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JURISDICTION ANALYSIS OF HEIRS RESPONSIBILITIES ON DEBT OF INHERITOR BASED ON ISLAMIC LAW AND CIVIL LAW

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ABSTRACT

The aim of the study is to analyze the difference between Islamic Law and Civil Law about paying heir's or inheritor's debt. The study was conducted by reviewing library materials or secondary data which includes primary, secondary and tertiary legal materials. Analysis and utilization of data in this study using qualitative methods. The conclusion is drawn using deductive logic. The difference between Islamic Law and Civil Law about paying heir's debt based on Islamic heritance law id demanding the repayment of all the inheritor's debts and wills before the inheritance is distributed. The heirs are not obliged to cover insufficient payment arising from insufficient inheritance for repayment of the inheritor's debt. Based on the Civil Liability Law of the heir who has passed away in accordance with Article 1100 of the Civil Code, it is affirmed, "heirs who have been willing to receive inheritance, must take part in paying debt, wills and other expenses, the same as amount received from each of the inheritance. However, heirs are not obliged to pay the inheritor's debt and expenses which exceed the amount of inheritance he/she receives.

KEYWORDS: *heirs responsibilities,islamic law, civil law*

INTRODUCTION

The inheritance law in Indonesia is known based on three (3) legal systems namely Customary Law, Islamic Law and Western Civil Law. The existence of the three systems is influenced by the diversity of Indonesian society, which consists of various tribes and religions.

Ali Afandi stated that the legal relationship as intended, there is a need for regulations that

accommodate as a result after someone's pass away [1].

The law of inheritance is a set of provisions governing the ways of transferring rights from someone who has passed away to a living person whose provisions are based on the Qur'an and the explanation given by the Prophet Muhammad, called al-farā'id [2].

Inheritance according to most Islamic jurists is that all property left behind by someone who

died either a movable object or a fixed object, including goods / loan money and goods that have something to do with the rights of others, such as pawn goods for cash when heirs still alive [3]

The property that can be divided is the property, with the condition that it must fulfill the rights of the deceased [4], for example:

- a. Zakat, pawn goods and etc,
- b. Funeral and burial expenses,
- c. Paying debts of the deceased.
- d. Determine the value / will of the deceased (which can only be a maximum of one third of the property).

Debt is a liability that must be repaid in a certain time (agreed) as a result of the benefits received by the debtor, so that it has implications for the inheritance. Because the assets left before being distributed must be used to pay off the debt of the deceased (Heir) [5].

OBJECTIVES OF THE STUDY

To analyze the difference between Islamic Law and Civil Law regarding inheritor's/heir's debt.

RESEARCH METHODOLOGY

Legal research is a scientific activity based on methods, systematics and certain thoughts that aim to study one or several symptoms of a particular law, by analyzing it [6]. The nature of this research is descriptive analysis, giving an overview or explanation of the subject and object of research [7]. The method of this research is a normative juridical approach.

The study was conducted by reviewing library materials or secondary data which includes primary legal materials, secondary legal materials and tertiary legal materials [8]. In the processing, analysis and utilization of data in this study using qualitative methods [9]. The conclusion is drawn by deductive logic.

LITERATURE REVIEW

Regulations Regarding Inheritor's/Heir's Debt in Islamic Law and Civil Law

In Arabic the transfer of something from someone to another person or from a people to another person is called Al-mirats, whereas the meaning of Al-mirats according to the term known to the scholars is the transfer of ownership rights from the deceased to the heirs, both property and estate legal property based on shariah law [10].

Al-faraidh etymologically the word "faraid" is jama 'from "furud" with the meaning mafud mafrud means the share is determined. In terms of the term "shared inheritance rights have been determined definitively in the Qur'an and the Sunnah of the Prophet" [11].

According to A. Pitlo, inheritance law is, "A collection of rules governing the law regarding property, because someone passes away, that is regarding the transfer of wealth left by deceased and the result of this transfer for people who obtain

good relations between them, in the relationship between them and third parties [12].

Whereas the inheritance law according to Wirjono Prodjodikoro is about what and how various rights and obligations concerning one's wealth at the time of his death will turn to other people who are still alive [12].

Ulama said that the payment of debt by the inheritor / heir must be done first than the will. The legal reason used by most scholars is that debt is an obligation that must be fulfilled. Whereas *was'eyya* is only recommended good deeds. When meeting obligations with recommendations, obligations must take precedence. That is why payment of debt must be prioritized [11]

Based on the Compilation of Islamic Law, regarding the inheritor's debt is regulated in article 175 paragraph 2, which reads "The heir's responsibility for the debt or the heir's liability is limited to the amount or value of his inheritance" [13].

The heirs based on the Law of Inheritance of the Civil Code are required to pay the inheritor's debts. Both the heirs based on the law and the heirs of the testator will obtain all the rights and obligations of the testator [14].

Payment or settlement of debts left by the testator or debts arising in connection with the heirs are regulated in Chapter 17, Part 2, Book II of the Civil Code concerning payment of debt. However, the transfer of obligations from the heir to the heirs is also based on the provisions of Article 833 and Article 955 of the Civil Code [15].

RESULTS AND DISCUSSION

Payment of inheritor's/ heir's debt based on Islamic law

Debts must be paid in advance before the inheritance is divided based on each faraidh. However, the payment of a will or debt may not cause harm to the heirs. It means that the debts of the deceased are paid by the heirs as long as the inheritance is sufficient. If the inheritance is insufficient there is no legal obligation for the heir to pay the debt. Except if the payment of the debt does not give harm to the heirs.

If the sentence structure in the Qur'an is studied, then the will must first be paid for from the debts of the person who died. However, based on the hadith of the Prophet told by Ali bin Abi Talib, that the Messenger of Allah SAW said that Avoiding loss or preventing harm is better than taking advantage and benefits.

Next he said based on the hadith of Ali ibn Abi Talib ra., The Messenger of Allah had determined that a will / *was'eyya* may be issued after all debts had been paid (HR Tirmidzi, Ibn Majah of Misykat Al-Masabih). After that, the rest give to zawil faraidh zawil qarabat or ashabah. In this matter the hadith experts agreed.

Heirs have no legal obligation to pay the debts of people who have died. The heirs are

legally responsible as long as the inheritance is sufficient to pay off the debts of the deceased.

Thus it can be concluded that Islamic inheritance law requires the repayment of all debts and wills / *waṣe'yya* of the heir before the inheritance is distributed. The heirs are not obliged to cover the lack of debt payments because of insufficient inheritance.

Payment of inheritor's/ heir's debt based on Civil law

The inheritance rights are based on marital relations, blood relations, and wills stipulated in the law. And what is meant by heirs is every person entitled to heir's inheritance and is obliged to settle his debts. Therefore the rights and obligations arise after the heir dies. While inheritance is all property left by the heir after deducting all of his debt. From this understanding it is clear that what must be considered is that the right to inheritance is not the obligation to pay the inheritor's debts, because the obligation to pay the debt remains with the heir, the repayment of the heirs is taken from the property left by the heir.

Debt of a person dies if studied based on the Civil Code, an heir can choose whether he or she will accept or reject the inheritance or by other means, accepting another condition that he or she will not be obliged to pay the debts of the deceased who exceed their share in heritage.

Furthermore, it is determined that full acceptance (*zuivers-aanvaarding*) can be carried out expressly or secretly (*stillzwijgende-aanvaarding*). Strictly if someone with a deed accepts his position as heir. Secretly (*stillzwijgende*), if he commits an act such as taking or selling inherited goods or paying off debts of a deceased person, it can be considered to have received the inheritance in full (*zuivere-aanvaarding*). The law does not stipulate a specific time when a person must act or reject inheritance. However, the interested parties have the right to sue the heirs to state their position.

An heir who is sued or is required to determine his position has the right to ask for a time to think (termed *van beradad*), up to four months. The judge's decision cannot be requested for him, but he must take care of the inheritance as well as possible and he may not sell anything. This provision based on the Civil Code is different from the inheritance provisions in Islamic law.

Furthermore, in Article 833 the Civil Code affirms that "the heirs, by themselves due to the law, have ownership rights to all goods, all rights and all debts of the deceased". In Article 1100 of the Civil Code it is also stated, "heirs who have been willing to receive inheritance, must take part in paying debt, wills and other burdens, in balance with what each of them inherits. Related to the obligation of the heir to pay the heir's debt, based on Article 1101 of the Civil Code regulates that the obligation to pay is borne individually, each

according to the share of his inheritance, without reducing the rights of the creditor to all inheritance, as long as the inheritance has not been shared, and without reducing the rights of creditors.

In Article 833 paragraph (1) of the Civil Code it is determined that the heirs are based on the law themselves, obtain ownership rights to all goods, all rights and all receivables from the heir. However, on the other hand the heirs have obligations in terms of payment of debt, wills, and others from the heir (Article 1100 of the Civil Code).

Related to this, the debt of the heir who has passed away can be transferred to his heirs based on the provisions in the Civil Code. However, heirs are not obliged to pay the heir's debt and expenses which exceed the amount of inheritance received (Article 1032 of the Civil Code).

CONCLUSION

The difference between Islamic Law and Civil Law regarding the settlement of inheritor debt, based on Islamic inheritance law requires the repayment of all the inheritor's debts and wills/ *waṣe'yya* before inheritance is distributed. The heirs are not required to cover the lack of debt payments if the inheritance does not meet the payment of the heir's debt. And based on Civil Law, the debt of the heir who has passed away in accordance with Article 1100 of the Civil Code affirms that, "heirs who have been willing to receive inheritance, must take part in paying debt, wills and other burdens, balanced with what received from each of the inheritance. However, heirs are not obliged to pay the inheritor's debt and expenses which exceed the amount of inheritance he/she receives.

SUGGESTIONS

1. There needs to be awareness of the heir to pay the inheritor's debt so that it does not harm the lender but also does not cause harm to the heirs.
2. Religious leaders or community leaders are expected to be able to participate in the settlement of inheritor's debt conflicts.

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