

Legal Protection of Heirs in the Disbursement of Inheritance Assets (A Case Study of District Court Decision Number 218/Pdt.G/2021/PN.Dps)

Cindy Valencya Tumbel¹⁾ & I Made Priadharsana²⁾

¹⁾ Master of Notarial Law, University of Indonesia (UI) Jakarta, Indonesia, E-mail: cindy39valencya@gmail.com

²⁾ Master of Notarial Law, University of Indonesia (UI) Jakarta, Indonesia, E-mail: dharsanaimade@yahoo.co.id

Abstract. *Inheritance is said to occur when someone has died. Arrangements for the distribution of property belonging to someone who has died to his heirs in Indonesia are regulated in inheritance law. The regulation of inheritance law in Indonesia is regulated according to Islamic Law and the Civil Code. For a person who adheres to Islam, he follows the provisions of Islamic inheritance law and other than that, he follows the provisions of the Civil Code. The problem of inheritance disputes is something that has occurred in the community due to the problem of fighting over who is the heir, unfair inheritance shares, or disbursement of testamentary property that takes a long time. In this paper, the author will discuss an inheritance case where the bank as the depository of the inheritance from the testator does not want to give it to the heirs. It is hoped that this writing will provide new knowledge to readers regarding the inheritance disbursement procedure in Indonesia.*

Keywords: *Dispute; Heirs; Inherited; Property.*

1. INTRODUCTION

In social life, we often hear the terms will and inheritance. These two things are closely related. The law of inheritance and the law of marriage are inseparable because they have a substantial connection. In terms of marital property, this will affect the inheritance. Meanwhile, heirs will be related to marriage because in reality the heirs are children born from a marriage. Inheritance only occurs because of death.¹ Inheritance law is the law that regulates the transfer of inheritance and its consequences for the heirs. In Indonesia, the implementation of inheritance law is divided into 3, namely Islamic Inheritance Law, Civil Inheritance Law, and Customary Inheritance Law. The implementation of these three inheritance laws in Indonesia is based on the group of adherents.

¹ Civil Code, Article 830

Inheritance can be defined as: ²

1. The arrangement of the wealth of someone who has died.
2. The inheritance of a deceased person can be transferred to another person who is still alive.

As mentioned above, inheritance occurs due to death so that the property left by the heir is only open after the heir dies. In the Civil Code, there are 2 (two) ways applied in obtaining an inheritance, namely *ab intestato* and *testamentair*. *Ab intestato* is inheritance based on the law where the heirs are blood relatives, both legal and outside marriage.³ In this case, this inheritance occurs without a will. Meanwhile, *testamentair* is an heir appointed based on a will so that this is the freedom of the testator to appoint heirs.⁴ The appointment of heirs is not limited to family but non-family can also become heirs. *Burgerlijk Wetboek* inheritance law recognizes 3 (three) principles, namely:⁵

1. Individual principle (personal principle) in which the heir is a person
2. Bilateral principle, namely when someone receives inheritance not only from his father but also from his mother
3. The principle of rank, namely the heir whose degree is close to the testator closes the heir who is further away in degree so that in this BW the calculation of inheritance is carried out by looking at the classification of the heirs.

One of the cases against the will studied by the author is that the heirs want to disburse the inheritance of the heirs in the form of deposit funds and deposit funds stored at PT BCA Central Asia. Based on the Testament Deed No. 23 dated July 11, 2017 which was made before Eddy Nyoman Winarta, S.H. However, BCA bank does not want to disburse the inheritance on the grounds that the testament deed made was not registered by the notary concerned to the Ministry of Law and Human Rights of the Republic of Indonesia and BCA bank adheres to the principle of prudence in carrying out its functions and duties. This research aims to find out how the process of disbursing inheritance in banks and how legal protection for heirs who cannot disburse their inheritance.

2. RESEARCH METHODS

² Irma Fatmawati, (2020), *Hukum Waris Perdata (Menerima dan Menolak Warisan oleh Ahli Waris serta Akibatnya)*, Yogyakarta: CV.Budi Utama, p.6

³ Civil Code, Article 832

⁴ *Ibid.*, Article 899

⁵ Nih Luh Gede Suwarni, I Nyoman Putu Budiarta, dan Desak Gde Dwi Arini,(2020), "PEMBAGIAN HARTA WARISAN DITINJAU DARI KITAB UNDANG-UNDANG HUKUM PERDATA", in *Jurnal Interpretasi Hukum*, Volume 1, Nomor 2, September 2020, p.49

The research method used is doctrinal. This research method can be said to be library research, or documentary studies. The normative method is a doctrinal method that is carried out by analyzing legal issues and reviewing from the aspect of legal norms that have prevailed in society.

3. RESULT AND DISCUSSION

3.1. Legal Protection of Heirs in the Procedure for Disbursing Inheritance Property

In inheritance, there are 2 ways to obtain inheritance regulated in the Civil Code:

a. Heirs according to the Law (*Ab Intestato*)⁶

Based on Article 832 of the Civil Code, heirs according to the law are blood relatives, both legal and outside of marriage and the husband or wife who lives the longest. *Ab Intestato* heirs occur directly and do not have a will. This heir is divided into 4 groups which are:

a) Class I: husband or wife who lives the longest and their children and descendants

b) Class II: the parents (father and mother), siblings, and also descendants of siblings

c) Class III: family in a straight line upwards after father and mother (the grandparents from father and mother)

d) Class IV: lineal family to the sixth degree

b. Heirs based on a will (*testament*)

Based on Article 873 of the Civil Code, A will or testament is a deed that contains a person's statement about what he wants and will happen after he dies, and by him can be revoked again.⁷ The will must be in written form made by an authentic deed or deed under hand.

The characteristics of a will or testament designated in a will, namely:⁸

a) A will is the basis or reason for the transfer of inherited property into the control of the person designated in the will.

⁶ Effendi Perangin, (2020), *Hukum Waris*, Depok: Rajawali Press, p.4

⁷ Irma Fatmawati, (2020), *Hukum Waris Perdata..*, p.10

⁸ *Ibid.*, p.11

b) Although the law stipulates in a will that each child as an heir must receive an equal share and it is not permissible to deprive someone of their rights as an heir. However, it is permissible in a will to specify the distribution of goods specifically to each heir.

The nature of a will or testament, namely:⁹

a) Testament is a written letter from the testator containing the gift of the testator's property to another person or institution that will take effect after the testator dies.

b) Testament is only valid after the death of the testator.

c) The testator has the right to revoke the will while he is still alive.

The rules of inheritance law that apply in Indonesia are divided into indigenous groups, groups of European descent and Chinese descent, and other foreign Eastern groups (such as Arab descent, Indian descent, etc.). When someone has passed away, for the management of the inheritance, the heirs must first take care of making a certificate of inheritance rights. A certificate of inheritance rights is a letter issued by an authorized institution/official whose contents explain information about the circumstances of the deceased, the heirs, the inheritance, and the rights of each heir.¹⁰ This certificate of inheritance rights will serve as evidence and can be used as a notification to third parties, such as banks and the land office for the transfer of land rights due to inheritance. For indigenous groups, the certificate of inheritance rights is made by the heirs by containing true information and witnessed by 2 (two) witnesses and known by the Lurah and confirmed by the local Sub-District Head in accordance with the domicile of the testator. For those of Chinese descent, it is made by a Notary and before the certificate of inheritance rights, the Notary must first check the will at Section of the Central Register of Wills of the Subdirector of Estates of the Ministry of Law and Human Rights of the Republic of Indonesia. For those of foreign eastern descent (Arabs and Indians) it is made at the Balai Harta Peninggalan.¹¹ One of the uses of an inheritance certificate is as evidence to cash out savings at the bank.

In the case of Decision Number 218/Pdt.G/2021/PN.Dps, it is known based on the Deed of Testament No.23 dated July 11, 2017 made in Notary Eddy Nyoman Winarta, S.H., that the plaintiffs consisting of 5 people are heirs to the testamentary property bequeathed by Edward Russel Whitechurch. The testator deposited the testamentary assets at PT Bank Central Asia (BCA) in the form of deposit funds and savings funds. The plaintiffs can be said to be heirs based on

⁹ *Ibid.*,

¹⁰ Kantor Wilayah DKI Jakarta Kementerian Hukum dan HAM Republik Indonesia, <https://jakarta.kemenkumham.go.id/layanan-publik/pelayanan-hukum-dan-ham/layanan-bhp/pembuatan-surat-keterangan-hak-waris> accessed on 23 January 2024

¹¹ Legalitas.org, <https://legalitas.org/tulisan/tentang-surat-keterangan-waris> accessed on 23 January 2024

the testament. Based on Article 938 of the Civil Code states that a will by public deed must be made in a Notary and two witnesses. Based on this, the Deed of Testament was made in Notary Eddy Nyoman Winarta, S.H. and was attended by two witnesses, namely Mrs. Ni Made Atik Sutiari and Mrs. Caecilia Indah Tripurbandari. By making a deed of testament, the testator can appoint someone or several people to become heirs and the testator will later give the right to someone or several heirs to receive his inheritance.

Through the Deed of Testament made by the testator, a person, namely Grant Manners Cockburn, was appointed to act as the executor of the will. In the procedure of disbursing the inheritance, there is an executor of the will or *exécuteur testamentaire*, which is a person or several people appointed by the person who will leave the inheritance who are assigned to supervise that the will is truly carried out according to the will of the deceased.¹² The purpose of the will executor is so that the will that has been made by the testator can be implemented and if there is a dispute, the will executor will appear before the judge to defend the validity of the will. One of the duties of Grant Manners Cockburn as the executor of the will is to disburse the testator's funds for the heirs stored at BCA Bank KCP Sanur Raya and then distribute them to the plaintiffs as the beneficiaries of the will.

On November 6, 2017, the testator passed away as evidenced by the death certificate issued by the Badung Regency Population and Civil Registry Office. The event of death causes the property of the deceased to become an open inheritance. Then, Grant Wannars as the executor of the will carries out his duties by submitting a request for disbursement of the testator's funds to BCA KCP Sanur Raya through a letter requesting disbursement of funds attached with supporting documents in the form of an original Testament Deed made before a notary, Death Certificate of the Testator, savings book and deposit book which explains the details of the funds stored and requested for disbursement to BCA KCP Sanur Raya. However, BCA KCP Sanur Raya did not want to disburse the testator's funds even though the executor of the will had repeatedly asked BCA KCP Sanur Raya for an official reason but still no reason for refusal was submitted.

Bank BCA KCP Sanur Raya stated that in order to be able to close accounts and disburse funds on accounts belonging to Foreign Citizens (WNA), an inheritance document in the form of a Legal Opinion from a legal consultant from the country of origin of the heir which must be legalized by a Notary Public in the country of origin of the heir and registered at the Embassy of the Republic of Indonesia / Consulate General in the country of origin of the heir. The purpose of the Legal Opinion is to provide legal certainty for Bank BCA as the party holding the customer's funds to hand over the funds to the rightful party in accordance with the legal provisions of the country of the heir as the customer. The heir has made and brought the Legal Opinion requested by Bank BCA and has also been legalized by a Public Notary in Australia.

¹² Maman Suparman, (2015), *Hukum Waris Perdata*, Jakarta: Sinar Grafika, p.146

3.2. Dispute Resolution for the Disbursement of Inheritance Assets in District Court Decision Number 218/Pdt.G/2021/PN.Dps

As a result of Bank BCA KCP Sanur Raya not providing reasons related to the refusal to disburse the inheritance, the plaintiffs as heirs filed a lawsuit against Bank BCA KCP Sanur Raya, the Notary concerned in making the Deed of Testament, and the Ministry of Law and Human Rights of the Republic of Indonesia. The plaintiffs filed a lawsuit against Bank BCA KCP Sanur Raya with an action against the law. Unlawful Acts are regulated in Article 1365 of the Civil Code which states that every unlawful act that brings harm to another person, obliges the person whose fault caused the loss, to compensate for the loss:¹³

- a) Other people's rights
- b) Legal obligations
- c) Good morals
- d) Obligations that must be observed in social intercourse regarding other people or objects.

In the case of Decision Number 218/Pdt.G/2021/PN.Dps, what is done by the Bank BCA KCP Sanur Raya can be said to be a tort because it commits acts that harm the rights of others. The rights of others in this case are the rights of the heirs to receive the inheritance in the form of funds deposited in Bank BCA KCP Sanur Raya.

Regarding the plaintiffs' lawsuit against Notary Eddy Nyoman Winarta, S.H. which refers to the provisions of Article 16 Paragraph 1 letters I, j, and k of Law No. 2 of 2014 on Notary Position, which states that:

1. In carrying out the position, the obligations of a notary are ...
 - i. make a list of Deeds relating to wills in the order in which the Deeds are made every month;
 - j. send the list of Deeds as referred to in letter (i) or zero list to the central register of wills at the ministry that carries out government affairs in the field of law within 5 (five) days of the first week of the following month;
 - k. take notes in the repertorium of the date of delivery of the register of wills at the end of each month

Based on the explanation above, every Notary who makes a Testament Deed has an obligation to register the testament deed with the Ministry of Law and Human

¹³ P.H.H. Simanjuntak, (2017), *HUKUM PERDATA INDONESIA*, Jakarta: Kencana, p.304

Rights of the Republic of Indonesia. That it turns out that based on a letter from the Ministry of Law and Human Rights of the Republic of Indonesia regarding the certificate of the will of the heirs, it turns out that the deed of will is not registered. Then it becomes the reason for the Bank BCA KCP Sanur Raya not to disburse the funds of the heir's inheritance because the deed of testament which is used as the basis for the distribution of the inheritance of the heir / customer has not been registered with the Ministry of Law and Human Rights of the Republic of Indonesia. Bank BCA KCP Sanur Raya as a bank applies the principle of prudence in running a financial services institution that stores customer funds.

Regarding Notary Eddy Nyoman Winarta, S.H. who was the notary who made the will deed and should have registered the will deed with the Ministry of Law and Human Rights of the Republic of Indonesia. The action of Notary Eddy Nyoman Winarta, S.H. based on the consideration of the judge was said that Notary Eddy Nyoman Winarta, S.H. was negligent in registering the Deed of Testament of the Heir. The Ministry of Law and Human Rights as the co-defendant in this decision stated that the Ministry of Law and Human Rights has used an electronic application (online system), namely the *Aplikasi Pelaporan Wasiat & Permohonan Surat Keterangan Wasiat*. In the process of reporting the will, the Ministry of Law and Human Rights RI does not have the authority to examine either formally or materially the deed requested to the Ministry of Law and Human Rights RI. The one who has the authority to check the validity of the deed is the Notary. The notary who makes the deed of will is obliged to ensure that all supporting documents are true and complete, considering that the notary has the duty and function to keep all supporting documents related to the making of the deed of will. Based on the consideration of the judges in this decision, that the deed of testament that has been prepared before an authorized official, which is made by a Notary, then has been registered with the Ministry of Law and Human Rights of the Republic of Indonesia and even its contents have been given a legal note or Legal Opinion from a lawyer in Australia is correct and appropriate. In this case, the will deed of Decision Number 218/Pdt.G/2021/PN.Dps is valid and there is no reason for BCA Bank KCP Sanur Raya to refuse the disbursement of these funds. BCA Bank KCP Sanur Raya in carrying out its duties must apply the principle of prudence, but in this case, the plaintiffs as heirs and executors of the will have fulfilled the legal requirements to be able to disburse funds according to the mandate of the inheritance deed.

The Panel of Judges was of the opinion that the action of the defendant, BCA Bank KCP Sanur Raya, in refusing to disburse the funds of the heirs was an unlawful act. The result received by the plaintiffs as heirs was a loss, especially in terms of protracted time. Based on Article 958 of the Civil Code state that all pure and unconditional testamentary grants, from the day of the death of the testator, give the right to the testamentary grantee to claim the donated goods. Therefore, it is clear that the rights of the heirs that should have been since November 29, 2017 (the date based on the death certificate of the testator) but until 2021 cannot be received by them as heirs. The heirs should have been able to accept the distribution of money deposited at BCA Bank KCP Sanur Raya,

especially at that time the pandemic situation where the money was very useful for the plaintiffs as heirs.

Based on the consideration of the Denpasar District Court Judges, it is stated that:

- a) The Deed of Testament made by Notary Eddy Nyoman Winarta, S.H. is valid and has legal force;
- b) Declare the action of the defendant Bank BCA KCP Sanur Raya which refused to disburse the testamentary funds in accordance with the testamentary deed made by Notary Eddy Nyoman Winarta, S.H. as an Unlawful Act;
- c) Punish the Defendant, BCA Bank KCP Sanur Raya, to pay material damages, by disbursing the Grantor's funds available to the Defendant, namely the value of the Deposit and its interest and disbursing the savings according to the amount of the remaining balance and its interest, to the Plaintiffs.

Looking at the decision case above, the heir is a customer of one of the banks in Indonesia. The presence of customers in a bank greatly affects the existence of banks as financial institutions that are present in the community. Banks must certainly maintain trust and improve the quality of their services to customers who deposit funds or use other banking products. Banks in carrying out their duties and functions adhere to the prudential bank principle. Article 2 of the Banking Laws emphasizes that banking in Indonesia conducts its business on the basis of economic democracy by applying the principle of prudence.¹⁴ The prudential principle aims to keep the bank liquid and solvent, so that the bank can protect the interests of customers in conducting bank transactions and the public continues to trust the bank.¹⁵ Thus, this prudential principle is also used when handling the process of disbursing the inheritance of customers who have passed away.

When the customer has passed away, the family who is the heir has the right to take care of the inheritance including cashing out the heir's savings, with procedures and requirements from the bank that must be met, one of which is attaching a beneficiary statement document to the bank.¹⁶ The inheritance certificate serves as evidence that will be kept by the bank as proof that the people whose names are contained in the inheritance certificate and are legitimate heirs according to the law so that they are entitled to inherit the inheritance of the heirs stored in the bank.

¹⁴ Trisadini P. Usanti and Abd. Shomad, (2016), *Hukum Perbankan Edisi Pertama*, Jakarta: Kencana, p.28

¹⁵ Hendra Adiwijaya, et.al., (2022), *Prinsip Kehati-hatian Bank dalam Mencairkan Dana Nasabah yang Telah Meninggal Dunia (Studi Putusan Mahkamah Agung Nomor 1050/K/Pdt/2015)*, in *Jurnal Ilmiah Penegakan Hukum*, Volume 9, p.26

¹⁶ Risa Gia Anjadi and Liza Priandhini, (2023), *Peran Akta Notaris dalam Pencairan Tabungan Bank Milik Nasabah Meninggal Dunia oleh Ahli Waris*, in *Nusantara: Jurnal Ilmu Pengetahuan Sosial*, Volume 10, p.4973

Based on Article 40 Banking laws, banks do have an obligation to keep information about their customers confidential, but it is exempted in the event that the customer dies and the heirs apply for the disbursement of the customer's savings as the heir. The bank can provide information about the customer and the customer's deposits to the customer's heirs who have fulfilled the requirements requested by the bank. When the heirs cannot fulfill these requirements, the bank cannot provide information related to the customer and cannot disburse the customer's savings. In the case of the court case discussed in this study, the heirs have made and provided all the requirements requested by Bank BCA KCP Sanur Raya, but Bank BCA still does not want to disburse so that the actions of Bank BCA KCP Sanur Raya are unlawful.

4. CONCLUSION

BCA bank is very precise and correct in carrying out the principle of prudence towards its customers' savings. However, the prudence of BCA bank itself even caused disputes in court. Bank BCA as one of the large banks in Indonesia, of course, has experience in the case of disbursing the inheritance of the heirs as its customers. The heirs have fulfilled their obligations in providing documents as a requirement to disburse the inheritance but the Bank BCA KCP Sanur Raya still does not want to disburse so this is very detrimental and the Bank BCA KCP Sanur Raya should compensate for the losses felt by the heirs. And it has been proven that the party requesting the disbursement is entitled because as a legal heir according to the law. Regarding the role of the notary, it is appropriate that when someone comes to make a will, after that it becomes an obligation for the notary to register the will with the Central Register of Wills of the Ministry of Law and Human Rights of the Republic of Indonesia.

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