

The Authority of Judges in Assessing the Validity of Deeds of Wills Made by Foreign Officials

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Abstract. *This study aims to analyze the authority of Indonesian judges in assessing the validity of wills made by foreign officials abroad and the legal consequences if the deed is declared invalid. The case is based on the illustration of Mr. Agus, an Indonesian citizen residing in the Netherlands and making a will before a Dutch notary by appointing his adopted son, a Dutch citizen, as the sole heir, without listing his biological children in Indonesia. The research method used is normative juridical with a statutory approach and case studies, through analysis of primary, secondary, and tertiary legal materials. The results show that Indonesian judges have full authority to assess the validity of foreign wills if the object of inheritance is located in Indonesia. If declared invalid, the deed loses its evidentiary force and inheritance is carried out based on the ab intestato system according to the Civil Code. The legal implication that arises is the exclusion of the rights of the beneficiary of the will (adopted son) because it does not meet the provisions of national law. This study emphasizes the need to harmonize national law with the principles of international civil law to provide legal certainty in cross-border inheritance cases.*

Keywords: Authority; Inheritance; Judge's; Law.

1. Introduction

The debate over the validity of foreign wills in Indonesian judicial practice has become a major focus for legal academics. Kamila and Sareal (2025) found that even though the will formally complied with legal requirements, the Supreme Court still declared it null and void because it contradicted national agrarian provisions.¹ This shows a gap between the concept of legal formality and its application in judicial practice.

¹Kamila, RT, & Sareal, MK (2025). Making a will by foreign citizens in Indonesia regarding land ownership rights (Study of Supreme Court Decision Number 486 K/Pdt/2020). Face of Law, 9(1), 304–318. <https://doi.org/10.33087/wjh.v9i1.1717> accessed on 10/08/2025

Normatively, the Civil Code regulates the procedures for making and the requirements for the validity of a will in Articles 875–945. Ideally, these provisions should provide legal certainty for the parties involved in a will. However, the reality is different. Judges still face challenges in reviewing wills drawn up abroad, particularly regarding harmonization with national law in force in Indonesia.

Nugroho's research (2022) confirms that these difficulties arise because there are no clear technical guidelines for judges in assessing foreign deeds.²As a result, inconsistencies arise in judicial practice, with judges interpreting foreign wills differently. This creates legal uncertainty in cross-border inheritance, which should be minimized through more comprehensive regulations or guidelines.

On the other hand, research in the Syntax Literate Journal states that in principle, foreign citizens have the same status as Indonesian citizens in making wills.³However, in practice, judges' interpretations often differ. Judges tend to limit the scope of foreign nationals' authority, particularly when it comes to land, which can legally only be owned by Indonesian citizens. This gap further emphasizes the gap between legal theory and judicial reality.

Furthermore, negligence by notaries in drafting deeds also contributes to legal issues. The Tora Journal notes that notaries often focus solely on formalities, while often ignoring the legal substance underlying the deed.⁴ Practices like this have the potential to give rise to legal conflicts in the future, especially when the deed is tested in court.

The gap between what should be normatively applicable and what actually occurs in practice requires clear identification of the problem. This identification is crucial for mapping the limits of judges' authority in assessing foreign wills, thereby creating consistency in court decisions and increasing legal certainty for the public.

This study aims to analyze the authority of Indonesian judges in assessing the validity of wills made by foreign officials abroad and to evaluate the legal implications of their cancellation for heirs in Indonesia.

2. Research Methods

The research method used in this study is a normative juridical method with a statutory and case-based approach. This approach is used to examine the

²Nugroho, R. (2022). Guidelines for testing foreign deeds by judges: a case study of international civil law. *Journal of Law and Justice*, 10(2), 100–118.

³Leonardy, A., & Gunawan, R. (2023). The position of foreign citizens in making wills in Indonesia. (2023). *Jurnal Syntax Literate*, 8(5), 14581–14592. <https://jurnal.syntaxliterate.co.id/index.php/syntax-literate/article/view/14581> accessed on 10/08/2025

⁴ Maria Magdalena Siregar (2022) Legal analysis of negligence in making a will by a notary. *Jurnal Hukum Tora*, 9(Special Issue), 185–201. <https://ejournal.fhuki.id/index.php/tora/article/download/544/257> accessed on 11/08/2025

authority of judges in assessing the validity of foreign wills based on applicable positive legal provisions and relevant court ruling practices.

This research is descriptive-analytical in nature, systematically describing and analyzing legal regulations relating to judges' authority over foreign wills, then linking them to their implementation in court. Data collection was conducted through a literature review, examining relevant laws and regulations, legal literature, scientific journals, and court decisions.

The data analysis method used is qualitative analysis, namely processing secondary data obtained from legal materials to then be analyzed in depth so that conclusions can be drawn according to the research objectives.

3. Results and Discussion

3.1. The Authority of Indonesian Judges in Assessing Foreign Wills

The research results show that judges in Indonesia have the authority to assess the validity of foreign wills submitted in court proceedings. This authority is based on the principle of *lex fori*, namely the law of the country where the case is being heard, which serves as the basis for examination. Therefore, even if a will is valid under the law of the country of origin, Indonesian judges still have the authority to assess its compliance with national law.

This is in line with the view of Subekti (2008) who emphasized that judges in civil cases do not only play a passive role, but also play an active role in assessing whether an agreement or deed is in accordance with national legal provisions.⁵

Furthermore, Sudikno Mertokusumo's theory of judicial authority explains that judges have the freedom to invent law (*rechtsvinding*) when written legal norms are inadequate. Therefore, judges, when assessing foreign wills, are not only bound by normative texts but must also consider the principles of justice, legal certainty, and expediency (Mertokusumo, 2010, p. 25).⁶

From a comparative legal perspective, in the Netherlands, for example, judges tend to be more flexible in accepting foreign wills as long as they meet the formal requirements of the country of origin. However, in Indonesia, judges place greater emphasis on national legal interests, particularly regarding land ownership. This demonstrates the differing paradigms of cross-border inheritance law, which poses a unique challenge in international judicial practice.

3.2. Legal Consequences of a Foreign Will Deed that is Declared Invalid

The annulment of a foreign will by a judge has significant legal implications for the parties. The heirs originally designated in the will lose their rights, and the

⁵Subekti, R. (2008). Principles of Civil Law. Jakarta: PT Intermasa, pp. 25-26

⁶Mertokusumo, S. (2010). The Discovery of Law: An Introduction. Yogyakarta: Liberty. p. 25

distribution of the estate reverts to the provisions of applicable national inheritance laws. This is in accordance with Article 830 of the Civil Code, which states that a new inheritance is opened upon the death of the testator and must be distributed according to applicable Indonesian law.

In the case of Mr. Agus, who made a will in the Netherlands for his adopted son, the Indonesian judge's cancellation of the deed resulted in the adopted son not receiving inheritance rights under the will. Instead, the inheritance was distributed to the legal heirs under Indonesian law, namely the testator's blood relatives. This view aligns with Wirjono Prodjodikoro's (1993) opinion, which asserts that Indonesian inheritance law prioritizes the interests of heirs according to bloodline over the testator's personal wishes.⁷

The legal consequences of revoking a foreign will also have practical consequences. First, disputes arise between heirs due to differing interests. Second, legal uncertainty arises for those originally designated as heirs in the foreign will. Third, issues arise regarding legal protection for adopted children, who in practice are still in a weaker position than blood heirs. An article in Forikami (2023) also adds that inherited assets abroad often face obstacles due to the lack of harmonization of international inheritance laws and differing administrative procedures.⁸ Thus, the cancellation of a foreign will is not only a formal matter, but also has sociological and legal impacts that must be handled carefully by the judge.

Indra dewi (2024) emphasized in her research that the cancellation of foreign wills has the potential to create legal uncertainty for foreign heirs. She argued that judges must be careful to ensure that the cancellation of the will does not result in discrimination or violate the principle of legal protection for the vulnerable.⁹

3.3. Normative and Practical Gap

This research found a gap between the normative provisions of the Civil Code and court practice. The Civil Code allows individuals the freedom to make a will as long as they meet the formal requirements. However, in practice, judges often annul foreign wills because they are deemed inconsistent with national agrarian law principles and Indonesian legal interests.

Sudikno Mertokusumo (2010) emphasized that judges in finding the law should not be trapped by normative texts alone, but must consider the values that exist in society.¹⁰ This confirms that Indonesian judicial practice places more emphasis

⁷Prodjodikoro, W. (1993). *Inheritance Law in Indonesia*. Bandung: Mandar Maju, pp. 15-16

⁸Forikami. (2023). Legal certainty regarding inherited assets abroad. *DasSollen Journal*, [PDF]. https://journal.forikami.com/index.php/dassollen/article/download/734/511/5727?utm_source=chatgpt.com accessed on August 10, 2025

⁹Indradewi, AA (2024). Legal consequences for foreign heirs of wills made by Indonesian citizens abroad. *Jurnal Privat Law*, 10(1). <https://doi.org/10.20961/privat.v10i1.60634> accessed on August 10, 2025

¹⁰Mertokusumo, S. (2010). *The Discovery of Law: An Introduction*. Yogyakarta: Liberty. pp. 37-38

on protecting national legal interests than on applying the universal principles of international inheritance law.

This gap is further exacerbated by the negligence of notaries, who sometimes focus only on the formalities of the deed without delving into the legal substance. In some cases, notaries fail to anticipate potential cross-jurisdictional conflicts that could arise. However, according to Gustav Radbruch's theory of legal certainty, laws must not only be clearly written but also provide certainty for the public.

On the other hand, legal certainty often clashes with the principle of justice. The case of an adopted child in a foreign will demonstrates that even though the deed is formally annulled, from a social justice perspective, the adopted child actually deserves legal protection. This is the judge's dilemma in reconciling legal norms, the principle of certainty, and a sense of justice.

The gap between normative theory and judicial practice demands clear guidelines for judges in assessing foreign wills. Without such guidelines, judges are likely to interpret them differently, creating legal uncertainty. Standardizing assessment standards is crucial to prevent judicial discretion from leading to multiple interpretations in judicial practice.

This urgency was also emphasized by Soerjono Soekanto & Sri Mamudji (2006), who stated that normative legal research must be able to provide certainty of direction in the formation of law. Therefore, a Supreme Court regulation (Perma) or technical guidelines are needed that judges can use when dealing with foreign wills.¹¹

Furthermore, harmonizing national law with international law is an unavoidable necessity in the era of globalization. Many Indonesian citizens living abroad make wills in their countries of domicile. Without clear regulations, cross-border inheritance disputes will increase and create legal uncertainty.

With a clear identification of the problem, it is hoped that firmer parameters can be formulated regarding the limits of the judge's authority in assessing the validity of foreign wills, so that legal certainty and protection for interested parties can be created.

4. Conclusion

Based on the research and discussion, it can be concluded that judges in Indonesia have full authority to assess the validity of foreign wills based on the *lex fori* principle. Although the deed is valid under the law of the country of origin, the judge can still annul it if it conflicts with national law, particularly regarding land ownership by foreign nationals as regulated in the UUPA. The annulment of a foreign will has significant legal consequences, namely the transfer of inheritance

¹¹Soekanto, S., & Mamudji, S. (2006). Normative Legal Research. Jakarta: Rajawali Pers, pp. 13-14

distribution to the legal heirs according to the Civil Code. This indicates a gap between normative provisions and judicial practice, where the principle of legal certainty often clashes with the principle of justice, especially for parties such as adopted children whose position is still weak in the Indonesian inheritance law system. To address these issues, specific technical guidelines or regulations are needed to serve as a reference for judges in assessing foreign wills, for example through a Supreme Court Regulation. Furthermore, harmonization between national law and international legal principles needs to be strengthened to create legal certainty and justice for parties involved in cross-border inheritance disputes. The role of notaries must also be enhanced in ensuring that wills not only fulfill formalities but also consider substantial aspects to avoid future legal conflicts.

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