

DIFFERENCES IN THE DISTRIBUTION OF INHERITANCE ISLAMIC LAW AND BATAK LECTURES

By:

Herlina Hanum Harahap ¹⁾

Indra Fauzi ²⁾

Supian ³⁾

Nusantara Muslim University AL Washliyah ^{1,2,3)}

E-mail:

Linahrp4@gmail.com ¹⁾

Fauziindra14@gmail.com ²⁾

Supianchan26@gmail.com ³⁾

ABSTRACT

Customary inheritance is the process by which tangible and intangible property is inherited and passed on from generation to generation. The customary law of inheritance contains provisions on the transfer of property and intangible property from generation to generation to their descendants. An heir is a person who dies, whether male or female, leaving behind a portion of the property acquired and the rights and obligations that must be exercised during his lifetime, whether by will or not. The legal basis for the crown prince to bequeath part of the crown prince's property according to BW inheritance law. Many or at least the share that the heirs receive from the applicable law. Therefore, all heirs have the same inheritance. Meanwhile, batak customary punishment is based on the provisions of the law and ordinary presidential orders on the division of inheritance.

Keywords: Difference, Distribution, Property, and Inheritance

1. INTRODUCTION

Islamic inheritance law is found in the text of the Prophet's hadith narrated by Ahmad, An-Nasa'I and Ad-Daruquthn, which means: Learn the Qur'an and teach it to humans and learn the science of Faraidh and teach it to humans because I am the one who will be kidnapped (we will die) while the knowledge is raised. Almost two people argued about the division of the library, neither of them found anyone willing to give them a fatwa.

Another hadith mentions the following: On the authority of Abu Huraira that the Prophet saw: P teach faraidh and teach people because faraidh is half of

science and will be forgotten. Faraidh's science used to be removed from my people. Ibn Majah and Ad-Daruquthni.

However, it should be noted that according to Ali bin Qasim as stated by Fatchur Rahman the obligation to learn and teach the law of inheritance falls if there is a person who carries it out. All Muslims will bear their sins for ignoring or neglecting orders, such as abandoning *fardhu kifayah* (collective obligations of society) such as organizing the management of the body.

Similarly, regarding the law of faraidh, there is not a single provision (*nash*) which causes that dividing the

estate according to the provision of the *faraidh* is not mandatory. On the contrary, in Surah An-Nisa verse 14 Allah Almighty stipulates:

14. *And whoever disobeys Allah and His messenger and violates His provisions, undoubtedly Allah puts him into the fires of hell while he is eternal in them; and to him an insulting torment.*

The above opinion is actually based on an understanding of the properties of the law, which consists of:

- a. Coercive law.
- b. Governing law.

A. Problem Formulation

The formulation of the problem of this devotion is how the difference in the division of inheritance according to Islamic law and Batak customary law

B. Method

The nature of this research is descriptive analytical, is a method used to describe an ongoing condition or situation that aims to provide data on the object of research so that it is able to explore things that are ideal, then analyzed based on legal theory or laws and regulations. In this study, descriptive analytical methods are used to provide an overview or a phenomenon related to law enforcement for the eradication of money laundering crimes in order to realize a prosperous country.

2. Results of the Discussion on the Differences in the Division of Inheritance According to Islamic Law and Batak Customary Law

As for the governing law, that is, the existing law can be set aside (not edomani) if the parties wish otherwise. (according to the agreement or deliberation between them), and even if the provisions of the existing law are not implemented, the act is not categorized as an unlawful act, because it is only regulating in nature.

For those who argue that the division of inherited property may deviate from the authenticity of the Qur'an and hadith, because in their opinion the provisions of the inheritance (the law of inheritance is in the Alquran text and the hadith is as a "governing law of inheritance", and therefore may not be edomanied or may be set aside if the heirs wish otherwise.

In order to carry out the task of dividing the property of a person who is Muslim (inheritance case), when viewed from the legal point of view, it can be viewed from two angles of provisions as follows:

Division based on court decisions

The division of inherited property based on this court decision also includes the function of the authority of the Religious Court in carrying out the task of execution on the condition that:

a. The judgment in question has already acquired permanent legal force, or against the award it no longer exists (or is no longer possible) to pursue legal remedies in the form of appeals or cassation. Or it could be that the case in question is decided in appeal or cassation.

b. Judgments that have acquired permanent legal force contain a *condemnatoir* "amar" or "dictum". As for what is meant by amar which is *condemnatoir* in nature that one of the amar judgments contains the inclusion of punishing the heirs to do the division or *amar* who ordered the division, and it can also be *amar* which is in the form of carrying out the division. And only such a judgment can be executed through the authority of the court (Chief Justice).

Inherited property in the European inheritance law system or civil law system sourced from BW includes all property along with the rights and obligations of the heir in the legal field of wealth that can be assessed with money. However, there are some exceptions to such provisions. Namely the rights and obligations in the field of property law that cannot be transferred to heirs include:

a. The right to collect proceeds

b. Labor agreement, with the work to be done is personal

c. Trade sharing agreements, both in the form of *maatenschap* according to BW and firms according to Wvk, because this sharing ends with the death of one of the members or companies.

Another exception, namely that there are some rights that lie within the field of family law, but can be passed on to the heirs of the rights owner, namely:

- 1) The right of a father to deny the validity of a child;
- 2) The right of a child to demand that he be declared the legitimate child of his father or mother.

Under the provisions, that according to BW, the death of a person results in the immediate transfer of all rights and obligations to his heirs. This is expressly explained in Article 833 subsection (1) BW, which states that: "all heirs by themselves by law acquire title to all goods, all rights and all receivables of the deceased". The transfer of rights and obligations from the deceased to his heirs is called: his called "saisine"

The BW heir system does not recognize the term "original property or gono-gini property" or property jointly acquired in marriage, because marital property in BW from anyone else, is a whole and whole in the whole will pass

from the hands of the heir or heir to the heir. That is, in BW there is no known difference in the arrangement on the basis of the type or origin of the goods left by the heir. As asserted in Section 849 BW, which asserts "The Act does not look to provide for inheritance against it". The BW inheritance law system recognizes the opposite of the customary inheritance system that distinguishes the "sort" and "origin" of the goods left by the heir. The BW system, on the other hand, does not recognize this, but rather the original property that each brings when they are married, and the property obtained during the marriage is combined into a whole that will be transferred and inherited by all his heirs.

Basically the process of transferring one's property to one's heirs, called inheritance, occurs only by death. Therefore, a new inheritance will occur if 3 (three) requirements are met, namely:

- a) The existence of a person who died;
- b) There is a person who is still alive as an heir who will acquire an inheritance at the time the heir dies;
- c) There are a number of treasures left by the heir.

The nature of Western Civil Inheritance Law (BW) is, adhering to:

- (1) A private system, that is, one that determines that the heirs are individuals, not groups of heirs.
- (2) Bilateral system, that is, bequeathing from the mother's and father's side. The system of heirship, that is, the heir whose degree is closer to that of the heir closes the heir of a further degree.

In BW inheritance law, there is a principle that specifies that, "If a person dies, then immediately all his rights and obligations pass to all his heirs. The rights and obligations that pass on the heirs are as long as they fall within the legal field of property or only rights and obligations that can be assessed with money.

A distinctive feature of the law of inheritance according to BW is "the existence of the absolute right of their respective heirs to at any time demand the division of the estate". This means that if an heir demands the division of the estate before the court, the claim cannot be denied by the other heirs. These provisions are contained in Article 1066 BW, namely:

- (a) A person who has the right to a portion of the property of the relic property cannot be compelled to give the inherited property in an undivided state among the existing heirs;

- (b) The division of the estate can always be prosecuted even if there is a treaty prohibiting it;
- (c) An agreement suspending the division of inherited property may be made only for a certain period of time;
- (d) The distraction agreement is only binding for 5 (five) years, but can be renewed if it is still desired by the parties.

Based on the aforementioned provisions of Article 1066, it can be understood that the BW inheritance law system has a distinctive cirri, which is to require that the estate of an heir be divided as soon as possible to those who are entitled to the property. Or if it is not to be divided then it must first be through the agreement of all heirs.

3. COVER

The nature of the acquisition of heirs who are of different religions with heirs according to batak customary law, in batak customs there is a grouping of divisions of inheritance property related by blood with heirs, namely the lali-laki group, namely fathers, brothers' sons, uncles, grandfathers. And the female class of mothers, sisters, grandmothers. Marital relationship with the testator. Such heirs

are determined under the provisions of the civil code law.

4. BIBLIOGRAPHY

- Suriyaman Mustari Pide, *Customary, Present, and Future Customary Law*, Jakarta: Kencana, 2014.
- Mukti Arto, *The Discovery of Islamic Law in Order to Realize Justice Building a Justice System Based on Legal Protection and Justice*, Yogyakarta: Pustaka Pelajar, 2017.
- Abdulkabir Muhammad, *Indonesian Civil Law*, Bandung: PT Citra Aditya Bakti, 2011.
- Abu Daud Busroh, *State Science*, Jakarta: PT Bumi Akasara, 2015.