



## Heirs' Liability for State Losses Arising from a Deceased Corruption Offender under Islamic Inheritance Law

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Submitted: February 19, 2025; Reviewed: April 9, 2025; Accepted: July 8, 2025

### Article's Information

#### Keywords:

Corruption, State Losses, Islamic Inheritance Law, Heirs

#### DOI :

<https://doi.org/10.25041/corruptio.v5i2.4022>

### Abstract

Corruption is an extraordinary crime that often leaves unresolved legal consequences when the perpetrator dies before serving their sentence, raising the question of whether heirs are responsible for settling resulting state losses. This study employs normative legal research through literature review to examine the compatibility between Islamic inheritance principles and the civil liability imposed on heirs in such cases. The findings show that Islamic inheritance law recognizes heirs' obligation to settle the deceased's debts, including those from unlawful acts, but strictly within the limits of the inherited estate. Thus, while heirs can be held accountable for corruption-related debts, their liability is confined to the value of the assets they receive. This highlights the importance of integrating religious norms and positive law to ensure fair and effective recovery of state losses after the perpetrator's death.

### A. Introduction

Corruption is classified as an extraordinary crime due to its capacity to cause significant losses to the state.<sup>1</sup> These losses are generally categorized as either financial losses or economic losses. According to the Financial Supervisory Agency, a state loss is defined as a reduction in state assets resulting from unlawful actions, negligence, or force majeure.<sup>2</sup> State losses may arise intentionally or unintentionally through the actions of government agencies. Therefore, the concept of state losses does not exclusively pertain to corruption and is often applied within the broader framework of state administration. This is distinct from the term state financial losses, which is more closely associated with corruption.

<sup>1</sup> Teuku Herizal, "Analisis Yuridis Pengembalian Aset Hasil Korupsi Melalui Gugatan Perdata Terhadap Ahli Waris", Jurnal Ilmu Hukum, Vol. 2, No. 2, (2014), p. 1.

<sup>2</sup> Theodarus M. Tuanakota, *Menghitung Kerugian Keuangan Negara Dalam Tindak Pidana Korupsi* (Jakarta: Salemba Empat, 2009), p. 81.



State losses constitute a core element of corruption offenses under Articles 2 and 3 of Law No. 31 of 1999 on the Eradication of Corruption, as amended by Law No. 20 of 2001. The deliberate actions of perpetrators leading to state financial or economic losses must be established as part of proving these offenses. The recovery of state assets lost to corruption is a principal objective of anti-corruption efforts, as reflected in Article 18 of the Corruption Law, which regulates restitution by convicted perpetrators. Accordingly, law enforcement officials must give due attention to the procedural mechanisms for recovering assets or compensating state losses caused by corruption.

Under the Corruption Law, the obligation to return state losses extends beyond the perpetrators themselves. If a perpetrator cannot be held criminally liable—for example, due to death—this responsibility transfers to their heirs. Articles 33 and 34 of the Corruption Law provide clear provisions governing the recovery of assets and compensation for state losses when the suspect or defendant dies during legal proceedings or after a final judgment has been rendered.<sup>3</sup>

Articles 33 and 34 of the Corruption Crime Law stipulate that when a suspect dies during the investigation, and it is evident that a state financial loss has occurred, the investigator must immediately submit the investigation file to the State Attorney or refer it to the injured agency to initiate a civil lawsuit against the suspect's heirs. Similarly, if a defendant dies during court proceedings, the public prosecutor is required to forward a copy of the trial record to the State Attorney or the relevant agency to pursue a civil claim against the heirs.<sup>4</sup>

When a perpetrator of corruption can no longer be held criminally accountable, the recovery of state losses is pursued through civil proceedings against the heirs, rather than through further criminal prosecution. In this context, the case transitions from the jurisdiction of the public prosecutor to the State Attorney, who represents the state in civil actions aimed at restoring state assets lost due to the perpetrator's conduct.<sup>5</sup>

The liability of heirs to satisfy the legal obligations of the deceased reflects a transfer of responsibility from the criminal to the civil domain. This mechanism aligns not only with Indonesian civil law but also with principles of Islamic inheritance law<sup>6</sup>, which recognize the obligation to settle the decedent's debts from inherited assets. Under these provisions, repayment of state losses is effected using the perpetrator's estate, underscoring the compatibility between the Corruption Crime Law and Islamic inheritance principles in ensuring that state financial losses are recovered even after the perpetrator's death.<sup>7</sup>

The relevance of heirs' responsibility for repaying state loss debts arising from corruption is limited to cases in which the legal subject is Muslim. This is based on the Compilation of Islamic Law, which provides that the principle of personality in Islamic inheritance law applies only to individuals whose status as heirs or testators is recognized within the Muslim community. If the perpetrator of corruption who leaves debts to the state is not Muslim, the application of Islamic inheritance principles to the heirs' liability is not legally justified. Islamic inheritance law regulates the transfer of rights and obligations related to the assets and liabilities of the deceased in accordance with Islamic sharia.<sup>8</sup>

<sup>3</sup> Putu Aditya Witanaya Putra, "Tanggung Jawab Ahli Waris Dalam Pengembalian Aset Negara Hasil Tindak Pidana Korupsi Oleh Terpidana Yang Meninggal Dunia", *Jurnal Interpretasi Hukum*, Vol. 2, No. 1, (2021), p. 2.

<sup>4</sup> Pasal 33-34 Undang-Undang Nomor 31 Tahun 1999 tentang Pemberantasan Tindak Pidana Korupsi sebagaimana telah diubah dengan Undang-Undang Nomor 20 tahun 2001 Tentang Perubahan Atas Undang-Undang Nomor 31 Tahun 1999 tentang Pemberantasan Tindak Pidana Korupsi.

<sup>5</sup> Michael Julnius Christophor Siahaya, "Pengembalian Kerugian Keuangan Negara Dalam Tahap Penyidikan Tindak Pidana Korupsi", *Lex Crimen Jurnal*, Vol. 4, No. 2, (2015).

<sup>6</sup> Putu Ariesta Wiryawan, Made Tjatrayasa, "Analisis Hukum Penyebab Terjadinya Tindak Pidana Korupsi Dan Pertanggungjawaban Pidananya", *Kertha Wicara*, Vol. 05, No. 02, (2016).

<sup>7</sup> Ni Made Dwi Julia Patria Dewi, dkk, "Pertanggungjawaban Perdata Ahli Waris Pelaku Tindak Pidana Korupsi Dalam Mengembalikan Kerugian Negara", *Bagian Hukum Bisnis Fakultas Hukum Universitas Udayana*, p. 2.

<sup>8</sup> Gisca Nur Assyafira, "Waris Berdasarkan Hukum Islam Di Indonesia", *Al-Mashlahah: Jurnal Hukum Islam dan Pranata Sosial Islam*, Vol. 8, No. 1, (2020), p. 3.

Based on this context, this research will examine two main issues: (1) the legal status of the inheritance left by the testator to the heirs; and (2) the form of the heirs' responsibility for state loss debts that are the testator's obligation. The purpose of this study is to clarify the status of the inheritance and to analyze the extent and nature of the heirs' liability to settle state losses incurred by the testator.

This study employed a normative legal research method, which is best suited to examining legal norms, statutory regulations, and religious legal doctrines. The normative approach was chosen over empirical methods because the research does not focus on societal behavior or perceptions but rather on the consistency, relevance, and interpretation of legal provisions, particularly within the framework of Islamic inheritance law and Indonesia's Corruption Crime Law. Primary legal materials included statutory documents, secondary materials comprised scholarly works such as books and journals, and tertiary materials consisted of electronic sources such as internet articles. Data were collected through document study and legal material analysis, followed by interpretation and synthesis to develop coherent findings.

The research used a qualitative descriptive method, systematically describing and interpreting normative data in clear, logical, and non-overlapping language. Legal norms were analyzed critically to identify their structure, compare doctrinal principles across civil and Islamic law, and assess relevant judicial practices. The analysis employed statute, conceptual, and comparative approaches to evaluate the alignment between Islamic legal obligations and national regulations on state loss recovery through heirs. This methodological choice is justified by its alignment with the research objectives and its suitability for addressing the doctrinal and theoretical dimensions of heirs' liability.<sup>9</sup>

This study aims to fill an academic gap by examining how Islamic inheritance law conceptualizes heirs' responsibility for debts arising from criminal acts such as corruption. Unlike general civil obligations, debts tied to criminal conduct involve moral and legal considerations that require harmonization between national law and Islamic legal doctrine. The urgency of this research lies in providing doctrinal clarity and proposing a balanced legal framework that integrates religious principles with state mechanisms for recovering public funds. This is particularly important in cases where the testator and heirs are Muslims, making Islamic law the applicable personal legal system.<sup>10</sup> In contrast to earlier studies by Mustofa et al. (2022) and Husnul Syam et al. (2022), which primarily addressed civil inheritance disputes and technical debt settlements, this research offers a normative legal analysis specifically situating corruption-related liabilities within Islamic inheritance law. By doing so, it contributes to legal scholarship and enforcement practice, providing a normative justification for asset recovery mechanisms that respect religious legal principles.

## **B. Discussion**

### **1. Status of Inheritance Left by the Testator to His Heirs**

As stipulated in Article 171 letter d of the Compilation of Islamic Law (KHI), inheritance is defined as "property left by the testator<sup>11</sup>, whether in the form of tangible assets or rights." Based on this provision, inheritance encompasses all assets, rights, and obligations belonging to the testator during their lifetime, which are transferred to the heirs upon the testator's death. In this context, inheritance consists of property and rights that had not been formally transferred to the heirs prior to the testator's passing.<sup>12</sup>

Inheritance comprises the testator's estate along with any unsettled obligations, such as debts or bequests. This is important to ensure that heirs are aware of the scope and value of the estate.

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<sup>9</sup> Nur Solikhin, *Pengantar Metodologi Penelitian Hukum* (CV. Penerbit Qiara Media, 2021), p. 119.

<sup>10</sup> Sheyla Nichlatus Sovia, *Ragam Metode Penelitian Hukum* (Kediri: Lembaga Studi Hukum Pidana, 2022), p. 3.

<sup>11</sup> Pasal 171 huruf d Kompilasi Hukum Islam (KHI).

<sup>12</sup> Zainal Abidin Abubakar, *Kumpulan Peraturan Perundang-undangan Dalam Lingkungan Peradilan Agama* (Jakarta: Yayasan Al-Hikmah, 1993), p. 77.

Before distributing the inheritance, the heirs are required to first complete the funeral arrangements and settle any outstanding obligations of the testator.<sup>13</sup> The obligation to pay the testator's debts is grounded in the Qur'anic injunction in Surah An-Nisa, verse 11: "...after any bequest he [the deceased] may have made or debt." This is further supported by the hadith of the Prophet Muhammad (peace be upon him): "The soul of the believer is held hostage by his debt until it is paid" (HR. At-Tirmidhi), which affirms that inheritance cannot be distributed before debts are settled. To ascertain the portion of the estate that may be distributed, it is first necessary to determine the scope of the inheritance<sup>14</sup>, which at minimum includes:

1. Materials and properties that have material value
2. Property rights
3. Intangible rights
4. Objects related to the rights of others

Before making inherited property an inheritance, there are several obligations that the heirs need to carry out regarding the heir's inheritance after death, including:

1. Heirs are obliged to look after and guard the inheritance before distributing it to each heir who is entitled to receive the inheritance.
2. Heirs may not use the inheritance before officially accepting the inheritance as their portion.
3. The heir is obliged to pay off the debts left by the heir during his lifetime.
4. The heir is obliged to carry out the will written by the testator (if there is a will).
5. After these obligations have been carried out, the remaining assets become the right of the heirs to be distributed.

In this context, as long as the heirs have not fulfilled their obligations regarding the testator's estate, the material status of the inheritance cannot be considered fully transferred. Nevertheless, Islamic inheritance law provides clear regulations governing the transition of property from the testator to the heirs.<sup>15</sup> Under Islamic law, inheritance arises exclusively upon the death of the testator, at which point ownership of the testator's property automatically passes to the heirs, even if the estate has not yet been distributed due to outstanding obligations that must first be settled.

It is important to distinguish between two categories of property: joint property and separate property. Joint property comprises assets, rights, and obligations acquired by the testator together with a legal spouse during marriage, whereas separate property consists of assets individually acquired outside the marital relationship. This distinction is essential for heirs to understand, particularly in relation to using inherited assets to settle the testator's debts and fulfill other obligations. In this sense, inheritance serves as a guarantee to discharge the testator's liabilities, reflecting a principle in Islamic law intended to prevent heirs from being unduly burdened by the testator's debts.

Regarding the heirs' obligations to use inherited assets to settle debts, this principle aligns with provisions in Indonesia's Anti-Corruption Law, which impose liability on heirs to compensate state losses incurred by the deceased through corruption. Articles 33 and 34 of the law stipulate the heirs' responsibility to satisfy such obligations through civil claims.<sup>16</sup> This requirement is consistent with the Compilation of Islamic Law (KHI), particularly Article 175

<sup>13</sup>Aunur Rahim Faqih, *Mawaris Hukum Waris Islam* (Yogyakarta: UII Press, 2017), p. 51-54.

<sup>14</sup>Fatchur Rahman, *Ilmu Waris* (Bandung: PT Al-Ma'arif, 1994), p. 36-37.

<sup>15</sup>Naskur, "Memahami Harta Peninggalan Sebagai Warisan Dalam Perspektif Hukum Islam", *Journal Ilmiah Al-Syir'ah*, (2010), p. 6.

<sup>16</sup>Suparman Usman dan Yusuf Somawinata, *Fiqhi Mawaris: Hukum Kewarisan Islam* (Jakarta: Radar Jaya Pratama, 1997), p. 45.

paragraph (1), which affirms that heirs must manage and preserve the estate and fulfill the deceased's obligations before distributing the inheritance.<sup>17</sup>

There is thus a clear connection between the Anti-Corruption Law and the Islamic law principle of safeguarding inherited property. However, this relationship is applicable only when the deceased perpetrator was a Muslim, consistent with the personal principle enshrined in the KHI, which limits the application of Islamic inheritance law to Muslims. Under this framework, heirs of a deceased perpetrator of corruption are responsible, in their capacity as holders of authority over the inheritance, for enabling the state to confiscate the estate as restitution for state losses caused by the deceased during their lifetime.

## **2. Form of Responsibility of the Heirs for Debt Losses to the State which are the Heir's Obligations**

Law Number 31 of 1999 on the Eradication of Criminal Acts of Corruption, as amended by Law Number 20 of 2001, establishes clear provisions regarding the responsibility of heirs to repay state losses arising from acts of corruption committed by deceased perpetrators. Ideally, accountability for corruption should rest solely with the perpetrators as the principal legal subjects. However, because corruption is an extraordinary crime that harms not individual victims but the public interest and state finances, its resolution requires special measures to recover state losses illicitly enjoyed by the perpetrators.

When a perpetrator of corruption dies during the investigation, prosecution, or after a court verdict, the right to prosecute criminally is extinguished. This principle is explicitly set out in Article 77 of the Indonesian Criminal Code, which states: "The authority to prosecute is removed if the defendant dies." Accordingly, a deceased perpetrator cannot be held criminally liable.<sup>18</sup> Nevertheless, in the context of corruption, the Corruption Eradication Law provides for the transfer of liability to the heirs through civil mechanisms. Heirs are thus obliged to repay state losses from the inheritance left by the deceased. This arrangement reflects a convergence between the provisions of anti-corruption legislation and the principles of Islamic inheritance law.

In practice, recovery of state losses from deceased perpetrators is pursued by filing civil claims against the perpetrator's estate, particularly assets traceable to acts of corruption. As previously discussed regarding the distinction between joint property and separate property, such differentiation facilitates enforcement by enabling prosecutors to target inherited assets without indiscriminately seizing family property. In other words, civil claims primarily focus on property derived from criminal conduct. If the state can recover its losses from the confiscation of the perpetrator's inherited assets, there is no necessity to pursue claims against the personal assets of the heirs.<sup>19</sup>

However, in some cases, the inherited assets may be insufficient to cover the full amount of state losses. In such situations, the prosecution may seek to claim the heirs' personal property. This approach differs somewhat from the principle of debt settlement under Islamic inheritance law, which does not impose liability beyond the value of the deceased's estate and is designed to avoid causing undue hardship to the heirs.<sup>20</sup>

This provision is further reinforced by the principle of *saisine*, which holds that when a legal relationship between two parties is established by a court decision, the death of one party does not terminate that relationship. Instead, the associated rights and obligations are transferred to

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<sup>17</sup> Isnina, "Tanggung Jawab Ahli Waris Terhadap Utang Pewaris Menurut Hukum Islam", Seminar Nasional Teknologi Edukasi dan Humaniora, Vol. 1, (2021), p. 826.

<sup>18</sup> Pasal 77 Kitab Undang-Undang Hukum Pidana.

<sup>19</sup> Mohammad Ali Mustofa, dkk, "Tinjauan Yuridis Tanggung Jawab Ahli Waris Terhadap Hutang Pewaris Kepada Bank Titil Sebagai Pihak Ketiga Menurut Hukum Islam Dan Kitab Undang- Undang Hukum Perdata", Universitas Muara Kudus, Naskah Publikasi, (2022), p. 15.

<sup>20</sup> Pasal 1367 Kitab Undang-Undang Hukum Perdata.

the deceased's heirs. This principle was affirmed by the Supreme Court in Decision Number 1159 K/Pdt/2012, which recognized the plaintiff's right to file a civil claim against the heirs to settle debts incurred by the deceased during their lifetime.<sup>21</sup>

This principle is directly relevant to the question of heirs' liability for state losses resulting from acts of corruption committed by the deceased. If a perpetrator of corruption dies without repaying state losses, the responsibility to settle those obligations passes to the heirs who inherit the deceased's property. This liability applies to any heir—whether related by blood, marriage, or testament—who receives assets associated with the corruption.<sup>22</sup> This is consistent with Article 1100 of the Indonesian Civil Code, which provides: "Heirs who have accepted the inheritance must also bear the payment of debts, bequests, and other obligations in proportion to the share of the inheritance they received."<sup>23</sup>

Overall, the provisions of the Corruption Eradication Law concerning civil claims draw upon the general framework established in the Civil Code. The principle of preserving and utilizing inherited property to repay state losses aligns with the obligations of heirs to settle the debts of the deceased. In practice, civil claims against the estate of a deceased corruption perpetrator reflect this transfer of responsibility under civil law.<sup>24</sup>

When considered in relation to Islamic inheritance law, the liability of heirs under the Corruption Eradication Law corresponds to the Islamic principle that debts of the deceased must be settled using the estate before distribution to heirs. This equivalence applies insofar as both the deceased and the heirs are Muslim and thus subject to the provisions of the Compilation of Islamic Law.

### C. Conclusion

The first discussion concludes that the deceased's estate must first be used to fulfill obligations—such as funeral arrangements, repayment of debts, and execution of bequests—before distribution to the heirs. Accordingly, inheritance does not immediately transfer in full upon the testator's death but remains subject to these prior obligations.

The second discussion concludes that the heirs' liability to repay state losses from the deceased's acts of corruption aligns with the Compilation of Islamic Law, which requires settlement of debts from the estate. In principle, there is a clear legal connection between Articles 33 and 34 of the Corruption Eradication Law and these Islamic inheritance obligations. However, this connection applies strictly when both the deceased and the heirs are Muslim.

Nevertheless, the resolution of such cases is governed by national civil law. Thus, heirs' liability must be implemented according to the Corruption Eradication Law and the Civil Code, even though the underlying principles correspond closely with Islamic inheritance law.

<sup>21</sup> Putusan Mahkamah Agung Nomor: 1159 K/Pdt/2012.

<sup>22</sup> Ahmad Azhar Basyir, *Hukum Waris Islam* (Yogyakarta: UI Press, 2004), p. 2.

<sup>23</sup> Gatot Supramono, *Perjanjian Utang Piutang* (Jakarta: Kencana Prenada Media Group, 2013), p. 10.

<sup>24</sup> Kitab Undang-Undang Hukum Perdata, Op. Cit., Pasal 1100.

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