



Inheritance Law of Children Outside of Marriage

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Abstract: *Inheritance law has an important role for society, in terms of regulating rights to property left by someone who has died. However, in practice, the implementation of inheritance law in Indonesia still faces various challenges, such as differences in views, ambiguity in the inheritance process, and determination of heirs which can lead to conflicts/disputes between the families left behind. Therefore, it is necessary to conduct a more in-depth study of inheritance law in Indonesia. This study uses the literature review method in books related to the theme of the papers made, as well as sources from dictionaries and several articles from the internet. It was found that there are two legal bases for an expert to bequeath a number of inherited assets according to the BW inheritance law system, namely according to statutory provisions and being appointed by will. Inheritance must occur with conditions, that is, the heir must have died (Article 830 of the Criminal Code) and the heir. The person who is entitled or the heir must have existed or was still alive when the heir died. A child out of wedlock can only inherit his father's inheritance if the father recognizes him as his son, but he may not inherit class II, class III and class IV. He may inherit inheritance from all groups if it is recognized as valid, namely recognition that is legalized in the District Court.*

Keywords : *Law, Inheritance, Civil Code.*

Introduction

Inheritance law is one part of civil law that has not been codified. This means that for various groups of the Indonesian population different laws still apply. For example, customary inheritance law until now customary inheritance law in each region is still regulated differently. Islamic inheritance law, for those who are Muslim (some Indonesian population who are Muslim).¹ This Islamic inheritance law is regulated in Presidential instruction number 1 of 1991 concerning the Compilation of Islamic Law.

¹ Jefry Tarantang, *Buku Ajar Hukum Islam (Paradigma Penyelesaian Sengketa Hukum Islam Di Indonesia)* (Yogyakarta: K-Media, 2020).

Then there is Western inheritance law, for those subject to Western Civil Law, the provisions of the Civil Code (BW) apply.² Inheritance law has an important role in people's lives, especially in terms of regulating rights to property left by someone who has died. However, in practice, the implementation of inheritance law in Indonesia still faces various challenges, such as differences in views between heirs and courts, vagueness in the inheritance process, and determination of heirs that can cause conflicts and disputes among families left behind. Therefore, it is necessary to conduct a more in-depth study of inheritance law in Indonesia to improve implementation and provide solutions to problems that arise.³

To elaborate some matters related to inheritance law in civil law, the formulation of the problem used is as follows; (1) What is the meaning of inheritance law?; (2) What is the legal basis of inheritance law?; (3) What is the will in the Code?; (4) What is the process of inheritance?; (5) How are heirs and parts of children out of wedlock classified?

The writing of this article uses the literature review and library *research* method⁴ to books related to the theme of the paper made, and also sourced from dictionaries and some articles from the internet.

Discussion

1. Understanding Inheritance Law

Regarding the understanding of inheritance law until now, both Indonesian jurists and in the Indonesian legal literature, there has been no uniformity of understanding, so the terms for inheritance law are still diverse. Wirjono Prodjodikoro uses the term inheritance law. Hazairin used the term inheritance law, and Soepomo called it inheritance law. Soepomo explained that the inheritance law contains regulations governing the process of passing on and passing property and intangible

² I Ketut Markeling, *Hukum Perdata (Pokok Bahasan Hukum Waris)* (Denpasar: Universitas Udayana, 2016), 5.

³ Ibnu Elmi Achmat Slamet Pelu, Ahmad Syaikh, and Jefry Tarantang, "Tradisi Penyelesaian Sengketa Kewarisan Masyarakat Kalimantan Tengah (Studi Pada Kabupaten Katingan Dan Kota Palangka Raya)," *Al-Manahij: Jurnal Kajian Hukum Islam* 13, no. 2 (2019): 203–16, <https://doi.org/10.24090/mnh.v13i2.2027>.

⁴ Jefry Tarantang, "Teori Dan Aplikasi Pemikiran Kontemporer Dalam Pembaharuan Hukum Keluarga Islam," *Transformatif* 2, no. 1 (2018): 315, <https://doi.org/10.23971/tf.v2i1.882>.

goods from a generation of people to their descendants. Therefore, the term inheritance law contains a meaning that includes rules and principles that govern the process of transferring property and the rights and obligations of a person who dies. Inheritance law is all the legal regulations governing the wealth of a deceased person, that is, regarding the transfer of such wealth, the consequences for those who acquire, both in the relationship between them and third parties.⁵

With the term inheritance law above, there is an understanding that includes rules and principles that regulate the process of transferring property and the rights and obligations of someone who dies. From some of the definitions above, several terms can be known, namely:⁶

- a. Heir The Heir is the person who dies, and leaves the property to another person.
- b. An heir is a person entitled to property/inheritance.
- c. Inheritance is wealth left behind in the form of *assets* and *passive (boedel)*.
- d. Inheritance is the process of transferring one's property (rights and obligations) to heirs.

2. Legal Basis of Inheritance

The basis of Western civil inheritance law is the Civil Code (BW) especially in Book II BW (on assets and debts) and Book III BW (on Wills). The number of articles governing inheritance law is 300 articles starting from article 830 of the Civil Code to 1130 of the Civil Code.⁷ The legal basis for an expert to inherit a number of heirs' assets according to the BW inheritance law system is two ways, namely:

- a. According to the provisions of the law

The law has determined that in order to continue the legal position of a deceased person, it is adjusted to the will of the deceased person wherever possible. The law has the principle of a person being free to determine his will about property after death. However, if it turns out that a person does not determine for himself when he lives about what happens to his property, then in that case the law will again

⁵ Djaja S. Meilala, *Hukum Waris Menurut Kitab Undang-Undang Hukum Perdata* (Bandung: Penerbit Nuansa Aulia, 2018), 4.

⁶ Markeling, *Hukum Perdata (Pokok Bahasan Hukum Waris)*, 6.

⁷ Indah Sari, "Pembagian Hak Waris Kepada Ahli Waris Ab Intestato Dan Testamentair Menurut Hukum Perdata Barat (BW)," *Jurnal Ilmiah Hukum Dirgantara*, Vol. 5, No. 1 (September 2014): 5.

determine the regulation of one's property.⁸ Heirs *ab intestato* is regulated in article 832 of the Civil Code, which states that those entitled to become Heirs are blood relatives, both legal and extramarital and the husband and wife who live the longest. If all is absent, then the one who has the right to be the Heir is the State.⁹

b. Appointed in the Will

A will or *testament* is a statement of what the testator wants. Testamentary heirs are stipulated in Article 874 of the Civil Code, "All the estate of a person who dies, belongs to his heirs according to law, so far as he has not made a valid determination. The valid provision in question is a will".¹⁰ A will is valid after the testator dies and cannot be revoked. As long as the author of the will is alive, the will can be amended and revoked. A person can bequeath part or all of his property by will. If a person establishes only part of it through a will, other than that it is the share of heirs under the law. This will is as stated in BW Articles 874, 875, 879, 880, 890, 893, 894, 895, 897, 930, 944, 946, 947, 950, 951, 954, 988, which regulate the discussion of wills.¹¹

3. Wills in the Civil Code

The definition of a will or testament according to the Civil Code (BW) is regulated in article 875 BW which states that "a will or *testament* is a statement from a person about the property to be left to his heirs where the statement is possible to be withdrawn". A will or testament is a deed that is made as proof if in the future the testator dies and its manufacture requires intervention from an official in this case who is often found in the community is a Notary.¹² The terms of the will include:

- a. Willful Person. In accordance with article 895 of the Civil Code which states that to be able to make or revoke a will, a person must have his sense. Article 897 of the Civil Code states that minors who have not reached the age of eighteen are not allowed to make a will. Article 893 of the Civil Code states that a will is considered void if it is made under threat or fraud. A will also cannot be made by two people

⁸ Dwi Putra Jaya, *Hukum Kewarisan Di Indonesia*, (Bengkulu: Zara Abadi, 2020), 9.

⁹ Satrio, *Hukum Waris* (Bandung: Penerbit Alumni, 1992), 185.

¹⁰ Ibid.

¹¹ Jaya, *Hukum Kewarisan Di Indonesia*, 10.

¹² Monica Sriastuti Agustina, "Tinjauan Hukum Surat Wasiat Dalam Penyerahannya Oleh Orang Lain Ke Notaris," *Jurnal Fakultas Hukum Universitas Tulungagung*, Vol. 6, No. 1 (Juli 2020), 5.

together for the benefit of each other and for the benefit of third parties, contained in article 930 of the Civil Code.¹³

- b. The Person Who Receives the Will. The heirs can determine one of the attitudes among the three, namely: ¹⁴
 - 1. Can receive the entire inheritance;
 - 2. Accept conditionally;
 - 3. Refuse.

Before determining the attitude to the heirs, they are given the opportunity and time to think for a grace period of four months, if necessary, it can be extended by the District Court as stipulated in Articles 1023 to 1029 of the Civil Code.

- c. Limitation of Wills. The limitation in a testament lies in article 931 of the Civil Code, namely about *legitime portie* which states that *legitime portie* or absolute part is all part of the estate that must be given to heirs in a straight line according to the Law, against which part the deceased is not allowed to establish something, either as a division between the living and the deceased, as well as a will. ¹⁵
- d. Nullity of Will. The nullity of the testament depends on an indeterminate event, namely if the person who receives the will dies first before the testator dies, the will or testament becomes void. This is stated in article 997 of the Code. The person who receives the will or testament refuses or turns out that he is incompetent to accept it (article 1001 of the Civil Code). In the previous description, it has been explained, that the will can be revoked, therefore if there is a revocation by the testator, the will that has been made becomes void. The revocation can be carried out overtly (*uitdurkkelijk*) or secretly (*stilzwijgend*).¹⁶

4. Occurrence of Inheritance

The conditions for inheritance to obtain inheritance must be fulfilled, namely:

- a. For inheritance to occur, the heir must have passed away, as mentioned in article 830 of the Civil Code. The death of the heir can be divided into: The death of the

¹³ Penik Riyanti, "Studi Komparasi Pembagian Waris Dan Wasiat Dalam Perspektif Khi, Cld Khi Dan KUHPerdara, (Skripsi—Tulungagung, Institut Agama Islam Negeri Tulungagung, 2015), 88.

¹⁴ Pasnelyza Karani, "Tinjauan Ahli Waris Pengganti Dalam Hukum Kewarisan Islam Dan Hukum Kewarisan KUH Perdata" (Universitas Dipenogoro, 2010), 105.

¹⁵ Riyanti, "Studi Komparasi Pembagian Waris Dan Wasiat Dalam Perspektif Khi, Cld Khi Dan KUHPerdara" (n.d.), 90.

¹⁶ Ibid., 92.

heir is known in real terms (true death) that is, it can be proven by the five senses that he has really died; Dead for the law, declared by the Court, i.e. not known in real faith according to the fact that it can be proven that he is dead.¹⁷

- b. Conditions relating to heirs of the rightful person or heirs to the estate must have existed or were still alive at the time of the testator's death. The life of the heir is possible by; Living in reality, that is, according to reality, is really still alive, can be proven by the five senses. Living legally, that is, not knowing in reality is still alive. In this case, it also includes babies who are in the mother's womb (article 1 paragraph 2 of the Civil Code).¹⁸

5. Classification of Heirs and Extramarital Share of Children

a. Classification of Heirs

The law dividing heirs due to death is divided into 4 (four) groups:

- 1) First Group: consists of husband / wife and their descendants. In this class, the husband or wife and/or children of the heir's descendants are entitled to receive inheritance. In the chart above, the ones who get the inheritance are the wife/husband and their three children. Each gets 1/4 share.¹⁹
- 2) Second group: consists of parents, brothers or sisters and their offspring. According to Article 854 paragraph (1) of the Civil Code (KUHPercivil), if there are no heirs in the first group, then the inheritance falls to the second group.²⁰
- 3) Third group: consists of miscellaneous ancestors. Grandparents in this group of heirs have no siblings so that those who inherit are families in a straight line up, both from the maternal and paternal lines. An example of what is meant to inherit is a grandfather or grandmother from both father and mother. For the division of inheritance is divided into two first, one part for the straight line of the father's descent and the other part for the straight line of the mother's descent.²¹

¹⁷ A. Pitlo, *Hukum Waris Menurut Kitab Undang-Undang Hukum Perdata Belanda*, (Jakarta: Intermasa, 1986), 65.

¹⁸ Ali Zainuddin, *Pelaksanaan Hukum Waris Di Indonesia 85-86*. (Jakarta: Sinar Grafika, 2010), 85–86.

¹⁹ Budi Hariyanto, "Tinjauan Yuridis Terhadap Pembagian Harta Waris Beda Agama Menurut Kitab Undang Undang Hukum Perdata (KUH Perdata) Dan Kompilasi Hukum Islam (KHI)," *Jurnal IUS* VIII, no. 2 (2010): 35.

²⁰ Ibid., 36.

²¹ Ibid., 36.

- 4) Fourth group: consists of other family children in a line deviating up to the sixth degree.²²

If none of this exists, then it is the state that receives the estate, but not as heirs.²³

b. Share of Children from Out of Wedlock

Articles 862 to 873 of the Civil Code regulate inheritance in the event of extramarital children. Article 863 of the Civil Code reads: "If the deceased leaves legitimate offspring or a husband or wife, then extramarital children inherit 1/3 of the share they should get, if they are said to be legitimate children, if the deceased leaves no children, husband or wife but leaves brothers and sisters or their descendants inherit 1/2 of the inheritance and if only relatives in a further degree 3/4 share". So if extramarital children inherit with the first class heirs then the extramarital children inherit 1/3 share as well as when they inherit with the second class heirs if they inherit with the third class heirs they inherit 3/4 share, of what they inherited. Suppose they were legitimate children.²⁴ As stipulated in Article 280 of the Civil Code which reads: "With the recognition of a child out of wedlock, a civil relationship is born between the child and his father or mother".²⁵

Article 863 of the Civil Code limits the right to inherit an extramarital child to 1/2 (half) of the inheritance, if he inherits with the family in the upper line, brothers and sisters or their descendants (class II). If there are two or more extramarital children, for whom they have to divide the inheritance with the other heirs, then for the division there must be so, it must be determined in advance how much the joint share of the extramarital children should be if they were legitimate children, successively 1/3 - 1/2, or 3/4 of it is the share of the extramarital children.²⁶

Example: If an out-of-wedlock child inherits together with group I (husband / wife and children) then the share is 1/3 of the share he would receive if he were a legal child. So for example A leaves a husband / wife, three legal children and 1 child out of wedlock, then the illegitimate child will get (if he is a legitimate child which is 1/5 share

²² Wirjono Prodjodikoro, *Hukum Warisan Di Indonesia* (Bandung, 1974), 4.

²³ Ibid.

²⁴ Ishak Kasim, "The Position of Children's Inheritance Rights According to Customary Law, Islamic Law, Civil Law for Comparison," *Lex et Societatis* vol. IV, no. 5 (2016): 154.

²⁵ Hijawati and Rizayusmanda, "Hak Dan Kedudukan Anak Luar Nikah Yang Diakui Terhadap Warisan Tanah Ditinjau Dari Hukum Perdata," *Solusi* Vol. 19, no. No. 1 (n.d.): 129.

²⁶ Waren K. Dalise, "Kedudukan Hukum Dan Hak Waris Anak Luar Kawin Menurut Hukum Perdata," *Lex Privatum* Vol. VII, no. No. 2 (n.d.): 148.

because there are five heirs) but because he is an out-of-wedlock child, then he gets $\frac{1}{3} \times \frac{1}{5} = \frac{1}{15}$ share. If the two children left out of wedlock (so the heirs are already 6 people: husband / wife, three legal children and two children out of wedlock) then the share of the extramarital child is $\frac{1}{3}$ of $\frac{1}{6}$ share (if he is a legal child the share is $\frac{1}{6}$). So the result is: $\frac{1}{18}$ part of the rest is divided between legal children and spouses.

If an out-of-wedlock child inherits jointly with group II (parents, siblings and siblings), then the share is $\frac{1}{2}$ share if he is a legal child. So for example A leaves heirs 3 extramarital children and his father (so 4 people). So the share of extramarital children if they are legal children each gets $\frac{1}{3}$ share (because there are 3 children) but because they are children out of wedlock, then their respective shares are: $\frac{1}{2}$ of $\frac{1}{3}$ part = $\frac{1}{6}$ part (because they have 3 illegitimate children then their share is $\frac{3}{6}$ part in total), and the rest is $\frac{3}{6}$ ($\frac{1}{2}$) for his father A.

If an out-of-wedlock child inherits together with group III or group IV (other ancestors and other relatives, in a sideways line up to the sixth degree) the share is $\frac{3}{4}$ share if he is a legitimate child. So for example A leaves the heirs of 1 extramarital child and his grandfather 2 people (1 maternal grandfather and 1 paternal grandfather), then the share of inheritance is divided by 2, namely $\frac{1}{2}$ for the maternal grandfather and $\frac{1}{2}$ for the paternal grandfather. The out-of-wedlock child inherited jointly with his second grandfather. So the share of extramarital children is: $\frac{3}{4} \times \frac{1}{2}$ part (maternal grandfather) = $\frac{3}{8}$ part, and plus $\frac{3}{4} \times \frac{1}{2}$ part (paternal grandfather) = $\frac{3}{8}$ part. So the whole share of extramarital children is $\frac{3}{8} + \frac{3}{8} = \frac{6}{8}$ or $\frac{3}{4}$ part. When the testator dies, leaving no legal heirs, the extramarital child acquires the entire estate. He sidelined the country. If it refuses or when it does not act as heir for some other reason, then the state is entitled. In the case of an out-of-wedlock child as an heir, then the matter of who inherits from an out-of-wedlock child is regulated in articles 870 and 871 in article 873 paragraphs 2 and 3 of the Civil Code.²⁷

Conclusion

Inheritance law is all the legal regulations governing the wealth of a deceased person, that is, regarding the transfer of such wealth, the consequences for those who

²⁷ Kapojos, *Kapojos, Diktat hukum waris, (Manado: Fakultas Hukum UNSRAT, 1987), 25* (Manado: Fakultas Hukum UNSRAT, 1987), 25.

acquire, both in the relationship between them and third parties. The basis of Western civil inheritance law is the Civil Code (BW) especially in Book II BW (on assets and debts) and Book III BW (on Wills). The legal basis for an expert to inherit a number of heirs' property according to the BW inheritance law system is twofold, namely according to the provisions of the Act and designated in the will. The occurrence of inheritance must be with conditions, namely For the occurrence of inheritance, the heir must have died in the world, as mentioned in article 830 of the Civil Code and Conditions relating to heirs The entitled person or heir to the estate must already exist or be alive at the time of the death of the testator. An external child can only inherit his father's estate when this father recognizes him as his son, but he cannot inherit the inheritance of class II, group III and group IV. He may inherit the property of all classes if it is recognized as valid, that is, the recognition certified in the District Court of the Extramarital Child even though it has been recognized as valid, but the share obtained in the inheritance is not the same as that of the legal child.

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