

# Implications Of Pluralism In Civic Matters On Social And Family Beings

Yunanto, Bambang Eko Turisno

**Abstract:** Refusal inheritance is an attitude that is not commonly done, but is the right of heirs. In practice, not all inheritance refusals are carried out according to legal procedures so that they can cause disputes with fellow heirs and with third parties. The purpose of this study examines the validity of the refusal of inheritance so that it is binding on him and other heirs and third parties; and the legal implications of denial of inheritance. The approach method used in this study is an empirical juridical method, namely an approach to the problem by reviewing the regulations as positive law with the implementing regulations including their implementation in the field. The results of the study indicate that the refusal of inheritance by the heir is only valid and binding if it has been carried out in the courtroom of the district where the inheritance is open. In practice, there was a denial of inheritance made by a notary and some were carried out with the latter statement abroad. Of course such refusal is not legal according to the heirs who refuse to remain domiciled as heirs. In addition, the emergence of both civil and criminal disputes related to the denial of inheritance originated from violations of the *nemo plus* principle.

**Keywords :** inheritance law, inheritance rejection.

## 1 INTRODUCTION

The diversity of inheritance law can be seen in the practice in the judiciary that still uses inheritance law according to its class (Coulson, 2017; Moors, 2018). For those who are subject to Islamic law inheritance settlement will be settled according to Islamic law through a religious court, while those who submit to customary law will be settled based on customary inheritance law in the district court. Likewise, for those who are subject to western civil law, the settlement will be settled according to civil inheritance law through a district court (Cammack, 2009). In Turkey there is also legal pluralism between civil law and Islamic law (Toktas & O'Neil, 2015). The difficulty of realizing unification in inheritance law and family law is because inheritance law and family law is one of the fields of civilization that has a sensitive and conflictual nature. In China, there are challenges that must be faced in family law, namely the law must be careful in upholding morality in the field (Shi, 2013). In addition, because between the inheritance system one has a sharp difference with other inheritance legal systems. For example the rights received by male and female heirs differ according to Islamic law and civil inheritance law. Likewise the position of heirs in customary law is different on the basis of a kinship system consisting of a patrilineal, matrilineal and parental system. Another difference is in civil inheritance law known as inheritance rejection, while it is not known in Islamic inheritance law and customary inheritance law. The right to reject this inheritance is only known in civil inheritance law and is unknown in customary inheritance law and Islamic inheritance law. Normally, the assets left behind by the testator are more assets than the liabilities. In the form of inheritance assets as exhausted natural resources (Soldatos, 2017). In such a context it is common in the practice of inheritance to be rare. However, it is also found that both civil and criminal disputes stem from the refusal of inheritance (Saraswati, 2019).

This shows that the motive for rejection of inheritance is not just to release the obligation of the heirs to pay the inheritor's debts, there are also those that are based on bad faith which aim to harm fellow heirs and third parties. The issue of the authority to act and the violation of the principle of *nemo plus* in making or implementing a rejection of inheritance is also a source of conflict between heirs and third parties. The focus of the study in this study is the inheritance legal system that applies in Indonesia, especially the inheritance system that regulates the rejection of inheritance. The act of refusing inheritance by an heir can be said to be an act that is contrary to the prevalence in the community, but on the other hand the refusal of inheritance is one of the rights of the heir. On this basis, the problems that can be raised in this paper are about the validity of the refusal of inheritance carried out by the heirs so that they are lawful and binding on him and other heirs and third parties; and the legal implications of the refusal of inheritance that has been done legally in the inheritance system in Indonesia.

## 2 RESEARCH METHODS

The approach method used in this study is an empirical juridical method, namely an approach to the problem by reviewing the regulations that have been applied in the community as positive law with implementing regulations including the implementation in the field. The research paradigm used is the paradigm of constructivism or more precisely legal constructivism. In constructivism reality can be understood in the form of various and irrevocable mental constructs, which are socially based and experience, characterized locally and specifically and the form and content depends on the human or individual groups that have the contradiction (Guba & Lincoln, 2009).

## 3 RESULT ANALYSIS

### 3.1 Legality of Refusal of Inheritance

In the event of the death of a person (heir) who leaves an inheritance, then it will be continued with the distribution of the inheritance. But not everyone who is a family of heirs can receive inheritance. This means that certain conditions are needed to receive inheritance. The main requirement is that the person has the right to inheritance. This right comes from

- Diponegoro University, Semarang, Jawa Tengah, Indonesia.
- Diponegoro University, Semarang, Jawa Tengah, Indonesia.

the relationship of blood and or the existence of testaments or wills. Heirs originating from blood relations can be legitimate or illegal or based on non-marital relations. Heirs that are based on legitimate blood relations are characterized by legal marriage. In Indonesia, there are two laws to view the legitimacy of marriage, namely from religious law and state law. However, the nature of the legitimacy of marriage desired by the Marriage Law is legal according to religious law and state law (Bedner & Van Huis, 2010). Only registered or registered marriages are legally binding. Similarly, in South Africa, access to resources after the death of a spouse is often centered on registering marriage. customary marriage prevents the realization of property rights in a marriage (Mwambene, 2015; see also. Roy, 2015; Niizeki & Hori, 2019). Heirs who are based on illegal blood relations are out of wedlock children. However, to become an heir to an extramarital child must be recognized first by his biological father. For heirs who have a legal blood relationship, are divided into four groups of heirs. However, not all people who have blood relations with the testator can receive inheritance, because those who have blood relations on the side line are only limited to the sixth degree of the heir. With these provisions indicate a close relationship between inheritance law and family law. Those who have the closest blood relationship to the heir who has the right to inherit the goods. In addition, it can also be seen in the provisions of Article 832 of the Civil Code which states: "According to the law, the right to be an heir, blood relatives, both legal and out of wedlock, and sisami or siisteri who live the longest, all according to the rules listed below. In the event that neither the family of blood, nor the person who lives the longest between husband and wife (widower and widow) does not exist, then all the inheritance of the deceased becomes the property of the state, which the authorities will pay off all the debt, just the price of sufficient inheritance to that". Article 832 of the Civil Code if filtered becomes a provision that those who actually appear as heirs are those who have the closest blood relationship to the heir. To determine the proximity of a family relationship between someone and another person, it is necessary to calculate the ratio between these people. These regulations are important to find out who is the closest family, and to determine the family on the side line who is still entitled/no longer entitled to inherit due to the limitations of the rights inherited to the family in the side line. There are groups of heirs to filter again, namely by the presence of the heirs of the blood group brothers grouped. This group of blood heirs is divided into four groups, and the four groups of heirs appear sequentially starting with the heirs of the first group. They cannot appear together in inheritance, except groups three and four can appear together origin in different lines/lines. The heirs of the first group are that children are included in the sense of children here, all of their offspring continue to go down indefinitely and are still added by others who should not have blood relations, namely: the wife/husband who lives the longest. The heirs of the second group are the father and mother of the heir and the brothers and relatives to the sixth degree. The heir of the third group is the inheritance blood family in a straight line up (maternal grandparents, maternal grandparents). While the heirs of the fourth group are blood relatives in the side line and their descendants to the sixth degree (uncles and aunts of father and uncle and aunts of mothers and their descendants to the sixth degree).

### 3.2 Legal Implications of Inheritance Refusal

Motivation for rejection of inheritance is common because heirs do not want to pay the heir's obligations to third parties. Thus the heirs have been able to estimate that the inheritance left by the testator is more passivity or debts. This can happen because of the refusal of inheritance, the heirs who reject the inheritance are considered no longer heirs, so creditors cannot sue the heirs who refuse to fulfill the heir's obligations to the creditor. It is rather strange that in inheritance all heirs reject inheritance so that creditors can be harmed because the debt is not paid. This is a legal risk that must be borne by the creditor. This risk arises because when engaging in an engagement with the testator it is not based on a special guarantee so that when the heir and/or his heir cannot fulfill his obligations there is a guarantee of repayment to the creditor by executing the auction of the collateral item. If there is an heir who rejects inheritance in the case of assets left by the heirs of more assets, then the motive for the refusal can be to the detriment of the creditor heirs. In practice there can be a variety of motives for rejection of inheritance whose purpose can be detrimental to fellow heirs or third parties/creditors. This is the case that can then lead to disputes both civil and criminal. In addition, the source of the dispute arising from the inheritance refusal is the issue of the authority to act which leads to violations of the *nemo plus* principle. The authority acts related to the subjective conditions of the agreement, namely skills. The skills in question are certainly capable of law. The principle is that every person is capable of doing the law, except for a wife (has been revoked by SEMA No. 3 of 1963); minors; and people who are placed under guardianship. A person who is capable of law does not necessarily have the authority to act. In order for a person who is capable of doing the law, he can act for himself (meaning the source of "self" as the subject of the law namely the holder of rights and obligations). In addition, he can act for other parties. In this case the source of the authority to act includes law, agreement, parental power. So, anyone who is capable of doing the law does not necessarily have the authority to act, and every person must not act beyond his authority as is known as the *nemo plus* principle. According to Irawan Soerodjo, *nemo plus* is a principle where a person cannot take legal action that exceeds his rights, and the consequences of such violations are null and void by law (Sutedi, 2008). Many disputes occurred in court due to violations of the principle of *nemo plus*, both civil disputes in the form of defaults, lawsuits against the law, lawsuit for cancellation of agreements or criminal disputes. If the refusal of inheritance has been done legally, the heirs who reject the inheritance are considered not to be heirs anymore. Heirs who reject inheritance mean giving up their responsibilities as heirs (Perangi, 2014). In the system of civil inheritance there are several things that can eliminate the position of someone as an heir, namely: refusing inheritance; declared inappropriate for inheritance; or declared incompetent to inherit. In addition to these three things there is no longer a provision that removes the position as an heir. As explained that it turns out that in practice there are various motives of heirs who reject *warisan*, whether based on good ties or vice versa. Of course the heirs who reject inheritance on the inheritance of their parents because they feel that the heirs have sufficient material are those that will not cause a dispute. Disputes due to the rejection of inheritance are usually based on the existence of bad ties. Based on the

provisions of Article 1057 Civil Code, rejection of inheritance can only be done in the courtroom of the district court where the inheritance is open. With this provision the notary even though he has the authority to make authentic deeds, but is not authorized to make an inheritance deed deed. Thus the legacy rejection deed made with a notary deed, the deed is invalid and non-binding. In addition, a notary who makes an inheritance rejection deed has acted beyond his authority.

#### 4 CONCLUSION

Refusal of inheritance is only known in the civil inheritance legal system, whereas in other inheritance legal systems in force in Indonesia, namely inheritance law and Islamic inheritance law, there is no denial of inheritance. In order for the refusal of inheritance by legal and binding heirs and other heirs and third parties, it must be carried out in the courtroom of the district where the inheritance is open. So the refusal of inheritance made with another deed other than the deed from the court of law of an illegitimate court and the place of refusal of inheritance should not be carried out outside the court where the inheritance is open. Likewise the notary even though he has the authority to make authentic deeds but is not authorized to make inheritance deed deeds. Provisions for violations of the making of inheritance deed in the form of violations of procedure and place of manufacture have caused the inheritance rejection deed to be illegitimate and non-binding, which means that the heirs who reject the inheritance remain domiciled as heirs. The refusal of inheritance can be done legally. The legal implication is that the heirs who reject the inheritance are deemed not heirs anymore. Thus the creditor of the heir cannot claim the heir's obligation to the heir who rejects the inheritance. Because of the implication of inheritance rejection not only to the heirs concerned but also to fellow heirs even to third parties, the act of rejecting the inheritance can lead to disputes in both the civil and criminal domains. This shows that the motive for rejection of inheritance is not merely to give up the responsibility of the heir to the obligations of the heir, but there are also those who are based on bad faith with the aim of harming others.

#### 5 REFERENCES

- [1] Bedner, A., & Van Huis, S. (2010). Plurality of marriage law and marriage registration for Muslims in Indonesia: a plea for pragmatism. *Utrecht L. Rev.*, 6, 175.
- [2] Cammack, M. (1999). Inching toward equality: Recent developments in Indonesian inheritance law. *Indonesian Law and Administration Review*, 5(1), 19-50.
- [3] Coulson, N. (2017). *A history of Islamic law*. Routledge.
- [4] Guba, E.G., & Lincoln V.S. (2009). Competing paradigms in qualitative research. In Denzin, N. K., & Lincoln, Y. S. (Eds.), *The Sage handbook of qualitative research*. Sage.
- [5] Moors, A. (2018). Debating Islamic family law: Legal texts and social practices. In *A social history of women and gender in the modern Middle East* (pp. 141-175). Routledge.
- [6] Mwambene, L., & Kruuse, H. (2015). Unfulfilled Promises? The Implementation of the Recognition of Customary Marriages Act in South Africa. *International Journal of Law, Policy and the Family*, 29(3), 237-259.
- [7] Niizeki, T., & Hori, M. (2019). The effect of inheritance receipt on individual labor supply: Evidence from Japanese microdata. *Japan and the World Economy*, 49, 176-186.
- [8] Perangi, E. (2014), *Hukum Waris*. Jakarta: PT

RajaGrafindo Persada.

- [9] Roy, S. (2015). Empowering women? Inheritance rights, female education and dowry payments in India. *Journal of Development Economics*, 114, 233-251.
- [10] Saraswati, R. (2019). Shame and Indonesian women victims of domestic violence in making the decision to divorce. *Identities*, 1-17.
- [11] Shi, L. (2013). Balancing Different Rights in Families: Did the Third Judicial Interpretation of the Marriage Law of the PRC Achieve its Goals?. *International Journal of Law, Policy and the Family*, 27(3), 381-398.
- [12] Soldatos, G. T. (2017). Inheritance and inequality, and aggregate demand and policy issues. *International Journal of Social Economics*, 44(12), 1833-1845.
- [13] Sutedi, A. (2008). *Peralihan Hak Atas Tanah dan Pendaftarannya*. Jakarta: Sinar Grafika.
- [14] Toktas, S., & O'Neil, M. L. (2015). Competing frameworks of Islamic law and secular civil law in Turkey: A case study on women's property and inheritance practices. *Women's Studies International Forum* 48, 29-38.