a settlement agreement made by the parties with the assistance of a mediator must meet certain requirements, namely that it does not contain provisions that contrary to law, public order, and/or morality, detrimental to third parties, or incapable of implementation.

The phrase "contrary to the law" is important because the heirs and beneficiaries named in the Settlement Deed are all Muslim, so there is a clear influence in Islamic inheritance law itself that the principles of Islamic inheritance law cannot be ignored, namely the provision of *Ishlah*, which states that the parties must first be aware of the share they are entitled to receive. The implication of not fulfilling this provision, which could harm other heirs, is that the judge will not ratify the settlement agreement that has been made into a Settlement Deed, and will request that the parties and mediators rectify this matter. Since notaries are public officials who can make settlement agreements, it is only appropriate that they follow this provision.

In carrying out their duties, a Notary is not only required to exercise the authority stipulated in the Law, namely to draw up authentic deeds, but is also responsible for the deeds they have drawn up. On the other hand, even though a Settlement Deed is classified as a Partij Acte, the Notary, as a public official, still has the obligation to provide legal advice to the parties to ensure that their wishes are in accordance with the laws and regulations.[29] Therefore, to mitigate the practical risks contained in the *Dading* Deed that are not in accordance with the principles of Islamic inheritance law, the Notary must first provide legal guidance and ensure that the heirs understand their respective shares according to Islamic law before they are recorded in the *Dading* Deed. In addition, it is necessary to add a clause in the premise of the deed stating that the heirs are aware of their respective shares according to Islamic inheritance law. This is useful to prevent the Deed of Settlement from being subject to future cancellation and to provide security for the Notary on the basis of the deed that has been drawn up.

CLOSING

The existence of the *Dading* Deed, drawn up before Notary X in Bantul Regency and used to settle inheritance disputes, is recognized in the Civil Code as a valid instrument for settling a case. However, there are several inconsistencies, including the inclusion of a clause regarding Article 1858 of the Civil Code in Article 3 of the *Dading* Settlement Deed, which reads, "The settlement between

[27] Firmansyah, "Kekuatan Hukum Akta Perdamaian Yang Dibuat dihadapan Notaris Danputusan Akta Perdamaian Pengadilan," 228.
[28] Razikin, *Tinjauan Yuridis Akta Perdamaian Yang Dilakukan Para Pihak Di Hadapan Notaris*, 69.
[29] Anggita Mustika Dewi et al., *Akta Notaris Konsep, Struktur Dasar, Dan Teknik Penyusunan* (Setara Press, 2024), 16.

the parties has the force of a final court decision and cannot be contested on the grounds of legal error or because one of the parties has been harmed." The provisions of Article 1858 of the Civil Code apply to Settlement Agreements that have been confirmed by a judge in court, so it is not appropriate to include them in *Dading* Agreements that have not been registered with the competent court. Furthermore, regarding the substance of the deed containing the inheritance settlement, if the deceased and the heirs listed in the deed are Muslim, then Islamic inheritance law must still be used as the primary reference. In practice, the Settlement Deed deviates from the principle of *Ijbari* in Islamic inheritance law, but is not accompanied by the application of the concept of *Ishlah* as stipulated in Article 183 of the KHI. This is because there is no substance in the agreement stating that the heirs are aware of their shares according to Islamic inheritance law, and the notary does not ensure that the heirs know their legal shares. This gap has the potential to create legal risks for the parties and the notary, including the possibility of the deed being revoked (the deed is declared legally invalid) or disputes arising in the future.

Based on this, notaries as public officials should not include clauses related to Article 1858 of the Civil Code, which equates deeds of settlement made before a notary with deeds of reconciliation confirmed by a judge in court (*Acte Van Vergelijk*), when drafting deeds of settlement. Furthermore, before drafting the Settlement Deed, the Notary should first provide legal advice to the parties regarding the provisions of Islamic inheritance law. In addition, once the parties understand the inheritance they are entitled to, this should be stated in a clause in the Settlement Deed. This clause is important to confirm that the heirs are aware of and understand their respective inheritance rights in accordance with Islamic law before agreeing on the distribution. Thus, the deed that is drawn up has legal certainty and is in line with Islamic principles. Furthermore, so that the deed does not have any loopholes for cancellation and the deed can be confirmed by a judge through a court decision, the Deed of Settlement has the force of a court decision at the final level.

REFERENCES

Amir Syarifuddin. *Hukum Kewarisan Islam*. Jakata: Kencana, 2011.

Badriyah Harun. *Panduan Praktis Pembagian Waris*. Yogyakarta: Pustaka Yustisia, 2009.

Dewi, Anggita Mustika, Iin Suny Atmadja, Deasy Widya Sari, et al. *Akta Notaris Konsep, Struktur Dasar, dan Teknik Penyusunan*. Malang: Setara Press, 2024.

Dhonny Tri Laksono. *Kewenangan Notaris Dalam Pembuatan Akta Perdamaian Terhadap Pihak yang Bersengketa di Kabupaten Sintang Provinsi Kalimantan Barat*. 2013, 32–33.

Eiga Irwana. *Pembagian Harta Waris Secara Kekeluargaan Ditinjau Dari Maqasid Syariah (Kajian Acte Van Dading 404/Pdt.G/2020/Pa.Bji)*. 2021, 46–46.

Elfia. "Ishlah Dalam Takhruj Menurut Hanafiyah Versus Ishlah Dalam Kompilasi Hukum Islam (Analisis Kebijakan Hukum)." *Jurnal Ilmiah Syariah* 17, no. 1 (2018): 1–33. https://doi.org/10.1234/juris.v17i1.1010.

Firmansyah, Yanuar Rozi. "Kekuatan Hukum Akta Perdamaian yang Dibuatdihadapan Notaris Danputusan Akta Perdamaian Pengadilan." *Jurnal Cakrawala Hukum* 8, no. 2 (2017): 220–29. https://doi.org/10.26905/idjch.v8i2.2114.

Hsb, Putra Halomoan, Fatahuddin Aziz Siregar, and Suud Sarim Karimullah. "Inheritance in the Mandailing Community: Value Changes from a Legal Culture Perspective." *NURANI: Jurnal Kajian Syari'ah Dan Masyarakat* 25, no. 1 (2025): 83–108. https://doi.org/10.19109/nurani.v25i1.24870.

Irene Svinarky. *Pembuatan Akta Perjanjian Damai (Dading) Melalui Proses Negosiasi Dalam Penyelesaian Sengketa Tanah di Kota Padang*. 2012, 44–44.

Kennedy, Bobby. *Isi Akta Perdamaian Dalam Putusan Pengadilan Negeri Semarang Nomor 14/Pdt.G/2013/PN.Smg*. (Semarang), September 2018, 1–62.

Khairandy, Ridwan. *Hukum Kontrak Indonesia Dalam Perspektif Perbandingan (Bagian Pertama)*. FH UII Press, 2013.

Lestari, Ahdiana Yuni, and Endang Heriyani. *Dasar-Dasar Pembuatan Kontrak Dan Aqad*. MocoMedia, 2009.

Muh Yusuf, Nurhaedah, and Syamsul Alam. "Analisis Hukum Hak Legitime Portie Dalam Sistem Hukum Waris Perdata Indonesia." *Legal Dialogica* 1, no. 1 (2025): 1–15.

Mukti, Dhimas Haris Anggara. "Kekuatan Mengikat Akta Perdamaian (Acte Van Dading) yang Dibuat Diluar Pengadilan yang Isinya Berbeda Dengan Putusan yang Sudah Berkekuatan Hukum Tetap (In Kracht Van Gewijsde)." *Jurnal Hukum dan Pembangunan* 53, no. 1 (2023): 49–84. https://doi.org/10.21143/jhp.vol53.no1.1546.

Nofitasari, Khotifatul Defi. "Penyelesaian Sengketa Harta Waris Melalui Akta Vandanding." *Jurnal Antologi Hukum* 5, no. 1 (2025): 72–90. https://doi.org/10.21154/antologihukum.v5i1.5169.

Nugraha, Fajar, Fisuda Alifa Mimiamanda Radinda, and Ricka Auliaty Fathonah. "Akibat Hukum Pewaris yang Menolak Warisan." *Diversi Jurnal Hukum* 6, no. 1 (2020): 1–21. https://doi.org/10.32503/diversi.v6i1.634.

Prodjodikoro, Wirjono. *Hukum Warisan di Indonesia*. Jakarta: Sumur Bandung, 1980.

Razikin, Abdul Khair. *Tinjauan Yuridis Akta Perdamaian yang Dilakukan Para Pihak di Hadapan Notaris*. (Yogyakarta), 2011, 24–24.

Sapsudin, Asep, Iwan Sutadipraja, and Aldi Putra Pangestu. "The Van Dading Act as A Result of Mediation Which was Not Accompanied by A Court Ruling In Relation to The Executorial Value." *Tec Empresarial* 19, no. 1 (2024): 2329–2343.

Seroja, Triana Dewi, Ampuan Situmeang, Febri Jaya, and Supardi. "Kekuatan Hukum Acta Van Dading Sebagai Hasil Kesepakatan Mediasi Dalam Gugatan Perdata." *Jurnal Hukum To-Ra: Hukum Untuk Mengatur dan Melindungi Masyarakat* 6, no. 3 (2020): 265–281. https://doi.org/10.33541/JtVol5Iss2pp102.

Soekanto, Soerjono. *Pengantar Penelitian Hukum*. Jakarta: UI-Press, 1986.

Sutantio, Retnowulan, and Iskandar Oeripkartawinata. *Hukum Acara Perdata Dalam Teori dan Praktek Edisi Revisi*. CV. Mandar Maju, 2019.

Taliwongso, Candella Angela Anatea. "Kedudukan Akta Otentik Sebagai Alat Bukti Dalam Persidangan Perdata di Tinjau Dari Pasal 1870 Kuh Perdata (Studi Kasus Putusan Nomor 347/Pdt.G/2012/ Pn.Mdn)." *Lex Administratum* 10, no. 2 (2022): 1–15.