

Analysis An Expected Legal Rights To Think Before Receiving And Rejecting Legacy

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ABSTRACT

In the current system of the economy, the function of the matter is increasingly essential in the facets of human life, primarily that it can be traded regarding the election of properties often disputes. Such is the case of an inheritance arising in a specific circumstance, for example by the death of the heir and the possessions to be inherited, and those who receive the property. In the case of transfer of the right of this heir to the heir then arises the problem of inheritance. Strictly speaking there is no heir without the death. A human being as a member of the community as long as still alive has a place in society with accompanying various rights and obligations to others as well as to objects - objects that are in society. Mutual affect both parties either happiness or misery felt by both parties. If a member of the community at any time dies, there will be a transition of rights and duties or that we are often familiar with the term inheritance as a result of a legal relationship between the deceased and the abandoned family. According to the provisions of the Civil Code (Civil Code) which switched to this essentially all inheritance included also the debts of the estate. This means opening opportunities for debtors or creditors to insist on repaying the obligations of the inherited legacy to the inheritors. Inheritance according to the Civil Code there are often questions, such as when an heir accepts or rejects legacy, the consequences of the heirs receiving or rejecting the inheritance, the extent to which the inheritance rejection may be involved and the form of restoration of the inheritance's rejection.

Keywords : *A right of Thought; Heir; Heritage*

1. INTRODUCTION

According to Ali Afandi (2016), inheritance is all the wealth left by the deceased in the form of all the property of the deceased after deducting all debts. According to Hartono Soerjopratikjo, legacy is a treasure issued by a person who goes behind a complex of assets and liabilities. According to A. Pitlo, all the treasures that have been opened while the heirs do not know then the cache will be subject to rain and heat if the Act does not make specific rules for it. In general, inheritance is a treasure from someone who has died and turned to others who are still alive.

The inheritance is to include both concrete and abstract objects consisting of rights (assets) and liabilities (passive). The reason shall include the power or authority of the deceased (the heir) in respect of the property which he left behind, such as the right to collect receivables, property rights to land, houses and other reasons. Liability is the obligation to repay the debts owned by the heir and the goods borrowed during his lifetime.

The Civil Code recognizes 3 (three) kinds of attitudes of the heirs to inheritance, meaning that the heirs can choose between three positions namely (article 1023 Civil Code):

1. Receive the inheritance purely;
2. Receiving inheritance with a conditional (beneficiary);

3. Refusing inheritance

In section 1048 of the Civil Code is stipulated on the acceptance of the estate which is done purely, either firmly or secretly with the consequence that if there is a debt of the heir the heir is obliged to pay it and vice versa.

And then section 1032 of the Civil Code, regulates the inheritance of the inheritance, whereby the personal property of the heir is not intermingled with the legacy provided that if there is a debt of the peer, then the heir will settle as long as the inheritance is sufficient for that and if there is any residual the debt the heir is irresponsible. But in addition to the above habits to the heir's Act is given the opportunity to think first before choosing one of these attitudes.

If the heir rejects the inheritance, it means the heir disposes the rights to the assets and frees himself of the liability for the liability left by the heir and for rejection indicated that the inheritance should be open. Within the Act, it is unclearly determined the cause of the legacy was rejected.

However, there may be a limitation that the heir declares to reject the inheritance because he or she feels resentful to the heir or to benefit others by giving legacy from inheritance or to free himself from the debts of the heirs of his lifetime and so on.

So if the heir takes one of the three attitudes, it can have a big effect on the heirs, then

according to the Civil Code to them firmly given the opportunity to think first before choosing one of these attitudes.

2. THE RIGHT OF THINKING TO THE HEIRS

For the heirs may choose between three possibilities and the other creditor/heir cannot impose his choice either directly or indirectly because for the heir to make the decision it may not be easy, therefore the treasury lenders are essential to know who the person is called to deny this is where the insured who should be contacted and the part which should be made object of the settlement of receivables.

On large or vast treasures it is usually not easy for the heirs to get a complete picture of the estate, it will take time to learn, in which case the creditor should not be victimized if the heir is still hesitant in determining the creditor may force the expert to state his choice. The legislation regulates this, and may even void the denial of inheritance to the extent of self-harm, but in fact that debt of the heirs, transferred to the heirs, the creditor may prosecute the person who is called to be the heir.

In this case, the heirs may also escape the claim partly or entirely by accepting conditional (beneficiary) or by rejecting inheritance.

However, with the right to think given to the heirs, the lawmakers provide an opportunity for the heirs to get a delay, during the time the heir is still thinking, he can not be required to make his choice during the thinking time, suspended all cases against the expert inheritance or to the total heir (article 1025 Civil Code).

3. METHOD OF THINKING GIVEN TO THE HEIRS

The purpose of thinking given to the heirs is to investigate which is more beneficial for the heirs in determining attitudes concerning the open inheritance that this period of reflection arises because there is pressure from other heirs.

If it is seen in daily practice, not many heirs use it the right to think if the heirs are not urged by the creditors, but most heirs take the decision by receiving the inheritance purely because in general the legacy always has a favorable residual for every heir.

4. POSITION THE HEIRS WHO ARE THINKING AND CONSEQUENTLY

When the heirs should file the right to think it depends on the attitude of the creditor or other heirs, because for the heirs who are not pressed

by the creditor or other heirs to determine his or her opinion may be stalling indefinitely.

To think this heir must make a statement in the District Court Committee to be included in the list (article 1023 Civil Code) to the heirs who are thinking it is given a period of four months from the date of the statement, and on the grounds of urgent Court Affairs can extend (Article 1024 Civil Code).

As a result of the heirs who are thinking, then during the grace period the heirs cannot be forced to accept the position of the heirs and the heirs it is impossible to get a judge's decision that contains a punishment of the inheritance is the judge's decision that has been pronounced against the heir to the implementation (article 1025 verse 1 of the Civil Code).

The heirs who are thinking may ask permission from the Judge to sell items that are unnecessary or cannot be stored long as well as to do all sorts of deeds that can not be delayed and how the sale of such items will be stipulated in the Judge's permission if-if the deed which is not a deed of conduct can be interpreted as a pure act of acceptance. In this case regarding the right of thinking, according to Hartono Soerjopratikjo is as follows:

Thinking (Beraad), stopping the completion of the treasure of a person who during his thinking acts as an heir is deemed to be declaring that he has secretly received pure (article 1048) and has also waived the right he obtained from asking for that thought. Furthermore, it is said, if the heirs who want to think and other beneficiaries receive beneficiary must be meant that the completion of beneficiary acceptance, for the time being, cannot continue.

For the heirs who are exercising their right to think during the prescribed time limit implies a state of uncertainty regarding to the inheritance because it is not known who replaces the heir in his rights and duties because the heirs who are thinking may not be forced to determine his attitude towards the open heritage.

If the time limit for thinking has been determined to think, then heirs must be forced to determine his attitude in accepting the heir as the heirs in relation to the treasure that will be received. Furthermore, in the Civil Code it is determined that a provision by which the inheritance has prohibited the use of the right to think and the privilege of holding records of heritage is void and illegitimate (article 1043 Civil Code).

The right to think it is the absolute right of the heir, if the heirs want to exercise their right of thought then the other party shall not prevent or prevent it. Therefore, the election of one of the three attitudes can greatly affect the heirs, then by the Civil Code to them are firmly given

the opportunity to think first before choosing one of these attitudes.

5. CONCLUSION

An heir is said to receive an inheritance is where the heir is firmly or secretly received either pure or conditional (beneficiary). Whether it is done explicitly means that if an official (authentic) or under-hand has acknowledged himself as an heir. Whereas silent acceptance means the heir performs acts which may mean that the heirs intend to receive the inheritance. And it is also said to receive the inheritance on a conditional basis (beneficiary) indicates that the heirs are only willing to accept the assets just, and if there is a debt of the heir the heirs who receive the conditional only pay as long as the goods and receivables abandoned.

Due to the acceptance of the inheritance is pure:

- a. Heritage and wealth are mixed
- b. All duties in the heir are borne by the heirs
- c. The heir's personal property shall be used to pay the debts of the benefactor if inheritance is not enough
- d. All the heirs belong to the heirs
- e. The heirs are entitled to claim all the property of the heirs possessed by others

The result of receiving a conditional (beneficiary) of the heir is obliged to pay the debts of inheritance if the inheritance is sufficient for it.

REFERENCES

- Afandi, Ali, Hukum Waris, Hukum Keluarga, Hukum Pembuktian, KUH Perdata, PT Bina Aksara, Jakarta :
1983
- Pitlo, A, Hukum Waris Menurut KUH Perdata Belanda Jilid 1, Intermass : 1979
- Soerjopratikjo, Hartono, Hukum Waris Tanpa Wasiat, FH – UGM, Yogyakarta : 1982
- Subekti, Pokok – Pokok Dari Hukum Perdata, Jakarta
- , Kitab Undang – Undang Hukum Perdata (BW)