




Legal Analysis Of Successor Heirs In Positive Law And Islamic Law

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ABSTRACT

This study is intended to find out more in the provisions in the compilation of Islamic law and Civil Law, on the status successor heirs. Because there is a slight difference, if in BW replacement is no limit, then in KHI explained that this replacement only comes to grandchildren course, therefore there is a contradiction between the provisions of the expert successor inheritance in the compilation of Islamic law with Civil Law (BW). The study was conducted qualitatively using the juridical-normative approach. Approach normative done by researching library materials includes research on the principles of law, Systematics law, comparative law and legal history. The Data obtained by the documentation technique is then performed inductive analysis, where after the data collected then the next step is to analyze the data that is a way to search and systematically organize records of results interviews, observations and more. The results of this study can be explained that the law of inheritance according to the compilation of slam law stated that grandchildren have the right to replace the position his parents died before heir, although the share of grandchildren is not always as big his parents. The share of grandchildren should not exceed the share other heirs equal to the one he replaced. As for provisions in the law of inheritance according to civil law that not only grandchildren have the right to take the place of people the old man who died but also a nephew and also siblings can be replaced by his children.

INTRODUCTION

National development that includes all field with the aim of achieving fair and prosperous Indonesian society material and spiritual evenly based on Pancasila and the law 1945. Development in the legal field is one means of support national development, given that Indonesia is a country based on law and not based on power mere, for that development in the field of law lead to

unification and codification of laws with regard to legal awareness growing in the community for creation of justice and legal certainty.

In heritage law in force in Indonesia to this day, it remains pluralistic. Meaning, various systems of inheritance law in Indonesia is coming together. In time and the same region. It proved with the customary inheritance law still in force, Islamic inheritance law and BW inheritance law together. Side by side set terms of inheritance for the

subjects of law subject in each of these legal systems. In addition, in the field of customary law is still indicates the existence of differences the inheritance law. It is very closely relation to the family system embraced and there are people of Indonesia, namely patrilineal, matrilineal, bilateral and parental and other family systems which may exist as a result of alloys and variations of the three systems. Principles-the principle of family is very influential, especially in the determination of heirs and in the case of determination of the inheritance which will be inherited.

Inheritance law is part of family law has a role to play important, even determining and reflecting the family system in place society. The law of inheritance is very strict relationship to human life because it is related to wealth and one man with the other. Death or dying is an event which must be experienced by every person because death is the end of life's journey human. If a person dies so-called heirs leave family and property wealth is called inheritance. In what way we share the legacy that has been left inheritance and what laws apply to share that legacy. That law discuss the transition of heritage, management and continuation of rights and obligations of a deceased person set forth in the law of inheritance (Utama, 2016).

For the religious population of Indonesia Islam to them can choose the law Islam, for the benefit of the people European or Eastern Foreign, for them apply Western inheritance law and for people who originally known as the son of Islam allows them to choose Customary Inheritance Law.

Law is a system based on the nature of the mind or emotions Justice, therefore inheritance law Civil code (BW), Islamic inheritance law and customary inheritance law is a system have a basic natural thought or sense of Justice different from each other, and have settled as his legal consciousness. With enact the provisions of the choice of law on inheritance law for the community Indonesia is actually a Muslim when viewed from an academic point of view causing confusion or confusion in an understanding of the principles of inheritance law and in practice the application of the law in society.

In the case of the inheritance it's not something that comes with itself. In Islamic inheritance law inherited there is a reason, namely nasab, marriage and nothing'. This is because the NASB refers to family relationship between heirs and members heirs. Because marriage is a person's inheritance by becoming a husband or wife. Because it doesn't reflect the circumstances when a person becomes a slave, then the freed slave died

without leaving ashobah the man who freed the slave got the part.

Common Islamic law of inheritance called Faroidl law is part of the whole of the special Islamic law organize and discuss the process of transition of heritage and rights and obligations of a deceased person to the living.

The compilation of Islamic law inheritance is a law that regulates transfer of ownership rights to relic property the heir presumptive, who entitled to be the heir and his share each and set when the time the division of the estate of the testator implemented.

Inheritance system contained in Burgerlijk Wetboek (BW) or (book of laws- civil law) which adheres to the system individual, where after the testator dies the inheritance of the heir is immediately distributed to the heirs. The provision of heirs in KHUPerdata is regulated in Book II. Civil Code inheritance law is part of the law of property, therefore, it is only the rights and obligations tangible. Inheritance law based on The Act recognized two (2) ways of inheriting, that is, first, inherit because his / her own position. Second, inherited due to the replacement of premises (Plaatsvervulling) (Zuhroh, 2017).

In the field of inheritance experience meaningful development, due to the increasing needs of society complexes and their patterns of thinking can change in accordance with the Times. Among them the Islamic inheritance law experience the development with the experts successor heirs whose application in Indonesia set forth in the compilation of Islamic law.

In the Civil Code is strictly regulated about the change of place of heirs (plaatsvervulling), article 841 B.W. "Replacement the right to give one's replacing to act as a substitute, in degrees and in all rights of persons replaced. As for the the most important thing to look out for in inheritance by replacement of place is that the person who takes the place of have / have the right and position the same as that of the man who his place was replaced.

In addition, in Article 842 BW it I explained that the replacement of the place of the heir in straight line down the legitimate, ongoing without end. Results Of Rakernas The Supreme Court in 2010 and 2011 explained that the successor heirs only until the grandchildren, according to Article 185 compilation Islamic Law. Therefore, the study intended to determine the provisions of the expert successor heirs in KHI and law Civil Code, the following similarities and differences both of these problems.

METHOD

This research is a normative research that uses primary and secondary legal materials, in the form of legislation, literature, and research results relevant to this research. The Data is studied and analyzed through the study of literature to further draw conclusions. Approach taken is the approach of legislation, historical approach and approach to the case. Data analysis is done using descriptive analytical and historical approaches.

RESULTS AND DISCUSSION

A. Successor heirs in Islamic law

Definition of successor heirs in law Islamic inheritance is not the same as inheritance substitute in customary inheritance law, or law the West Bank, which only looking at the successor heirs is descendants of replaced heirs his position. Definition of successor heirs in Islamic inheritance law is the heir only open as a result of the absence of certain heirs.

Heirs are not always descendants of the heirs he replaced. Therefore some jurists say that the law Islamic inheritance does not recognize the change position. Granddaughter, the daughter of the son if there are no other surviving boys and half of the inheritance. Two or more granddaughters get two thirds part. If there are sons, grandchildren women have no part at all. Thus in Islamic law there is no legacy replacement system (Plaatsvervulling), this means that the granddaughter does not replace her father who died earlier than others who left a legacy (Utama, 2016).

Next to the granddaughter woman of the one who left together, they inherited two-thirds of the estate.

Daughters of sons (grandchildren women) do not get an inheritance, if there is boys, so if there are two people daughter. If the granddaughter having a brother becomes ashobah, meaning that both received inheritance of the property after the got the part. For men twice the portion girls.

That the grandson of the daughter and granddaughters of daughters, and grandchildren the women of the boys were all named Zawil Arham. According to Ali ibn Abi Talib, Ibn Abbas, Abu Bakr, Umar, Usman and some tabi " in, that Zawil Arham I just got a new one when there is no more heirs entitled to FARA'id and ashobah, according to Zaid bin Thabit, that Zawil Arham did not get an inheritance from heir. When the person who died there is no heir, no right FARA'id and ashobah sent to baitul maal (kas Negara in The Islamic State).

The opinion was approved by Imam Maliki, Shafi'i and others (Hasibuan, 2018).

B. Positive Legal Heirs

On this occasion will be discussed about the law of inheritance in. On inheritance law is regulated in general terms is the law governing transfer of property ownership relic case the heir presumptive, who entitled to be an heir and how much his share each. Islamic law in Islam known by the term faraidh, plural from the single word faridhah which means provisions, this is because in Islam section- part of the inheritance to which the heirs are entitled has been it is prescribed in the Qur'an.

According to Article 49 of Law No. 9 year 1989 in the case of religious law, the practiced in religious courts is Islamic Inheritance Law. During this time, when called Islamic inheritance law, the association is the law of inheritance according to imam Ash madhhab Shafi'i or the opinion of Hazairin and his disciples Sayuti Talib. Islamic inheritance law is the law the patrimonial inheritance.

In the law of inheritance there are elements that enabling the transfer of heritage someone who goes on as you should. These elements are (Krisnayanti, 2019):

1. The heir is the one who exists when death or declared dead based on the decision of the religious court Islam, leaving heirs and property relics (Article 171 letter B compilation). On top of the Ijtibari, the transfer of property of people who death to his heirs occurred in accordance with God's will S.W.T.
2. The property is an inherited property plus part of the common property after used for the purposes of inheritance during sick to death, maintenance coststion, the payment of debts, and gifts to relatives (Article 171 letter e KHI). Can be distinguished from Treasure relics (Article 171 letter d KHI).

In another sense it can be said Treasure

a relic is anything that is for someone who died during his death, and his legacy it is a treasure, and owned by the owners of the very all kinds of other people's rights in inside it.

The existence of Article 171 letter E KHI has dispelling doubts about Islam about the position of common property in marriage, according to the law which has been agreed in law Marriage Act Number 1 year 1974. According to Article 85 KHI: the existence of property together in marriage it does not close the possibility of property belonging to

each each husband or wife (Listyawati & Dazriani, 2015).

Hence since the ongoing marriage itself forms a treasure together between husband and wife. This principle sourced from the provisions of Article 35 paragraph (1) Law No. 1 of 1974 which state: acquired property during the marriage becomes joint property, therefore, this principle is considered to be inherent in Chapter XIII compilation of laws Islam does not just guarantee law enforcement, but also separate property law in marriage India is a uniform.

In Chapter II on the heirs (Article 172 up to Article 191) compilation of laws Islam. What is meant by heirs is persons or persons entitled to property the legacy left by those who died. Besides because of the relationship kinship (blood or lineage) and marriage, which will be explained below, someone new can be an heir if you meet the following conditions apply to (a) when the testator dies, (b) there is no reasons that prevent him from becoming a member property, and (c) is not covered (walled or of the greater inheritance).

All heirs (from i to ix) are heirs by blood relationship, being experts inheritance due to marital relations is the husband or wife. The husband or wife as the property is located in Al-Qur'an "an Surah An-Nisa" (4) verse 12. Relationship marriage does not cause or the right to any inheritance relatives of the husband and or relatives of the wife (Dewi Kemalasar, 2016).

Mawali is the successor heir. That this is a replacement for the legacy someone to acquire a share of inheritance which was to be obtained by the person replaced it. The reason is because people who replaced it is the one who should inheritance if he were still alive, but in the case in question he has died before the heir. People the substitute shall be a liaison between him who replaces this with the heirs who left the property relics. Those who have been converted are descendants of heir children, descendants of relatives heirs or descendants of persons enter into some kind of inheritance agreement (it may be in the form of a will.) with the heir.

Motivation for institutionalization of successor heirs based on a sense of justice and unworthy, unworthy, unworthy just, and inhumane punish a person with no inheritance what his father should have gotten, only because of his father's died before my grandfather. Moreover if this is connected with the facts, on when my grandfather died, my children all are rich and established. On the contrary the grandson because he was left

orphaned, destitute, and poor (Safryan Dilapanga et al., 2021).

Is it worth depriving him of his right to get what should be got his father's share? The provision became interesting, because it is a new idea poured into a rule of law which refers to the benefit, who owns the property as a symbol of family harmony (in the sense of extended family).

Then the study of inheritance in civil law according to the conception of law Western civil sourced on BW, it is part of the law of property wealth. Therefore, it is only right and obligations tangible property it is a wealth of heritage and which will be inherited. Rights and obligations in public law, rights and obligations it comes from humility and modesty will not be inherited, so similarly, with rights and obligations arising from a legal relationship family, this also can not be inherited.

"The law of attraction is a group regulations governing the law on wealth due to the death of someone, it is about the transfer of wealth death of the deceased and the consequences from this transfer for people who get it, both in relationships between them with them, and in the relationship between them with third party."

In inheritance law according to BW applies there is a saying that "when someone dies." world, then all rights and the responsibility shifts to the members his inheritance". Rights and obligations that turn to experts inheritance is throughout included in property law, or simply rights and obligations that can be assessed by money.

Which is characteristic of inheritance law according to BW, among others, "the absolute right of the respective heirs to time demands division of property legacy". In other words, if an heir demand the division of inheritance in front of court, the claim can not be rejected by other heirs. This provision stated in Article 1066 BW, namely: Someone who has the right to a portion of the property cannot be forced to give up property relics in a state of undivided among the heirs. Division of property the relic can always be sued although there is an agreement that prohibits such. Division suspension agreement inheritance can only be done for a certain period of time, the agreement the division of shares is only binding for five years, however, it can be renewed if it is still desired by the parties (Milayani, 2017).

From the provisions of Article 1066 BW on separation of inheritance and consequences- as a result, it can be understood that the system inheritance law according to BW has distinctive features different from other inheritance laws.

Features these include the hokum waris according to B.C. wants to preserve its heritage an heir as soon as possible divided for those who have the wealth such. If you want to be left without divided, must first go through consent of the entire estate.

In contrast to the customary law system of inheritance, according to both legal systems above what is meant by inheritance or property relics are a number of possessions the property is in pristine condition. Meaning, after deducting the debt payment inheritance and other payments caused by the death of the heir. By therefore, the property received by the heirs according to the Islamic legal system and the system the common law is the right of those who free from the demands of the testator's creditors.

Inheritance in the legal system Western civil sourced on the BW covers all property and rights and obligations of the heir in the field of property law that can judged by money. However, against the provision there are some exceptions, where the rights and obligations in the field property law there are also those who can not turn to the heirs.

CONCLUSION

Inheritance law according to Compilation Islamic Law. In this case, the grandson the right to change people's the old man who died first from the heir. But the grandson part not always as big as his parents. Parts the grandson shall not exceed the share the other heirs to the replaced it. Grandson's share of the estate, maximum amount of inheritance received other heirs who are equal to the he was replaced by the law of inheritance according to BW. In the system this turn, not only grandchildren are entitled replacing his parents' who died except also nephews and also siblings can replaced by his sons.

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