

Impact of Ne Bis in Idem on Inheritance Claims in Indonesian Civil Law

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ABSTRACT

This study aims to analyze and explain the influence ne bis in idem on inheritance. The method used in this study is a normative legal research method with primary legal materials. The results of the study show that in the second case/dispute the Makale District Court Decision Number: 103/Pdt.G/2015/PN. Mkl., contrary to the principle ne bis in idem, because the judge only considered that the subject of the case was the same and the object of the case was the same, so this case entered ne bis in idem without assessing the legal relationship between Defendant I and Defendant II. Defendant II redeems the pawn object from Defendant I but between Defendant II and Defendant I has never entered into a pawn agreement so that Defendant II does not have the right to redeem the pawn object/object of dispute. To avoid the confusion mentioned above, in this third case, if G. Yohana Lembang wants to fight for his right to obtain the distribution of inheritance from his deceased parents, then G. Yohana Lembang must change his position as Defendant II and the Plaintiff is his 2 brothers who have not been involved in the first and second cases and the object of the dispute is changed to undivided inherited land. So the influence ne bis in idem on inheritance does not exist. so that G. Yohana Lembang can obtain his rights through the distribution of inheritance that has not been divided.

KEYWORDS *Ne bis in idem, Object of Land Mortgage Agreement and inheritance property*



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INTRODUCTION

A person who wants to claim his rights must prepare his lawsuit letter properly, ensuring that the evidence or events stated in the lawsuit are supported by proof. If the evidence is not present, it should not be presented, as it can result in the lawsuit being rejected. According to Sudikno Mertokusumo (2009), judges in examining civil cases are passive in the sense that the scope or extent of the subject matter of the dispute submitted to the judge for examination is basically determined by the parties to the case, not by the judge.

Since the plaintiff determines the course of the disputed event or the postulates, the plaintiff must also prepare his evidence (Nesson, 2013). The events presented must be supported by evidence; otherwise, the plaintiff's lawsuit will be rejected. The plaintiff's lack of evidence in presenting these arguments will be the subject of the problem in the plaintiff's efforts to seek justice. In this dispute, the author will present three examples of cases that will be experienced by the plaintiff, as follows: 1. Case example 1—Makale District Court Decision Number 41/Pdt.G/2012/PN.Mkl.; 2. Case example 2—Makale District Court Decision Number: 103/Pdt.G/2015/PN.Mkl.; 3. Case example 3 discusses how the plaintiffs in cases 1 and 2 can obtain the inheritance of their parents without applying the principle of *ne bis in idem*[a1]. Based on the description above, the formulation of the problem to be discussed in this paper is how *ne bis in idem* influences inheritance.

According to Iva Nurdianah Azizah (2022), *ne bis in idem* is a case with the same object, parties, and subject matter, decided by the court and having permanent legal force, whether granting or rejecting, which cannot be re-examined a second time. If a lawsuit that a person files with the court contains *ne bis in idem*, the judge must declare it inadmissible (*Niet Ontvankelijk Verklaard*).

In accordance with Article 1917 of the Indonesian Civil Code, a judge's decision that has gained permanent legal force (*inkracht*) is only binding on the specific subject matter of the case at hand. To invoke this binding effect in subsequent cases, several conditions must be met: the issues in dispute must be identical; the claims must be based on the same grounds; and the parties involved must be the same, both in terms of the litigants and their legal relationships. This principle ensures that judicial decisions are not applied beyond their intended scope, maintaining the integrity and specificity of legal rulings (Sihombing, 2021). Furthermore, legal certainty is crucial in upholding the consistency of judicial decisions, which is why the doctrine of *res judicata* limits the application of previous decisions to the same subject matter and parties involved (Putra & Agustina, 2020). This serves to prevent any undue expansion of a judgment's effect beyond what was originally intended (Hartanto, 2022). Additionally, the application of *res judicata* within Indonesian legal practice plays a vital role in upholding fairness and ensuring that legal principles are applied consistently across cases (Wibowo, 2019). The impact of judicial precedents on subsequent cases further reinforces the importance of applying these principles only within the intended boundaries of the case (Alfian & Salim, 2023).

According to Yayah Harahap (2007), this has also been discussed as part of execution. Therefore, what is stated above is only a summary in relation to the final decision, with reference that if the lawsuit filed is based on the same grounds and filed by and against the same party, in the same relationship as the court decision that has permanent legal force, then the element of *ne bis in idem* is attached to the lawsuit. Therefore, the lawsuit must be handed down a final verdict with *amar*: declaring the lawsuit unacceptable.

Furthermore, according to Yosef Peniel Batubara (2021), from the description of Article 1917 of the Civil Code, the conditions that can be seen are as follows:

- What is being sued has been litigated before;
- In the previous case, there has been a judge's decision that has permanent legal force;
- The case disputed in the decision has been terminated completely;
- The subject or party to the matter is the same; and
- The object being sued is the same.

These conditions are cumulative, so if one of them is not met, the principle of *ne bis in idem* does not apply to the decision.

Furthermore, the Supreme Court has issued Circular Letter Number: 03 of 2002 concerning the Handling of Cases Related to the Principle of *ne bis in idem*, stating that in order for the principle of *ne bis in idem* to be implemented properly and for the sake of certainty for justice seekers by avoiding different decisions:

- Proceedings in the same Court:

The Registrar should carefully examine the case file and report to the Chief Justice if there are similar cases that have been decided in the past;

The Chief Justice shall provide a note to the Panel of Judges regarding the circumstances;

The Panel of Judges is obliged to consider, both in the exception decision and in the main case, similar cases that have been decided in the past.

According to Urip Santoso (2014), a *lien* is the handing over of a piece of land belonging to a person to another person for a while, which is at the same time followed by the

payment of a sum of money by another party in cash as a pawn, with the provision that the landowner will only get his land back if he redeems it with the same amount of money.

Furthermore, according to Boedi Harsono (2003), *land pawn* is a legal relationship between a person and land belonging to another person, who has received pawn money from him. As long as the pawn money has not been returned, the land is controlled by the *pawnholder*. The return of the pawn, or commonly called redemption, depends on the will and ability of the mortgagor landowner. In a society that still obeys customary law, many pawns last for years or even decades because the landowner has not been able to redeem them.

According to H. Hilman Hadikusumo (1992), a land transaction called "*selling pawn*" (Javanese: *juall sende*, Sundanese: *ngajual akad*) is the handover of land by the seller to the buyer at a certain price and with the right to redeem it.

If a dispute arises over pawned land in the community and the community brings the dispute to court, the court will apply the Government Regulation in Lieu of Law Number 56 of 1960 concerning the determination of the area of agricultural land: Article 7 regulates as follows:

Whoever controls agricultural land with liens that, at the commencement of this Regulation, have lasted seven years or more is obliged to return the land to its owner within one month after the existing crop has been harvested, with no right to demand the payment of a ransom.

Regarding liens that have not lasted seven years, the landowner has the right to request it again at any time after the existing crop has been harvested, by paying a ransom which is calculated according to the formula:

$(7 + 1/2) - \text{lien period} \div 7 \times \text{pawning amount}$, provided that at any time the lien has lasted seven years, the pawnholder is obliged to return the land without payment of the ransom, within one month after the existing crop is harvested.

According to Urip Santoso (2014), the factors causing the abolition of land mortgage rights are as follows:

1. Redemption has been made by the landowner (*pawnbroker*);
2. The lien has been in place for seven years or more;
3. There is a court decision that states that the pawnholder becomes the owner of the mortgaged land because the landowner cannot redeem it within the period agreed upon by both parties in the land mortgage;
4. The land was appropriated for the public interest;
5. The land was destroyed.

To prove the parties' postulations, the judge burdens the litigants to submit evidence. According to Article 163 of the Civil Code, Article 1865 of the Civil Code states: "Whoever declares that he has a right or mentions an event to affirm his right or to deny the existence of the rights of others, then that person must prove the existence of that right or event." So what must be proven is:

1. Event;
2. Rights.

These must be proven using evidence. Evidence that can be used by the litigants (the plaintiff or the defendant) is the evidence mentioned in Article 164 HIR/284 RBg, namely: written evidence, witness evidence, suspicion, confession, oath.

According to M. Natsir Asnawi (2016), after considering all of the evidence, the panel of judges will then conclude what facts were revealed in the trial. Concluding the facts at the trial is carried out by the judge by linking the evidence with the postulates of the parties. Furthermore, the judge will assess which evidence is stronger and which convinces the judge, to further guide the judge in concluding the facts revealed at the trial.

METHOD

The type of research used is *normative legal research*. According to Soerjono Soekanto (2001: 14), *normative legal research* is research that examines applicable norms, including laws that are relevant to the problem as the source of legal material. Furthermore, according to Peter Mahmud Marzuki (2014), the approaches used in legal research are the *statute approach*, the *case approach*, the *historical approach*, the *comparative approach*, and the *conceptual approach*. This research is *normative juridical* with a *legal approach* and a *case approach*. The *legal approach* is carried out by examining laws related to pawns and *ne bis in idem*. According to Johnny Ibrahim (2006), the *case approach* in normative research aims to study the application of legal norms or rules as carried out in legal practice.

RESULT AND DISCUSSION

In this discussion, there are 2 decisions that will be discussed, namely:

1. Makale District Court Decision Number 41/Pdt.G/2012/PN.Mkl.
2. Makale District Court Decision Number: 103/Pdt.G/2015/PN. Mkl.

First Lawsuit Position Case

This case is a case of civil dispute about procurement with the litigant as follows: G. Yohana Lembang, domiciled in Ariang Village (Garunggong), Makale District, Tana Toraja Regency, as Plaintiff, against Dorce Tongli, Domiciled at Jalan H. A. Mappanyuki No. 67 Forestry Complex, Makassar Municipality, as Defendant.

Plaintiff's Claims:

1. That initially the object of the dispute was the inheritance of the Plaintiff's mother and the deceased. J. U. Lembang, the husband of the Defendant, named Alm. Dorothea Rante who married the alm. Henrikus Lembang.
2. That the Plaintiff is one of the heirs of 4 (four) brothers, the children of the deceased. Dorothea Rante who married the alm. Henrikus Lembang is:
 - Yohana Lembang (Plaintiff)
 - M. Teresia Lembang
 - Alm. J. U. Lembang (Defendant's Husband)
 - D. L. Lembang;
3. That the Object of Dispute has been fully handed over as part or property of the Plaintiff by the Plaintiff's mother herself during her life as a sign of her gratitude to God for the birth of the Plaintiff who was born prematurely (young) and can survive (bunga 'matanna), because 4 (four) of the Plaintiff's brothers were born but all of them died in infancy.

4. That in 1965 the object of dispute and the Bombongan rice fields, now the dry land was mortgaged by the Plaintiff to A. P. Limbong Allo for Rp.750,000,- (seven hundred and fifty thousand rupiah).
5. That then in 1972 J. U. Lembang (deceased) the Defendant's husband redeemed both, namely the object of dispute and the Bombongan land for Rp.175,000,- (one hundred and seventy-five thousand rupiah) which was received by H. Lembang without permission and without the Plaintiff's knowledge.

Legal Considerations

IN THE MAIN POINT:

Considering that from these facts none can explain about the land object of dispute that has been divided by the heirs by handing it over to the Plaintiff as the heir by his mother which is said to be a sign of gratitude but all witnesses explained about the existence of the pawn made by the Plaintiff with the knowledge of his parents and saw the Plaintiff who worked on the land that was the object of the dispute in the 1990s so that there was no connection to prove the evidence Plaintiff's lawsuit.

Considering, that even though the facts of the testimony of the Plaintiff's witnesses are not able to prove the postulates of the plaintiff's lawsuit, it is necessary to connect these facts with the evidence of the plaintiff's letter as follows.

Considering, that from the evidence of the letter marked P-1 is a certificate from G. Y. Lembang explaining the existence of a pawn that occurred between G. J. Lembang who had received money as a loan from A. P. Limbong Allo which was approved by his parents but if it is connected with the facts of the witness testimony proves that the land object of dispute has been mortgaged by the Plaintiff by receiving his pawn money from A. P. Limbong Allo in 1965 and with the knowledge and approval of the person as also explained in the evidence of letter P-5, although it cannot be used as perfect evidence, is supported by the facts of the witness statement and the evidence of the letter marked P-1 so that it can be proven regarding the existence of a pawn made by G. J. Lembang with the approval of his parents, but the proof cannot prove the postulates of the plaintiff's lawsuit.

Considering, that despite all the evidence of the Plaintiff that proves the existence of a pawn made by the Plaintiff, according to the panel of judges, the occurrence of the pawn made by the Plaintiff and the redemption of the pawn as evidenced by P-4 is not as evidence of the ownership of a property right over the object of dispute, **but** for the Defendant it is the basis of the Defendant's control over the object of the dispute recognized by the Plaintiff.

Considering that because the Plaintiff cannot prove the postulates of his lawsuit, the Plaintiff's lawsuit does not need to be further elaborated and the Defendant's control over the object of the dispute cannot be said to be an unlawful act as long as it has not been proven otherwise.

Considering, that thus the Plaintiff's lawsuit must be declared rejected in its entirety and the Plaintiff is also sentenced to pay the costs of the case arising in this case in the amount to be determined in the judgment below.

Analysis of the Makale District Court Decision Number 41/Pdt.G/2012/PN.Mkl

The author does not agree with the judge's consideration mentioned above because the judge only saw that the donation made by the plaintiff's mother to the plaintiff was not proven, so the plaintiff's lawsuit was rejected. The judge did not consider whether the redemption made by the defendant was valid or not. The party who entered into the agreement with A.P. Limbong Allo was the Plaintiff, thus there was a pawn agreement that gave rise to rights and obligations for both parties. The Defendant makes redemption for the land mortgaged by the plaintiff, this means that the Defendant does not have the right to redeem the land because he is not the one who made the agreement (no rights and obligations).

According to Munir Fuady (2014) in treaty law, a theory called *pacta sunt servanda* also applies. Literally, *pacta sunt servanda* means that "the covenant is binding". In this case, if before the entry into force of the agreement the principle of freedom of contract applies, in the sense that the parties are free to govern themselves whatever they want to include in the agreement, then after the agreement is signed or after the entry into force of an agreement, then the parties are no longer free, but are bound by what they have stipulated in the agreement.

Second Lawsuit Position Case: Makale District Court Decision Number: 103/Pdt.G/2015/PN.

This dispute is a continuation of the first civil dispute regarding land acquisition where the plaintiff's lawsuit was rejected by the court because the plaintiff did not succeed in proving his argument that the land that was the object of the dispute was granted by the plaintiff's mother to the plaintiff while according to the plaintiff the mortgage dispute has not been decided by the court. The court has not considered the legal position of the defendant who redeemed the land from A.P. Limbong Allo, where the defendant never entered into a pawn agreement.

The litigants and the position of the case are as follows:

1. G. Yohana Lembang, Residence in Ariang Village (Garunggong), Makale District, Tana Toraja Regency, hereinafter referred to as the Plaintiff, against:
2. Mrs. Adolphone Limbong Allo Bungin (Widow of Alm. A.P Limbong), located at Jalan Nusa Indah, No. 13, Palu- Central Sulawesi, hereinafter referred to as Defendant I;
3. Dorce Tongli (widow of Alm. J.U Lembang), located at Jalan H.A Mappangyuki No. 67 (Forestry complex), Makassar, hereinafter referred to as Defendant II;

The reasons that are the basis of the Plaintiff's lawsuit are as follows:

1. That the Plaintiff on October 4, 1965, had borrowed money of Rp. 750,000 (Seven Hundred and Fifty Thousand Rupiah) from A.P Limbong Allo with a guarantee of 2 (two) rice field locations, now both of them are dry land, with the location, area and boundaries as follows:
 - a. Located in Bombongan (1/2 of a rice field), covering an area of $\pm 300 \text{ m}^2$, with the following boundaries:
 - North with : Advent Church
 - East with: Makale Christian Vocational School
 - South with : Makale Christian Vocational School
 - West with : Road to Makale Christian Vocational School
 - b. Located in Galinting (3 rice fields) covering an area of $\pm 1,500 \text{ m}^2$, with the following boundaries:

- North with : Mangape House
 - East with : Rumah Ibu Tandungan and Maria Biang
 - South with : Tana Toraja Regent Office House
 - West with : Y. Buntu House, A. Pala'langan, M. Tangaran
2. That because the collateral land is handed over to the control of the lender to be processed, it is in accordance with the Tana Toraja Customary Law is a Pawn.
 3. That of the two locations of the land mortgaged above, the Object of Dispute in this case is specifically land according to point 1 b.
 4. That now the Object of Dispute is controlled by Defendant II on the grounds that it has been redeemed by Defendant II's Husband (Alm. JU. Lembang) and or Defendant II.
 5. That because the person who pawns the Object of Dispute is the Plaintiff, regardless of who is most entitled to the Object of Pawn, in accordance with the Customary Law of the Pawn who has the right to redeem the Object of Pawn is the Pawnbroker or another person who has the Power of Attorney from the Pawnbroker (Plaintiff).
 6. That the Plaintiff never gave a good Power of Attorney to the Husband of the Defendant II (Alm. JU. Lembang) and or Defendant II or anyone to redeem the Pawn Object from the Husband of Defendant I (Alm. AP. Limbonbg Allo) and or Defendant I, then the actions of the Defendant's Husband I and/or Defendant I who received the ransom from the Defendant's Husband II and/or Defendant II and the actions of the Defendant's Husband II and/or Defendant II who redeemed the Pawn Object without the permission/consent of the pawnbroker (the Plaintiff) were unlawful acts and therefore the possession of the Object of Dispute by Defendant II was against the law.
 7. That because the Object of Dispute is the Object of Pawn from the Plaintiff as the Pawnbroker to A.P. Limbong Alli (deceased) as the Pawnholder, then based on Prp No. 56 of 1960, the return of the Pawn Object does not need to be through ransom.

Based on the reasons mentioned above, the Plaintiff requests that the Chief Justice of the Makale District Court, through the Panel of Judges who examined this case, be pleased to decide this case as follows:

1. Grant the Plaintiff's lawsuit in its entirety.
2. Declare that the confiscation of the collateral placed on the Object of Dispute is valid and valuable.
3. Declaring that the Object of Dispute is the Object of Pawn from the Plaintiff to A.P. Limbong Allo (Alm) Husband of the Defendant I.
4. Declaring that the actions of the Defendant's Husband II and/or Defendant II who redeem the Pawn Object are now the Object of Dispute from the Defendant I's Husband and/or from Defendant I who did not have the power or consent of the Plaintiff as the pawnbroker is an unlawful act.
5. Declaring that the actions of the Husband of Defendant I and/or Defendant I who received ransom from the Husband of Defendant II and/or Defendant II are unlawful acts.
6. Declaring that the control of the Object of Dispute by Defendant II is against the law.

7. Punishing Defendant I and Defendant II or anyone who has the right from them to hand over the Object of Dispute in an empty, intact and perfect state without any burden to the Plaintiff as the Pawnbroker without ransom.
8. Punishing defendants I and II jointly and severally to pay the costs incurred in this case.

Legal Considerations

In Exceptions

Considering, that the Defendant in his answer has filed an exception which basically states that:

1. The plaintiff's lawsuit Nebis In Idem;
2. The plaintiff's lawsuit is lacking in parties;

Regarding Nebis In Idem's lawsuit:

That in his deposition, the Defendant postulated that the object of the dispute had been litigated by the Plaintiff G. Yohana Lembang in the civil case No. 41/Pdt.G/2012/PN.Mkl, in conjunction with the decision of the Makassar High Court No. 13/PDT/2013/PT. MKS juncto the Decision of the Supreme Court of the Republic of Indonesia Number: 2030 K/PDT/2013 which has permanent legal force;

That the Plaintiff in his replica responded to the exception by stating in essence that the party in case No. 41/Pdt.G/2012/ PN.Mkl is only dorce Tongli while in this case the Defendant I is Mrs. Adolfina Limbong Allo Bungin and the material of case No. 41/Pdt.G/2012/PN.Mkl is property while the material in this case is Pawn;

Considering that against this pretextual exception, the Panel is of the opinion that in order to prove the parties' arguments, the Panel needs to pay attention to the evidence, especially the evidence of the decision No. 41/Pdt.G/2012/PN.Mkl to determine whether there is indeed an element of nebis in idem in this Plaintiff's lawsuit;

Considering that because the Panel needs to examine the evidence but this exception is still the subject matter of an exception, this exception will be considered in the main case

In the Tree of Things

Considering that thus the Panel will consider the Defendant's exception to point 1 which postulates that the Plaintiff's lawsuit Nebis In Idem because the object of the dispute has been litigated by the Plaintiff G. Yohana Lembang in the civil case No. 41/Pdt.G/2012/PN.Mkl, jo the Decision of the Makassar High Court No. 13/PDT/2013/PT. MKS juncto Decision of the Supreme Court of the Republic of Indonesia No: 2030 K/PDT/2013;

Considering that by considering the evidence of T-6 is connected to the Plaintiff's lawsuit, the Panel finds that the object of the lawsuit (location, area and boundaries of the disputed land) is the same, as well as the postulates of the Plaintiff's lawsuit (*vide posita* of the Plaintiff's lawsuit), the legal relationship between the parties is the same, also the subject matter of the lawsuit is the same, namely an unlawful act of possession of a piece of land, the Panel only found that there was a reduction in the postulates in the previous case that was not postulated in this lawsuit, namely regarding the origin of obtaining the object of dispute which was a gift from the Plaintiff's parents and the addition of a party, namely Defendant I which also turned out to be postulated in the previous lawsuit *posita* but was not seated as a party

however, the Panel did not see anything new regarding the postulates of the Plaintiff's lawsuit and related to the issue of pawn that the Plaintiff questioned in the current lawsuit has also been considered in the Decision by the Panel of Judges from the first level to the level of cassation and has been given a certain legal status, and the Decision is positive, namely rejecting the Plaintiff's lawsuit and has also had permanent legal force, the Panel considers the Plaintiff's lawsuit *Nebis In Idem*;

Considering that the Supreme Court Decision No. 1226 K/Pdt/2001 dated May 20, 2002, has issued a rule of law even though the position of the subject is different, but the object is the same as the case that has been decided previously and has permanent legal force, the lawsuit is declared *NEBIS IN IDEM*;

Considering that the Decision of the Supreme Court of the Republic of Indonesia No. 2895 K/Pdt/1995 dated August 30, 1996, has issued the rule "because the exclusion of Defendants I, II, III is considered appropriate and justified according to law, the Court does not need to consider further the Plaintiff's lawsuit, and subsequently the Plaintiff's lawsuit must be declared inadmissible;

Considering that because the exception is justified according to the law, based on the legal principles of jurisprudence mentioned above, it brings juridical consequences of the Plaintiff's *lawsuit a quo* must be declared impossible.

Analysis of the Makale District Court Decision Number 103/Pdt.G/2015/PN.Mkl

The author does not agree with the judge's consideration mentioned above because the judge only sees the same party, the same object of the case or the same land so that he immediately applies *ne bis in idem* without considering whether the defendant has the right to redeem the object of the dispute while the defendant himself has never entered into an agreement. Mrs. Adolphone Limbong Allo Bungin (Widow of Alm. A.P Limbong)/Defendant I and Dorce Tongli (widow of Alm. J.U Lembang)/Defendant II has never entered into a land mortgage agreement so that Defendant II does not have the right to redeem the object of dispute.

The Third Position Case

This third dispute is a continuation of the civil dispute and the second dispute. The first dispute was about land acquisition where the plaintiff's lawsuit was rejected by the court because the plaintiff did not succeed in proving his postulate that the land that was the object of the dispute was granted by the plaintiff's mother to the plaintiff while according to the plaintiff the mortgage dispute had not been decided by the court. The court has not considered the legal position of the defendant who redeemed the land from A.P. Limbong Allo, where the defendant never entered into a pawn agreement. The second dispute of the Plaintiff postulates the existence of a pawn agreement and the Defendant does not have the right to redeem the pawned land because Defendant II has never entered into a pawn agreement, but the judge only considers that this second dispute is a repetition of the first dispute because the parties are the same and the same object so the judge applies the principle *ne bis in idem*.

In this third case, G. Yohana Lembang, must have a strategy so that he can get his parents' inheritance without being influenced by *nebis in idem*.

In the first case, G. Yohana Lembang as the plaintiff postulated as follows:

1. That initially the object of the dispute was the inheritance of the Plaintiff's mother and the deceased. J. U. Lembang, the husband of the Defendant, named Almh. Dorothea Rante who married the alm. Henrikus Lembang.
2. That the Plaintiff is one of the heirs of 4 (four) brothers, the children of the deceased. Dorothea Rante who married the alm. Henrikus Lembang is:
 - Yohana Lembang (Plaintiff)
 - M. Teresia Lembang
 - Alm. J. U. Lembang (Defendant's Husband)
 - D. L. Lembang;

Based on the evidence stated in the first lawsuit, in order for Yohana Lembang to be able to obtain his parents' inheritance and avoid the influence of ne bis in idem, the steps that must be corrected by Y. Yohana Lembang are as follows:

1. Make changes to the position of the parties to the litigation as follows:
 - a. M. Teresia Lembang Residence in Villagehereinafter referred to as Plaintiff I,
 - b. D. L. Lembang Residence in the Villagehereinafter referred to as Plaintiff II),oppose:
 - c. Dorce Tongli (widow of Alm. J.U Lembang), located at Jalan H.A Mappangyuki No. 67 (Forestry complex), Makassar, hereinafter referred to as Defendant I,
 - d. G. Yohana Lembang, Residence in Ariang Village (Garonggong), Makale District, Tana Toraja Regency, hereinafter referred to Defendant II.The position of G. Yohana Lembang as Defendant II so that the judge does not apply the principle ne bis in idem.
2. The evidence presented:
 - a. That the object of the dispute is the inheritance of the parents of the Plaintiff and the Defendant named almh. Dorothea Rante who married the alm. Henrikus Lembang.
 - b. That the Plaintiff and the Defendant are the heirs of 4 (four) brothers, the children of the deceased. Dorothea Rante who married the alm. Henrikus Lembang is:
 - Yohana Lembang (Defendant II)
 - M. Teresia Lembang (Plaintiff I)
 - Alm. J. U. Lembang (Husband of Defendant I)
 - D. L. Lembang (Plaintiff II);
3. The object of dispute is the land located in the
4. The object of the dispute has never been divided among the heirs of

From the evidence presented, both the subject and the object of the case are still new and are not influenced by the principle ne bis in idem because in this dispute it is the division of inheritance so that Yohana Lembang as Defendant II can obtain the inheritance of his parents.

CONCLUSION

Based on the results of the research and discussion, it can be concluded that in the Decision of the Makale District Court Number 103/Pdt.G/2015/PN.Mkl, the influence of *ne bis in idem* is very strong; the judge only briefly observes the parties who are involved in the same case and the object of the case, without further examining the case material. To avoid the confusion mentioned above, in this third case, if G. Yohana Lembang wants to fight for his right to obtain the distribution of inheritance from his deceased parents, then G. Yohana Lembang must change his position to Defendant II, and the Plaintiff should be his two brothers who were not involved in the first and second cases. Additionally, the object of the dispute should be changed to undivided inherited land.

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