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The Disharmonization of Wills Decisions by Judges on the Basis of Justice Values

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Abstract. *The purpose of writing is to find out and analyze: (1) the disharmony of legal decisions against wills by courts; (2) the position of the will deed in inheritance law in Indonesia. The approach used in this paper is normative juridical. Research specifications using analytical descriptive are strengthened by perspective. Sources of research data are sourced from primary legal materials, secondary legal materials and tertiary legal materials. Techniques for collecting legal materials using document or literature studies. The legal material analysis technique uses normative qualitative. The results of the study concluded that: (1) Disharmonization that occurred in the legal decision regarding a will by a panel of judges between levels of the judiciary, because the content of the judge's decision was different. The judge's decision has the potential to violate the legitieme portie, because on the land that was bequeathed only to his two children, a hotel business was built which was inherited by all his children; (2) The status of wills in inheritance law in Indonesia, namely: (a) according to the Civil Code and Islamic Compilation Law (HKI), the heir can make a will both to his heirs (grant/legaat will) and other people (will to appoint heirs) /erfstelling); (b) The testamentary deed is effective in the process of transferring inheritance after the testator dies; (c) a will made before a Notary is an authentic deed and has 3 (three) evidentiary powers before a court; namely: physical evidentiary power (uitwendige bewijskracht), formal evidentiary power (formele bewijskracht) and material evidentiary power (materiele bewijskracht).*

Keywords: Disharmony; Justice; Wills.

1. Introduction

According to Article 874 of the Civil Code, all the inheritance of the deceased heir belongs to the heir, unless the heir has legally determined it in a will (testament). A will is one way of inheritance. Subekti, said testament is a statement from someone about what he wants after he dies.

A problem occurs if there is more than one heir, where the heirs have been given a will while the heirs who did not receive a will (so that the heirs are as referred to in Article 833 BW and Article 874 BW) do not heed the will of the heir because

they feel disadvantaged due to the will of the heir, while on the one hand it is known that according to statutory provisions that the inheritance, along with the rights and obligations contained therein, belong to the heir, but the law also gives rights to the heir who where the will in the form of a will must be fulfilled by each heir.So that there is a conflict between fulfilling Article 833 BW and 874 BW or fulfilling the will of the heir, namely the will contained in the provisions of Article 875 BW.

In this research, the case taken was the granting of a will made by the biological mother over a plot of land in her own name to her two children, while the other three children were not given a will. On that plot of land stood the hotel building and business and the other three siblings (not given a will) also became the heirs of the hotel building and business.

The granting of the above will eventually caused conflict between siblings, and finally had to be brought to court. However, the decisions of the district court, high court, and cassation resulted in different decisions.Therefore, there has been disharmony in legal decisions between judicial institutions, resulting in different interpretations of law by court judges. This can affect the principle of legal certainty, legal justice and legal benefits.

In such case if there is a problem where the heir does not heed the testamentary will of the heir, then from there BW regulates the absolute portion of the heir which cannot be reduced and regarding the obligations of the heir. The obligation of the heir in question is a limitation on his rights determined by law. He must pay attention to the existence of legitieme portie, namely a certain part of the inheritance that cannot be written off by the person who left the inheritance (Article 913 BW). So legitieme portie is an annulment of the heir's right to make a will.

The purpose of this research is to find out and analyze: (1) disharmony of legal decisions against wills by courts; (2) and the position of the will in inheritance law in Indonesia.

2. Research Methods

The approach used is normative juridical. The specification of this research uses analytical descriptive strengthened by perspective. Sources of data in this study are sourced from primary legal materials, secondary legal materials and tertiary legal materials. Techniques for collecting legal materials using studies on December 30, 2015, a mother made a Testament before a Notary on five plots of land in her name with an area of 7,085 m2 (seven thousand eighty five square meters), on which there is a hotel building for her two children. Knowing this, the other three children sued the local district court, and the district court issued the

messenger whose contents stated that the will made by the underborn mother insofar as it concerned the five plots of land was not against the law, while the rest was against the law so that it had no binding force.

After making an appeal to the High Court, the High Court stated that the will made by the biological mother as long as it concerns ½ (half) of the five plots of land that is the right of the mother is not against the law. However, after going to the cassation level court, the Supreme Court then issued a decision stating to carry out a will on the 5 (five) plots of land, a will made by document or bibliography. Legal material analysis techniques use normative qualitative.

3. Results and Discussion

3.1. Dishamonization of Testament Decisions at the Judicial Institution Level

Inheritance, according to the concept of the Civil Code, can be because it is determined by law, it can also be due to the appointment of an heir (*erfstelling*) based on a will or testament which is also often called a testamentary heir. If someone is appointed as the heir, then it is as if he is in the position of heir based on the law. In Islamic inheritance law, the concept of appointing or appointing heirs (*erfstelling*) is not recognized. There is only a gift from one person to another which applies when the giver dies. A "gift" in special circumstances like this is known as a will. In the Civil Code inheritance law is called a testamentary grant or commonly known as *legaat*.

On December 30, 2015, a mother made a Testament before a Notary on five plots of land in her name with an area of 7,085 m2 (seven thousand eighty five square meters), on which there is a hotel building for her two children. Knowing this, the other three children sued the local district court, and the District Court issued the contents of which stated that the Deed of Will (Testament) insofar as it concerned the five plots of land was not against the law while the rest was against the law so that it had no binding force. After making an appeal to the High Court, the High Court ruled that the testament made insofar as it concerns ½ (half) of the five plots of land which is the right to be given a testament is not against the law. However, after the court of cassation level, then gave a decision Deed of will (testament) insofar as it concerns the 5 (five) plots of land is not against the law.

Observing the contents of the three court decisions above, there is disharmony of decisions, because there are differences or contradictions in the contents of these decisions. There are differences in the contents of decisions of court institutions at the District Court, High Court and Supreme Court levels as explained above, this indicates the existence of disharmony in legal decisions. This difference can be caused by several factors. According to Kusnu Goesniadhie

S, Legal disharmony can occur due to several factors, including: (1) The large number of laws and regulations that apply in the governance system; (2) Differences in interests and interpretations; (3) Gaps in technical and legal understanding of good governance; (4) Legal constraints faced in the implementation of laws and regulations which are composed of regulatory mechanisms, regulatory administration, anticipation of changes and law enforcement; (5) The legal obstacles encountered in the application of laws and regulations are in the form of overlapping authorities and conflicts of interest.

Based on the several factors that cause disharmony above, the factors that cause disharmony in legal decisions related to wills that occur in this research case are differences in interests and interpretations of law by the panel of judges in each judicial institution, namely the District Court, High Court, and Supreme Court. Great.

The same interpretation in understanding laws and regulations by court judges at each level of the judiciary is very important, so that there is harmonization of decisions that can achieve the authority of judges and judicial institutions.

Apart from the need for harmonization of legal decisions, harmonization of the contents of regulation between legislation is also very necessary, such as lower regulations may not deviate or set aside or conflict with statutory regulations

The need for harmonized and integrated laws and regulations is an indispensable requirement to create order, guarantee legal certainty and protection. The main principle that must be upheld in every rule of law is that lower laws and regulations may not conflict with higher laws and regulations. Lower level laws and regulations may not deviate from or overrule or conflict with higher level laws and regulations

Furthermore, from the side that is authorized to form the law, that the lawmakers who form a hierarchical unit, that is, starting from the highest law maker to the lower and then down to the lowest. Higher legislators delegate their authority to lower legislators

The Ministry of Justice's National Law Development Agency is of the opinion that harmonization of law is a series of scientific activities to achieve a process of harmonization (harmonization/conformity/balance) of written law that refers to sociological, philosophical, economic and juridical values. So that from the above understanding it can be interpreted that a harmonization of laws and regulations is a process of harmonization and harmonization between laws and regulations as an integral part or sub-system of the legal system in order to achieve a legal goal.

Legal harmonization can be done through prevention, where legal harmonization efforts are made to avoid legal disharmony. When in the implementation of a large number of laws and regulations that are related to one another, then of course if they are not studied properly and in depth in the process of their formation, it will have implications for the occurrence of legal disharmony. For example, when there is a conflict of legal norms between PP and law or law with other laws.

Legal harmonization is a process of adjusting laws and regulations, judges' decisions, government decisions, the legal system along with legal principles that have the aim of increasing legal unity, legal certainty, justice, comparability, usefulness and clarity of law, without obscuring or compromising legal pluralism.

Based on the opinion above, the harmonization of legal decisions can increase the principle of legal unity, legal certainty, justice and the use of law for legal justice seekers. Related to this principle, *Bellefroid* explains that the legal principle is a basic norm that is translated from positive law and which is not considered by legal science to originate from more general rules, so the legal principle is the deposition of positive law in society.

3.2. Position of Will Deed in Inheritance Law in Indonesia

Based on the provisions of the will element above, the legal case issues are related to the Supreme Court's decision, then the making of a will made by the biological mother in before a Notary, the five plots of land in the name of his property with an area of 7,085 m2 which were given to his children fulfill the following elements: (1) In the form of an authentic deed, meaning that the will was drawn up in an authentic deed before a Notary and has binding legal force; (2) There is a statement of will, meaning that the will is a unilateral wish Serly Godiman, until kthis desire can lead to unilateral legal consequences; (3) Serly Godiman has passed away, so that the will has become binding on the heirs who were given a will, and must also be respected by heirs who are not given a will; (4) A will can no longer be revoked, because the maker of the will has passed away, and the contents of the will do not conflict with the provisions of the applicable law.

Judging from the position of the will, the will created by Serly Godiman at before Notary Rusli Rachmat, SH, MH with Number 122 dated 30 December 2015 for the five plots of land in his name with an area of 7,085 m2 which was given to his heirs has the power of evidence before the court, because the will is an authentic deed.

GHS Lumban Tobing is of the view that the strength of proof of a Notary deed, which includes the strength of material proof, formal proof and external proof,

namely the strength of authentic deed proof, thus also the Notary deed, is a direct consequence which is a necessity of statutory provisions, that must there are authentic deeds as a means of proof and from duties imposed by law on certain officials or people.

According to Habib Adjie, a notary deed is a proof of perfect writing or letter. because a Notary deed has 3 (three) evidentiary powers, namely: (1) Outward evidentiary strength (*uitwendige bewijskracht*) which is the ability of the deed itself to prove its validity as an authentic deed; (2) Strength of formal proof (*formele bewijskracht*) which provides assurance that an event and fact mentioned in the deed is really known and heard by the Notary and explained by the parties who appear before it, which is stated in the deed in accordance with the procedure specified in making the deed Notary Public; (3) Strength of material proof (*materiele bewijskracht*) which is certainty about the material of a deed.

a. The Power of Outward Proof (*Uitwendige Bewijskracht*)

By external evidentiary power, this means the ability of the deed itself to prove itself as an authentic deed. According to Article 1875 of the Civil Code, this ability cannot be given to deeds made privately, a deed made underhanded is only valid, that is, as one that really comes from the person against whom the deed is used. If the signatory acknowledges the truth of the signature or if it is done in a legal way, it can be considered as having been acknowledged by the person concerned.

The evidentiary value of the Notary deed is from an outward aspect, the deed must be seen for what it is, not seen for what is wrong. Outwardly there is no need to be contradicted by other evidence. If anyone considers that a notarial deed does not meet the requirements as a deed, then the person concerned is obliged to prove that the deed is not an authentic deed outwardly.

As far as the strength of this outward proof is concerned, which is complete evidence without reducing the evidence to the contrary, then "*partij deed*" and "officer deed" in this case are the same. A deed that outwardly appears to be an authentic deed, applies as an authentic deed for everyone, the signature of the official concerned (Notary) is accepted as valid.

Proof to the contrary, meaning that proof that the signature is invalid, can only be carried out through a "*valsheids procedure*" according to Article 1866 of the Civil Code, where evidence is only permitted by letters (*bescheiden*), witnesses (*getuigen*), presumption, confessions, and oaths. So in this case (namely proving otherwise against external evidentiary strength through the "*valsheids*

procedure"), what is at issue is not the contents of the deed or the authority of the official, but solely regarding the signature of the official.

Denial or denial that outwardly the notarial deed is an authentic deed, not an authentic deed, so the evaluation of the proof must be based on the conditions of the notary deed as an authentic deed. This kind of proof must be made through a lawsuit in court. The plaintiff must be able to prove that outwardly the deed which is the object of the lawsuit is not a notarial deed. Having the power of external proof (*Uitwendige bewijskracht*), namely the ability of the deed itself to be able to prove itself as an authentic deed. This ability is based on Article 1875 of the Civil Code which cannot be granted to deed made privately. The deed made under the new hand is valid, that is, if it really comes from the party against whom the deed is used, and if the signatory acknowledges the truth of the signature or if the person concerned has acknowledged it in a legal way. While an authentic deed made by a Notary can prove its validity by itself (*acta publica probant sese ipsa*). This means that the outward form of the deed and the contents of the words indicate that the deed originates from a public official, so the deed is considered an authentic deed until it can be proven that the deed is not an authentic deed.

b. Formal Strength of Evidence (*formele bewijskracht*)

Notary as a public official authorized to draw up a deed containing formal truths in accordance with what the parties have notified to the Notary. The notary as a public official has the authority to draw up a deed containing formal truths in accordance with what the parties have notified to the notary. According to R. Soebekti, what is called a deed is a writing that is solely made to prove something or an event, therefore a deed must always be signed. Meanwhile, according to Sudikno Mertokusuma, what is called a deed is a signed letter containing events which form the basis of a right/agreement that was made from the start on purpose for proof.

The notary deed must provide assurance that an event and fact mentioned in the deed were actually carried out by a notary or explained by the parties who appeared at the time stated in the deed in accordance with the procedures specified in making the deed. Formally to prove the truth and certainty regarding the day, date, month, time (time) facing, and the parties appearing, the initials and signatures of the parties/appearing parties, witnesses, and Notaries, as well as proving what was seen, witnessed, heard by Notary (in the deed of officials/official minutes), and records the statements or statements of the parties/appearers (in the deed of parties).

With the strength of this formal proof, an authentic deed is proven, that the official in question has stated in the writing, as stated in the deed and apart from

that the truth of what the official described in the deed is what he did and witnessed while carrying out his position. .

Article 1866 of the Civil Code states that written evidence is one of the means of written evidence. Likewise, in Article 1867 of the Civil Code it is stated that proof in writing is carried out in authentic writings or in private writings.

Article 1868 of the Civil Code says that an authentic deed is a deed which, in the form determined by law, is made by or before public officials who have the power to do so at the place where the deed is made. What is meant by the deed is made in a form according to the provisions of the law, made by or before a public official and said public official has the authority to do so at the place where the deed was made.

Thus a Notary as a public official has the authority to make authentic deeds regarding all actions, agreements and provisions required by laws and regulations and or desired by interested parties to be stated in an authentic deed. The aim is to serve as strong evidence if one day there is a dispute between the parties or there is a civil lawsuit or criminal charge from another party. If there is a civil lawsuit or criminal charge from one of the parties, it is possible that the Notary will be involved in the problems of the litigants regarding the deed drawn up by the Notary.

In a deed made under the hand, the power of proof only includes the fact that the statement was given, if the signature is acknowledged by the person who signed it or is deemed to have been recognized as such according to law.

If the formal aspect is disputed by the parties, then the formality of the deed must be proven, that is, they must be able to prove the untruth of the day, date, month, year and time they were seen, prove the untruth of those who attended, prove the untruth of what was seen, witnessed, and heard by the Notary. In addition, it must also be able to prove the untruthfulness of the statements or statements of the parties given/submitted before the Notary, and the untruthful signatures of the parties, witnesses, and the Notary or there is a procedure for making a deed that was not carried out. In other words, the party disputing the deed must carry out reverse verification to deny the formal aspect of the notarial deed. If unable to prove the untruth, then the deed must be accepted by anyone.

Having the power of formal proof (*Formale bewijskracht*), that the deed provides certainty about an incident and the fact that in the deed was actually carried out by a Notary or explained by the parties who appear before him. This means that the official concerned has stated in writing as stated in the deed and apart from that the truth of what the official described in the deed is what he witnessed and did while in that position. In a formal sense, as far as official deeds (*ambtelijke*

acte) are concerned, the deed proves the truth of what was witnessed, namely what was seen, heard and also carried out by the Notary as a public official in carrying out his position. In a private deed, the power of proof only includes the fact that the statement was given, if the signature listed in the deed under the hand is recognized by the person who signed it or deemed to have been recognized as such according to law. In a formal sense, the correctness/certainty of the date of the authentic deed is guaranteed, the correctness of the signatures contained in the deed, the identities of the persons present (*comparanten*), as well as the place where the deed was drawn up. As far as the acte partij is concerned, the existing parties explain as described in the deed, while the truth of the statements themselves is only certain between the parties themselves. Then the truth/certainty of the date of the authentic deed is guaranteed, the correctness of the signatures contained in the deed, the identity of the persons present (*comparanten*), as well as the place where the deed was drawn up. As far as the acte partij is concerned, the existing parties explain as described in the deed, while the truth of the statements themselves is only certain between the parties themselves. Then the truth/certainty of the date of the authentic deed is guaranteed, the correctness of the signatures contained in the deed, the identity of the persons present (*comparanten*), as well as the place where the deed was drawn up. As far as the *acte partij* is concerned, the existing parties explain as described in the deed, while the truth of the statements themselves is only certain between the parties themselves.

In an authentic deed, the power of formal proof applies and applies to everyone, namely what is and is in their signature. However, there are exceptions or denial of the power of this formal proof, namely:

a. The denying party may immediately not admit that the signature affixed to the deed is his signature. The complaining party can say that the signature that appears to have been affixed by him was in fact affixed by another person and therefore in this case what is known as signature forgery.

b. The denial party can state that the Notary in making the deed made a mistake or oversight (*ten onrechte*) but does not deny the signature in the deed. This means that the denial party does not question the formality of the deed but questions the substance of the deed. Thus what is at issue is the contents of the notary's deed which are not true (*intellectuele valsheid*). The denial party does not accuse of forgery but accuses an oversight which may be unintentional so that the accusation is not based on the strength of formal proof but on the strength of material evidence from the Notary's statement. In proving this matter, according to the law, all things that are within the corridor of formal law of proof can be used.

Anyone may deny or deny the formal aspects of a Notary's deed, if the person concerned feels harmed by the deed drawn up before or by a Notary. The denial or denial is carried out by means of a lawsuit to the general court, and the plaintiff must be able to prove that the formal aspects that were violated or not in accordance with the deed concerned.

Notarial deed made according to the wishes of the interested parties to ensure or guarantee the rights and obligations of the parties, certainty, order and legal protection of the parties. In essence, the Notary Deed contains formal truths in accordance with what was notified by the parties to the Public Official (Notary). The notary is obliged to include in the deed what has really been understood according to the will of the parties and read to the parties about the contents of the deed. The statement or statement of the parties by the Notary is stated in the Notary deed. Meanwhile, private writing or also called private deed is made in a form that is not determined by law, without an intermediary or not in the presence of a Public Official (Notary) based on article 1874 of the Civil Code.

c. The Power of Material Proof (*Materiele bewijskracht*)

Certainty regarding the material of a deed is very important, that what is stated in the deed is valid evidence against the parties who made the deed or those who got the rights and applies to the public, unless there is evidence to the contrary (*tegenbewijs*). Information or statements set forth/loaded in the official deed (or minutes), or statements of the parties given/submitted before the Notary and the parties must be considered correct. The words which are then stated/loaded in the deed must be judged to have said so correctly. If it turns out that the statements/statements of the appearers are incorrect, then this will be the responsibility of the parties themselves. Notary apart from that kind of thing. Thus the contents of the Notary deed have certainty as the truth,

If you are going to prove the material aspects of the deed, then the person concerned must be able to prove that the Notary did not explain or state the truth in the deed, or the parties who said correctly (in front of the Notary) said it was not true, and reverse verification must be carried out to refute this aspect material from the notarial deed.

Having the strength of material proof (*material bewijskracht*), that what is stated in the deed is valid proof against the parties making the deed or those who have rights and applies to the public, unless there is evidence to the contrary (*tegenbewijs*). Statements or statements set forth or contained in the official deed (or minutes) or statements of the parties notified or submitted before a Notary (deed of parties) and the parties must be judged "correctly said" which is then set forth or contained in the valid deed as correct or every person who comes before the Notary who later or whose statement is stated or contained in

the deed must be considered to have said correctly if it turns out that the information is "incorrectly said" then it is the responsibility of the parties themselves. This means that not only is the fact proven by an authentic deed, but the contents of the deed are deemed to be proven as true against every person who orders the deed to be made/produced as evidence against him (*preuve preconstituee*). Thus an authentic deed, regarding the contents contained in it, applies as true, has certainty as true, then it becomes legally proven between the parties, therefore if it is used before a court it is sufficient and that the judge is not allowed to ask for other proof signs in addition to an authentic deed the. However, the contents of the deed are deemed to have been proven as true against any person who orders the deed to be made as evidence against him (*preuve preconstituee*). Thus an authentic deed, regarding the contents contained in it, applies as true, has certainty as true, then it becomes legally proven between the parties, therefore if it is used before a court it is sufficient and that the judge is not allowed to ask for other proof signs in addition to an authentic deed the. However, the contents of the deed are deemed to have been proven as true against any person who orders the deed to be made as evidence against him (*preuve preconstituee*). Thus an authentic deed, regarding the contents contained in it, applies as true, has certainty as true, then it becomes legally proven between the parties, therefore if it is used before a court it is sufficient and that the judge is not allowed to ask for other proof signs in addition to an authentic deed the.

The three aspects mentioned above are the perfection of the Notary's deed as an authentic deed and anyone bound by the deed. If it can be proven in a court hearing, that there is one aspect that is not true, then the deed only has the power of proof as a private deed or the deed is degraded in its evidentiary power as a deed that has the power of proof as a private deed.

Judges are bound by authentic evidence because if this is not the case then it can be questioned what is the use of the law appointing officials who make an authentic deed as evidence if the judge can simply set aside the deed made by the official. The responsibility of a notary as a public official for an authentic deed made must be in accordance with article 16 UUJN 2014 concerning the position of a notary. In making an authentic deed that is made, a Notary must be passive, meaning without prejudice to the Notary's right of authority to check everything that happened before him, especially fact-finding, in this case investigating the information put forward or conveyed by the parties (applicant for the deed) whether it is against the law, public order, the Notary must refuse.

4. Conclusion

The disharmonization that occurs in legal decisions regarding wills by panels of judges between levels of judicial institutions, because the contents of judges'

decisions are different. The judge's decision has the potential to violate the *legitieme portie*, because on the land that was bequeathed only to the two children, a hotel business was built which was inherited by all of their children. The difference between inheritance by heirs based on living and deceased wills is: (a) inheritance given by will from the heir to his heirs (children) is a grant or gift (grant will), while the inheritance given by the heir to the heirs (children) are inheritance that must be divided based on the provisions of the law; (2) A testamentary grant can be given from the legal owner (heir) to his heirs (children) as long as the heir is still alive, the form and value of the property is in accordance with the grant, and the transfer of the inheritance takes effect after the heir dies, while the inheritance of the heir can be divided among the heirs (children) after the heir dies and each heir (child) gets the same share. The position of a will deed in inheritance law in Indonesia, namely: (a) according to the Civil Code and Islamic Compilation Law (HKI), the heir can make a will both to his heirs (grant will/legaat) and other people (will to appoint heirs/*erfstelling*); (b) The testamentary deed is effective in the process of transferring inheritance after the testator dies; (c) a will made before a Notary is an authentic deed and has 3 (three) evidentiary powers before a court; namely: physical evidentiary power (*uitwendige bewijskracht*), formal evidentiary power (*formele bewijskracht*) and material evidentiary power (*materiele bewijskracht*).

There are several suggestions that can be conveyed, namely: (1) In making a will, it is expected that the heir is made before a Notary and made in the form of an authentic deed, so that the deed has the power of proof before the law; (2) Heirs are expected to act wisely and fairly in allocating shares of inheritance to their heirs, so that in the future there will be no disputes or cause legal problems among their heirs; (3) If the heir wishes to share the assets among the heirs, it is expected to consider matters such as: (a)Set aside part of the heir's assets for living expenses, sickness and *tajhiz* costs, unless the heirs agree to bear all of this; (b) No new heirs appear or are born by the heir; (c) None of the heirs who died earlier than the heir; (d) There is no concern among the heirs that there will be an apostate; € If the division of the inheritance is not carried out during the life of the heir, there will be disputes and cause harm among the heirs.

5. References

Journals:

[1] Aden Lukmandan, dan Moch. Djais, Implementasi Hak-Hak Ahli Waris Erfstelling Terhadap Harta Warisan, *Notarius*, Volume 12 Nomor 1 (2019).
[2] Aden Lukmandan, dan Moch. Djais, “Implementasi Hak-Hak Ahli Waris Erfstelling Terhadap Harta Warisan”, *Notarius*, Volume 12 Nomor 1 (2019).

[3] Eko Haryanti, Pembatalan Akta Hibah Wasiat Yang Dibuat Dihadapan Notaris dan Akibat Hukumnya, *Jurnal Repertorium*, ISSN:2355-2646, Edition 3 January-June 2015.
[4] Muliana, dan Akhmad Khisni, "Akibat Hukum Akta Hibah Wasiat Yang Melanggar Hak Mutlak Ahli Waris (Legitieme Portie)", *Jurnal Akta*, Vol. 4 No. 4 December 2017.
[5] Naskur, "Pembagian Harta Warisan Disaat Pewaris Masih Hidup Telaah Pasal 187 Ayat (1) Kompilasi Hukum Islam (KHI)", *Jurnal Ilmiah Al-Syir'ah*, Vol. 15, No. 1, 2017.

Books:

[1] Abdul Kadir Muhammad, *Hukum Perdata Indonesia*, Bandung: Citra Aditya Bakti, 1993.
[2] Abdul Kadir Muhammad, Pokok Pokok Hukum Perdata Indonesia, cet. Revisi Bandung: PT. Citra Adytia, 2010.
[3] Abdurrahman al Jaziri, *l Fiqhu ala Mazahib al Arba'ah,* Juz 3, Riyad Saudi Arabiyah: Penerbit Matabah al Riyad al Hadisah, tanpa tahun.
[4] Abdurrahman Al-Jaziri, *Al-Fiqhu Ala Mazahibi Arba'ah,* Terjemahan oleh H. Moh. Zukri, Jilid 4, Semarang : Asy Syifa, 1994.
[5] Ahmad Rofiq, *Hukum Islam Di Indonesia,* Jakarta: Penerbit Raja Grafindo Persada, 1995.
[6] *Alimuddin, "Aplikasi Pembaharuan Hukum dalam Teori Socio Legal Studies, DitJen Badan Peradilan", Jakarta:* **www.badilag.net***, 2015, accessed on 15 November 2021.*
[7] Anisitius Amanat, *Membagi Warisan Berdasarkan Pasal-Pasal Hukum Perdata BW*, Jakarta: Raja Grafindo Persada, 2011.
[8] Anisitus Amanat, *Membagi Warisan Berdasarkan Pasal-Pasal Hukum Perdata BW*, cet. III. Jakarta: Raja Grafindo Persada 2003.
[9] Ash Shan'ani, *Subulussalam*, Terjemahan oleh Abu Bakar Muhammad, Surabaya : Al-Ikhlas, 1995.
[10] Bahder Johan Nasution, *Metode Penelitian Ilmu Hukum*, Bandung: Mandar Maju, 2008.
[11] Benyamin Asri dan Thabrani Asri, *Dasar Dasar Hukum Waris Barat* [Suatu Pembahasan Teoritis dan Praktek] Bandung: Tarsito, 1988
[12] Effendi Perangin, *Hukum Waris,* (Jakarta: Rajagrafindo Persada, Jakarta, Cetakan ke-1, 1997.
[13] Emeliana Krisnawati, *Hukum Waris Menurut Burgerlijk Wetboek* [BW] Bandung: CV Utomo 2006.
[14] G.H.S. Lumban Tobing, *Peraturan Jabatan Notaris,* Jakarta: Erlangga, 1992.
[15] H. Chairumman Pasaribu dan Suhrawardi K. Lubis, *Hukum Perjanjian Dalam Islam*, Jakarta : Sinar Grafika, 1994.

[16] H.Zainuddin Ali, *Pelaksanaan Hukum Waris di Indonesia*, Cet.Pertama, Jakarta: Sinar Grafika, 2008.
[17] Habib Adjie, *Hukum Notariat di Indonesia-Tafsiran Tematik Terhadap UU No.30 Tahun 2004 Tentang Jabatan Notaris*, Bandung: Refika Aditama, 2008.
[18] Hartanto Soerjopratikknjo, *Hukum Waris Testamenter*, Yogyakarta, Seksi Notariat FH UGM, 1982.
[19] Herlien Budiono, *Asas Keseimbangan bagi Hukum Perjanjian Indonesia-Hukum Perjanjian Berlandaskan Asas-Asas Wigati Indonesia*, Bandung: Citra Aditya Bakti, 2006.
[20] Hi. Zainuddin Ali, *Pelaksanaan Hukum Waris Di Indonesia*, cet. 1 Jakarta: Sinar Grafika 2008.
[21] HM Idris Ramulyo, Beberapa Masalah Pelaksanaan Hukum Kewarz'san Perdata Barat [Burgerlijk Wetboek] Jakarta: Sinar Grafika, I993.
[22] Ibnu Rusy, *Bidayatul Mujtahid*, Terjemahan M.A. Abdurrahman dan Al Haris Abdullah, Jilid 3, Semarang : Asy Syifa, 1990.
[23] Idris Ramulyo, *Perbandingan Pelaksanaan Kewarisan Islam Dengan Kewarisan Menurut Kitab Undang-Undang Hukum Perdata (BW)*, Jakarta: Sinar Grafika, 2003.
[24] J. Satrio, *Hukum Waris*, Bandung: Alumni, 1992.
[25] Khudzaifah Dimyati, *Teorisasi Hukum-Studi Tentang Perkembangan Pemikiran Hukum di Indonesia 1945-1990*, Surakarta: Penerbit Universitas Muhammadiyah, 2004.
[26] M. Agus Santoso, *Hukum,Moral & Keadilan Sebuah Kajian Filsafat Hukum*, Ctk. Kedua, Jakarta: Kencana, 2014.
[27] M. Anshary, *Hukum Kewarisan Islam dalam Teori dan Praktik*, Yogyakarta: Pustaka Pelajar, 2013.
[28] M. Syamsudin, *Operasional Penelitian Hukum*, Jakarta: PT. Raja Grafindo Persada, 2007.
[29] Maman Suparman, Hukum Waris Perdata, cet. 1 Jakarta: Sinar Grafika, 2015.
[30] Maman Suparman*, Hukum Waris Perdata,* Jakarta: Sinar Grafika, 2015.
[31] Mukhlis Lubis dan Mahmun Zulkifli, *Ilmu Pembagian Waris*, Jakarta: Citapustaka Media :1999.
[32] Mulyadi, *Hukum Waris Tanpa Wasiat,* Semarang: Badan Penerbit Universitas Diponegoro, 2008.
[33] Oemarsalim, *Dasar-Dasar Hukum Waris di Indonesia*, Jakarta : Rineka Cipta, 1991.
[34] Oemarsalim, *Dasar-Dasar Hukum Waris Di Indonesia*, Jakarta: Rineka Cipta, 1991.

[35] Putusan Mahkamah Agung Republik Indonesia Nomor 3445 K/Pdt/2018.
[36] R. Subekti, *Pokok-Pokok Hukum Perdata*, Cet. XXVIII, Jakarta: Intermasa, 1996.
[37] R.SoegondoNotodisoerjo,*Hukum Nataiat di Indonesia: Suatu Penjelasan,* Jakarta: Rajawali Pers, 1992.
[38] Salim HS dan Erlies Septiana Nurbani, *Penerapan Teori hukum pada Penelitian Tesis dan Disertasi*. Jakarta : Raja Grafindo Persada, 2014.
[39] Sayyid Sabiq, *Fiqhus Sunnah*, Jilid 3, Kairo: Penerbit Maktabah Dar al Turas, tanpa tahun.
[40] Sidik Tono, *Kedudukan Wasiat Dalam Sistem Pembagian Harta Peninggalan,* Jakarta: Kementerian agama Republik Indonesia, 2012.
[41] Subekti, *Pokok-pokok Hukum Perdata*, Jakarta: Intermasa, 1994.
[42] Subekti, *Pokok-Pokok Hukum Perdata*, Jakarta: Penerbit Intermasa, 2018.
[43] Sudargo Gautama, *Tafsiran Undang-undang Pokok Agraria*, Bandung: Citra Aditya Bakti, 1990.
[44] Sudikno Mertokusumo, *Hukum Acara Perdata Indonesia Edisi Ke 6*, Yogyakarta: Liberty, 1998.
[45] Surini Ahlan Sjarif dan Nurul Elmiyah, *Hukum Kewarisan Perdata Barat : Pewarisan Menurut Undang-Undang,* Jakarta: Badan Penerbit Fakultas Hukum Universitas Indonesia, 2010.
[46] Syahkroni, *Konflik Harta Warisan Akar Permasalahan dan Methode Penyelesaian Dalam Perspektif Hukum Islam,* cet. 1 Yogyakarta: Pustaka Pelajar, 2007.
[47] Tamakiran, *Asas-asas hukum waris menurut tiga sistem hukum*, Bandung: Pioner Jaya, 1992.
[48] Tamakiran, *Asas-Asas Hukum Waris Menurut Tiga Sistem Hukum*, Bandung: Pioner Jaya, 1992
[49] Zainuddin Ali, *Metode Penelitian Hukum*, Jakarta: Sinar Grafika, 2013.