

Distribution of Inheritance Based on The Principle of Justice According to National Law

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ABSTRACT

Inheritance is an object that has been given by an heir in the form of a moving or immovable object. Distribution of inheritance often causes inheritance disputes between parties who receive an inheritance. The assets and inheritance that are disputed sometimes give harm to parties outside the heirs. The system and rules governing inheritance are very necessary for a country known for its diverse customs, one of which is Indonesia. This study aims to investigate the principle of justice in distributing inheritance based on the compilation of Islamic law (KHI). The method used in this study is library research using various literature and legislation. The results of the study show that the distribution of inheritance among the parties has not referred to the national legal system but is still based on a legal system agreed upon by the parties. They have the right and can use and choose which law to use for their inheritance. Existing laws will always provide and accommodate various forms of taste and justice created in the lives of the general public and in that case, are the same age as an inheritance under various systems and laws and that are truly trusted by the heirs.

Keywords: *Principle of Justice, Inheritance, Legal system*

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1. INTRODUCTION

As a Samawi religion, Islam teaches law to be a guideline for humanity to ensure harmony, order, protection, and peace in living in the shade and divine blessing (Kuncoro, 2015). Indonesia with a majority of Muslim population easily accommodates Islamic law to be positive law. Inheritance law is a lump sum or part of the law which contains arrangements for transfer of rights or ownership of property in the form of inheritance of movable or immovable property of a person who has inheritance. The inheritance law also has a function to determine the parties who become heirs, and determine how many assets each party will receive

Property is an important part of human life. To get the treasure, a lot of time, energy, and mind must be sacrificed. Property is a need in one's life both personal needs and social needs. The degree of a person is often measured by how much he has in the form of wealth. The social disparity arises from the quantity of property owned by a person.

Seeing the importance of property, the law strictly regulates property. Starting from the type of object or asset, the right that can be owned by someone to an object as wealth, and the way that is done to get the right to move from wealth to property which becomes the transfer of rights if the owner dies. Property ownership, especially for someone whose marriage is indeed bound and turns out to be determined differences between the legal systems. The status of the right to property is important in determining who is most considered and who is entitled to own the property.

In the Private law system, the assets of people who are bound by marriage vary. Property owned by someone who is bound by marriage is not differentiated based on the origin of property so that called marital assets. The concept of marital assets in the customary law system is different from private law. The private property comes from property owned before marriage and is owned by a family before marriage. Marital assets in the customary law system are after marriage ties where each party has the same rights. This is not based on the principle of justice and can lead to discrimination, especially those who receive it. Referring to the Private law system, there is no difference in obtaining both male and female inheritance. However, the Compilation of Islamic Law (KHI) still distinguishes the inheritance distribution between men and women. Based on the description above, it is necessary to examine the fulfillment of the principle of justice in the distribution of inheritance according to the Compilation of Islamic Law Compilation (KHI)

2. THEORITICAL FRAMEWORK

2.1. The Concept of Inheritance

According to the Large Indonesian Language Dictionary (KBBI), inheritance is the process by which a property is transferred which is inherited from the inheritor by the heir according to the applicable legal rules. Based on the formulation, elements of inheritance can be identified. Namely, there are heirs, inheritance, transitional processes, legal rules, and society. The heir is or can be said to be someone who has or has gone or died before and in this case, does have inheritance or property. Whereas the so-called heir expert is someone or they are deemed to have the right to receive the inheritance or property of the heir who has been left behind.

The heir consists of the original inheritance, namely the child of the heir and the wife concerned in this case the heir, this is also called the real term of the heir. Intimate inheritance is an expert from the heir and who is considered close to or has a relationship and kinship that is close to the heir. Heirs who are considered legitimate according to the law, the custom and even religion are called legitimate heirs. Removing the property to be inherited is the property of objects from the inheritance of an heir. The criteria or size of objects or assets left behind may be rights to the material, assets of all wealth, rights to wealth and intellectual property, or brands of trading companies (Jamal, 2016).

Inheritance is an act or process or method of movement and the transfer of inheritance to the heirs of the heir. Society or community groups always have rules that are considered valid regarding inheritance based on customary rules, and religion and also applicable laws, when an event or death occurs, the concept of inheritance occurs. Where the father or mother in a family member dies this is the perception of the death event, if the person who has died or who has a lot of all the assets and wealth to be left behind, then the property and wealth, then, in this case, that really becomes the root of a problem is not his death or event, but the wealth left behind.

The problem is who is entitled to the assets left behind? Who is obliged to bear and settle the debts of the deceased? Thus, it is clear that inheritance is a family which is its root and on the other hand is rooted in inheritance. Rooted means because on the one hand, it is family and also because of who is involved in being an heir. It is rooted in the inheritance because it can be said about whoever is authorized to be the heir of the inheritance.

In the concept of inheritance, there are legal subjects, namely heirs as family members who die and heirs as family members left behind. Because the occurrence of inheritance occur an event of a death in which the heirs will get and have the right to receive the inheritance (Mir-Hosseini & Vogt, 2017). So it is clear that inheritance is a system of positive law and indeed is said to govern the transfer or transfer of inheritance or property, in this case, the heir to experts who are entitled to inherit.

2.2. Inheritance Distribution Pattern

With the death of the testator, inheritance was opened. Before the inheritance is divided, first the assets are separated first, where are the assets from, where are the joint assets. If there are shared assets, it needs to be shared first so that the amount of the assets can be inherited. The right to demand the sharing of shared assets is a right that must not be reduced or even abolished. Coercion cannot be done to someone or anyone to be able to give jointly and to accept only a situation in which the person has undivided wealth.

Receivables made by people on the assets of the deceased also have the right to carry out various forms of resistance, because they are considered the absolute right to the existing accounts and because the distribution of the inheritance has not been repaid. Because confiscation is only possible concerning the undivided inheritance. If the inheritance has been divided, the debtor can only charge each heir.

The Civil Code in the Second Book concerning inheritance Law is from Article 830 to Article 1130. In addition, 1991 Number 1 concerning Presidential Instruction concerning the inheritance law. A basic understanding of inheritance law is not found, only in the Civil Code but also includes various parts of inheritance and concepts, including receiving the inheritance and being entitled and those who are also considered not entitled to receive an inheritance. But in the provisions of the Compilation of Islamic Law, it has been regulated and included the definition of inheritance law.

Article 171 letter A of 1991 Number 1 states: "Inheritance or inheritance law is a series of laws in force and which also regulate matters or about a right of ownership or transfer regarding inheritors and inheritance, and determine with whom or who are entitled to be and take part in each of the heirs in question". It also discusses the understanding of space as well as focusing on and seeing the scope of inheritance and Islam. Only applies to other people in this law and inheritance. The scope includes the transfer of ownership rights, the determination of the heirs and those who have the authority and their respective parts.

In general, it is the whole of the legal rules, and concerning inheritance and legal rules both written and non-written, and regulates the part to be received, the relationship of third parties with their heirs, regarding the transfer or transfer of the wealth or property of the heir and will be forwarded to receive to each of his heirs.

The definition or elements can be drawn in inheritance law, namely:

1. Legal Rule
2. Heir and Transition or Transfer of wealth or property
3. Heirs
4. Parts received
5. The third party has a relationship with those who receive assets (heirs)

Clearly, regarding the inheritance, there is a law, and that can indeed also be divided into several things, namely 2 (two) parts or types, namely about the law governing the inheritance that is written and the rules that also govern customs and inheritance. The legal rules which are indeed contained in law and jurisprudence are referred to as written legacy laws. While custom which concerns the rule of law and its inheritance is a law that is always alive and will grow in the customary law community including its environment. The definition of the transfer of wealth and property contains a meaning that the person who is entitled to receive an inheritance and property which during his lifetime is obtained from the heir is an heir or can be more.

The inheritance or who are considered to receive and has the right to be called an heir is a person who indeed has the authority and has the right to obtain or receive from the heir in the form of inheritance. Large or small parts that will be accepted by various parties from the heirs are indeed already arranged and determined in the inheritance law. Each inheritance system, each expert, is different in accepting his part. For example inheritance in the provisions of the law concerning Islamic inheritance, parts of some heirs are not all the same, certainly different parts.

Distribution of inheritance must be under the principles of justice and law enforcement, so that there is no dispute or crime or conflict in the future so that each of the heirs can explore the existing rules in each occurrence and arrival of problems, to get their share.

However, if there are parties who are referred to as heirs who feel disadvantaged, then they can claim their demands to court, wherein the process in the court runs the party giving the loss or who is considered the accused can be summoned by the judge. In general, male heirs get a part of the inheritance that is more and larger than the female heir, which is meant by a legal relationship that arises between the heir and the third party, when the heir is still alive, whether the heir has debts or receivables so the heirs who solve it.

2.3. Heritage Not Given to Heirs

Some provisions exist, the heir is revealed in giving away his property, not all heirs have the right to receive it. People who are categorized as deemed not entitled to obtain wealth or property or inheritance from the inheritor are:

1. Conducting severe persecution of the testator and resulting in the death and consequences of the act being punished and blamed.
2. There is a decision by a judge stating that he is blamed for defaming the heir;
3. Conduct violence and prevent the heir from making a will;
4. Proven to have done destructive actions, falsified and embezzled a will and contents from the heir (Aprilia, Ria, & Nurlaili, 2018).

2.4. Who is Entitled to Receive Heritage?

The party entitled to inheritance is 1) the party determined by the law and 2) because of a will, this is the category of those who really can and are entitled to receive an inheritance. Based on the existence of laws and regulations that apply to an inheritance lawyer, including in the sense that has the right to receive or obtain an inheritance, as stated and written in an applicable rule. Heirs because this law is regulated in the 873 Civil Code and 1991 Number 1 Presidential Instruction in article 174. In article 873 of the Civil Code the authorized and entitled heirs are determined, namely:

1. Family blood
2. Husband or wife.

Because of the blood relationship, there are heirs who are all descendants or their children, in this case, the heir. Year 199 Number 1 The Presidential Instruction also regulates those parties who are entitled to become heirs, in article 174 this Presidential Instruction distinguishes heirs into two groups, namely:

1. Heirs according to blood relations, are family relationships so that heirs arise;
2. Heirs are formed because of the relationship in a marriage, because the heirs are indeed present and a relationship arises in marriage between the two parties, namely between the heir himself and the heirs. The heirs according to the perception of a will are their heirs or groups intended to receive and obtain inheritance because of the will of the heir himself to his heirs and set forth in a will meaning on a decree contained and containing a statement from someone regarding what he really wants and what he wants will be true if the heir dies.

Each legal system has a different conception of when the inheritance will be distributed to the heirs. Code civil of law and Islamic Law there are several differences or principles that definitions and terms that are indeed considered and referred to as inheritance shall be divided if it can be given and distributed to the heirs if the heir who is in this condition who has wealth and assets has died, is very different with customary law which has the principle that the inheritance can be divided, whether the

heir has not died or has died (Atmadjaja, 2016). Likewise the problem of parts received by heirs, each legal system is also different from the others.

2.5. Distribution of Assets Before Death

In customary law, a person often occurs before he dies making a provision concerning his property addressed to his heirs. If something like that happens, then the heir's assets will be distributed to his heirs according to established instructions. In the customary law community, what is more, done is that the time is still living the heir gives his property as a whole to his heirs and/or those who are already married to part of his property (Firdaus, 2015).

This method is carried out by the heir so that the heirs who get it can be used for their livelihood. So, in the hands of the heirs, there is still a legacy of property which will be distributed to their children gradually if the heir's children are married. If the heir dies, while there are still children who have not yet received the assets, then the assets that are still left behind are given to them, while those who have received part or all of the assets distributed will no longer receive part of the assets.

In Islamic law, there is a provision that the distribution of property before a deceased is called a will, 1/3 and indeed the distribution does not exceed and is not permitted more than the provisions of the inheritance. This is intended to protect the part of the parties from other heirs. The definition of deed in civil law contains a statement about someone about what he wants if one day the heir dies, this is called a will, and cannot be revoked

2.6. The principle of justice in the distribution of inheritance in the perspective of national law

The problem of inheritance distribution has become a frequent phenomenon because the parties involved in it feel dissatisfied with the assets obtained from their parents. The concept of justice here gives under their rights; at least there are no more parts that must be broken down or shared. But giving it the same as the equal rights in accordance with *Burgelijke Wetboek* (BW) there must be no difference but all must get all with their respective rights and the same in the eyes of the law, naturally all in the inheritance division follow the concept of national law or not based on Islamic law or local customary law. Because the national law applies thoroughly to Indonesian citizens, we should refer to the national law.

3. RESEARCH METHOD

This study uses normative legal research by examining various regulations in the field of Inheritance. The data obtained were analyzed using a qualitative approach and presented in the descriptive form.

4. RESULT AND DISCUSSION

4.1. What are the inheritance and heir elements?

Inheritance has elements that must be fulfilled so that it can be called an inheritance event. Inheritance must contain about the element of the heir, regarding the inheritance to be shared, and the right to receive the heirs themselves. While the heir is a person, who is classified as one who will inherit part or all of his property. An inheritance is a property that will certainly be inherited. While the heirs themselves are those, who will receive and be entitled to inheritance without exception. A very basic difference between the three legal systems that govern inheritance in Indonesia regarding these inheritance elements (Mardani, 2016). However, in broad terms, there is a meaning or the existence of a meaning that is the same between the elements of inheritance as mentioned above. According to the customary inheritance system, people will continue their property while still alive, or after death, this is what is called the heir. The law used to regulate life-related to tradition is also said to see an inheritance as part of the process of transition and transfer of hands to one's wealth and property and can be from material or immaterial one or small generation to another generation or large.

Private law and its system, concerning an heir where one person will continue his wealth when alive or after death. Likewise, customary law also considers the existence of inheritance as a part and a transitional process and/or assets and wealth that have been moved materially or immaterial from one another. According to the provisions of the Islamic inheritance legal system, said the heir should be someone who does have property during his lifetime. Both someone who has been deemed to inherit his property and someone who receives it in this case inheritance must have faith and indeed Islamic religion. It is said to leave a legacy, and the inheritance is a term from the heir of this provision published in the rule of 1991 Number 1 Article 171 letter c Presidential Instruction concerning Islamic law and its compilation. In Islamic Law and Compilation, it explains about article 171 of the Presidential Instruction, which refers to legal authority regarding inheritance, who is authorized and has the right to determine the assets of the heir and regulate the transfer and transfer of assets left behind (Utama, 2016).

The definition of inheritance in customary law is regarding inheritance, and the law of civil inheritance and Islamic inheritance law has a different concept. Customary law regarding inheritance defines heirs according to 3 (three) family systems, namely:

1. Patrilineal
2. Matrilineal
3. Parental

The patrilineal family system is known for its heirs in inherited customary law with a patrilineal kinship system that his parents only give their wealth to their sons. But boys cannot oppose if parents give something to their daughters. Heirs in this system are:

1. Boys: All legitimate boys have the right to inherit livelihoods and inheritance.
2. Adopted children: In the assets obtained from work or livelihood, there is an equal position between biological children and adopted children.
3. Father and mother and siblings between brothers and sisters.

The customary inheritance law with a system of matrilineal citizenship determines that the children of the mother can be their heirs, both livelihoods and inheritance. Obtaining the same rights to the inheritance left by his parents among men and women also the difference does not exist and is part of the parental family system.

4.2. How the concept of inheritance in private law?

Private law regarding inheritance contains provisions to be an heir and has rights to property:

1. Ab-Intestato, meaning that there is a part of the heirs according to the provisions of the legal rules which are already stipulated in the law, for example, the inheritance of children, husbands, wives, grandparents, grandmothers.
2. Testament, the meaning is based on the will of the heir who was bolted during his lifetime, getting his share of the heir (Walim, 2017).

In the Provisions of Article 2 code of private law the child is deemed to have been born if for the sake of the child in receiving a part of the inheritance, including in this case the child who is in the womb of his mother, except if born in death. According to article 838 code of private law, someone who is deemed inappropriate to inherit is:

1. Sentenced and attempted murder of the heir
2. Committing a crime that is threatened with a sentence of 5 years or more because it is considered defamatory to the heir and has committed a crime.
3. Measures to prevent and obstruct make or even revoke a will that is inherited by the heir.

4. Proven to have committed acts of damage, embezzlement, or falsification of the contents of the testament of the heir.

Having a blood relationship with the heir or because of the relationship between marriage and Islamic religion and not getting involved or dealing with the law, namely the so-called heir and position when the testate dies. Indonesia recognizes the distribution of inheritance in Islamic law which has been divided into 3 (three) systems, namely:

1. Patrilineal does not recognize the replacement of places between women and men and prioritizes male heirs.
2. Bilateral recognize the replacement of places between women and men are entitled heirs, namely women, and men.
3. Based on 1991 Number 1, the Presidential Instruction regarding compilation of Islamic law accommodated the inheritance legal system according to the patrilineal inheritance system with a bilateral Islamic inheritance system which, although prioritizing male heirs, still recognizes substitution between male and female heirs (Nurhayani, 2014).

Heirs according to the system of patrilineal inheritance law are people who are truly considered to have a close relationship or blood and a relationship in the marital relationship with the concerned or heir and are Muslim. Heirs who are considered to be the heirs of the heirs who are Muslims are experts who inherit and certainly are Muslim. Heirs are known to have Islamic beliefs can be proven and seen from their identity cards.

4.3. What if there's no party to maintain the inheritance?

If there is no neglected inheritance because of the absence left by testate in this case heir inheritance, in West Javanese customs, for example, inheritance is left to the village. Then the village will utilize the inheritance for the welfare of the village. There were also in some areas the neglected inheritance was handed over to Baitul Mall or also handed over to poor village residents or also handed over to social foundations.

In the law of civil inheritance or Islamic inheritance law, if there are overtaken or not taken care of inheritance by the heirs, in other words, there is no heir, the inheritance is handed over to the Heritage Center (BHP). BHP secures the goods and inheritance which is no longer handled for later registration and announces the existence of the neglected inheritance. If it has been three years since the heir passed away, BHP handed it over to the state as the ruler of the neglected inheritance.

In KHI, inheritance based on the decisions of religious courts to be handed over to Baitul Mall to be managed in the interests of Islamic religion and also for the general welfare, if there is no one from the heirs left by the testator.

4.4. How is the distribution of inheritance in the Compilation of Islamic Law (KHI)?

The way to do inheritance depends on the condition of the heir. If all capable people are capable heirs to be able to take actions which are deemed as legal actions and all are in place in the sense of being present all, then the inheritance distribution is left to themselves. They are free by agreement to do their distribution of inheritance and determine the part of each heir. Among the heirs that there are still children or underage or immature, the distribution can be done in the form of a deed obtained from the notary. The basis of distribution is based on the selling value or estimated value of the inheritance.

Justice in the distribution of rights to all heirs, then all gifts during the life of the testator will be given to his heirs must also be taken into account because the gift is considered as an inheritance. The law requires giving to all the inheritance parties included in the existence of a straight-line provision, without distinguishing whether they inherit based on the law or appointed through testament, to return the gift to BHP. This return does not have to return the item that was not received, but enough to calculate the price based on estimates. Returns to inheritance are also required in the case if one of the heirs owes

the heir, of debt, is required for all receivables. In Compilation of Islamic Law (KHI), Islamic inheritance law divides by:

1. The first payment of debts from the testator is carried out.
2. At the time of distribution of inheritance, heritage center officials are present and present before a notary chosen by their heirs. If there is no agreement on which notary is chosen, the religious court appoints a notary to record the distribution of inheritance.
3. A list of inherited property is made; if there is a change in inheritance, the change must be stated by the notary.
4. Heritage assets are valued by those who are competent in their fields.
5. One heir to another can propose the cancellation of inheritance distribution for inheritance carried out by pressure, coercion or fraud and which can result in and cause a danger or loss to reach $\frac{1}{4}$ part which is also due to an error in the case of giving an assessment of the value of inheritance or objects relating to property.
6. If one of the heirs does not include inheritance in the list of inheritance, a further inheritance shall be distributed.
7. The provisions and duration and time of cancellation are with and within the range that is in the time the inheritance is distributed, namely three years. The state of inheritance can return to its original state of cancellation, which is not divided, then re-share the inheritance.

Regarding the distribution of inheritance, there is an absolute part, namely assets from the inheritance which must be and can be given as a whole to the parties of the heirs according to and in a provision of a straight line stated according to the law, to which part the heir is not allowed to deduct with a gift in the lifetime or gift with a will (article 913 code of private law). A line that is said to be straight if it is reached by a line that is either straight down or said to be a line that is straight to the top. That is, if no heirs are straight down, other heirs are following a line that is straight to the top and has the right to the absolute part.

The purpose of the provision regarding the absolute part is to protect the rights of the heirs from the deed's irresponsible actions. For example, all assets are granted and inherited to others according to their own needs without regard to the interests of their heirs. Even though according to the law has full rights between the parties or heirs regarding the inheritance. The law considers provisions regarding absolute parts as restrictions on the freedom of a person to make a will according to his own volition. Therefore the arrangement is placed in the section concerning inheritance rights according to a will.

5. CONCLUSION

The principle of justice will be fulfilled when referring to national law. Through national law, there will be no difference in inheritance distribution due to the principle of equality to provide parts and each of the rights between men and women. The principle of justice emphasizes that all are equal to get their rights, without any differences. With the concept of national law, the parties should be able to implement it in the inheritance distribution; this applies to biological children or adopted children who have been adopted which means that there are equity and distribution based on justice.

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Regulations

Kitab Undang - Undang Hukum Perdata (Burgelijk Wetboek)

Kompilasi Hukum Islam (Compilation of Islamic Law)