

ABSTRAK

Kepemilikan adalah hak yang diberikan kepada seseorang atas suatu benda atau harta, yang memungkinkan untuk memanfaatkannya selama tidak bertentangan dengan *syara'*. Pada Desa Kebun, Kecamatan Kamal, Kabupaten Bangkalan, terdapat praktik *nguwan embi'* yang dilakukan di atas tanah milik orang lain. Praktik tersebut pada awalnya berlangsung atas dasar akad lisan antara pemilik tanah terdahulu dan penggembala. Namun, setelah wafatnya pemilik tanah, praktik tetap dilanjutkan tanpa adanya pembaruan izin dari ahli waris. Penelitian ini bertujuan untuk menganalisis kesesuaian praktik *nguwan embi'* setelah perubahan status kepemilikan tanah, serta menilai keabsahan penyelesaian sengketa yang dilakukan antara penggembala dan ahli waris pemilik tanah terdahulu menurut Hukum Islam.

Metode yang digunakan adalah yuridis empiris dengan pendekatan *socio-legal*. Data dilakukan melalui observasi, wawancara, dan studi kepustakaan.

Hasil penelitian menunjukkan bahwa keberlanjutan praktik *nguwan embi'* tanpa pembaruan izin dari ahli waris pemilik tanah terdahulu bertentangan dengan *Surah Al-Baqarah* ayat 188 karena mengandung unsur *ghasab*, yakni pengambilan hak orang lain tanpa izin yang sah, yang tergolong sebagai perbuatan bathil. Selain itu, penyelesaian sengketa yang timbul akibat praktik tersebut dilakukan melalui mekanisme *ash-shulh*, namun dinilai tidak sah dan ditolak karena adanya ketidakpahaman pihak ketiga (mediator) terhadap prinsip dasar *ash-shulh* dan hukum pewarisan dalam Islam. Akibatnya, rukun dan syarat sahnya *ash-shulh* tidak terpenuhi, seperti tidak hadirnya seluruh ahli waris yang berhak, objek sengketa berupa tanah warisan yang belum dibagi secara jelas sehingga bersifat *gharar*, serta kesepakatan akad *al-ariyah* yang dihasilkan menjadi *bathil* karena tidak memiliki kepastian dan kejelasan hukum.

Kata Kunci: *ash-shulh*, *nguwan embi'*, tanah

ABSTRACT

Ownership is the right given to a person over an object or property, which allows him to utilize it as long as it is not contrary to Shara'. In Kebun Village, Kamal Subdistrict, Bangkalan Regency, there is the practice of *nguwan embi'* which is carried out on land owned by others. The practice initially took place on the basis of an oral contract between the previous landowner and the herder. However, after the death of the landowner, the practice continued without any renewal of permission from the heirs. This research aims to analyze the suitability of the practice of *nguwan embi'* after the change in land ownership status, as well as assess the validity of the dispute settlement carried out between the herder and the heirs of the previous landowner according to Islamic Law.

The method used is empirical juridical with a socio-legal approach. Data were collected through observation, interviews, and literature study.

The results show that the continuation of the practice of *nguwan embi'* without renewing the permission of the heirs of the previous landowner is contrary to Surah Al-Baqarah verse 188 because it contains elements of *ghasab*, which is the taking of other people's rights without legal permission, which is classified as an unlawful act. In addition, the settlement of disputes arising from this practice was carried out through the *ash-shulh* mechanism, but was considered invalid and rejected due to the lack of understanding of the third party (mediator) of the basic principles of *ash-shulh* and inheritance law in Islam. As a result, the pillars and conditions of the validity of *ash-shulh* are not met, such as the absence of all entitled heirs, the object of dispute in the form of inherited land that has not been clearly divided so that it is *gharar*, and the resulting *al-ariyah* contract agreement becomes invalid because it does not have legal certainty and clarity.

Keyword: *ash-shulh*, *nguwan embi'*, land