

Transfer of Foster Parents' Assets to Foster Children from the Perspective of Islamic Law

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ABSTRACT

Purpose of the study Families that do not have children, not a few who do childcare or adoption. The child being cared for can be from a close family or from someone else

Methodology: This research uses the literature study method which relies on bibliographic sources from books and articles in scientific journals related to the subject matter, reading data with the thoughts of experts with a constructive approach and interpretation of the main content

Main Findings: voluntary legal action, which is based on the free will of the testator as the owner of the property. However, based on the word of Allah surah al-Baqarah (2) verse 180, the will law is obligatory, namely to give a share to parents or relatives who do not receive the inheritance because they are hijab (mahjub), or cannot become heirs because they are obstructed (mamnu).

Novelty/Originality of this study: The inheritance which was carried out in Gajah village, Ngoro sub-district, Jombang Regency, did not have a clear basis, namely regarding which legal options would be used in the distribution of the inheritance, or who should be the heirs and those who are entitled to inheritance.

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1. INTRODUCTION

In Indonesia, there are 3 systems of inheritance law, namely Customary Inheritance Law, BW Inheritance Law, and Islamic Inheritance Law. These three legal systems are still valid today, so they can be said to be positive law [1]. The enactment of these three legal systems has resulted in Legal Pluralism in the field of Civil Law in general and Inheritance Law in particular, so that people can choose which inheritance law system to use in the settlement of legal actions taken. The pluralism of the inheritance law system, there are still similarities in the elements in it. This general elemental equation is related to the heir, the heir, and the object of inheritance. Each of these elements has characteristics that distinguish the three systems of inheritance [2]-[4].

Broadly speaking, those who are entitled to become heirs are prioritized to their descendants or the children of the heir. If there is anything, families who are worried about not having offspring generally take care of children to be their own children. In this case the heir also has the right to give his wealth to whoever he wants. Not even in the blood family though.

Each inheritance system has its own term for mentioning children who are not from blood relatives. In Customary Inheritance Law it is called adopted child, while in BW Inheritance Law it is called adoption, and in Islamic Inheritance it is called foster child. But in the applicable regulations it is not stated that there is a

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difference between the three terms. Therefore it is more common to use the term adopted child in practice. Giving assets by the heir to his foster children can be given through a grant or will. Grants or wills made must be based on existing regulations in accordance with the specified population group [5]-[7]. In Customary Law, it does not explicitly regulate the will grant as is the case in BW law, it only regulates it in outline. Habits for indigenous groups subject to customary inheritance law. But in its development, many of the native groups who embraced Islam were subject to Islamic Inheritance Law.

This is found in the results of research by Pratiwi that one of the things related to the legal status of foster care, namely regarding inheritance. The inheritance which was carried out in Gajah village, Ngoro sub-district, Jombang Regency, did not have a clear basis, namely regarding which legal options would be used in the distribution of the inheritance, or who should be the heirs and those who are entitled to inheritance.

2. RESEARCH METHOD

This research uses the literature study method which relies on bibliographic sources from books and articles in scientific journals related to the subject matter, reading data with the thoughts of experts with a constructive approach and interpretation of the main content.

3. RESULTS AND DISCUSSION

In studying the law of inheritance, what we must know first is the meaning of inheritance itself. According to J. Satrio, "Inheritance is a legacy in the form of assets and liabilities, inheritance is a separate problem for the heirs".

Next, know the meaning of inheritance law. According to the definition of Mr. A. Pitlo is as follows: "The law of inheritance is a series of provisions, in which, in connection with the death of a person, the consequences in the material field are regulated, namely: the result of the transfer of the inheritance of a person who died, to the heirs, both in their own dealings, as well as with third parties." [8].

Inheritance law in Indonesia has not been codified. There are 3 inheritance laws that apply in Indonesia, namely Customary Inheritance Law, Islamic Inheritance Law, BW Inheritance Law. The existence of these three systems of inheritance law indicates the existence of legal pluralism that applies in Indonesia. Legal pluralism is defined as a situation in which two or more legal systems work side by side in the same area of social life [9].

1. Customary inheritance law

According to Hilman Hadikusuma, Customary Inheritance Law is customary law which contains lines of provisions concerning the system and principles of inheritance law, regarding inheritance, heirs and heirs and the manner in which the inherited property is transferred to control and ownership from the heir to the heir. Customary inheritance law has an inheritance system that is divided into 3, namely:

- Collective inheritance system, that is, inheritance is jointly owned, and heirs are not allowed to own it personally.
- Mayoral inheritance system, that is, inheritance is owned by the eldest heir, managed and utilized for the benefit of the young heirs, both women and men, until they become adults and are able to take care of themselves.

Individual inheritance system, that is, inheritance can be privately owned by the heirs, and ownership is absolutely in their hands.

2. Islamic inheritance law

With the enactment of inheritance law in Indonesia, Islamic inheritance is a coercive law for its followers. Although Islamic inheritance is very appropriate to use in regulating the inheritance problems of its people. According to KHI, the law of inheritance is the law that regulates the transfer of inheritance rights (tirkah) to heirs, determines who has the right to become heirs and how many shares each has.

3. BW inheritance law

Inheritance law is regulated in the second book, Chapter XII, article 830-1130 BW, which regulates the transfer of assets left by someone who dies and the consequences for the heirs. Article 830 BW contains a principle of Inheritance Law regarding heirs, namely that "discussions about inheritance can only be done when someone dies." So it is clear that the death of a person is the main condition for inheritance. With the death of a person, all of his assets will be transferred to the heirs. The heir is the person who receives the inheritance. Heirs according to BW inheritance law are not differentiated according to gender, a person becomes an heir according to BW inheritance law due to marriage and blood relations, whether legally or not.

The division of inheritance in Islam has been clearly regulated in the Qur'an, namely in the letter An Nisa. Allah with all His grace, has provided guidelines in directing humans in terms of the distribution of

inheritance. This distribution of assets is also intended so that among the people left behind there is no dispute in distributing inheritance.

In KHI article 174 paragraph (1) states who has the right to inherit, namely: (1) Groups of heirs consist of: a. According to blood relationship - the male group consists of: father, son, brother, uncle and grandfather. - The women group consists of: mothers, daughters, sisters and grandmothers b. According to the marital relationship consists of widowers c. If all the heirs are there, only the child, father, widow or widower are entitled to inheritance.

Law number 23 of 2002 concerning Child Protection, provides terms about children, and each of these terms can provide a different conception of the picture. In article 1, several terms for children can be found, one of which concerns foster children.

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Transitional Heir is a person who dies, both male and female, who leaves behind a number of assets and rights acquired during their lifetime, either with a will or without a will. Heirs are people who are entitled to inherit because of kinship (nasab) or marital relations (marriage) with the heir, are Muslim and are not hindered by law from becoming heirs.

Heir according to Islamic inheritance law is a person or several people who are entitled to a share of the inheritance. Broadly speaking, the class of heirs is divided into 3 groups, namely:

- Heirs according to the Al-Qur'an or those specified in the Al-Qur'an..
- Heirs drawn from the father's line.
- Heirs according to the mother's line

The size of the portion received for each heir can be described as follows: The distribution of inheritance in Islam has been clearly determined in the Al-Qur'an Surah An-Nisa and we can conclude that there are 6 types of percentage distribution of inheritance. the party that gets half (1/2), one quarter (1/4), one eighth (1/8), two thirds (2/3), one third (1/3), and one sixth (1/6).

In Islamic law, it tends to use the extended term foster child / hadhanah. The use of the term foster child is less commonly used, what is more often used is the term foster child or adoption. But the three terms have definitions indicating different substances. The following is an explanation of the three terms of the child. Islamic law has outlined that the legal relationship between adoptive parents and adopted children is limited to the relationship between foster parents and foster children and does not create a lineage relationship at all. The juridical consequence of parenting in Islam is only the creation of a relationship of love and affection and a relationship of responsibility as fellow human beings.

The legal consequence is a condition that arises from the position one has, so in Islam childcare is not recognized as a transfer of lineage from biological parents to foster parents. in the sense that the prohibition to marry and continue to inherit from one another with their biological parents. In Islam there are three factors that cause a person to inherit from each other, namely: marriage, kinship, and wala' (Wala'ul ataqah or Ashabah Sadabiyah, namely ashabah which is not caused by a lineage, but due to a cause for freeing slaves.) , (Walail-Mualah, namely kinship according to law that arises because of an agreement to help each other and an oath of allegiance between a person and another person). In the event that the inheritance of the foster child is not included in the three categories above, in the sense that he is not a relative or descendant of the foster parents, nor is he born in a legal marriage to the foster parents, nor is it due to a guardianship relationship. Therefore, foster children and their foster parents are not entitled to inherit from one another. If he inherits, the foster child can only inherit from the biological parent. However, Islam does not rule out the possibility that foster children will receive a share of the inheritance of their foster parents. You do this with a grant or will written or spoken by the foster parents before they died.

Although in the Islamic legal system foster children cannot inherit from each other with their foster parents, there are other legal instruments that can protect their interests in their inheritance, namely through the obligatory will institution. At first, the conception of a mandatory will was only intended for heirs or relatives who did not receive a share of the inheritance from the person who died, due to a syara' impediment. For example, bequeathing a non-Muslim mother or father, because different religions are an obstacle for someone to receive an inheritance, or grandchildren who do not get an inheritance because they are hindered by the presence of their uncles, foster children who are not included as heirs but whose services and existence are very meaningful for the heir. The amount of the obligatory will is in accordance with the division of inheritance that they must receive. The obligatory will is limited to one-third of the assets on condition that this part is the same as what Ashabul Furud should have inherited if he was still alive. In the Compilation of Islamic Law, the obligatory will is mentioned in article 209 paragraph 1, namely:

- The inheritance of adopted children is divided according to articles 176 to 193 above, while adoptive parents who do not receive a will are given a mandatory will of up to 1/3 of the adopted child's inheritance..

For adopted children who do not receive a will, they are given a mandatory will of up to 1/3 of the inheritance of their adoptive parents.

4. CONCLUSION

Basically the will is a voluntary legal action, which is based on the free will of the giver of the will as the owner of the property. However, based on the word of Allah surah al-Baqarah (2) verse 180, the will law is obligatory, namely to give a share to parents or relatives who do not receive the inheritance because they are hijab (mahjub), or cannot become heirs because they are obstructed (mamnu). Meanwhile, in the Compilation of Islamic Law the obligatory will is used to give a share to foster children or foster parents.

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