

Determining the Inheritance Law System to be used in the Event of someone's Death



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ABSTRACT: Humans cannot be separated from inheritance. Inheritance is the most important aspect in all areas of life, because in the end people are always faced with inheritance, whether it is inheritance in positive form, namely obtaining wealth or negative, namely the existence of many debts that are paid as an inheritance from the testator. Inheritance is something that many people who are in need or who are not in need still hope for an inheritance that can improve and/or increase their standard of living.

Inheritance is an inheritance left by a person who dies to his or her heirs. All rights and obligations of the heir automatically (saisine principle) are transferred to the heir(s) when the heir dies, even if the heir is not/is not aware of the existence of the inheritance¹. Inheritance often triggers divisions and/or quarrels in families, especially if the heir leaves behind many heirs. Quarrels can occur because of feelings of injustice, jealousy, disagreement or disagreement in the distribution of inheritance and many other things that trigger quarrels over inheritance, but in the end it is the assets that are fought over between the heirs.

To minimize the risk of disputes, one way is to determine what inheritance law is used in dividing inheritance assets when someone dies.

Determining inheritance law is an important aspect in resolving legal problems related to inheritance of property. This research aims to explore various factors that influence the choice of inheritance law in the context of differences in culture, religion and state law. The research method used is analytical descriptive of the inheritance law system in force in Indonesia as well as a review of related literature. The results of this research identify that in determining which inheritance law to use, factors such as religion, cultural values, state policies and personal family preferences play a crucial role. Apart from that, legal clarity and certainty are also the main considerations in choosing inheritance law. The implications of this research are the importance of being aware of cultural and legal diversity in dealing with inheritance issues, as well as the need for a flexible and inclusive approach in determining inheritance laws that suit the needs and values of the family concerned. This research makes an important contribution to the practical and theoretical understanding of determining effective inheritance law in an increasingly connected global context.

KEYWORDS: inheritance, inheritance, heirs

INTRODUCTION

Inheritance is a phenomenon that always exists in human life. From ancient times to the present, inheritance of property has been an integral part of the social and cultural structure in various societies throughout the world. The concept of inheritance does not only include the transfer of materials, but also involves aspects such as family values, traditions and cultural identity that are passed on from one generation to the next.

The existence of heritage not only reflects the intrinsic relationship between individuals in a family, but also describes the broader relationship between individuals and their society and culture. Therefore, heritage has deep value in understanding the history, identity and values of a human group.

Apart from that, inheritance also has important implications in the legal and economic context, because the arrangement and ownership of inherited assets can influence the distribution of wealth and social justice in society.

Thus, heritage is not just a recurring and constant thing in human life, but is also a reflection of the complexity of interindividual, intergenerational and intercultural relationships that enrich and shape human social and cultural networks.

¹ Hukum waris / J. Satrio ; Pengarang, Satrio ; EDISI, Cet.2 ; Penerbitan, Bandung : Alumni Bandung, 1992

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Inheritance of property is an important aspect of the social and legal structure at various levels of Indonesian society. However, the process of determining inheritance law is often complex and requires careful consideration of the various factors that influence the decision.

This introduction aims to investigate issues related to determining inheritance law, with a focus on cultural diversity and inheritance law systems and their implications for inheritance law practices in Indonesia. This research will identify factors that influence the choice of inheritance law, including but not limited to aspects of religion, culture, state legal policies, and personal family preferences.

Through a descriptive analytical approach and literature review, this research will produce a better understanding of the process of determining effective and relevant inheritance law. It is hoped that the results of this research can provide valuable insight for legal practitioners, policy makers and the general public in facing complex challenges related to inheritance of property.

A. METHOD

In the context of research in Indonesia regarding determining inheritance law that is used when someone dies, analytical descriptive methods can be applied to provide a comprehensive understanding of inheritance law practices in Indonesia. Here are ways to apply the method:

1. Description of the Indonesian Inheritance Law System: The first step is to provide a detailed description of the inheritance law system that applies in Indonesia. This includes an understanding of the principles of inheritance law as regulated in legislation, such as the Civil Code, Islamic law, and customary law, as well as how these legal systems are applied in practice.
2. Identification of Research Variables: Determine the main variables that will be analyzed in the research, such as the regulation of inheritance law based on religion, the role of customary law in determining inheritance law, administrative procedures for inheritance law, and recognized inheritance rights.
3. Data Collection: Collect data through various sources, including statutory regulations, court decisions, administrative documents, and study of related literature. This data will support a comprehensive description of inheritance law practices in Indonesia.
4. Descriptive Analysis: After the data is collected, carry out a descriptive analysis to explain in depth the practice of inheritance law in Indonesia. Identify patterns, trends and differences that emerge in determining inheritance laws, as well as factors that influence these practices.
5. Analytical Analysis: After explaining inheritance law practices, conduct further analysis to understand the implications of these practices. Evaluate the effectiveness, clarity and fairness of the inheritance law system in Indonesia and identify its weaknesses and strengths.
6. Drawing Conclusions: End the research by summarizing the findings obtained from the descriptive and analytical analysis that has been carried out. Provide an in-depth understanding of how inheritance law is determined in Indonesia and recommendations for improvements or changes that may be needed.

By applying analytical descriptive methods, this research can provide an in-depth understanding of the practice of inheritance law in Indonesia and provide a basis for determining the inheritance law that will be used when someone dies as well as improving or further developing the inheritance law system.

B. RESULTS AND DISCUSSION

Inheritance is a sensitive matter to discuss but will always be an interesting topic of conversation considering that humans will not be separated from inheritance, humans will always use the inheritance that falls to them.

Inheritance can be seen from various aspects of life which will be discussed by researchers, namely determining inheritance laws that will be used in distributing inheritance when someone dies.

In Indonesia, there are 3 (three) inheritance law systems that are still used in society, namely:

1. Western Legal System or better known as Civil Law or *Burgelijk Wetboek* (BW);
2. Islamic Inheritance Law System; And
3. Customary Inheritance Law System

These three legal systems can be used in dividing inheritance.

BW Inheritance Law System

In BW inheritance law, several principles are known, namely:

1. The principle of "le mort saisit le vif" (saisine rights), means that if someone dies, then immediately all their rights and obligations pass to their heirs. No surrender or legal action is required.

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2. Individual principle, meaning that the heir is an individual, not a group of heirs and not a tribal or family group (Article 852 in conjunction with Article 852a of the Civil Code)
3. Bilateral principle, meaning that a person not only inherits from his father, but also from his mother, likewise, brothers inherit from both their brothers and sisters, both full and half-siblings (Article 850, Article 865, Article 856 and Article 875 of the Civil Code).
4. Principle of Degree, meaning that heirs whose rank is closer to the heir excludes the opportunity for heirs whose rank is further away, so to simplify calculations, heir classification is carried out (Article 832 paragraph (1) of the Civil Code). In this case, the expression "who is the closest blood relative, the inheritance he will get"² applies. However, there are exceptions, because there is the possibility of group III and group IV appearing together as heirs.
5. Death Principle, inheritance only takes place because of death (Article 830 of the Civil Code). Exceptions exist in the event of absence (Article 467 in conjunction with Article 470 of the Civil Code)³

Apart from the existence of certain principles in BW inheritance law, there are 2 (two) ways of distribution in BW inheritance law, namely:

- a. Wills
- b. Ab Intestato (by law)

A will is a deed that contains a person's statement about what he wants to happen after he dies and which can be revoked again⁴. In this case, what a person wishes will be carried out after he dies, in the sense that what is stated in the letter becomes his last will.

If there is a will, the Will must take precedence. Wills are of several types;

- a. Olographic Will, namely a will written in the testator's own hand before he dies
- b. General Will, a will made before a notary in which the notary helps provide legal counseling
- c. Secret Will, a will made by the testator before he dies, then the letter is sealed and entrusted to a notary, then when the testator dies, the will is only opened
- d. And an emergency will, a will made in an emergency situation, for example during war, state duty, a pandemic, where an emergency will has a validity period of 6 (six) months from the signing of the will.

Because a will is the last wish/will desired by the testator to carry out an action regarding the assets

The left behind, therefore to respect that will, if someone dies and he leaves a will, then that will will always take precedence.

If there is no will, then the second method of distribution that will be carried out is by ab intestato, distribution based on law. In the second book of the Civil Code on objects, the Civil Code provides provisions for dividing inheritance based on class and degree of kinship. In civil law there is no gender difference for heirs, meaning that both women and men will get the same share if they are in the same group.

The next Inheritance Law system is Islamic inheritance law,

The Islamic inheritance law system is a legal system that regulates how to inherit a person's property based on the teachings and principles of Islamic law. This is mainly found in fiqh (Islamic law) which regulates various aspects of Muslim life, including inheritance.

Some of the main characteristics of the Islamic inheritance law system include:

Inheritance According to the Qur'an: Inheritance of property in Islamic law is based on the provisions contained in the Qur'an, especially in Surah An-Nisa (4): 11-12, which regulates the distribution of inheritance among legal heirs .

Heirs: Heirs in Islamic inheritance law consist of specifically determined groups, such as children, husband/wife, parents and siblings, with their respective shares determined based on the provisions regulated in Islamic law.

Proportional Distribution: Inheritance in Islamic law is divided based on clearly defined portions. For example, boys get twice the share as girls in certain cases, and there are special provisions for parents and husband/wife.

Additional Provisions: In Islamic inheritance law, there are also additional rules regarding wills (al-wasiyyah) which allow a person to arrange a small portion of the inheritance, no more than one third of the assets left behind, to be given to certain parties outside legal heir.

² Ali Afandi, Hukum Waris, Hukum Keluarga, Hukum Pembuktian, Jakarta, PT. Bina Aksara, 1983, hlm 53.

³ Djaja S. Meliala, S.H., M.H., Hukum Waris, Menurut Kitab Undang-Undang Hukum Perdata, , Pengertian Hukum Waris, Pengertian dan Penggolongan Ahli Waris, Pengertian Surat Wasiat, Cara Membagi/ memisahkan Harta Warisan, Nusa Aulia, 2019, hlm. 3-4.

⁴ Clause 875 Code of Civil law

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Laws and Fatwas: Implementation of Islamic inheritance laws may vary in different countries or regions, depending on the interpretation of Islamic scholars and Islamic law enforcers (qadis). Fatwas or legal opinions from religious authorities are often used to resolve disputes or problems related to inheritance.

In Islamic inheritance law there are provisions for dividing inheritance based on class, first wife, second wife and so on and always looks at the man's side. Islamic inheritance law provides 2 (two) times the share for male heirs compared to female heirs, in other words women and men in Islamic law get 1:2 (one to two), this is because men are the successors of the bloodline who continue the family and as the head of the family who supports his family. The distribution of inheritance in Islamic law is slightly more complicated than in BW inheritance law because in Islamic law there are differences between women and men and the existence of polygamy. However, in Islamic law it is also known that there are wills which have the same principles as wills in BW inheritance law, namely that the will must come first.

The next inheritance law system is customary inheritance law, which is a legal system that regulates how to inherit a person's property based on the traditions and customs that apply in a particular society or ethnic group. This system is based on hereditary customs that are recognized and respected by members of the community or tribe concerned. Some of the main characteristics of the customary inheritance law system are as follows:

Position of Tradition: The inheritance of property in the customary inheritance law system is based on beliefs, values and norms passed down from generation to generation. These traditions can vary between tribes or ethnic groups, even within one country or region.

Heirs: Heirs recognized in customary inheritance law can include various family relations, such as children, siblings, uncles, aunts, and so on. Recognition of the status and position of heirs is often closely related to the social and cultural structure of the society concerned.

Customary inheritance law is simpler than the two previous inheritance law systems, because traditional inheritance law divides inheritance based on the customs of the heir and his/her heirs. Customary inheritance law is not formally regulated, unlike the BW inheritance law system and Islamic inheritance law, both of which are formally regulated. And in customary inheritance law, it is also known that there is a will which must take precedence if the testator makes it before the testator dies.

After the researcher conducted research on the three inheritance law systems above, it can be said that determining which inheritance law system to use or apply when a person dies depends on the testator's choice if he leaves a will regarding how to distribute his inheritance to (the heirs or it is determined by the heir(s) themselves which inheritance law they will use in dividing the heir's inheritance.

The heir(s) can determine for themselves what inheritance law they use in dividing inheritance as long as there is an agreement between them, except for certain communities whose inheritance law is clear, for example Muslim communities which will use Islamic inheritance law in dividing inheritance, but it is not possible if there are heirs among them who wish to be distributed according to law (*ab intestato*), this can only happen as long as the heirs among them agree to the distribution in a way other than Islamic inheritance law.

So if someone asks what inheritance law is used when someone dies? So to answer this question it is returned to the family left behind, which inheritance law they will agree to use in dividing the heir's inheritance.

C. CONCLUSION

The conclusion in this research is that the BW inheritance law system, Islamic inheritance law and customary inheritance law both have the same position, nothing takes precedence except for the existence of a will, so what will be used in distributing inherited assets takes precedence based on the will. All inheritance law systems that exist and apply in Indonesia are equally good and have their respective functions. So, determining which inheritance law system will be used to distribute inheritance when someone dies depends on the choice of the family left behind. Even though there is a provision that if the person dies is Muslim then the inheritance will be carried out according to Islamic inheritance law, this can still change if the heir(s) really want and agree to this. It is hoped that this research will be useful for practitioners, academics and the public to be wiser and more understanding in determining the inheritance law system that will be used in distributing inheritance when someone dies.

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