THE VALIDITY OF THE HEIR TO REJECT THE INHERITANCE ACCORDING TO INHERITANCE LAW IN INDONESIA

I Dewa Ayu Yus Andayani, S.H., M.H.
Anak Agung Ngurah Alit Suteja, S.H., M.H.
Anak Agung Putu Oka Seputra, S.H., M.H.

ABSTRACT

Indonesia has three inheritance laws, namely Islamic, customary, and Western inheritance law. The difference in these legal provisions has implications for different arrangements regarding the attitude of the heirs to the inheritance. Basically, there are three attitudes of the heirs to the inheritance namely receiving the inheritance in full or purely, receiving the inheritance on condition, and refusing the inheritance. In this study, it will be discussed the provisions of the rejection of inheritance in the legal system in Indonesia. This study will also discuss the legal consequences of the inheritance rejection and cancellation (withdrawal) of inheritance rejection. The provisions for the rejection of inheritance in the legal system in Indonesia only exist in the Western inheritance law. The legal effect of the rejection of this inheritance is that the heir is never considered to be an heir, so he has no obligation to pay off the debts, wills, and other expenses. The cancellations of inheritance rejection can only be done if the rejection occurs because of fraud or duress.

Keywords: Heirs, rejection of inheritance, inheritance law, Indonesia

INTRODUCTION

The inheritance law is an important matter and gets great attention in the field of civil law. Distribution of inheritance often results in unfavorable consequences for the decedent's family. The distribution of inheritance often causes bad brotherly relations when the problem of distributing inheritance such as houses or land is not carried out fairly. To avoid it, the distribution of inheritance must be resolved fairly. The distribution of inheritance must be based on inheritance law. The inheritance law is a collection of rules governing the law regarding the wealth due to the death of a person, namely concerning the transfer of wealth left by the deceased and the effect of the relationship between them, as well as the relationship between them and the third parties.[1]

Inheritance consists of property left from the deceased. When viewed from an economic perspective, the assets have economic characteristics, namely:

a) Can satisfy human needs;
b) The amount is relatively less (so the inventory does not exceed the demand);
c) Having a specific value;
d) Can only be obtained through sacrifice, such as work; and
e) Can be transferred from one person to another.[2]

As the assets left by the deceased, the inheritance can satisfy human life, even change human life. Generally, an heir will fight for his right to obtain an inheritance, because it can add his personal wealth. Poor people can turn out to be rich when they receive inheritance. Each person tries to get a legacy that is seen as fair, but the rejection of inheritance is very rare. However, in inheritance law, there is a term of refusal of inheritance. Rejection is to give up a right, as with every other matter, that is valid since the declaration of the intention for that to the person concerned, in this case the heir. The heir can reject the inheritance that is open to him, but the inheritance is stated strictly to give a registrar's decree to Pengadilan Negeri (the District Court) to declare an attitude towards the open inheritance rejection.[3]

The provisions regarding the rejection of inheritance are not included in all applicable inheritance laws in Indonesia. Indonesia is a country that has various ethnicities, races and religions. This condition has implications for the inheritance law system that applies in Indonesia which is also diverse. Indonesia has three inheritance legal systems: Islamic, customary, and Western inheritance law.[4] These three laws differ in term of inheritance arrangement, eventhough similarity can be found in some aspects. Generally, all three laws outline common perspective on the deceased or testator or person inheriting his treasure and property, heirs or the recipient entitled to receive inheritance, inheritance or treasure, requirements, barrier, provision of heirs, grant, testament and so forth.[5] Not all provisions of inheritance law in Indonesia regulate the rejection of inheritance.

[1] Pitlo, A. (2006). *Hukum waris menurut kitab undang-undang hukum perdata Belanda.* Jakarta: Intermasa, p. 1

[2] Gunadi, T. (1981). *Sistem Perekonomian menurut Pancasila dan Undang-Undang Dasar 1945*. Bandung: Aksara. p. 7.

[3] Subekti dan Tjitrosudibio. (2004). *Kitab Undang-undang Hukum Perdata*. Jakarta: PT. Pradnya Paramita, p. 273.

[4] Barlinti, Y. S. (2013). *Inheritance legal system in indonesia: a legal justice for people*. *Indon. L. Rev.*, *3*, 23.

[5] Putra, G. M., & Gunarto, G. (2018). Juridical Review On Notarical Testament In The Perspectives Of Islamic Inheritance Law. *Jurnal Akta*, *5*(2), 487-490, p. 487.

In this study, it will be discussed the provisions of the rejection of inheritance in the legal system in Indonesia in the Islamic, customary, and Western inheritance law. This study will also discuss the legal consequences of inheritance rejection and the cancellation of rejection of inheritance.

LITERATURE REVIEW

Inheritance law is one of the legal fields in civil law. The inheritance law governs inheritance. There are three inheritance laws used by Indonesian people, namely Islamic, customary, and West inheritance law that can be explained as follows:

1. Islamic inheritance law. This inheritance law is in accordance with the Islamic Shari'a, as stated in Faraid science, in the Qur'an, it is the bilateral inheritance legal system.[6]

2. Customary inheritance law is a law that is very unwritten and pluralistic, meaning that each group has its own law seen from the various ethnic forms of customary law, for example Bilateral systems in Java, Matrilineal in Minangkabau, Patrilineal in Batak area, Unilateral alterneren (the unilateral system that is shifting) as in the Rejang Lebong area, which is carried out by people in inheritance law to this day, is still closely related to the customary people. [7] Soepomo views that customary inheritance law shows a style that is indeed a tendency for traditional Indonesian schools of thought. Traditional inheritance law is based on principles that arise from communal and concrete schools of thought from the Indonesian people.[8]

3. Western inheritance law is the inheritance law carried out according to the Civil Code.[9] The Indonesian nation is a nation that is united by history. The history refers to their experience colonized by the Dutch nearly three and a half centuries. Dutch colonialism covered the archipelago, colonizing more than 300 ethnic groups. Those hundreds of ethnic groups which are part of the Indonesian nation today.[10] Tamakiran calls the Western inheritance law as the inheritance law of the Civil Code. It is interpreted as follows: "All legal methods governing the fate of one's wealth after he dies and determining the person who can receive it.[11] The Western inheritance system adheres to an individual system, where after a person dies, the deceased's inheritance must be immediately distributed to the heirs. Western Inheritance Law does not apply to people who are Muslim and subject to customary law. Applicability of the Civil Code or *Burgerlijk Wetboek* (BW) is based on the provisions:

    a. Article 131 jo 163 I.S (*Indische Staatsregeling*) namely: The inheritance law stipulated in the Civil Code applies to Europeans and those who are equal to those of Europeans.

    b. *Staatsblad* 1917 no.129, namely: The inheritance law stipulated in the Civil Code applies to Chinese Foreign Easterners.

    c. *Staatsblad* 1924 no.557 jo *Staatsblad* 1917 no.12 namely: The inheritance law stipulated in the Civil Code applies to other Eastern Foreigners and Indonesians who submit themselves to European law.[12]

In inheritance law, the new inheritance will occur if the three requirements are met, namely:

a. There is someone who has died;

b. There is someone who is still alive as an heir who will receive a number of inheritance when the decedent dies. The heirs must be present when the decedent dies. This provision does not mean reducing the meaning of Article 2 of the Civil Code, namely: "the circumstance when a child shall be deemed to be born. In the event that a child is stillborn, it shall be deemed to have never existed". If a baby dies at birth, he is considered never exist. Thus means that the womb baby has also been regulated by law as an heir and has been deemed capable of inheriting

c. There are a number of assets left by the deceased.[13]

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[6] Ramulyo, M.I. (1994). *Perbandingan Pelaksanaan Hukum Kewarisan Islam Dengan Kewarisan Menurut Kitab Undang-Undang Hukum Perdata (BW)*. Jakarta : Sinar Grafika, p. 1.

[7] *Ibid*.

[8] Soepomo, R. (2003). *Bab-bab Tentang Hukum Adat.* Jakarta: Pradnya Paramita, p. 83.

[9] Ramulyo, M.I. *loc.cit*.

[10] Irawaty, I., & Diyantari, D. (2017). Inheritance Laws in Indonesia. *Hayula: Indonesian Journal of Multidisciplinary Islamic Studies*, *1*(2), 209-228. DOI: doi.org/10.21009/hayula.001.2.05, p. 210.

[11] Tamakiran. (1992). *Asas-asas Hukum Waris.* Bandung: Pionir Jaya, p. 24.

[12] Sjarif, SA dan Elmiyah, N. (2006). *Hukum Kewarisan Perdata Barat*. Jakarta: Kencana, p. 4.

In 830 the Civil Code is stated "Succession shall only result from demise." The law recognizes two ways to get an inheritance namely:

a. In *ab intestate* (heir according to the law), in Article 832 of the Civil Code. According to the provisions of this law, those who are entitled to receive a portion of inheritance are blood relatives, both legal and unmarried, and the surviving spouse, in accordance with the following regulations.

b. In *tertamentair* (heir because of the will or testament), in Article 899 of the Civil Code. In this case, the owner of the wealth makes a will where the heirs are appointed in a testament.[14] The heirs because of the testament is regulated in Article 899 of the Civil Code which states "In order to benefit from something disposed of in a last will, an individual must have existed at the time of the demise of the testator, having regard to the rules stipulated in article 2 of this Civil Code. This stipulation is not applicable to individuals who are entitled to benefits from institutions." In Article 2 it is stated that the circumstance when a child shall be deemed to be born. In the event that a child is stillborn, it shall be deemed to have never existed.

Inheritance will discuss the question of whether 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.[15] Heritage assets are inheritance that can be shared with heirs after the total assets of the testator are separated from husband and wife property and inheritance, inherited property that cannot be owned, minus debts and wills. Provisions regarding inheritance are governed by inheritance law. The inheritance law regulates the provisions concerning the transfer of inheritance from a deceased person, to his or her heirs or more.[16] Therefore, in the inheritance law there are three things that are regulated, namely the testator, heir, and inheritance. In Western civil law, inheritance can only be shared if the owner of the inheritance has died. It aims to secure his position in the family, so that he is not wasted in his old age by his children after the inheritance is shared.

PROVISIONS FOR REJECTING INHERITANCE IN THE LEGAL SYSTEM IN INDONESIA

In the daily life, the distribution of inheritance of the deceased is often a problem. The problems that occur are in determining the heirs and the distribution of inheritance. People who are entitled to inheritance are called heirs. Regarding the heirs according to the law, in Article 832 the Civil Code is stated:

According to the law, the lawful heirs to the property comprising the inheritance shall be the blood relatives, both lawful and non-married, and the surviving spouse, in accordance with the following regulations. In the absence of blood relatives and a surviving spouse, the assets shall devolve upon the State, with the provision that the debts of the estate shall be settled, to the extent that the value of the assets is sufficient.

A person who has been determined as an heir has the right to express an attitude towards the inheritance he will receive. The heirs before the inheritance distribution can determine one attitude among three possibilities:

a. Receiving inheritance in full or purely (*zuivere aanvaarding*).

b. Receiving inheritance on condition (*beneficiare aanvaarding*).

c. Refusing inheritance (*erwerpen*).[17]

The attitude of the heir to accept unconditionally (*zuivere aanvaarding*) is to fully accept both the rights and obligations of the deceased. This unconditional acceptance statement can be carried out strictly, that is if a person with a deed accepts his position as an heir, or secretly if he commits an act, for example taking or selling inherited goods or paying off the inheritor's debt can be deemed to have receive inheritance in full.

Heirs can also receive inheritance, namely receiving inheritance on a note. This means that the heir is willing to accept the inheritance on the condition that he only pays the testator's limited debt or as much as the inheritance he receives, so that the heir does not pay the deceased's debt with his personal wealth. Article 1032 of the Civil Code states the privilege of estate description shall have the following consequences:

1) The heir shall no longer be obliged to settle the debts and encumbrances of the inheritance, other than to the extent of the value of the assets covered by the inheritance, and he may in addition be released from the obligation to make any payments, by leaving all assets, belonging to the inheritance, at the disposal of the creditors and legatees.

2) That the personal assets of the heir shall not be mixed with the inheritance, and that he shall reserve the right to set off his personal loans against the inheritance.

[13] Suparman, E. (2005). *Hukum Waris Indonesia Dalam Perspektif Islam, Adat dan B.W*. Bandung: Refika Aditama, p. 25-32.

[14] Perangin, E. (2007). *Hukum Waris.* Jakarta: PT.Raja Grafindo Persada, p. 4.

[15] Hadikusumah, HH. (2006). *Hukum Waris Indonesia Menurut Perundangan Hukum Adat, Hukum Agama Hindu – Islam.* Bandung: Citra Aditya Bakti, p. 5.

[16] Sudarsono. (1993). *Hukum Waris dan Sistem Bilateral,* Jakarta: Rineka Cipta, p. 11.

[17] Usman, S. (2013). *Ikhtisar Hukum Waris Menurut Kitab Undang-Undang hukum Perdata (Burgerlijk Wetboek)*. Serang: Darul Ulum Press, p. 122.

In the provisions of the Civil Code, the heirs are also permitted to refuse inheritance, namely refusing to accept inheritance in the form of assets or obligations from the deceased. This refusal must be made with a statement deed to the Registrar of the local District Court where the inheritance is open. In the concept of Western civil law, the refusal of inheritance is stated in Article 995 of the Civil Code which states "The revocation, either express, or implied, in a subsequent last will, shall be fully enforceable, notwithstanding that the subsequent deed is rendered invalid due to the incompetence of the nominated heir or legatee, or by their refusal to accept the inheritance."

The legal basis for rejection of inheritance is stipulated in article 1057 to 1065 of the Civil Code. Article 1057 of the Civil Code states "The rejection of an inheritance shall take place expressly, in the form of a statement submitted to the court clerk at the court of justice, in whose jurisdiction the inheritance has become available." J. Satrio says that although the inheritance refusal question does not have to be given in writing, the Court states the statement in the register concerned.[18]

Someone who rejects inheritance can be caused by calculating the profit and loss when receiving inheritance. The heir may have a lot of debt, so the heir does not want to be disadvantaged by receiving inheritance. In the concept of Western inheritance, inheriting means accepting all rights and accounts and bearing debt. In Article 833 of the Civil Code states "The heirs shall by law assume possession of the assets, rights and lawsuits of the deceased." On the contrary, in Article 1100 of the Civil Code states "The heirs, who have accepted an inheritance, shall in the settlement of debts, legacies and other encumbrances, be responsible therefor proportionately to that which they have received from the inheritance.

The philosophical basis known as inheritance rejection in Western inheritance law is to avoid the heirs from the burden left by the deceased while in the Law of Islamic inheritance, there is no denial of inheritance because the existence of the *Ijbari* principle is the transfer of property from the deceased to his heirs without the will of the deceased or his heirs. Islamic law does not recognize the rejection in inheritance, i.e. the heirs may not reject the inheritance that will be given to him. The element of "force" or *Ijbari* or compulsory in Islamic inheritance law can be seen from the obligation of the heir to accept the transfer of inheritance to him in accordance with the amount determined by Allah outside his own will. This principle of *Ijbari* can be seen from the general provisions concerning the formulation of the meaning of inheritance, deceased, and heir. Article 187 paragraph (2) Compilation of Islamic Law states "The remain of the expenditure referred above is an inheritance that must be distributed to the entitled heirs."

The right to reject inheritance is only known in the Western civil inheritance law. The customary inheritance law also does not recognize the rejection of the inheritance because inherited property is not always the economic value but also in the form of rights and assets inherited from generation to generation, so it is not permitted to refuse it. The institution that takes care of the rejection of inheritance in the Western Inheritance Civil Code is Balai Harta Peninggalan (BHP) or the Heritage Office. Western inheritance law applies to Non-Muslim people who are not subject to customary inheritance law and Islamic inheritance law. The law of inheritance as regulated in the Civil Code is indeed imbued by the Western minded pattern of the individual. This is due to the historical fact that the KUH Perdata itself is Burgerlijk Wetboek or Western civil law that was applied in Indonesia with the principle of concordance. In the civil inheritance law, the principles apply:

a. Only rights and obligations in the legal field of property wealth can be inherited.

b. The existence of saisine for the heirs, namely: all heirs by themselves automatically because of the law obtains ownership rights to all goods, and all rights and obligations of the deceased.

c. The Principle of death, namely; Inheritance is only due to the death. Individual principles, namely: Heirs are individuals (personally) not a group of heirs.

d. Bilateral principle, namely: Someone inherited from the side of the father and also from the mother's side.

e. The principle of degree, namely: the closer degree heirs cover the further degree heirs.[19]

THE LEGAL CONSEQUENCES OF INHERITANCE REJECTION AND THE CANCELLATION OF INHERITANCE REJECTION

In the Civil Code, it is known that there is rejection. Rejecting inheritance means rejecting all assets and liabilities in inheritance. Heirs do not have the obligation to pay off debts, wills, and other expenses as stated in Article 1100 of the Civil Code. An heir can reject the inheritance that is open to him. If there is a rejection, then when the rejection starts, it is considered that since the death of the testator. The heir who rejects inheritance means giving up his responsibility as an heir and declaring that he does not accept the distribution of inheritance.

Heirs also cannot refuse part of the inheritance, this is because the refusal of the inheritance results in the person being deemed never to be an heir. By being considered never to be an heir, then he is not entitled to inheritance. The legal consequence of inheritance refusal is that someone will lose his right to inherit, so that he is considered never to be the heir and the *legietieme porty* will be lost. Heirs who refuse are declared never to be heirs, and consequently people who reject part of inheritance

[18] Satrio, J. (2012). *Hukum Waris*. Bandung: Alumni, p. 340.

[19] Ramulyo, MI. *Op.Cit*, p. 95-96.

(*legietieme porty*), because they move or fall to the heirs who are entitled to the inheritance if people who refuse are not alivr at the time of the testator's death, or the heirs are not responsible for the inherited debts. Reimbursement cannot occur for those who reject inheritance except by inheriting from their own strength.

The legal effect of rejecting this inheritance is that he is never considered to be an heir. This is confirmed in Article 1058 of the Civil Code which states "An heir who rejects an inheritance, shall be regarded as if he had never been an heir." The inheritance portion of a person who rejects inheritance falls to the person who is entitled to that part, if the person who rejects it is not alive at the time of the death of the testator.

In Article 1060 states that an individual, who has rejected an inheritance, may never be represented by proxy; if he is the only heir in that degree, or if all heirs reject the inheritance, then their children, shall inherit equal share on their behalf. The descendants of the heirs who refuse it cannot inherit because of the change of place. This provision means the descendants of heirs who refuse to inherit cannot be the substitute heirs, so the heirs who reject inheritance will have no rights to inherit, including inheritance rights of their offspring.

The rejection of the inheritance must not be detrimental to the creditor. According to Article 1061 of the Civil Code, the creditors of an individual who are disadvantaged by his rejection of the inheritance, may be authorized by a judge to accept the inheritance on the individual's behalf. In this regard, the rejection of the inheritance may only be canceled in the extent that it benefits the creditors and to the extent that it amounts to their debt claims; such rejection shall not be cancelled for the benefit of the heir who has rejected the inheritance.

The authority to refuse inheritance cannot be lost due to expiration. The right to reject an inheritance shall not expired (Article 1062 of the Civil Code). However, with the expiration of receiving an inheritance passing 30 (thirty) years, then automatically, after 30 (thirty) years have passed, the person is equal to the person who rejects the inheritance. In other words, after 30 (thirty) years, people no longer need to refuse inheritance if they do not want to become the heirs. The provisions of Article 1063 of the Civil Code states "An individual may not, even by provision in a prenuptial agreement, surrender the inheritance from an individual who is still living, neither may an individual transfer the rights to such inheritance which he is due to acquire after a certain period."

The heirs who eliminate or hide items that belong to inheritance, lose the authority to reject their inheritance; he remains a pure heir, even though he refuses, and may not claim any part of the item he has removed or hidden. If there is a testament from the testator intended for someone who rejects inheritance, then the testament cannot be carried out. This is in accordance with Article 1001 of the Civil Code which states “A provision in a last will, shall lapse, if the nominated heir or legatee rejects the inheritance or legacy, or has been declared incompetent to enjoy such.”

If the person who refuses has received a grant from the testator, then the grant is not required to be returned (inbreng) to the testator's inheritance (the grantor), unless the grant is offensive or violates the absolute right of the heir who has that right. Refusal only concerns the inheritance or the deceased's inheritance property only and the refusal must be sincere and not accompanied by other conditions.

Refusal inheritance is one of the uniqueness in the Western civil law which is not regulated in customary and Islamic inheritance law. An heir is given the opportunity to decide whether to accept or reject the inheritance. In principle, an heir who has legally denied inheritance is deemed not to have been an heir and cannot be restored to his position as an heir, unless the refusal was made because he was tricked or forced by another party. Withdrawal of the decision to reject inheritance can only be done if the rejection occurs because of duress or fraud as stipulated in Article 1065 of the Civil Code. In Article 1065 stated "No individual may be reinstated in the position they were in prior to rejection of an inheritance, other than in the event that such rejection resulted from deceit or duress force." This provision relates to Article 1053 of the Civil Code which states:
Willingness by an adult to accept an inheritance cannot be totally renounced unless such willingness was caused by duress or fraud committed against him. He cannot deny his acceptance, because of being jeopardized by it, unless the inheritance has been reduced by more than one half as a result of the discovery of a provision in the last will that was unknown at the time of acceptance.

According to Article 1321 of the Civil Code “No agreement is of any value if granted by error, obtained by duress or by fraud.” Furthermore, regarding fraud stipulated in Article 1328 of the Civil Code is stated:
Fraud shall form grounds for nullification of an agreement, if the deceit by one of the parties is of such nature that it is apparent that the other party would never have concluded the agreement without such deceit. Fraud shall not be presumed, but must be proven.

In Article 1323 of the Civil Code it is also stated “Duress against an individual who has entered into an agreement, shall form grounds for nullification of the agreement, notwithstanding that it was committed by a third party, who was not party to the said agreement.” According to Article 1449 of the Civil Code “Contracts concluded under duress, or due to error or fraud, shall result in a legal claim to nullify such.” Thus, the rejection of inheritance that occurs due to fraud or duress can cause the statement of rejection of the inheritance null and void, so that the right of heirs to inherit can be restored.

CONCLUSION

Provisions for the rejection of inheritance in the legal system in Indonesia are only known in the Western inheritance law, namely the inheritance law based on the Civil Code. Customary and Islamic inheritance law do not recognize rejection of

inheritance. The legal effect of rejecting this inheritance is that the person is never considered to be an heir. The descendants of the heirs who refused cannot inherit because of the change of place. The heirs have no obligation to pay off debts, wills, and other expenses. Refusal of inheritance must not disadvantage the creditor. Cancellations of rejection of inheritance can only be done if the rejection occurs because of fraud or duress.

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I Dewa Ayu Yus Andayani, S.H., M.H.
Faculty of Law
Universitas Ngurah Rai, Denpasar, Bali, Indonesia
Email: yus.andayani@gmail.com

Anak Agung Ngurah Alit Suteja, S.H., M.H.
Faculty of Law
Universitas Ngurah Rai, Denpasar, Bali, Indonesia
Email: alitsuteja56@gmail.com

Anak Agung Putu Oka Seputra, S.H., M.H.
Faculty of Law
Universitas Ngurah Rai, Denpasar, Bali, Indonesia
Email: okaseputra57@ gmail.com