

## Analysis of the Position of Wills as an Effort to Anticipate Disputes over the Division of Inheritance Assets

Gus Hiftirul Azis

Faculty of Law, Sultan Agung Islamic University (UNISSULA), Semarang, Indonesia,  
E-mail: [agushiftirul@gmail.com](mailto:agushiftirul@gmail.com)

**Abstract.** *The death of someone who leaves a will often create disputes between heirs because the contents state that they will give their property to one person in excess of the share that the other heirs should receive, giving rise to jealousy and feelings of injustice. In order to provide justice and legal certainty for heirs regarding their shares, the state has regulated this in a legal regulation called inheritance law. Inheritance law explains the maximum limit for giving assets in a will and the portions that each heir will and must receive. This research aims to find out and analyze the position of testamentary deeds in anticipating disputes over the distribution of inheritance and the role of the Inheritance Agency in implementing testamentary deeds and issuing certificates of inheritance rights as an effort to anticipate disputes over the division of inheritance. By using the Sociological Juridical study method, we can find the reality in the field in research. This method seeks data by means of interviews and data found in the field, to then analyze the legal problems that occurred in the case. In the research process carried out, it was found that wills in the distribution of inherited assets have an important position and their implementation always takes priority, although it does not rule out the possibility of problems or disputes for both the recipient of the will and the heirs, then the Inheritance Property Center is the agency that has the role and authority in opening will and make a certificate of inheritance rights for the share received by each heir.*

**Keywords:** *Inheritance; Position; Will.*

### 1. Introduction

Indonesia is a very pluralistic country, so forget the legal regulations especially in terms of inheritance. Inheritance law in Indonesia itself has 3 (three) legal systems used, starting from western inheritance law regulated in Burgerlijk Wetboek/KUHPerdata, then Islamic inheritance law contained in the

Compilation of Islamic Law or *faraidh*, and customary law which is applied according to the customs of each Indonesian society. The diversity of inheritance law systems is increasingly visible with the existence of customary inheritance law that applies in reality is not singular, but also varies according to the form of society and the family system of Indonesian society.

The inheritance law system in Indonesia has various characteristics, where each group of residents is subject to its own laws. However, when talking about inheritance law, the focus of attention cannot be separated from 3 (three) main elements, namely: the existence of inheritance (wealth) of the testator called inheritance, the existence of an heir, namely a person who controls or owns the inheritance and transfers or continues it, and the existence of an heir, namely a person who receives the transfer (continuation) or distribution of the inheritance.

With the existence of various inheritance law systems in Indonesia, this is what will have the potential for problems that make me as a writer interested, starting from the existence of differences in beliefs in a family or the possibility of someone leaving a will to determine which inheritance law system will be used in their family to anticipate disputes in their family. Because in the implementation of the distribution of inheritance, not a few heirs have left a will for the heirs which must be implemented later when the heir dies, which sometimes the will actually causes another conflict.

In the legal dictionary, a will (testament) is a letter containing the will of the person making the will or messages that will be effective when the person making the will dies.<sup>1</sup>The regulation on wills in the Civil Code is contained in book 2 which generally discusses property or wealth, the discussion includes property law and inheritance law. A will is in substance an act in the form of transferring property rights to another party.

In the Civil Code, a will is also called a testament, both terms are used interchangeably in some places. The definition of a will/testament in the Civil Code reads: "A will or testament is a deed containing a person's statement about what he wants to happen after he dies, which can be revoked by him."<sup>2</sup> A will (testament) must be in written form made by a private deed or an authentic deed. This deed contains a statement of will as a unilateral legal act, which means that the statement comes from only one party. In other words, a

---

<sup>1</sup>R. Subekti and Tjitrosoedibio, *Legal Dictionary, Pradnya Paramitha*, 12th Edition, Jakarta, 1996, page 106

<sup>2</sup>Article 875 of the Civil Code

testament is a statement about something after the testator has died. So, a testament only has an effect after the testator has died.<sup>3</sup>

In Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law, a will is the gift of an object from a testator to another person or institution which will be effective after the testator dies.<sup>4</sup> Wahbah Az-Zuhaili in his literature explains that the definition of a will is "a message about a good thing that will be carried out after the person dies". The will itself comes from the Arabic language, namely *washa*, which means to convey or give a message or forgiveness. In other words, a will is property given by its owner to another person after the giver dies.<sup>5</sup>

## 2. Research Methods

The approach method used by the author in this study is sociological juridical. The sociological juridical approach method is an approach method that describes a reality or fact that exists in the field based on legal principles, legal rules, or applicable legislation that is related to the problem being studied.

The research specifications shown are descriptive analysis in nature, namely research that aims to provide an overview of the problems that occur in connection with the use of applicable laws and regulations and relevant theories which are then collected through data that is collected, processed, and arranged according to existing theories to obtain problem solving in accordance with applicable provisions.

The data used are primary data and secondary data, primary data is filled with interviews and secondary data is obtained from literature studies, the data analysis method used in this study is a qualitative analysis method and the theoretical framework used to answer the problem formulation uses the theory of legal certainty and the theory of justice.

## 3. Results and Discussion

### 3.1. The Position of a Will in Anticipating Disputes over the Division of Inheritance Assets

A will is a legal act in the form of a statement regarding a person's wishes after he dies. In other words, a will is a confession or message

---

<sup>3</sup>Habib Adjie, *Compilation of Legal Issues in Notary and PPAT Practice (Selected Chapters for Notaries & PPAT)*(1), Indonesian Notary Community (INC), 2016, page 211 (Adjie, 2016)

<sup>4</sup>Article 171 letter (f) of the Compilation of Islamic Law

<sup>5</sup>Wahbah Az-Zuhaili, *Islamic Fiqh and Adillatuhu*. Translated by Abdul Hayyie al-Kattani, et al., Gema Insani, Jakarta, 2011, page 154

from a person about what he wants after he dies. The statement can be in the form of a transfer of assets, debts, responsibilities, and so on.<sup>6</sup>A will has 3 (three) main elements, namely:

- a) A statement, namely a message conveyed regarding the will of the will addressed to someone
- b) Its nature is effective after the death of the testator, namely that the message as desired by the testator can be carried out or transferred to the recipient of the will after the death of the testator.
- c) Can be revoked, namely the message or will can be revoked or withdrawn by the testator during his lifetime without having to ask permission first from the recipient of the will.<sup>7</sup>

Wills are divided into two types:

- a) A will containing *erfstelling* or a testament to the appointment of heirs.  
This is regulated in Article 954 of the Civil Code which states that those who make a will give one or more people their assets if they die. People who receive assets according to this article are heirs under general title.
- b) A will containing a grant (legacy gift) or *legaas*.  
This is regulated in Article 957 of the Civil Code, which confirms that a testamentary gift is a special provision in a testament, in which the testator grants to one or several people:
  - 1) Some specific items;
  - 2) Goods of one particular kind;
  - 3) The right to use the proceeds from all or part of the inheritance.

Civil inheritance law is a legal process or regulation that regulates the procedures for the transfer or assignment of inheritance from the deceased (heir) either in the form of property that can be valued in money or debts, to people who are entitled to inherit it (heirs), either according to law or a will, according to the sections specified in the Civil Code. Although there is no meaning or understanding of inheritance law

---

<sup>6</sup>Dr. Munadi Usman, MA, *Wills in the Legal System in Indonesia*, Pustaka Pelajar, Yogyakarta, 2020, pp. 109-110

<sup>7</sup>*Ibid*

in the Civil Code, there are concepts regarding inheritance, people who are entitled and not entitled to receive inheritance.<sup>8</sup>

Positive laws that exist in Indonesia are not a few that adopt and take based on Islamic teachings, as is the case with inheritance law. As in Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law in Book II general provisions point (a) explained, what is meant by inheritance law is the law that regulates the transfer of the right to choose the inheritance of the testator, determines who is entitled to be an heir, and how much each portion is.<sup>9</sup>

So, the position of a will in Islamic inheritance law is very important. It has been repeatedly stated in the Qur'an regarding this will, both in the verses of the Qur'an before the revelation of the verses on inheritance, even in the verses on inheritance itself. The importance of a will in the distribution of inheritance is also regulated in the Civil Code system. A will is not only useful when the maker dies but is also useful as a certainty for all family members. According to the Civil Code, there are two ways to obtain an inheritance, namely as an heir according to the provisions of the law, and because it is appointed in a will (testament). The first way is called an heir *abintestato*, while the second way is called an heir *by testamentair*.<sup>10</sup>

### **3.2. The Role of the Estates Office in Executing Wills and Issuing Certificates of Inheritance Rights**

The Heritage Office (BHP) is an institution that was originally created to meet the needs of the VOC (*Vereenidge Oost indische Compagne*) people. The VOC was a Dutch trading association founded in 1602 by the Dutch government. The VOC was founded in order to face trade competition with Chinese and Portuguese traders. With the expansion of the VOC in Indonesia, the need arose for its members, especially in managing the assets left by the Dutch, for the benefit of their heirs in the Netherlands or those who died in war due to trade competition, which could result in losses for children who were not yet adults with the emergence of legal vacuums both in terms of individual law, family law, and inheritance law.<sup>11</sup>

---

<sup>8</sup>Salim HS, *Introduction to Written Civil Law (BW)*, Sinar Grafika, Jakarta, 2014, page 137

<sup>9</sup>Presidential Instruction No. 1 of 1991 concerning the Compilation of Islamic Law

<sup>10</sup>Subekti, *Principles of Civil Law*, Intermasa, Jakarta, 1994, page 95

<sup>11</sup>Interview with Mr. Bernardo Da Cruz, Semarang City Heritage Office, July 7, 2023

The Estates Office (BHP) was established based on the Ordinance of 5 October 1872, Stb 1872 No. 166 concerning the Indonesian Estates Office (Instruction for Weesmakers in Indonesie). After independence, the Estates Office (BHP) continued to function based on Article II of the transitional provisions of the 1945 Constitution of the Republic of Indonesia. Currently, the Estates Office (BHP) in carrying out its duties and functions is guided by the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 7 of 2021 concerning the Organization and Work Procedures of the Estates Office.<sup>12</sup>

The Estates Office (BHP) carries out its functions as regulated in Article 3, namely:

- a) Management and resolution of issues regarding guardianship, guardianship, assets whose owners are declared absent (afwezigheid), and inherited assets that are not managed (onbeheerde nalatenschap);
- b) Registration of general wills, opening and reading of secret/closed wills;
- c) Making a certificate of inheritance rights;
- d) Acting as curator in the management, settlement and implementation of liquidation of limited liability companies in bankruptcy matters;
- e) Settlement of third party money administration;
- f) Preparation of program plans, budgets, facilitation of bureaucratic reform, management of information technology and public relations, administrative and personnel affairs, management of financial affairs, state and household property as well as evaluation and reporting of the Inheritance Office (BHP); and
- g) Other duties based on statutory provisions.<sup>13</sup>

Other duties as referred to in Article 3 letter g of the Regulation of the Minister of Law and Human Rights Number 7 of 2021 are based on the provisions of laws and regulations that overlap or are related to the duties of the Estate Office (BHP). Other duties that can be carried out by

---

<sup>12</sup>Ibid

<sup>13</sup>Ibid

the Estate Office are to carry out other provisions that are valid in the eyes of the law, including:

- a) Representing people who refuse or are negligent in carrying out the separation of property after being ordered by the Judge and managing what they receive in relation to the separation of inherited property (division and distribution of inheritance) based on Article 1071 of the Civil Code;
- b) Representing private land owners whose owners or whereabouts of the owners are unknown in the case of liquidation of said private land based on Article 2 paragraph (2) of Law Number 1 of 1958 concerning the Elimination of Private Land;
- c) Receiving submission of documents relating to former BPPN assets (Article 9 paragraph (11) of the Minister of Finance Regulation Number 154 of 2020 concerning Management of Former National Bank Restructuring Agency Assets;
- d) Other legal norms regulated by various laws and regulations; and/or
- e) Court decisions and/or rulings that determine or decide that the Estates Office (BHP) is the party appointed to represent the civil legal interests of third parties.<sup>14</sup>

Handling of open or public will registration by the Estates Office (BHP), namely:

- a) Order the executor of the will, heirs and/or notary to submit an application for a will statement to the Central Register of Wills, Directorate of Civil Procedure, Directorate General of General Legal Administration, Ministry of Law and Human Rights of the Republic of Indonesia;
- b) Receive an open/public will from a notary or heir or executor of the will;
- c) Registering an open/public will at the Estates Office (based on the provisions of LN. 1848 No. 10 Articles 41 and 42 OV, in conjunction with Articles 937, 942 of the Civil Code).<sup>15</sup>

---

<sup>14</sup>Ibid

<sup>15</sup>Ibid

Handling of the opening of a closed/confidential will by the Estates Office (BHP), namely:

- a) Order the executor of the will, heirs, and/or notary to submit an application for a will statement to the Central Register of Wills, Directorate of Civil Procedure, Directorate General of General Legal Administration, Ministry of Law and Human Rights of the Republic of Indonesia;
- b) Receive a closed/confidential will and deed of deposit (*acte van depot*) from the notary who keeps the will;
- c) Opening a closed/secret will witnessed by the heirs, executor of the will, notary, and stated in the Minutes;
- d) Registering a closed/confidential will at the Estates Office (based on the provisions of LN. 1848 No. 10 Article 41 and 42 OV, in conjunction with Articles 937, 942 of the Civil Code).<sup>16</sup>



n  
ce Office in its position based on the provisions of Article 3 letter a of the Regulation of the Minister of Law and Human Rights Number 7 of 2021, is an agency authorized to issue a Certificate of Inheritance Rights (SKHW). The Certificate of Inheritance Rights (SKHW) is a deed issued by an official of the Inheritance Office (BHP) which contains information about the circumstances of the deceased, heirs, inherited property, and

<sup>16</sup>Ibid



the rights of each heir. The Certificate of Inheritance Rights (SKHW) is complete evidence of the circumstances of the deceased, heirs, inherited property, and the rights of each heir, and serves as notification to third parties, such as banks and land offices.<sup>17</sup>

In addition, Article 111 paragraph (1) letter c of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 16 of 2021 concerning the Third Amendment to the Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency Number 3 of 1997 concerning Provisions for the Implementation of Government Regulation Number 24 of 1997 concerning Land Registration, also regulates that a letter of proof as an heir which is one of the requirements for the transfer of land rights due to inheritance, one of which can be in the form of an inheritance certificate issued by the Inheritance Office (BHP), or commonly referred to as an Inheritance Rights Certificate (SKHW).

With the enactment of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 16 of 2021, the issuance of the Certificate of Inheritance Rights (SKHW) is no longer differentiated based on the population group of the testator. If previously the Inheritance Office (BHP) only served applications for Certificates of Inheritance Rights from the non-Chinese foreign eastern population group, now the Inheritance Office (BHP) can serve applications from all Indonesian citizens.

The issuance of a Certificate of Inheritance Rights (SKHW) by the Inheritance Property Center (BHP) is preceded by the process of submitting an application for a Certificate of Inheritance Rights which explains the heir's data and data on who is the heir. This presentation is then outlined in an official report which is the basis for the issuance of a Certificate of Inheritance Rights (SKHW) by the Heritage Center (BHP).

#### **4. Conclusion**

In the inheritance law of the Civil Code, Article 874 of the Civil Code is the basis that shows how a will or deed has a strong and high position in the series of civil inheritance laws. Where the will of the testator in the will can override the rights of the heirs based on the provisions of the Law.

---

<sup>17</sup>Ibid

In the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 7 of 2021 concerning the Organization and Work Procedures of the Estate Office, Article 3 regulates how the Estate Office carries out its role, namely open will registration, opening and reading of secret/closed wills, issuing certificates of inheritance rights, and division and distribution of inheritance (boedelscheiding).

In the implementation of inheritance distribution and for the good of the heirs, so that later it can anticipate the occurrence of disputes so that harmony and common good are created. The author provides several suggestions as follows:

- a) For heirs: leave a will to the heirs as wisely and fairly as possible, in accordance with the provisions of the applicable laws and regulations.
- b) For heirs: in order to maintain harmony in the family, be aware of and know the rights that you should receive in terms of inheritance as regulated by statutory regulations.

## **5. References**

### **Books**

- Adjie, H. (2016). *Compilation of Legal Issues in Notary and PPAT Practices (Selected Chapters of Notaries & PPAT)*. Indonesia Notary Community (INC).
- Az-Zuhaili, W. (2010). *Islamic Jurisprudence and Justice*. Translated by Abdul Hayyie al-Kattani, et al. Jakarta: Gema Insani.
- Dr. Munadi Usman, M. (2020). *Wills in the Legal System in Indonesia*. Yogyakarta: Pustaka Pelajar.
- HS, S. (2014). *Introduction to Written Civil Law (BW)*. Jakarta: Sinar Grafika.
- Subekti. (1994). *Principles of Civil Law*. Jakarta: Intermedia.
- Tjitrosoedibio, RS (1996). *Legal Dictionary*. Jakarta: Pradnya Paramita.

### **Legislation**

Civil Code

Compilation of Islamic Law

Presidential Instruction Number 1 of 1991

Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 7 of 2021

Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the  
National Land Agency Number 16 of 2021