



Inheritance Law In The Perspective Of Customary Law, Civil Law, And Islamic Law

Hukum Waris Dalam Perspektif Hukum Adat, Hukum Perdata, Dan Hukum Islam

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ABSTRAK

Untuk memahami aturan dan seluk-beluk hukum waris, hampir tidak dapat dihindari untuk terlebih dahulu memahami beberapa istilah yang umum ditemui dan diketahui. Namun, ada tiga hukum waris yang berlaku di Indonesia, yaitu hukum waris adat, hukum waris perdata, dan hukum waris Islam. Hukum waris adat adalah kaidah-kaidah hukum yang mengatur penerusan dan peralihan dari abad ke abad baik harta kekayaan yang berwujud maupun yang tidak berwujud dari generasi ke generasi. Seseorang menjadi ahli waris menurut hukum waris perdata karena adanya hubungan perkawinan dan hubungan darah, baik secara sah maupun tidak. Sistem kewarisan Islam menurut Al-Qur'an sebenarnya merupakan perbaikan dan perubahan dari prinsip-prinsip hukum kewarisan yang berlaku di negara-negara Arab sebelum Islam, dengan sistem kekeluargaannya yang patrilineal.

ABSTRACT

In order to understand the rules and intricacies of inheritance law, it is almost unavoidable to first understand some terms that are commonly encountered and known. However, there are three inheritance laws that apply in Indonesia, namely customary inheritance law, civil inheritance law, and Islamic inheritance law. Customary inheritance law is the legal rules that regulate the transmission and transition from century to century both tangible and intangible assets from generation to generation. A person becomes an heir according to civil inheritance law due to marriage and blood relations, whether legally or not. The Islamic inheritance system according to the Qur'an is actually an improvement and change from the principles of inheritance law that prevailed in Arab countries before Islam, with its patrilineal family system.

INTRODUCTION

Inheritance law is one part of civil law as a whole and is the smallest part of family law. Inheritance law is closely related to the scope of human life. Because all humans will experience a legal event called death. One of them is the problem of how to manage and continue the rights and obligations of someone who dies. Settlement of rights and obligations as a result of the death of a person, is regulated by inheritance law. In order to understand the rules and intricacies of inheritance law, it is almost unavoidable to first understand some terms that are commonly encountered and known. The terms in question are, of course, an inseparable part of the notion of inheritance law itself. Some of these terms and their meanings can be seen below: Inheritance This term means people who are entitled to receive the inheritance (relics) of people who have died. Inheritance means inheritance, inheritance, and will. An heir is a person who gives inheritance, namely someone who dies and leaves a number of assets, heirlooms and wills. The heirs are all people who become heirs, meaning people who are entitled to receive the inheritance of the heir. Inheriting is getting an inheritance, usually all heirs are inheriting the inheritance of their heirs. The process of inheritance has two meanings or two meanings, namely: Means the continuation or appointment of the heirs when the testator is still alive and means the distribution of inheritance after the testator dies. However, there are three inheritance laws that apply in Indonesia, namely customary inheritance law, civil inheritance law, and Islamic inheritance law. Each inheritance law has different rules.

RESEARCH METHOD

The type of research used in this journal is normative juridical, which is a study that aims to examine legal principles, the content of the rule of law, in this case is about Inheritance Law in the Perspective of Customary Law, Civil Law and Islamic Law. This research was conducted using a statutory approach, namely Complications of Islamic Law, Law, Customary Law, and the Civil Code relating to Inheritance Law. The collection of legal materials is carried out using secondary data, in the form of legal materials such as books and literacy related to the object of research.

RESULTS AND DISCUSSION

1. Customary Inheritance Law

Indonesia is an archipelagic country consisting of various ethnic groups, religions, and customs that differ from one another. This affects the law that applies in each community group known as customary law. According to Ter Haar, a legal expert in his book entitled *Beginnelsen en Stelsel van het Adatrecht*. Customary inheritance law is the legal rules that regulate the transmission and transition from century to century both tangible and intangible assets from generation to generation.

Customary law itself is unwritten, only in the form of norms and customs that must be obeyed by certain communities in an area and only applies in that area with certain sanctions for those who violate it. Therefore, customary inheritance law is heavily influenced by social or kinship structures. In Indonesia, inheritance law recognizes several types of inheritance systems, namely: The hereditary system: this system is divided into three types, namely the patrilineal system, namely based on the father's lineage, the matrilineal system based on the mother's lineage, and the bilateral system, namely the system based on the lineage of both parents. Individual system: under this system, each heir gets or owns the inheritance according to their respective share. In general, this system is applied to people who adhere to a bilateral social system such as Javanese and Bataknese. Collective System: the heirs receive the inheritance as a unit which is not divided into control or ownership and each heir only has the right to use or get the proceeds from the property. An example is heirlooms in a particular society. Mayorat system: in the mayorate system, inheritance is transferred as an undivided unit with the right of control being delegated to certain children. For example, the eldest child who serves as the leader of the family replaces the position of the father or mother as the head of the family, as in the people of Bali and Lampung, inheritance is delegated to the eldest child and in South Sumatra to the eldest daughter.

2. Civil Inheritance Law

The heirs according to civil inheritance law are not distinguished by gender as in some customary inheritance laws. A person becomes an heir according to civil inheritance law due to marriage and blood relations, whether legally or not. In western inheritance law there are two important elements, namely: The individual element (concerning one's personal self). In principle, a person who owns an object has the broadest freedom as an individual to do anything with the object he owns, including his wealth according to his will. Social elements (concerning common interests). The actions carried out by the owner of the property as described in the individual elements can result in losses to the heirs so that the Law provides limitations on the freedom of the heirs for the benefit of the heirs.

This limitation in civil inheritance is referred to as *Legitieme Portie* which means a certain/absolute part of certain heirs. Because the absolute part is closely related to the grant/grant given by the testator, namely the limitation on the freedom of the testator in making a will, the *Legitieme Portie* is regulated in the section that regulates the will or testament. The BW inheritance system does not recognize the term "original property or gono-gini property" or property acquired jointly in marriage, because the inheritance in BW from whoever is also a "unity" which is completely and completely in its entirety will pass from the hands of the heirs/heirs to his heirs. This is confirmed in Article 849 BW, namely "The law does not consider the nature or origin of the goods in an inheritance to regulate inheritance". People who have the closest blood relationship are entitled to inherit (see Article 852 of the Civil Code). The closeness of blood relations can be grouped into four groups, namely: Group I heirs are included in group I heirs, namely the children of the heirs and their descendants in a straight line and widows/widowers. In group I it is possible to change places (grandchildren replace children who have died first from the heir). Regarding this change of place, Article 847 of the Civil Code stipulates that no one can take the place of someone who is still alive, for example, a child replaces the inheritance rights of his mother who is still alive. If in a situation the mother refuses to accept the inheritance, the child acts as himself, and does not take the place of his mother. Group II heirs are included in group II heirs, namely the father, mother, and siblings of the heir. Group III heirs are included in group III heirs, namely



grandparents from the father's line and grandparents from the mother's line. Group IV heirs are included in group IV heirs, namely relatives from the father and relatives from the mother, up to the sixth degree.

3. According to Article 838 of the Civil Code, a person deemed inappropriate to inherit from an heir is as follows

Those who have been convicted of murder or attempted murder of heirs. Those who have been convicted of defaming an heir have committed a crime that carries a sentence of five years or more. Those who prevent the testator from making or revoking a will. Those who are proven to have embezzled, tampered with, or falsified the will of the testator. The following rights are owned by the heirs according to the civil inheritance law, namely: The right to demand the split of the inheritance. Pay attention to the provisions of Article 1066 of the Civil Code. The agreement not to divide the inheritance is within five years, after five years an agreement can be made between the heirs. Saisine rights. Pay attention to the provisions of Article 833 of the Civil Code. A person naturally by law gets property, all rights, and receivables from the heir, but someone can accept or refuse and even consider accepting an inheritance. Beneficiary rights. Pay attention to Article 1023 of the Civil Code. Beneficiary rights, namely the right to receive inheritance by requesting registration of rights and obligations, debts, and receivables from the testator. Hereditary Petition Rights. Pay attention to Article 834 of the Civil Code. Petition hereditary rights, namely the right to sue a person or other heirs who control part or all of the inheritance to which they are entitled.

4. Islamic inheritance law

The form of inheritance or inheritance according to Islamic law is very different from the form of inheritance according to western inheritance law and as regulated in BW. Inheritance or inheritance according to Islamic law is "a number of property and all rights of the deceased in a clean condition". that is, the inheritance inherited by the heirs is a number of property and all rights, "after deducting the payment of the heir's debts and other payments caused by the death of the heir. The Islamic inheritance system according to the Qur'an is actually an improvement and change from the principles of inheritance law that prevailed in Arab countries before Islam, with its patrilineal family system. Basically, before Islam, there were three main principles in Islamic inheritance law, namely: Family members who have the right to inherit first are male relatives from the closest paternal side or called *ashab ah*, women and family members from the mother's line have no rights. inheritance. His descendants, namely children, grandchildren, advanced, basically have more rights to inherit than the ancestral heirs, namely, father, brother, and great-grandmother. After Islam came, the Qur'an brought changes and improvements to the three principles above so that the main points of law Islamic inheritance in the Qur'an as specified in the letter An-Nissa.

In addition to all that, the heirs' priority group is also known, namely "the heirs who take precedence to inherit" from other groups of heirs. Those who according to the Qur'an belong to the group that takes precedence to inherit or are called the "priority group" consisting of four kinds, namely: The first priority, namely: Children, both male and female, or heirs to replace the position of children who die. Father, mother, and widower or widow, if there are no children. The priority of the two brothers, both male and female, or the successor to your position. Father, mother, and widow or widower, if there are no relatives. The third virtue: Mother and father, if there is a family, mother and father if one, if there are no children and no relatives. Widow or widower. Fourth virtue: Widow or widower. Heirs substitute for the position of the mother and heirs for the position of the father.

CONCLUSION

In this case, inheritance law is the law that regulates the transfer of assets left by someone who dies and the consequences for his heirs. In principle, only rights and obligations in the legal field of wealth or property can be inherited. In the form of inheritance, there will be a difference between customary law, Islamic law and civil law. In accordance with customary law and Islamic law, basically the transfer of the deceased's hand to all heirs in the form of inheritance in a clean condition, meaning that it has been reduced by the payment of debts from the person who left the inheritance as well as other payments caused by the inheritance. by the death of the beneficiary.

REFERENCES

- Suparman Eman, Hukum Waris Indonesia Dalam Perspektif Islam, Adat, dan BW, Refika Aditama, Bandung, 2011.
- <https://www.futuready.com/artikel/all-about-money/mengenal-hukum-waris-di-indonesia/>
- <https://ngobrolinhukum.wordpress.com/2013/04/25/ahli-waris-menurut-hukum-waris-perdata/>
- Ahlan Sjarif, Surini dan Nurul Elmiyah, Hukum Kewarisan BW “Pewaris Menurut Undang-Undang”, Depok, Badan Penerbit Fakultas Hukum Universitas Indonesia, 2005.
- Muhammad Yasir Fauzi, Legilasi Hukum Kewarisan di Indonesia, Program Pascasarjana IAIN Raden Intan Lampung, Vol. 9, No.2, Agustus 2016.