


A Legal Analysis Of Inheritance Property Objects Still Serving As Debt Collateral

Azzumar Azza Akbar¹, Hasim Purba², Rosnidar Sembiring³

^{1,2,3}Universitas Sumatera Utara, Medan, North Sumatera, Indonesia

Article Info	ABSTRACT
Keywords: Inheritance, Inheritance, Debt Guarantee.	The problem of inheritance distribution is one of the issues that often causes disputes in society, especially when it is related to assets that still have burdens or ties to other parties. One form of complexity in inheritance distribution occurs when the object of inheritance still has the status of debt collateral. This research is a normative legal research supported by interview data, descriptive nature of analysis using a legislative approach and a conceptual approach. The methodology of this research relies on secondary data. Data collection is done through library research, while data analysis uses qualitative methods. This decision has a significant impact as a new jurisprudence that changes the previous paradigm from rejection of the lawsuit (NO) to the concept of inheritance distribution that can still be implemented by paying attention to the protection of the rights of heirs and creditors, thus creating a new standard in religious court practice for handling similar cases in the future.
This is an open access article under the CC BY-NC license 	Corresponding Author: Azzumar Azza Akbar Universitas Sumatera Utara, Medan, North Sumatera, Indonesia azzumarakbar@gmail.com

INTRODUCTION

The problem of inherited property that is still a debt guarantee is an issue that often occurs in the practice of inheritance law in Indonesia. When someone dies, the property he owns, including property that has been used as debt guarantee, will be transferred to the heirs. However, problems arise when the property is still bound by an unfinished debt agreement. As inheritance is one form of legal event that cannot be avoided in human life.

Inheritance law is the law that regulates what should happen to the assets of someone who dies, in other words, regulates the transfer of assets left behind by someone who dies and the consequences for the heirs.²In Arabic, al-Miras is according to etymology the transfer of something to another person or the transfer of something from one group to another. In terms of fiqh, inheritance or inheritance is "everything left behind by the testator, whether in the form of property (money) or others.

This includes debts and is related to personal obligations such as credit or dowry payments.³In principle, only rights and obligations in the field of wealth/property law can be inherited. There are several exceptions, for example the right of a father to deny the legitimacy of his child and the right of a child to demand that he be declared the

legitimate child of his father or mother (both rights are in the field of family law), declared by law to be inherited by his heirs.

According to the Geillusteerde Encyclopedia, A. Winkler Prints, inheritance law is all the regulations governing inheritance, determining to what extent and in what manner the legal relations of someone who has died are transferred to other people, and thus they can be passed on by their descendants.⁵In addition, HM Idris Ramulyo, said that inheritance law is a collection of legal rules that regulate who the heirs or legal entities are who have the right to inherit the inheritance. What is the position of each heir and how much each gets fairly and perfectly.⁶The person who replaces the position of the testator in the field of property law due to the death of the testator is the heir.

Heirs are people who are entitled to receive an inheritance. These people receive inheritance rights due to marital or blood relations.⁸Inheritance law in Indonesia is influenced by three legal systems: customary law, Islamic law, and Western civil law contained in the Civil Code (KUHPerdata). In the context of Islamic law, the Compilation of Islamic Law (KHI) is the main guideline. Article 171 letter (a) of the KHI defines inheritance law as the law that regulates the transfer of ownership rights of the testator's inheritance (tirkah), determines who is entitled to be an heir and how much each portion is.

According to Article 171 letters (b) and (c) KHI, an heir is a person who at the time of death was related by blood or marriage to the testator, was Muslim, and was not prevented by law from becoming an heir. Furthermore, Article 175 KHI regulates the heir's obligations towards the heir, which includes managing and settling the heir's debts.⁹Meanwhile, Article 185 of the KHI discusses the replacement of positions in inheritance or plaatsvervulling.

In the Civil Code, the provisions regarding inheritance are regulated in Book II on Property. Article 830 of the Civil Code states that inheritance only occurs due to death. Article 833 of the Civil Code stipulates that heirs automatically by law acquire ownership rights over all goods, all rights and all receivables from the deceased. Meanwhile, Article 1100.

The Civil Code emphasizes that heirs who have received an inheritance are obliged to bear a portion equal to what each of them received from the inheritance in terms of paying debts, bequests and other burdens. Heirs according to civil inheritance law are not differentiated by gender as in Islamic inheritance law. A person becomes an heir according to civil inheritance law due to marriage and blood relations, whether legal or not. The person who has the closest blood relationship has the right to inherit.

Inheritance is a transfer of all rights and obligations of a deceased person to his heirs. The definition of inheritance law is the law that regulates the transfer of assets left by a deceased person and the consequences for his heirs. When people talk about inheritance, they will come to two main problems, namely a deceased person who leaves his assets as an inheritance and leaves behind people who are entitled to receive the inheritance. If a person dies, this is a legal event that also gives rise to legal

consequences, namely how to manage and continue the rights and obligations of the deceased person.

Resolving inheritance issues is a religious obligation. Therefore, Muslims who are aware of their obligations will certainly carry out the obligation to resolve inheritance issues as carry out other religious obligations.¹⁰The settlement of a person's rights and obligations is regulated by law. So, inheritance can be said to be a provision that regulates the method of forwarding and transferring assets (tangible or intangible) from the testator to his heirs. In this case, the form and system of law, especially inheritance law, are closely related to the form of society. If it is agreed that law is one aspect of culture, both spiritual and physical, this is perhaps one of the reasons why there are various legal systems, especially inheritance law.

This legal basis determines that in order to continue the legal status of the assets of a deceased person, it must be adjusted as much as possible to the wishes of the deceased person.¹¹The basis of Islamic inheritance law is clearly regulated in the Qur'an, including in the Word of Allah in surah An-Nisaa': 7 which means: For men there is a right to share in the inheritance of their parents and relatives, and for women there is a right to share (also) in the inheritance of the parents and relatives, whether a little or a lot according to the division that has been determined. This verse confirms that male and female heirs receive a share of the inheritance from parents and relatives who die in accordance with the specified portion.

In terms of inheritance, Islamic Law places men and women as having equal rights to the inheritance left by the testator (mother and/or father). Only the portions are different, this is in accordance with their respective natures as a sunnatullah.¹²In addition, in civil inheritance law, the principle applies that when someone dies, at that time all of his rights and obligations are transferred to his heirs. Article 833 of the Civil Code, This means that the family members of the deceased person replace the position of the Heir in the field of property law due to the death of the Heir. The heirs occupy the position of the deceased in matters concerning property.

The inheritance left by the testator does not necessarily mean that all of it is wealth that will later be distributed to the heirs. There are times when the testator leaves behind inheritance in the form of debt.¹³In practice, many inheritance calculation methods are considered appropriate to be applied to heirs, such as according to the Civil Code, each party receives a different amount or proceeds from the inherited property depending on the agreed criteria.

Inheritance is anything left behind (can be in the form of assets or debts) left by the testator (the deceased person) and bequeathed to the heirs.¹⁵Collateral, which was originally a means of controlling debts and receivables, has now shifted from its original context.¹⁶In the context of debt collateral, it is necessary to distinguish between movable and immovable objects. Collateral for immovable objects includes land and buildings, which are usually secured through mortgage rights. While movable objects such as motor vehicles can be secured through fiduciary. This understanding is important in the context of settling inheritances that are still collateral for debt.

The issue of Islamic inheritance law in Indonesia has again come under the spotlight through an interesting case at the Baubau Religious Court. Case Number 393/Pdt.G/2021/PA Bb began with the death of a businessman named the late Moh. Jabir Azis (hereinafter referred to as the Heir) on April 27, 2021. During his life, the Heir was known as a fairly successful figure in business, as evidenced by his ownership of various valuable assets including land, commercial buildings, and company shares. However, behind his success, there was a complexity of problems that were only revealed after his death.

The testator left behind a wife named Siti Muniati Binti H. Munir (who in this case is Plaintiff I) who had accompanied him since October 8, 1983. Although they were not blessed with biological children, this couple adopted a child named Abdul Halim bin H. Munir (who in this case is Plaintiff II) whom they had been caring for since 1988. This child was adopted carried out according to custom, where Plaintiff II, who is the younger sibling of Plaintiff I, was handed over by his biological parents to this couple when he was still a baby. The adoption process was marked by the handing over of a sarong as a symbol of the transfer of responsibility for care, a tradition that is still firmly held by the local community.

During his life, the Heir has accumulated quite a large amount of wealth. Among them are several plots of certified land in various strategic locations in Baubau City, including 63 m² of land in Bataraguru Village, 1,058 m² in Bandar Batauga Village, 1,835 m² in Lawela Batauga Village, and several other plots of land. The Heir also owns commercial property in the form of a clothing store in the Laelangi Complex and a shop at PT Umna Wolio Plaza. No less importantly, he is the majority shareholder in PT. ST with a 50% stake, while his wife (Plaintiff I) owns 45% of the shares, and the Heir's brother named Muh. Safar Azis bin La Ngguali (who in this case is Defendant II) owns 5% of the shares. However, behind the glittering success of his business, it turns out that the Heir also left behind a number of quite large debts. His total debts reached almost 400 million rupiah, spread across various creditors including PT. ST, Koperasi Kurnia, Bank Mandiri Syariah, and Bank BNI. More complexly, some of the assets he left behind are still tied up as collateral for debts at these banks. For example, land in Kadolo Village which is still collateral at Bank Syariah Mandiri, as well as several plots of land and shops that are still tied to Bank BNI.

Problems began to arise when the testator's biological sister named Nasbia Binti La Ngguali (who in this case is Defendant I) and Defendant II, who is the Testator's biological brother, did not recognize the status of Plaintiff II as an adopted child. In fact, Plaintiff II has carried out his role as a child well, even being involved in managing the family business. The conflict became more heated when there was a dispute regarding the leadership of PT. ST after the Testator's death. Previously, there had been an agreement to appoint Plaintiff II as the main director, but Defendant II unilaterally canceled the agreement on the grounds that the distribution of shares was not in accordance with Islamic inheritance law.

The situation becomes more complicated when the parties have to think about settling the debts of the heirs, which are quite large. Some assets that should be inherited are still tied up as collateral in the bank, so they cannot be directly distributed to the heirs. In addition, questions arise regarding the status of these debts, whether they are the personal debts of the heir or are included in the category of joint debts in marriage that must be borne together with the wife.

The Baubau Religious Court in its decision took a wise step by first recognizing the status of Plaintiff II as an adopted child who is entitled to a mandatory will. The Panel of Judges also determined the distribution of the inheritance by considering the status of joint property and the rights of each heir according to Islamic law. However, interestingly, the court ordered that the debts of the heirs be settled first before the distribution. inheritance is carried out, with the burden of payment being divided proportionally according to each party's share of the inheritance.

This case is interesting to study further because it shows the complexity of inheritance law problems in modern society. It does not only revolve around the conventional distribution of inheritance, but also involves other legal aspects such as collateral law, banking law, and corporate law. The court decision in this case also provides a new perspective on how the Indonesian legal system accommodates various interests in inheritance disputes involving assets that are still tied up as debt collateral. Furthermore, this case shows that resolving inheritance disputes in the modern era requires a comprehensive and integrative approach. It is not enough to rely solely on the provisions of classical Islamic inheritance law, but must also consider various aspects of modern law and the socio-economic realities of society.

Literature Review

Theory of Legal Certainty

The theory of legal certainty can be an analytical tool in answering the first problem regarding the legal position of inheritance property which is still an object of debt collateral in the inheritance law system in Indonesia. Theory Legal certainty emphasizes that the law must provide clarity, consistency, and predictability. For the first problem, legal certainty demands clarity on the status of ownership of inherited assets, even though they are still tied as collateral for debt. Court decisions must be consistent with the provisions of inheritance law and applicable collateral law, providing a clear status whether ownership has been transferred to the heirs but with the burden of collateral still attached. Meanwhile, for the second problem, the theory of legal certainty requires clarity regarding the rights and obligations of the heirs. This includes the right to receive inheritance and the obligation to continue the heir's responsibilities related to debts secured by the assets.

Certainty is a characteristic that cannot be separated from law, especially for written legal norms. Law without certainty will lose its meaning because it can no longer be used as a guideline for behavior for everyone. Certainty itself is referred to as one of the objectives of law. When viewed historically, discussions about legal certainty are discussions that have emerged since the idea of separating powers from [Montesquieu](#).

The order of society is closely related to certainty in law, because order is the core of certainty itself. Order allows people to live with certainty so that they can do activities needed in community life.

Legal Protection Theory

The theory of legal protection can be an analytical tool in answering the second problem regarding the judge's considerations in deciding the case of inheritance distribution whose object is still a debt guarantee in Decision Number 393/Pdt.G/2021/PA Bb, the theory of legal protection becomes very relevant. The theory of legal protection emphasizes the importance of providing guarantees and protection for individual rights in their interactions with the law and other parties. In the context of this case, legal protection must be provided in a balanced manner to all parties involved. For heirs, legal protection includes guaranteeing their right to receive inheritance, but also protecting them from excessive debt burdens. For creditors, legal protection means ensuring that their rights to debt guarantees are maintained even though there is a transfer of ownership through inheritance.

The theory of legal protection also demands a clear and fair mechanism in the settlement process, including mediation or arbitration if necessary. Furthermore, legal protection also means providing procedural certainty in resolving cases, ensuring that every step taken is in accordance with applicable law and does not unfairly harm any party. By applying the theory of legal protection, it is hoped that the settlement achieved can provide a fair solution, protect the interests of all parties, and create a balance between fulfilling legal obligations and protecting the rights of individuals involved in this debt-collateral inheritance case.

The emergence of this concept of legal protection basically begins with the meaning that the law protects a person's interests by giving him the power to act in fulfilling his interests. The granting of power, or what is often called this right, is done in a measured manner, in terms of breadth and depth.²⁷ According to Paton, an interest is the object of rights, not only because it is protected by law, but also because there is recognition of it. Rights do not only contain elements of protection and interests, but also The theory of legal protection was developed by CST Kancil, Philipus M. Hadjon, and Satjipto Raharjo. According to CST Kancil, legal protection is a narrowing of the meaning of protection, in this case only protection by law. The protection provided by law is also related to the existence of rights and obligations, in this case owned by humans as legal subjects in their interactions with other humans and their environment. As legal subjects, humans have the rights and obligations to carry out legal actions.

Philipus M. Hadjon gives his opinion that legal protection is the protection of dignity and honor, as well as recognition of human rights owned by legal subjects based on general provisions from injustice or as a collection of regulations or rules that will be able to protect something else.

Meanwhile, Satjipto Rahardjo, explained that legal protection is providing protection for human rights that are harmed by other people and this protection is given to the community so that they can enjoy all the rights granted by law Lili Rasjidi and B.

Arief Sidharta said that law is developed and needed by humans precisely based on the products of human assessment to create conditions that protect and advance human dignity and to enable humans to live a reasonable life in accordance with their dignity. The theory of legal protection is a very important theory in assessing whether a decision or legal action has provided adequate protection for the parties involved. In the context Decision Number 393/Pdt.G/2021/PA Bb relating to the settlement of inheritance that is still collateral for debt, the theory of legal protection can be used to evaluate whether the decision has considered and provided legal protection for the parties.

Theory of Justice.

Justice in resolving inheritance disputes with debt collateral as objects become the main focus in the religious justice system. The theory of justice put forward by John Rawls emphasizes that justice must provide the greatest benefit to the least advantaged party, in line with the principle of legal protection for heirs and creditors. Decision Number 393/Pdt.G/2021/PA Bb is an important milestone in creating a balance between inheritance rights and debt obligations of the testator. According to John Rawls, situations of inequality must be given rules in such a way that they are most beneficial to the weakest groups in society. This happens if two conditions are met. First, the situation of inequality guarantees maximum minimorum for the weakest group of people. This means that the situation of society must be such that the highest possible profit is generated for the lower classes. Second, inequality is tied to positions that are open to everyone. The point is that everyone is given the same opportunities in life.

John Rawls emphasized that a program to uphold justice with a people's dimension must pay attention to two principles of justice, namely First, to provide equal rights and opportunities for the broadest basic freedoms as broad as the same freedom for everyone. Second, to be able to reorganize the socio-economic gap that occurs so that it can provide reciprocal benefits for everyone, both those from fortunate and unfortunate groups. The legal impact of Decision Number 393/Pdt.G/2021/PA Bb has reflected the principle of justice by providing legal certainty in the distribution of inheritance while protecting the rights of creditors. Procedural justice is realized through a mechanism for proportional distribution of debt repayment obligations to heirs, while substantive justice is achieved by still guaranteeing the rights of creditors holding collateral. This decision is a precedent that strengthens the inheritance dispute resolution system in the future based on the principles of balance and justice for all parties.

Inheritance in Positive Law

Positive law is a legal rule made by an official body mandatory and coercive in nature to regulate all human behavior in community environment. In this discussion it is related to inheritance based on the Civil Code there is not a single article that explain inheritance law specifically, but only mention that inheritance takes place if there is a death as regulated in Article 830. In addition, Article 832 of the Civil Code states: Heirs must have a blood relationship with the testator, therefore those who have inheritance rights are limited to people who have blood relations, either direct descendants or parents upwards or sideways.

In general, what is meant by inheritance law is the law that regulates how inheritance property is transferred or transferred from heirs in the form of property, in the form of money or other objects valuables, as well as debts owed by the deceased to people who are entitled to them inherit it either according to law or will, in accordance with the part that has been explained in the Civil Code.

METHOD

The type of research used is normative legal research, which is "library legal research conducted by examining library materials or secondary materials alone". To strengthen the normative analysis, this study is also supported by interviews with judges of the Medan religious court to support and assist in answering the problems studied. The nature of the research used in this study is descriptive analysis, namely "a research method that aims to describe and analyze facts that occur as they are and are linked to legal theory, and its implementation is related to the problems being researched".

This research also attempts to search for facts by providing the correct interpretation of the data with the aim of creating a description, a systematic description or painting of the facts regarding the problem researchers investigate. Descriptive methods are intended to describe the state of the object simply as it is. This step is taken as an important start because become the basis for the next discussion method. The legal research approach used in writing this law is a statutory regulatory approach, which means to understand and comprehensively analyze the hierarchy of laws and regulations and the principles in laws and regulations. The statute approach is carried out by examining all laws and regulations related to the legal issue being handled.

This research approach also uses a conceptual approach (Conceptual Approach), the conceptual approach is intended "to analyze legal materials so that the meaning contained in the terms can be known law". This was done as an effort to obtain a new meaning that contained in the terms studied, or testing these legal terms in theory and practice. Generally, data types are divided into primary data and secondary data. Data Primary data is data obtained directly from the first source, while secondary includes official documents, books, research results in the form of reports, and so on.

To get data maximum, supporting data is used in the form of primary data obtained through an interview with the Medan Religious Court Judge, namely Mrs. Dra. Hj. Nikmah, MH. In secondary data, the sources of legal materials used can be divided into several groups, namely:

- a. Primary Legal Materials Legal materials that have binding legal force such as legislation consisting of: Civil Code, Compilation of Islamic Law (KHI).
- b. Secondary Legal Materials
Materials that are closely related to primary legal materials, which can provide explanations of primary legal materials, consist of books, literature and research results.
- c. Tertiary Legal Materials

Other supporting materials that are relevant to the main problem, provide information, guidance and explanations of primary and secondary legal materials, such as the Big Indonesian Dictionary, the Legal Dictionary.

All legal materials were collected using library research techniques with data collection tools in the form of document studies from various sources deemed relevant.⁴⁸Data collection that intended in this study is to find data and developments from the problems faced. The search can be in the form of news or in the form of journals and articles. The tool used to collect data for this study is a document study, namely: "One way that can be done to get a picture from the subject's point of view through written media and other documents written or made directly by the subject concerned.

In addition to literature studies, primary data as supporting data is collected through field research with the interview method which is used as a data collection technique if the researcher will conduct a preliminary study to find problems that must be researched and also the researcher wants to know things from respondents in more depth and the number of respondents is small.⁵⁰The interview was conducted with one of the Medan Religious Court Judges, namely Mrs. Dra. Hj. Nikmah, MH at the Medan Religious Court.

This study uses qualitative data analysis and is expected to facilitate the analysis of the problems raised, interpret and then draw conclusions. This study uses a qualitative method, namely research that is descriptive and tends to use analysis. Data analysis that will be conducted qualitatively is expected to facilitate in analyzing the problems submitted, interpreting and then drawing conclusions. Qualitative analysis is conducted on the paradigm of dynamic relationships between theories, concepts and data which are feedback or fixed modifications of theories and concepts based on the data collected. In relation to the data analyzed, they are diverse, having different basic properties from one another.

RESULT

Legal Impact Of Decision Number Regarding The Resolution Of Inheritance Disputes Involving Debt Guarantee Objects In The Future.

When associated with decision Number 393/Pdt.G/2021/PA Bb, the Judge's decision reflects legal certainty for the parties. The plaintiff and defendant obtain legal certainty over the inheritance that is the object of the dispute in the case. Which in the decision stipulates that the heirs of the deceased testator are: Plaintiff I as the wife of the Testator; Defendant I as the biological sister of the Testator; and Defendant II as the biological brother of the Testator.

The element of legal certainty in law enforcement is the justifiable protection of one's actions against another, because law is traditionally seen as the definitive authority to resolve societal conflicts. This legal certainty is often replaced by the term predictability in legal theory. Thus, law enforcement should ideally be predictable, with the wrong party being found guilty and the right party being found innocent. The courts wrongly decide the right party and correctly decide the wrong party. This predictability is very important

to maintain the legal system as the main reference for society and to maintain the authority of the law itself. However, additional empirical evidence shows that our courts often make unpredictable decisions (not based on truth). The certainty obtained from judges is built on the basis of justice and in accordance with the law, and not merely the judge's personal preferences or the demands of society.

Justice is a state in which no party feels disadvantaged. This implies that justice is giving everyone their rights or entitlements. Order will be achieved by upholding justice in society. Justice is also an evaluation of actions or treatment, one person against another, usually from the perspective of the individual who is harmed or subjected to such treatment. The goal of achieving justice is different from the goal of upholding order. In certain situations, the demand for justice will weaken legal certainty, whereas legal certainty is the most important factor in upholding order. Without legal certainty, order is impossible. Conversely, order can, to some extent, weaken justice. In addition to certainty, order requires equality, while justice requires diversity or variation in treatment.

If we look closely at the contents of the decision in case Number 393/Pdt.G/2021/PA Bb, the judge's considerations regarding the legal status of the inheritance object that is still a debt guarantee according to the researcher are appropriate. Where the four inheritance objects that have been discussed previously according to Plaintiff I's argument still have collateral status in each Bank. And in proving the inheritance object, the Plaintiffs only attached their respective copies in the form of photocopies of the Ownership Certificate, all of which are proof of ownership or transfer of rights to the Deceased Heir because the existence of the original Ownership Certificate was used as collateral by the Deceased Heir while he was still alive. This evidence does not meet the formal requirements for proof as stipulated in Article 1888 of the Civil Code where the power of proof with a writing lies in the original deed, so that this evidence does not have the power of proof.

Due to the fact that the object of the lawsuit is still a guarantee for bank debt, thus based on the Legal Formulation of the Chamber of Commerce Religion letter A number 4 Circular Letter of the Supreme Court Number 3 of 2018 lawsuit for joint property where the object of the dispute is still a guarantee for debt, then the lawsuit for the object must be declared inadmissible.

The Panel of Judges could not find a common thread between the debts of the deceased Heir to Bank Syariah Indonesia and Bank Negara Indonesia (BNI) with the 4 objects of the Plaintiffs' lawsuit which are still bank guarantees because there is no information in the Plaintiffs' lawsuit arguments whether one of the objects of the lawsuit is a guarantee for debts from Bank Syariah Indonesia or Bank Negara Indonesia (BNI) as referred to by the Plaintiffs or between the two there is no relationship, but even so the existence of debts in the bank must be believed, then the evidence submitted by the Plaintiffs is only preliminary evidence, so the Panel of Judges considers that the Plaintiffs' lawsuit regarding debts from Bank Syariah Indonesia and Bank Negara Indonesia (BNI) is vague (*obscur libel*) and must be declared unacceptable. This does indeed reflect legal certainty for the heirs, but it should also be remembered that the creditors or in this case

the Bank also need certainty from the heirs in being responsible for the debts of the deceased Heir. The judge was deemed to have been less than careful in considering the position of the Bank, which was important enough to consider the position of its rights to the debts of the deceased testator.

The judge's decision must be beneficial for both the parties involved and society as a whole. In implementing or enforcing the law, society expects law enforcement to contain and provide benefits to society. In this case, society has an interest because it wants a balance in social order. The balance of order in society is thrown off by disagreements, but this imbalance should not cause unrest.

Law enforcement not only prioritizes certainty, but also considers various other fundamental legal principles. In the same vein, if achieving justice is the goal, then one must prioritize guarantees and benefits, and so on. In other words, a sense of justice will not be realized if legal certainty is not achieved, and if justice and certainty are not balanced, then the value of benefits will not apply, or will be null and void by law. Therefore, in the field of law enforcement, these three aspects need to be given proportional consideration. (balanced) so that it can be experienced and realized in a way that meets the expectations of the interested parties and society as a whole.

Potential Paradigm Change in Inheritance Dispute Resolution with Debt Collateral Objects.

Paradigm can be interpreted as a whole system of beliefs, values and techniques that are used together. Paradigm is identical as a form or model to explain an idea process clearly. Paradigm can also be said as a set of general theoretical assumptions and laws and application techniques that are shared by members of a scientific group. When reviewed in depth, paradigm can be understood the same as world view, general perspective, or way of breaking down the complexity.

Paradigm is a belief, feeling and everything in a person's mind that functions as a driving force for survival, social and moral change. A worldview can be interpreted as a human view of the reality of the world that functions as a means of social and moral change. So that worldview can also be interpreted as an integral basic belief system about the nature of the human self, reality, and the meaning of existence. Alparslan Acikgence interprets worldview as a basis for every human behavior, including scientific activities in science. Every human activity will seek and break it down into a worldview. A worldview generally has five conceptual structures or views consisting of: (1). Conceptual structure about science, (2) Conceptual structure about the universe, (3) Conceptual structure about humans, (4). Conceptual structure about life; and (5). Conceptual structure about moral values.

Mohammad Atho' Mudzhar is an intellectual in the field of Islamic legal sociology. In his book entitled *Antara Tradisi dan Leberasi*, he views that the historical journey of the development of Islamic law contains socio-cultural factors that influence the characteristics of Islamic legal products. The results of this thinking cannot be separated from the socio-cultural contribution in this case of Islamic thinkers themselves. Although legal products have been regulated in the Qur'an and Hadith marked by their verses, it is

very difficult to answer all forms of problems that develop and are complex in every axis of human life. Therefore, in order to fill the void in the legal aspect, scholars use reason to produce a product of Islamic legal thought that exists today. Then it can have an impact on the pattern itself, which is in fact until now as a consensus on the courage of scholars in producing legal products (tajdid) every time a problem arises and occurs in society.

In its journey, this legal product has attempted to actualize the product of Islamic law or the *ijtihad* itself which was carried out by scholars and continues to roll based on the conditions of a particular era and time. Both in the fields of marriage and inheritance law. According to him, the reconstruction of Islamic law can be done through the empowerment of *fiqh*. In understanding the concept of *fiqh*, one must first distinguish between *ad-din* (religion) and *al-Ajkar ad-din* (Islamic religious thought). This is because there are still many wild (dogmatic) thoughts developing in society that the science of *fiqh* is identical to (religion) as is the case with the Qur'an and Hadith. Basically, *fiqh* is the result of *ijtihad* (hard work) of a scientist in providing legal certainty for issues that are not found textually (in the Qur'an and Hadith).

It can be understood that *fiqh* is a product of human thought that can change based on changes in the times, situations and certain circumstances that require it. The sociological approach to Islamic law according to Atho is divided into at least five aspects; first, the influence of religion (belief) on societal change. Second, the influence of societal change related to the understanding of religious dogma. Third, the level of religious experience of the community. Fourth, the social system of Muslim society, both urban and rural communities, and the system of inter-religious relations in society. Fifth, social movements that bring understanding that can weaken or support life religious.

The paradigm shift in handling inheritance cases where the object is still a debt guarantee is also recognized by legal practitioners. Based on the experience of Mrs. Dra. Hj. Nikmah, MH: Previously, many judges tended to declare lawsuits inadmissible when the object of the inheritance was still a debt guarantee. However, this decision shows that inheritance distribution can still be done while still paying attention to the rights of the creditor holding the guarantee. This is a progressive legal breakthrough.

Basically, the majority of people do not want any quarrels due to the unequal or inappropriate distribution of inheritance. In other words, the majority of people want to prioritize the welfare rather than the harm that arises from the act. However, sometimes there are those who want to control the property with their own arguments, even though it is contrary to the principles of Islamic inheritance law.

As explained earlier, the rules on inheritance distribution have basically been regulated in Islamic law, statutory regulations and customary law. The legal basis for inheritance distribution is oriented towards the aspect of protecting the legal rights of the heirs, heirs, and others. Furthermore, that goodness must be in line with the principles of sharia, even though there is a gap with human goals. Because a person's welfare is not always based on the principles of sharia. However, it is often based on lustful desires alone, similar to the story in the time of ignorance where women did not have a share of the inheritance which in fact had a value of *maslahah* (based on customs), but this act

was considered not in accordance with sharia principles (not said to contain *maslahah*). It can be understood that a case is declared to contain *maslahah*, if the case can protect human nature, provide benefits, and does not conflict with the will of the Shari'a. Fiqh scholars divide problems based on aspects of quality, importance and beneficial value. So it was determined into three types. Among other things, *maslahah al-durariyyat* (*maslahah* relating to basic (primary) human needs in this world and the hereafter. Such as maintaining the five aspects of prosperity (called *al-masalih al khamsah*), namely protecting religion (*hifdzu ad-din*), protecting the soul (*hifdzu nafs*), guarding reason (*hifdzu aql*), guarding descendants (*hifdzu nasl*), and guarding wealth (*hifdzu maal*).

Basically living in the midst of society is a mode of survival for humans, where by living in society a person can continue his life. It is undeniable that by nature humans are creatures that cannot be separated from the structure of society. Therefore, the existence of social institutions that emerge, this can also be related to morals in society. In less advanced (primitive) societies, a person's actions can be seen from how they embody certain external values. Especially in their correlation with others. This means that a person's characteristics are influenced by certain (unwritten) norms that apply to society and its customs. Customs are habits that apply among the community, this is called the spirit in social interaction.

Interestingly, what happens in Muslim society is that some people in acting will not deviate from existing actions that arise from the actions of previous people (ancestors). If examined more deeply, that society has become one with the conditions adopted in the order of its environment. Moreover, in the implementation of inheritance, society is prone to using the concept of customs. This community activity exemplifies that some local people continue to instill values of togetherness in an effort to realize the customs inherited from their ancestors. Because some of the surrounding community believe that the customs in question are in accordance with the moral norms and customs of the surrounding community elements. Especially customs regarding the distribution of inheritance.

Discussing culture, cannot be separated from the values of local wisdom. Because local wisdom contains noble values from the legacy of the past that have codified or contained norms as a basis for acting and speaking. As done by the community in facing a more constructive way of thinking to be able to maintain the values contained in the customary system that has been inherited from ancestors in ancient times. Where the surrounding community takes a lesson from the importance of preserving customs in community life. The tradition of society in sharing inheritance is to prioritize togetherness in order to realize existing customs to be maintained and local wisdom values applied.

Not only that, the community is also still bound in an order according to the belief that everything comes from the same lineage. It can be stated that they believe that one descendant (ancestor) must make it obedient and submit to the norms inherited from the past without having to consider in advance whether the rules contained in the customs have been able to achieve aspects of justice in their application. Because whatever the

conditions, the thing that is prioritized by the surrounding community is upholding the value of togetherness in maintaining the existence of customs.

The distribution of inheritance adheres to customs that uphold togetherness. Maintaining the noble values that have been preserved by the ancestors. Interestingly, there are norms that are agreed upon internally by the family in the distribution of inheritance. For example, it is not allowed to divide the inheritance if one of the heirs is not married, the heir is not legally competent, and the house is for the youngest child. This is undeniable, because if violated it will trigger complicated problems in the household. If the transformation of the distribution of inheritance is reviewed from the theory of Islamic legal sociology, it can be seen that first, the influence of religion (belief) on changes in society. Second, the influence of changes in society related to the understanding of religious dogma. Third, the level of religious experience of the community. Fourth, the social system Muslim society, both urban and rural, and the system of inter-religious relations in society. Fifth, community movements that bring understanding that can weaken or support religious life.

Impact of the Decision on Inheritance Distribution and Debt Settlement Practices in Society

A case can be resolved effectively and efficiently, of course, requires proper arrangement or management in the process. This includes the litigation process in court which will run well if all elements in it are carried out according to their duties and functions. One important element that influences the litigation process in court is the implementation of the trial. In order to realize the blueprint and Vision of the Supreme Court of the Republic of Indonesia to become a great judicial body, the Supreme Court and all judicial bodies under it have implemented bureaucratic reform and have taken fundamental, comprehensive and systematic steps, so that the goals and targets that have been set can be achieved effectively and efficiently.⁸⁹ One form of bureaucratic reform that continues to be echoed by the Supreme Court is in terms of improving the quality of judges' decisions and the professionalism of all judicial institutions under it.

One form of improving the quality of judges' decisions and the professionalism of judicial institutions is when judges are able to hand down sentences. Decisions by paying attention to three very essential things, namely justice (*gerechtigheit*), certainty (*rechsecherheit*) and benefit (*zwachmatigheit*). Finding and finding harmony in law is neither difficult nor easy. The difficulty in achieving ideal law is where the parties in dispute or dealing with the law feel satisfied or accept the verdict with an open heart. In addition, the law is expected to develop rapidly following the flow of developments in the era to regulate all actions or deeds that have the potential to cause disputes, both small and large disputes. Allowing theory or practice to run on their own without complementing each other will affect the performance of the law itself. No less important when the law is left behind by the times, where the flow of change continues to occur following the growth rate of society, it will have an impact on the existence of law and the level of public trust in the law.

In principle, law is created to provide trust to society (humans) towards different interests. Through law, it is expected that the achievement of human ideals (legal

subjects) can be established, as stated by Gustav Radburch that law in its achievement must not be separated from justice, certainty and benefit. The existence of law in question is both passive law (statutory regulations) and active law (judges in court). Basically, every decision issued by the court must be representing the conscience of the people seeking justice. The judge's decision is needed in order to examine, resolve, decide cases submitted to the court. The decision should not worsen the problem or even cause controversy for the public or other legal practitioners. Things that may can cause controversy in the judge's decision because the judge lack of mastery of various fields of science that are currently developing rapidly as times change and judges are less thorough in processing a matter.

CONCLUSION

The Conclusion of this paper are: The legal position of inherited property that is still the object of debt collateral in the inheritance law system in Indonesia is regulated in several legal provisions. Based on the Compilation of Islamic Law (KHI) Article 175 paragraph (1) and Article 187 paragraph (2), inherited property that can be distributed to heirs is the inheritance after deducting the costs of managing the body, paying off debts, and implementing the will. This is reinforced by the provisions in the Civil Code Article 1100 and Article 1318 which emphasize that heirs are obliged to pay off the testator's debts to the extent of the value of the inherited property they receive. In the context of inherited property that is the object of collateral, based on Law No. 4 of 1996 concerning Mortgage Rights Article 7 in conjunction with Article 16, this right continues to follow the object in the hands of whoever the object is (*droit de suite*), so that even though it has been transferred to the heirs, the object cannot be transferred or divided before the debt is paid off, in accordance with the principle in KHI Article 187 paragraph (2) which states that "the costs of managing the body and paying off debts take priority over the distribution of inheritance". The Panel of Judges in Decision Number 393/Pdt.G/2021/PA Bb has shown comprehensive legal considerations in resolving inheritance cases with debt collateral objects. The judge's considerations cover several important aspects, namely the legal status of the object collateral, the position of the heirs, and the existence of the testator's debt. The panel of judges also considered the principle in Islamic inheritance law that debts must be settled first before the distribution of inheritance, as regulated in Article 175 paragraph (1) of the KHI. This decision stipulates two important things: first, the obligation to pay off the testator's debts is divided proportionally according to the inheritance share of each party; second, for objects that are still in collateral status, the distribution is carried out proportionally but the implementation is postponed until the debt is paid off or through an auction sale by agreement of the parties. This legal consideration reflects the balance between fulfilling the rights of heirs and protecting the interests of creditors holding collateral, in accordance with the principles of justice and legal certainty. The legal impact of Decision Number 393/Pdt.G/2021/PA Bb brings significant changes in the development of Islamic inheritance law in Indonesia, especially regarding the handling of inheritance objects that are still under debt collateral status. Substantially, this decision establishes a legal

breakthrough by introducing the concept of inheritance distribution that can still be implemented even though the object is still under collateral status, by providing balanced protection between the rights of heirs and creditors. The legal implications of this decision create new jurisprudence that changes the previous paradigm which tends to state that lawsuits are unacceptable (NO) in similar cases. This decision also introduces an innovative settlement model through the division proportional debt repayment obligations to heirs, which provide legal certainty and justice for all parties. This creates a new standard in the practice of religious courts and has the potential to be a reference for judges in deciding similar cases, thus encouraging the realization of uniform decisions in handling inheritance cases with debt collateral objects in the future.

REFERENCES

- Assyafira, Gisca Nur. "Inheritance Based on Islamic Law in Indonesia", *Al-Mashlahah*, Vol. 8, No. 1, May 2020.
- Afabdi, Ali. *Inheritance Law, Family Law, Evidence Law*. Jakarta: PT. Reineka Cipta, 2019.
- Angkasa, Nitaria, et al. *Legal Research Methods as an Introduction*. Lampung: CV. Laduny Alifatma, 2019.
- Ashibly. *Textbook of Guarantee Law*. Bengkulu: MIH Unihaz, 2018.
- Asmuni, Isnina, and Atikah Rahmi. *Islamic Inheritance Law (Comparative between Classical and Contemporary Jurisprudence)*. Medan: Perdana Publishing, 2021.
- English: Az-Zuhaili, Wahbah. *Islamic Jurisprudence and the Law Volume 10*. Jakarta: Gema Insani, 2017.
- Bakhtiar, Amsel. *Philosophy of Science*. Jakarta: Raja Grafindo Persada, 2016.
- Cahyadi, Antonius and E. Fernando M. Manullang. *Introduction to the Philosophy of Law*. Jakarta: Kencana Prenada Media Group, 2014.
- Ernawati. *Islamic Inheritance Law*. Bandung: Widina Bhakti Persada Bandung, 2022.
- Erlina B, Suta Ramadan, & Riyan Saputra. "Analysis of Judges' Considerations in Disputes over Unilateral Transferring and Pledge of Inheritance", *Pagaruyuang Law Journal*, Volume 7, No. 1, July 2023.
- Fardayana, M. Taj Bahy and Mega Dwi Ambarwati. "Resolution of Inheritance Disputes in Religious Courts", *Journal Justiciabellen*, Vol. 04, No. 01, January 2024.
- Fuady, Munir. *Debt Guarantee Law*. Jakarta: Erlangga, 2014.
- Hasanah, Uswatund and Eny Suastuti. *Legal Theory Textbook* Surabaya: Scopindo Media Library, 2020.
- Hamdani. "Comparison of Heirs' Responsibilities to the Debts of the Heir According to Islamic Law and the Civil Code", *JIM Civil Law*, Vol. 3, No. 2, May 2019.
- Harahap, Purnama Hidayah. "Transformation of the Implementation of Inheritance Distribution of New Ancient Society in the Perspective of Islamic Legal Sociology", *Diversi Jurnal Hukum* Volume 10, Number 1, April 2024.
- Ilyas, Amir. *Collection of Legal Principles*. Jakarta: Rajawali, 2016.
- Khisni, A. *Islamic Inheritance Law*. Semarang: Unissula Press, 2017.

- Manan, Abdul. Implementation of Civil Procedure Law in Religious Courts. Jakarta: Golden, 2015.
- Manullang, E. Fernando M. Legism, Legality, and Legal Certainty. Jakarta: Golden Prenada Media, 2017.
- Margono. Principles of Justice, Benefit and Legal Certainty in Judges' Decisions. Jakarta: Sinar Grafika, 2021.
- Marzuki, Peter Mahmud. Legal Research. Jakarta: Kencana, 2015.
- Mertokusumo, Sudikno. Understanding the Law: An Introduction. Yogyakarta: Liberty, 2014.
- Mochtar, Zainal Arifin and Eddy OS Hiariej. Basics of Legal Science: Understanding Legal Rules, Theories, Principles and Philosophy. Jakarta: Rajawali Pers, 2021.
- Muhammad, Abdulkadir. Law and Legal Research. Bandung: PT. Citra Aditya Bakti, 2014.
- Muhibbin, Moh. and Abdul Wahid. Islamic Inheritance Law "As a Positive Reform in Indonesia". Jakarta: Sinar Grafika, 2015
- Muqaddas, Busyro. "Criticizing the Principles of Civil Procedure Law", Ius Quia Lustum Law Journal, Vol. 2, No. 4, 2018.
- Nurkhalis. "The Concept of Thomas Kuhn's Paradigm Epistemology", Substantia Journal, Vol. 14, No. 2, October 2018.
- Nachrawi, Gunawan and I Gusti Agung Ngurah Agung. Legal Theory. Bandung: CV Cendekia Press, 2020.
- Nawawi, Maimun. Introduction to Islamic Inheritance Law. Surabaya: Pustaka Radja, 2016.
- Nugroho, Rahmat Muhajir, et al. Islamic Inheritance Law and Inheritance Conflict Resolution through Early Detection and Mediation. Yogyakarta: Jejak Pustaka, 2023.
- Prodjodikoro, R. Wirjono. Principles of Civil Law. Jakarta: Sumur Bandung, 2014.
- Purba, Hasim and Muhammad Hadyan Yunhas Purba. Basics of Legal Knowledge. Jakarta: Sinar Grafika, 2019.
- Rahardjo, Satjipto. Progressive Law Enforcement. Jakarta: PT. Kompas Media Nusantara, 2014.
- Rahmi Ria, Wati and Muhammad Zulfikar. Inheritance Law Based on the Western Civil System and Compilation of Islamic Law. Bandar Lampung: CV. Rika Media, 2020
- Ramulyo, Idris. Islamic Inheritance Law. Jakarta: Ind-HillCo, 2016.
- Rawls, John, A Theory of Justice, Oxford University press, London, 1973, which has been translated into Indonesian by Uzair Fauzan and Heru Prasetyo, Theory of Justice, Yogyakarta: Pustaka Pelajar, 2006.
- Rizkia, Nanda Dwi & Hardi Fardiansyah. Development of Guarantee Law in Indonesia. Bandung: Widina Bhakti Persada Bandung, 2022.
- Salim HS. Development of Guarantee Law in Indonesia. Jakarta: RajaGrafindo Persada, 2018.
- Satrio, J. Collateral Law: Property Collateral Rights. Bandung: PT. Citra Aditya Bakti, 2014.