

## **Legal Protection of Persons with Mental Disabilities in Managing Inheritance Case Study of Dalu Village 10A**

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**Abstract.** *This research aims to analyze the legal protection for people with mental disabilities in managing inheritance, focusing on a case study in Dalu 10A Village. From the perspective of Islamic law and the Civil Code, this research explores how their civil rights are protected. The research method used is a type of empirical legal research in qualitative research. The results show that although Law No. 19 of 2011 states that people with disabilities should be treated equally with the rest of society, in practice, people with mental disabilities are often denied their rights in inheriting property and face a lack of legal protection. This research highlights a case example in Dalu 10A Village, where the distribution of inherited property was not in accordance with existing provisions, demonstrating the need for improved understanding and implementation of disability rights protected by law. The research found that people with mental disabilities are categorized as legally incapable and unable to act in their personal interests, making the appointment of a guardian essential to preserve their rights. The application to become a guardian is submitted to the district court or religious court, in accordance with the regulations contained in Article 1 of Law No. 8 of 2016 and the Civil Code. This research provides insight into the challenges faced by people with mental disabilities in the context of estate management and emphasizes the importance of adequate legal protection to ensure their rights are respected and maintained.*

**Keywords:** *Disabilities; Heirs; Mental; Protection.*

### **1. Introduction**

The diversity of ethnicity, religion and identity of citizens gives the nature of pluralism in the Indonesian nation, in terms of inheritance law makes Indonesia have

three laws in the use of inheritance law. The applicable laws include customary inheritance law, Islamic law and civil law. There are differences in legal activities based on the characteristics of each law, making inheritance law in Indonesia has differences. The majority of Indonesian citizens adhere to Islam, thus making Islamic inheritance law often used and for people who are not Muslims using Civil Inheritance Law.<sup>1</sup>

Wirjono Prodjodikoro provides a definition of inheritance law that if a person dies, then his property and its legal consequences are compiled in regulations for experts both heirs based on marriage and based on blood relations inheritance called inheritance law. The heir as the recipient of the inheritance acts as a legal subject and the heir can act legally for himself. However, the physical and mental conditions of the heirs are different such as heirs with disabilities. But each heir still has rights and obligations from the property left by the muwaris. In carrying out legal actions to protect rights and carry out obligations, a person must have the ability to act. Among them:<sup>2</sup>

1. Has entered the age of majority, i.e. 21 years old
2. Not serving a sentence
3. Have a healthy mind and soul
4. Has been married even though under 21 years old<sup>3</sup>

A person is said to be legally incapable if they do not fulfill one of the conditions, so they cannot carry out their rights and obligations. Persons with disabilities can be categorized as someone who is not legally capable. This is because people with disabilities cannot control their assets. It is necessary to appoint a guardian or guardianship to overcome this. Through legal regulations, persons with disabilities have legal protection in managing their property, especially inherited property.<sup>4</sup>

Law Number 8 of 2016 defines that every person who has obstacles and difficulties in interacting with their environment for a long period of time by having intellectual, physical, sensory or mental retardation so that it is difficult to participate with other citizens is called a person with a disability (article 1). In Indonesia, people with disabilities are around 8.5%, namely 22.97 million people, including 5.2 million

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<sup>1</sup> Hidayah, S. (2021). Pengelolaan Harta Warisan Antar Ahli Waris. *El-Hadhanah: Indonesian Journal of Family Law and Islamic Law*, 1(2), 122–130. <https://doi.org/10.22373/hadhanah.v1i2.1619>

<sup>2</sup> Prodjodikoro, R. W. (1980). *Hukum Warisan di Indonesia* (p. p 2). Sumur Bandung.

<sup>3</sup> Tutik, T. T. (2015). *Hukum Perdata Dalam Sistem Hukum Nasional*. Kencana.

<sup>4</sup> Soimin. (2010). *Hukum Orang Dan Keluarga Perspektif Hukum Perdata Barat/BW, Hukum Islam, dan Hukum Adat* (p. p 51). Sinar grafika.

people with mental disabilities).<sup>5</sup>

The view of persons with disabilities in Law No. 19 of 2022 is that they must be equalized with the rest of society. This means that people with disabilities have the right to be respected, free from cruel treatment and torture that is degrading, inhumane and free from exploitation. The public perception is that children with disabilities are considered incapable or incompetent in receiving inheritance so they do not get a share. In practice in the community, legal protection for persons with disabilities has not been applied in accordance with the provisions of the law.<sup>6</sup>

Thus, based on the above reality, it is necessary to make efforts in the form of legal protection so that persons with mental disabilities can protect their rights in inheritance guaranteed by legislation. From this, the researcher examines specifically related to how the facts of the practice of managing inheritance for heirs with mental disabilities that occur in the community of Dalu 10A Village, Tanjung Morawa District, Deli Serdang Regency, and how the review of Islamic law and the Civil Code regarding legal protection for heirs with mental disabilities.

## 2. Research Methods

This research adopts a qualitative approach with a focus on exploration and in-depth understanding of legal protection for heirs with mental disabilities in managing inherited property. Using an empirical juridical approach, this research describes the real conditions in the field based on the facts and data found. Primary data in this research is obtained through interviews and direct surveys, while secondary data comes from relevant laws and scientific works. The data collection process was conducted through library research, including reviewing books, journals, previous research results, interviews, and accurate documentation. The results obtained from this research are organized systematically to provide a comprehensive and in-depth picture, in order to perfect this scientific work. This approach not only provides rich insights, but also ensures that each finding is supported by strong and relevant evidence, making a meaningful contribution to the legal understanding of protection for heirs with mental disabilities.

## 3. Results and Discussion

### 3.1. Facts on the Practice of Inheritance Management for Heirs with Mental

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<sup>5</sup> *Undang-Undang Republik Indonesia Nomor 8 Pasal 1 Tahun 2016.*

<sup>6</sup> *Undang-undang Republika Indonesia Nomor 19 Tahun 2011, Tentang Pengesahan convention On the Rights of Person with Disabilities (Konveksi Mengenai Hak-Hak Penyandang Disabilitas).*

## **Disabilities in Dalu 10A Village, Tanjung Morawa Subdistrict, Deli Serdang Regency**

Dalu 10A Village is a village located in Tanjung Morawa Sub-district, Deli Serdang Regency. With a population of 7,882 people, and a total of 2,364 families, with 2 cases of people with mental disabilities that the author researched. The following is a case that occurred in Dalu 10A Village, Tanjung Morawa District, Deli Serdang Regency regarding the management of inheritance for heirs with mental disabilities.

- **Inheritance Management for Heirs with Mental Disabilities in Mrs. X's family**

Management of inheritance assets for heirs with mental disabilities that occurred in the family of Mrs. X. Mrs. X is a widow who has 6 children including 4 boys and 2 girls. Mrs. X is a religion teacher at a school, she is the wife of the late Mr. Y. The late Mr. Y and Mrs. X were blessed with 6 children. However, one of their children has mental retardation, whose name is S due to several factors, S is the 5th child born in 1978. When the husband of Mrs. X died, namely Mr. Y, he gave inheritance to his wife and each of his children, but there were differences in the distribution of inheritance to S, namely the child who had a mental disability he only got some, not like the other siblings with the appropriate share, the reason from the family because S was a child with a mental disability who could not manage property.

From the results of the interview with Mrs. X, she said that S's inheritance is now managed by his smallest brother, because he is the only one who is willing to take care of the older brother (with mental disabilities). The management of the inheritance managed by his younger brother is two rental houses. from the proceeds of the rental house for medical expenses and others for the brother and the rest for the younger brother who takes care of it. So far Anita has no special savings from the results of her inheritance.

However, the appointment of the guardian was not registered with the court in accordance with the Civil Code, Article 436, which states that a guardian for a mentally retarded heir must be registered with the court in order to obtain legal certainty.<sup>7</sup>

- **Inheritance Management for Heirs with Mental Disabilities of Family A**

Mrs. A is a sister of the late, Mr. B and sister-in-law of the late, Mrs. D. Mr. B and

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<sup>7</sup> Tasyah. (2024). *Wawancara dengan Ibu X.*

Mrs. D have 4 children, namely a boy and 1 girl. However, one of their children has a mental disability, namely the 3rd child named X, born in 1980, who has a mental disability due to several factors. X now lives with his father's younger sister (his aunt), namely Mrs. A.

Before his father died his father had worked in a state-owned plantation and his mother was a housewife, it could be said that they were a very well-off family. when their parents died they left quite a lot of property, namely 1 house and garden, the property had been divided equally before his parents died but the property of X (a child with mental disabilities). It was taken over by his brothers and none of them cared about X. X is a mentally disabled person who is neglected on the streets who sometimes returns to his aunt's house, but he often lives on the streets at the mercy of others.

His family said that no medical treatment was given to X after his parents died, and X has no special savings from the sale of his brother's inheritance.

From the above case it can be concluded that there is no justice in the management of inheritance assets for people with mental disabilities that occurred to sister X. even though article 838 of the Civil Code explains that people with disabilities have the right to receive inheritance from the heir. that means X has the right to inherit the inheritance given to her parents.

In article 184 KHI, it explains that guardians are appointed based on the proposal of family members or the decision of the judge because the heir is unable to maintain his rights and carry out his obligations.<sup>8</sup>

### **3.2. Legal Protection for Heirs with Mental Disabilities in Managing Inheritance Assets**

The science of faraid or inheritance in Islam refers to the science that regulates the distribution of inheritance in accordance with Islamic law. This science includes knowledge of how to calculate a fair share of inheritance and knowledge of the rights of heirs.

As stated by As-Sharbini, the science of faraid includes three main aspects:

1. Distribution of inheritance: distributed fairly to the heirs who are entitled to inheritance property

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<sup>8</sup> Tasyah. (2024a). *Wawancara dengan ibu A.*

2. The rights of the heirs, including the rights of the heirs when receiving a share of the inheritance
3. Calculation of inheritance shares: Includes methods and formulas in calculating the assets obtained by each heir.

The science of faraid is derived from the Qur'an, Hadith, ijma, and ijtihad. A good understanding of faraid science is very important to ensure the distribution of inheritance that is fair and in accordance with Islamic law, and to prevent disputes between heirs. There is in the word of Allah SWT in QS. An-nisa Verse 11 which explains the division of inheritance has been mandated by Allah SWT for heirs.<sup>9</sup>

The obligation to carry out worship and perform legal acts is addressed to people who do not have disorders of the mind, while people with mental disabilities have disorders of the mind. Islamic inheritance law is of the view that persons with mental disabilities do not have legal power because they are categorized as people who have impaired intellect.<sup>10</sup>

As explained in the hadith of the Prophet Muhammad SAW:<sup>11</sup>

عَنْ عَائِشَةَ عَنِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ: رُفِعَ الْقَلَمُ عَنْ ثَلَاثَةٍ: عَنِ النَّائِمِ حَتَّى يَسْتَيْقِظَ، وَعَنِ الصَّغِيرِ حَتَّى يَحْتَلِمَ، وَعَنِ الْمَجْنُونِ حَتَّى يَعْقِلَ.

The Hadith explains about 3 groups that are not burdened with the law, namely a child until he reaches puberty, a person who sleeps until he wakes up, and a madman until he recovers and regains consciousness.

The rights to receive inheritance property remain attached to people with mental disabilities, but someone is needed in managing their inheritance property. The person has a blood relationship with a mentally disabled person. This is stated in article 184 KHI. Thus, Al-Hajr or guardianship is required through a court decision or family agreement. Al-Hajr is another term for alman'u which means holding back or

<sup>9</sup> Mardani. (2014). *Hukum kewarisan Islam di Indonesia*. Rajawali Pers.

<sup>10</sup> Fatmah, & Fahrurudin, A. F. (2023). Tinjauan Hukum Wali Pengampu Bagi Ahli Waris Cacat Mental dalam Sengketa Waris di Pengadilan Agama Kabupaten Kediri. *Indonesian Journal of Humanities and Social Sciences*, 4(2), 337–350. <https://doi.org/10.33367/ijhass.v4i2.4288>

<sup>11</sup> Sarifandi, S. (2014). Ilmu Pengetahuan dalam Perspektif Hadis Nabi. *JURNAL USHULUDDIN*, XXI(1), p 62 -82.

preventing someone from making transactions.<sup>12</sup>

The word of Allah SWT regarding the legal basis for guardianship in Q.S An-nisa verse 5:

وَلَا تُؤْتُوا السُّفَهَاءَ أَمْوَالَكُمُ الَّتِي جَعَلَ اللَّهُ لَكُمْ قِيَمًا وَآزْرُقُوهُمْ فِيهَا وَاكْسُوهُمْ وَقُولُوا لَهُمْ قَوْلًا مَعْرُوفًا

The verse describes the obligation of the guardian to provide expenditure and clothing from the estate of those who are not yet of sound mind, such as persons with disabilities, to fulfill the basic necessities of life for persons with disabilities. It also instructs them to speak kindly to them.<sup>13</sup>

The appointment of a person as Al-Hajr has the following objectives:

1. Responsible for safeguarding the rights of others and preventing when the person who is more in debt is prohibited from managing the property with the aim of safeguarding the rights of the debtor, prohibited from spending from one-third of the property if the person is seriously ill with the aim of safeguarding the rights of his heirs, prohibited from circulating his property for apostates.
2. Safeguarding the rights of people who are recommended by themselves in several ways, namely, it is forbidden to spend their property for young children until they are able to manage and mature, it is forbidden to manage the property of people who are not perfect in mind (crazy) with the aim of protecting their rights, it is forbidden to spend property for spendthrifts.

Being a guardian for a person with mental disabilities must fulfill the requirements stated by Imam Syafi'i, including, first, the religion of the guardian is Islam. Allah's Word QS. Al-Imran verse 28:

لَا يَتَّخِذِ الْمُؤْمِنُونَ الْكٰفِرِيْنَ اَوْلِيَاءَ مِنْ دُوْنِ الْمُؤْمِنِيْنَ

The above verse explains the prohibition of disbelievers as guardians of believers if there are believers around them. This is also contained in Government Regulation No. 9/2019 articles 3 and 4.

<sup>12</sup> Al-Juzairi, S. A. (2015). *Fikih Empat Mazhab* (p. p 567). Pustaka Al-Kautsar.

<sup>13</sup> *Surat An-Nisa Ayat 5 Arab, Latin, Terjemah dan Tafsir | Baca di TafsirWeb*. (n.d.). Tafsirweb.com. Retrieved July 5, 2024, from <https://tafsirweb.com/1537-surat-an-nisa-ayat-5.html>

Second, the guardian must have reached the age of majority. Government Regulation No. 29/2019 states that the guardian must be at least 30 years old in order to be able to carry out legal actions and have mature thinking.

Third, the guardian is male. In the Word of God QS. That men are able to accept higher responsibilities than women, he also has the obligation to take care of his family. However, guardians can also be done by women as stated in Government Regulation number 29 of 2019.

Fourth, the guardian is fair and trustworthy. Not committing major sins and doing things that tarnish honor is the definition of fairness in the book of Imam Syafi'i requires that the guardian must be fair or Amanah.<sup>14</sup>

In civil law, if a testator dies, the implementation of rights and obligations related to property or rights and obligations that can be valued by money directly passes to the heirs. A typical feature of the civil law system in inheritance law is to hasten the distribution of the heir's property to the heirs. Because, it is feared that it will cause inheritance problems to cause disputes if delayed.<sup>15</sup>

Maturity is the benchmark for a person to be said to be legally capable, because he is able to fulfill his responsibilities. if not legally capable, then legal actions are carried out through his companion. The law states that they are incapable or incompetent until they need to be represented. Law No. 8 of 2016 states that persons with disabilities are recognized as legal subjects according to Article 9 and for persons with mental disabilities through a court order to be determined incapable in Article 32.

A person who is a child or underage is incapable of entering into an agreement and is therefore under guardianship (Article 1330 of the Civil Code). When a person is 21 years old or married (Article 330 of the Civil Code). Therefore, persons with disabilities must be under guardianship. The inheritance of the testator can only be distributed due to the death of the testator, and the heirs must be alive when dividing the inheritance (Article 830). The exception is Article 838 of the Civil Code on people who do not inherit. In this article, persons with mental disabilities are not included in the group that is prevented from inheriting.

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<sup>14</sup> Sitanggal, A. U. (2013). *Al-Fiqh al-Manhaji 'ala Madzhab al-Imam as-Syafi'i* (p. p 15). CV. Asy-Syifa'.

<sup>15</sup> Astrid Athina Indradewi. (2023). Keberlakuan dan Kekuatan Hukum Terhadap Wasiat yang Melanggar Legitieme Portie Ahli Waris. *Sapientia et Virtus*, 8(1), 248–260. <https://doi.org/10.37477/sev.v8i1.483>

If reviewed in the Civil Code for persons with mental disabilities there is no explicit regulation regarding the special share of inheritance and there is no dispute in obtaining inheritance. Although not legally competent, persons with mental disabilities are entitled to inheritance rights that are supervised by guardians in terms of management. In terms of human rights, the Indonesian government is committed to protecting persons with mental disabilities in the convention on the rights of persons with mental disabilities such as disabilities regarding the recognition of persons with disabilities are entitled to respect for human dignity, and the perfect fulfillment of their rights. The principle of equality before the law can be a guarantee that persons with mental disabilities get the same justice before the law.

The same position before the law for Indonesian people is also in accordance with Article 27 of the 1945 Constitution. If it is related to the inheritance of persons with disabilities, they must be given the same rights and opportunities. The guardian in managing the inheritance of persons with disabilities is an important factor, so that the property is protected from misuse. The legal remedy for an immature child to an adult is called guardianship (*curatele*). A person with a mental disability who is under guardianship is called *curandus*. The selection of guardianship from a family relationship by marriage or by blood relationship.<sup>16</sup>

The circumstances under which a guardianship application can be made are insanity, blindness or imbecility (Article 434). However, in the case of extravagance or wastefulness, blood relatives or relatives in the straight line and sideways up to the fourth degree can be requested. In the case of a person with a weak mind who is unable to manage his/her personal interests, the guardianship may be requested. It can be concluded that guardianship applications for persons with disabilities are made by family members and their wives/husbands.<sup>17</sup>

The Religious Court is the place to apply for guardianship, and once the decision or order of the Religious Court has been issued, the guardianship will take effect. In filing the application, the applicant explains the reason and purpose of the guardianship application. A guardian for a mentally retarded heir must be legally registered with the court in order to obtain legal certainty (Article 436). The effects

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<sup>16</sup> Rusydi, Serba Bagus, S., Sholihan, Sudin, A., & Qulub, A. (2024). ANALISIS HUKUM TERHADAP PENGAMPUAN ATAS PENYANDANG DISABILITAS MENTAL (Studi Penetapan Pengadilan No. 2238/Pdt.P/2021/PN.Sby.). *MADANI: Jurnal Politik Dan Sosial Kemasyarakatan*, 16(1).

<sup>17</sup> Fitriyah, L., Muhibbin, Moh., & Bastomi, A. (2021). PEMBAGIAN HAK WARIS BAGI ANAK BERKEBUTUHAN KHUSUS (DISABILITAS) DALAM PERSPEKTIF HUKUM ISLAM DAN KUHPERDATA. *DINAMIKA*, 27(08), p 1215 - 1232.

if a guardian is not registered through a court order include:

1. Unwise Utilization

Guardians who are not supervised by the court may take advantage of the situation for personal gain, and will harm the mentally handicapped heirs.

2. Financial Abuse

Without legal oversight, there is a risk of financial or property abuse of heirs who cannot fully protect themselves.

3. Lack of Legal Protection

The presence of a court judgment provides legal protection for all parties involved, including heirs and guardians, to ensure continuity.

4. Legal uncertainty Without a court judgment, the legal situation can become unclear and complex, leaving the parties involved in legal limbo.<sup>18</sup>

The guardian's obligation is to protect the interests of the person under his guardianship from harmful actions and in the event of a violation, he is able to act against the interests of the person under his guardianship.<sup>19</sup> The guardianship agency supervises the guardian's actions in managing the assets. Thus, the guardian is also responsible for the assets. This supervision aims to protect the interests of the curandus in the form of property owned. Regarding this matter, there are several duties and powers of the guardian that have been regulated, namely:

1. Managing the personal interests of the guardian and managing the guardian's assets (Article 441 of the Civil Code).

2. The interests taken care of are only those related to the personal interests of the guardian, such as acting as a parent to the guardian (Article 1453 Civil Code).<sup>20</sup>

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<sup>18</sup> Tasyah. (2024c). *Wawancara Hakim di Pengadilan Agama Lubuk Pakam, Emidayanti*.

<sup>19</sup> Yunanda, N. R. (2020). *Analisis yuridis Terhadap Penetapan Pengampunan Perempuan Dewasa yang Mengalami Cacat Fisik dan Mental*. <https://repository.uir.ac.id/14996/1/151010360.pdf>

<sup>20</sup> Soimin. (2010b). *Hukum Orang dan Keluarga Perspektif Hukum Perdata Barat/BW, Hukum Islam, dan Hukum Adat* (p. p 51). Jakarta.

#### 4. Conclusion

Legal Protection for Heirs with Mental Disabilities in the Management of Inheritance Assets in Dalu 10A Village, Tanjung Morawa District, Deli Serdang Regency, is often ignored. The distribution of inheritance according to Islamic law is rarely applied to persons with mental disabilities, and guardians are often unwise in managing the inheritance. Although people with disabilities are not legally prohibited from becoming heirs and are entitled to receive inheritance, they need guardians to manage and safeguard their assets. These guardians can be close relatives or people who are related by blood or consanguinity. Article 838 of the Civil Code confirms that people with disabilities are not included in the category of those who are prevented from receiving inheritance. Article 184 of the KHI also clarifies the need to register guardianship through the religious court based on a judge's decision or a family member's proposal. The law clearly protects the inheritance rights of persons with mental disabilities, but its implementation still requires serious attention.

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