

# Distribution of Inheritance Property is Reviewed from Civil Law

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**Abstract.** Discussions regarding inheritance will never end, controversy will arise if one party feels that the distribution of inheritance is unfair, and if there is an argument will threaten the family harmony. This study uses norms founded on government decrees which focus on documents as the object and the analysis of the information obtained is conceptually related to normative legal research. In the division of inheritance both according to the Civil Code and according to inheritance law, both adhere to an individual inheritance system, meaning that from the time legacy is opened (the death of the testator), ownership of inherited assets can be divided between heirs. Each heir has the right to claim the share of inheritance that is his or her right. So the inheritance system adopted by the Civil Code is a bilateral individual inheritance system, while the difference is that when the heir dies, the assets must first be deducted from expenses, including whether zakat has been paid for the assets, then, deducted to pay debts or care for the body first. After it is cleaned, and then distributed to the heirs, whereas the Civil Code does not acknowledge this, the next difference fibs in the size and measure of the share received by each heir, which according to the provisions of the Civil Code all heirs' shares are the same, it does not differentiate whether children, or siblings, or mothers and so on, are all equal, whereas according to Islamic law the divisions between one heir and another are differentiated.

**Keywords:** Inheritance Law; Division of Assets; Civil Law

## 1 Background

Change after change has occurred from ancestral times to modern times in Indonesia, but some things have remained the same, even from ancestral times. For example, inheritance is the legacy of a person who has died, usually given or gifted to their descendants to develop something left behind, or at least make a change in the life of the person who inherits it. However, sometimes the distribution of inheritance during that period is uneven. Therefore, the government created a law that allows inheritance litigation both individually and collectively through applicable Indonesian civil law. There are three principles recognized in BW inheritance law: the personal principle where the heir is an individual; the bilateral principle, scilicet a person not only inherits from his father but also from his mother; and your principles. The degree regulates inheritance from a third brother or sister, which states that the heir whose degree is closest to the heir, includes heirs whose degree is further away. Heir categories were created to simplify calculations.[1]

Marriage is one of the reasons for obtaining inheritance, and there is mutual inheritance between husband and wife so marriage and inheritance law are two things that are interrelated in human life. The existence of inheritance rights for each partner is another factor that influences interfaith marriages. In everyday life, interactions between brothers of different religions are limited to friendship and goodwill; they are not included in matters of religious application, for example, inheritance law. In Islamic inheritance law, not all heirs can receive an inheritance, because in Islamic inheritance law, there are obstacles for the heir to obtain an inheritance. Inheritance barriers are a situation that closes a person's opportunity to obtain an inheritance. The things that cause a person not to have the right to inherit the heir's inheritance are slavery, murder, different places (countries), different religions, and because they disappeared without news.

The distribution of inherited assets after the death of the testator is a form of obligation because it is based on *qat'i* texts. These are the rules of inheritance in general. Muslims in general have been given clear provisions so that they are expected to be easy to implement.

In civil law, a person who deliberately uses someone else's inheritance rights can be prosecuted and tried by law through a civil law court. The inheritance system prioritizes relationships between families, where usually someone inherits their property when they are old or are no longer able to carry out activities and acknowledge their financial condition making a person pass on his property rights to his successors.[2] Everything that is inherited is not just wealth or money, there are many variations, such as rice fields, plantations, company shares, and many more, which makes a person who inherits a big responsibility for the inheritance received. Being someone who inherits previous family property, always looks after and cares for it, even developing it to support the family economy in the future.[3] The support of the heir's family is very meaningful considering the increasing responsibilities of an heir apart from supporting his family. The benefits of getting an inheritance depend on what is inherited. For example, getting the right to a rice field, the profit can be planted with various necessities or, if in difficult circumstances, it can be sold to survive.

Discussions regarding inheritance will never end, controversy will arise if one party feels that the distribution of inheritance is unfair, and if there is an argument then family harmony could be threatened. If this happens, the family should mediate to find a solution to the existing problem. Civil law states that not all inheritances can be fully owned. It falls upon the recipient to take care of and protect the inheritance. For example, a father can pass on to his two children equal shares of his oil palm land as an inheritance, on the condition that they maintain and develop the land. If one of the children is unable to take care of it, it can be given to another child who can care for it and use the property for development.[4] The mandate given by a person to an heir is called a will, usually in the form of a letter or directly said to the heir accompanied by a legal representative. A will made by the heir is binding on the person who is given the inheritance and cannot be contested if the person can carry out the responsibility of safeguarding the inheritance. If someone can enjoy it, otherwise he will not have the right to receive an inheritance and accept the risk of not receiving an inheritance.

A person who has a will bequeaths the value of his property to another person, but only if that person is recognized as an heir. Everything that the heir desires is unconditional and cannot be contested, including the duties, privileges, and responsibilities that the recipient of the inheritance will later acquire; However, not all heirs stipulate conditions; there are also gifts with authority that give the impression that the inheritance is in the hands of the recipient; there is no obligation to care for what is inherited; rather it is a gift from heir to heir.

Any form of inheritance, whether in cash, land, rice fields, or plantations owned by someone, is called an inheritance. It is given to the heirs openly or it is known that one of the

families usually has a will when receiving an inheritance with a message from the person giving the inheritance. Not all heirs have full rights to the inheritance, however. there is a responsibility to maintain and develop the inheritance obtained according to the wishes of the testator. Inheritance is a legacy of assets to heirs.[5]

Heirs usually use a Will as a Last Supper, which is given to someone who receives an inheritance and is recorded in a legal document before being applied to the person who receives the inheritance when the heir dies. The legal representative is tasked with protecting the inheritance left by the heir to the heirs. To protect the will of the heir expressed through a will as a final message. The legal representative also changes the meaning of the previous phrase "heir to the person who receives the inheritance" known as "successors," to "heirs." This research aims to understand the correct distribution of inheritance based on the Criminal Code and to understand the resolution of inheritance problems for heirs

## **2 Method**

This research uses normative research based on government regulations which focus on documents as the object and the analysis of the information obtained is conceptually related to normative legal research, namely library law which refers to legal norms contained in statutory regulations.[6] Researchers in completing this research did not deviate from positive law and research through the problems described above. The statutory approach is conducted based on laws as the basis for research. A case approach was taken to observe and understand the problems raised in this thesis without leaving the zone of positive law in normative and qualitative, where in the process, the author examines legal issues based on civil law regulations in Indonesia.[7]

## **3 Result and Discussion**

### **3.1 Distribution of Inheritance Assets Based on the Civil Code**

According to Civil Law, the division of heirs is grouped into two groups. The first group is a group who by law or Law/Civil Code have been determined to be heirs and the second group are people who become heirs because the heir during his lifetime carried out certain legal acts, for example recognizing a child, adopting/adopting a child or other legal acts called testament or will.

According to statutory regulations, there are four groups of heirs. The husband or wife who lives the longest, their child or children, and their descendants form the first group. Articles 832 and 852 of the Civil Code regulate this category. The second group consists of brothers, sisters, and their offspring, as well as biological fathers and mothers (if both are still alive), fathers or mothers (if one of them has died), and siblings. This second group is regulated in articles 854 to 857 of the Civil Code. Meanwhile, the third group consists of grandfathers and grandmothers from the mother's line and grandfathers and grandmothers from the father's line. This group is regulated in Article 850 and Article 853 of the Civil Code. The last (fourth) group consists of other relatives of the heir and is regulated in Article 858 and Article 861 of the Civil Code.

On the other hand, according to Civil Law, the heart that a soldier beats is not always the heart of a soldier. To understand and ascertain whether the property that has been violated is truly inherited property or not, it is necessary to understand the legal circumstances of the violation as well as other factors that influence the nature of the property that has been violated by the individual who has died.

The Civil Code divides marriage into three groups based on their legal status. The first is a marriage carried out with a marriage contract which states that there will be no mixing of assets or goods between the husband and wife concerned. Second, marriages carried out with a marriage contract result in the mixing of all assets between the husband and wife concerned. Third, marriages are carried out with a marriage contract which contains the mixing of assets between the husband and wife involved, although there are several exceptions. Meanwhile, examples of other things that burden the assets left behind by someone who has died, for example, when he was still alive, he entered into a debt and receivables agreement with another party which, until his death, the debt had not been paid.

Inheritance based on the Civil Code Law (*ab intestato*):

- a. Based on his position. In this case, the classification of heirs is based on the line of precedence as stated in the Civil Code, including:
  - 1) Group I, as stated in Article 852 to Article 852a of the Civil Code;
  - 2) Group II, as stated in Article 855 of the Civil Code;
  - 3) Group III, as stated in Article 850 in conjunction with 858 of the Civil Code; And
  - 4) Group IV, as stated in Article 858 to Article 861 of the Civil Code.
  
- b. On a replacement basis. In this case, a substitute is required if the person being replaced has died before the testator. So, the conditions for replacement are: the person being replaced has died before the heir. There are various types of replacement, including:
  - 1) In an infinite downward-sloping line, as stated in Article 842 of the Civil Code;
  - 2) In the lateral line, siblings are replaced by their children as stated in Article 844 of the Civil Code; And
  - 3) Replacements in the sideline in this case are family members who are more distantly related than siblings, for models, uncles, aunts, or nephews.

First Group Article 825 to Article 825a

Explanation of Group I Articles Article 852 Children or descendants, despite birth and multiple marriages, inherit the assets inherited from their parents, grandparents, or their next blood relatives in a straight line upwards, without distinction of gender or earlier birth. They inherit equal portions head for head, if they are all related to the deceased in the first degree and each has the right for himself; they inherit stake by stake if all of them inherit in part as a replacement.[8]

Article 852a

In the case of inheritance and a husband or wife who has died previously, the husband or wife who is left behind, in applying the provisions of this chapter, is equated with a legitimate child and the person who died, with

the understanding that if the husband and wife's marriage is a second or subsequent marriage, and from a marriage in which there were children or children's descendants, the new husband or wife may not inherit more or the smallest portion received by one of the children, or by all of his successor's descendants if he dies first. , and in any case, the wife's or husband's share of the inheritance cannot exceed a quarter of the inheritance of the testator. If for the happiness of the husband or wife and the second marriage or subsequent marriage, a will has been issued, then if the total portion obtained and inherited at death and the portion acquired and inherited exceeds the limits and amounts stated in the first paragraph, the portion and inheritance at death must be reduced so that the joint amount remains within those limits. If the will, in whole or in part, consists of usufructuary rights, then the price and usufructuary rights must be estimated, and the joint amount referred to in the previous paragraph must be calculated based on the estimated price. What the following husband or wife enjoys according to this article must be deducted in calculating what the husband or wife may receive or agree to according to Chapter VIII of the First Book.[9]

#### Second Group Article 855

If a person dies without leaving descendants and a husband or wife, and his father or mother has died before him, then his father or mother who lived the longest gets half of his inheritance, if the deceased leaves only one brother or sister. ; a third, if two brothers or sisters are left behind; a quarter share, if more than two brothers or sisters are left behind. The rest goes to the brother and sister.[10]

#### Third Group Article 850

All inheritance, whether in whole or in part, falls in line with the family in the upward or downward line, and must be divided into two equal parts; One half is distributed to the remaining blood family and father's line, and the other half to the still existing mother's line, without prejudice to the applicable provisions in Articles 854 and 859. The inheritance may not be transferred from one line to the otherwise, except if in one or both of the lines there is no one related by blood, either in the line-up or in the line to the side.[11]

#### Article 858

If there are no brothers and sisters and there are also no living blood relatives in one of the ascending lines, then half of the inheritance becomes part of the surviving blood relatives in the upward line, while the other half becomes part of consanguinity in other sideways and upward lines, except in the cases listed in the following article. If there are no brothers and sisters and blood relatives who are still alive in both lines upwards, then the closest blood relatives in each line to the side each inherit half. If in one line to the side, there are several blood relatives of the same rank, then they share between them head by head without prejudice to the provisions in Article 845.[12]

#### Article 845

Replacement is also permitted in lineal inheritance if in addition to the person closest in blood relationship to the person who died, there are still children or descendants of brothers or sisters and they are the first. [13]

#### Fourth Group Article 861

Blood relatives whose relationship to the deceased is further away and are a sixth degree in the lateral line, do not inherit. If in one line there are no blood relatives of a degree that allows them to inherit, then blood families in the other line receive the entire inheritance.[14]

According to the Civil Code, the inheritance law system does not differentiate between children and adults, or between husband and wife, or between children and wife. All children and adults are equally responsible for their belongings, with bags for children and adults matching the bags for children and adults respectively.

The definition of inheritance law is a rule that regulates the methods of transferring rights from one generation to the next. regulations governing inheritance left by the previous owner after death in the form of money and resulting in the transfer of ownership rights to people trusted by the owner. In the past, the definition of inheritance law was often based on the family relationships of the previous owner or other parties. However, experts generally agree that inheritance law is a regulation that regulates the procedures and processes for transferring money from heirs to their heirs or heirs as a result of various definitions of inheritance law.

In civil law regulations, there are rules regarding family law, while inheritance law itself is one part of family law, this means that inheritance law is closely related to the environment of family life where the members are humans because every human being will experience a natural event called death every time. A person who has died must have someone to transfer his wealth to. The unknown death causes the emergence of legal consequences, namely regarding the procedure for transferring the rights and obligations of a person who has died, which is regulated in inheritance law. Legal experts in Indonesia still have not got the point to agree on the definition of inheritance regulation itself, which means that the definition of inheritance law is very diverse in Indonesia.

A matter that is considered very important is inheritance because it concerns the previous generation to the next generation. Inheritance which is said to be important often causes various problems so that often in a family kinship can be broken because of this inheritance due to differences of opinion regarding the inheritance distribution agreement. The following are the elements in inheritance law: 1. Inheritance, namely a person who has wealth, which when he dies causes a problem, namely where the wealth he owns will be transferred. 2. Heirs, namely a person or more than two people will receive the rights to the property to the heir when the time has come for the heir to die, which is usually based on blood relations. 3. Inheritance, namely a form of wealth becomes a problem if the heir is no longer there and the rights will be transferred to the heirs.

A will is a statement from the testator about everything he wants when he dies, which is made in the form of a letter. Usually, it is issued by one party and contains the time when it will be handed over and to whom. Article 874 of the Civil Code which explains the meaning of a will or testament contains a requirement that the statement

must not conflict with the law. The right of the heir to the heir is the heir because it has been properly regulated when he becomes the heir if someone controls the assets.

If seen in a relationship with the heir as an example of renting, then the claim cannot be carried out on assets left behind as inheritance that are not managed. The right to claim can be used by the heir only by filing a lawsuit if he asks for his rights and states that he is entitled (Suparman, 2007). According to the individual principle, the person who can be recognized as inheriting is every person, even a newborn baby (Darmabrata, 2003). The law stipulates that people who do not deserve to receive an inheritance are people who have been or are currently serving a sentence from a judge's decision because they have acted against the law, namely killing and trying to kill the heir. Apart from that, heirs who have acted to embezzle and change the will rudely or with threats to the heir. The regulations have also stipulated that people who are related to the heir's career are not permitted to inherit from his will. What is meant is the official who has the authority, namely the notary in making the will and the witnesses who have been present in the making or agreement of the will, and the inheritance given by the will to the person who is the intermediary can be canceled. What is meant by the intermediary is the child or wife of the person who is not allowed to receive the inheritance that has been contained in the will.

The most popular case resolution now is an out-of-court or non-litigation settlement. Anything that is cost-effective without the need for many trials is of interest to the people concerned. The settlement process does not take a lot of time and if a clear point is found there is no need to hold a trial because the problem is resolved quickly. An agreement between the parties concerned outside of court results in good ethics because each party does not need to spend a lot of money but the problem has been resolved and acknowledged by both parties. party

#### **4 CLOSING**

In the division of inheritance, both according to the Civil Code and according to inheritance law, both adhere to an individual inheritance system, meaning that from the time inheritance is opened (the death of the testator), ownership of inherited assets can be divided between heirs. Each heir has the right to claim the share of inheritance that is his or her right. So the inheritance system adopted by the Civil Code is a bilateral individual inheritance system, while the difference is that when the heir dies, the assets must first be deducted from expenses, including whether zakat has been paid for the assets, then deducted to pay debts or care for the body. After it is washed, it is then distributed to the heirs, whereas the Civil Code does not recognize this, the next difference lies in the size and size of the share received by each heir, which according to the provisions of the Civil Code all heirs' shares are the same, it does not differentiate whether children, or siblings, or mothers and so on, are all equal, whereas according to Islamic law the divisions between one heir and another are differentiated.

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