
Juridical Analysis of Inheritance Law for Heirs Whose Presence Cannot Be Established According to the Civil Code

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ABSTRACT

The heirs whose whereabouts cannot be known are heirs who have lost news so that it is not known whether he is still alive or dead. Or it can be called a missing person. In fact, many heirs ignore the inheritance rights of heirs whose whereabouts cannot be traced. Based on this background, this research was conducted with the aim of explaining the inheritance regulations for heirs whose whereabouts cannot be determined and the legal consequences for heirs whose existence is known after the distribution of inheritance. The research method used in this study is normative legal research using secondary data in the form of laws, court decisions, and related literature. This research also shows that in practice, there are various problems in determining the whereabouts of unknown heirs, such as difficulties in finding sufficient information and evidence to determine the existence of heirs, as well as differences of opinion regarding whether unknown heirs are entitled to receive a share of the inheritance.

Keywords: Heir, Inheritance, Absence.

INTRODUCTION

In Indonesia, inheritance law is mainly regulated by Indonesian Civil Law (Perdata Law Book or KUHPerdata). Inheritance law plays an important role in regulating the distribution of a person's assets, properties and belongings after their death. The main aim is to ensure that the inheritance is distributed fairly and according to the wishes of the deceased (if there is a valid will) or according to the rules of succession law (if there is no will). Justice and equity are the main principles in inheritance law. While the specific rules and regulations governing inheritance may vary from one jurisdiction to another, the primary goal is to establish a framework that promotes equitable distribution, protects the interests of heirs, and upholds the wishes as expressed in their will, if applicable.

It is not uncommon for situations to arise where the whereabouts of certain heirs are unknown or cannot be determined in the inheritance settlement process. Such circumstances can indeed complicate the distribution of assets and prolong the settlement process. Dealing with missing or unknown heirs requires careful consideration and compliance with applicable laws and procedures. It is important to note that dealing with unknown or missing heirs can be complicated. They can provide guidance on applicable laws, procedures, and potential solutions to resolve the situation. Overall, dealing with the complexities that arise from unknown or missing heirs requires a combination of legal expertise, thorough investigation, compliance with legal requirements, and adherence to procedures established in the jurisdiction where the inheritance settlement takes place.

The Indonesian Civil Code does not explicitly regulate inheritance rights for unknown heirs. The Civil Code generally establishes rules regarding inheritance in Indonesia and identifies groups of heirs and each share of inherited assets. However, it does not provide specific guidance on how to handle the distribution of assets when the whereabouts of the heirs are unknown. In practice, the handling of unknown heirs in Indonesia is regulated by a combination of various legal provisions, such as the Inheritance Law, the Civil Code and court decisions. In general, the approach taken by Indonesian courts is to search carefully for

missing or unknown heirs and appoint legal representatives to act on their behalf if necessary.

It should be noted that dealing with unknown heirs can be a complex and challenging process. Therefore, it is advisable to seek guidance from a legal professional who specializes in inheritance law to help navigate the legal requirements and procedures involved.

According to A. Pitlo,¹Inheritance law, also known as succession law or probate law, refers to the body of legal rules and principles governing the distribution of a person's assets, property, and liabilities after their death. The main aim of inheritance law is to establish a framework for the orderly transfer of wealth and property from one generation to the next.

In article 838 of the Civil Code there are four things that cause heirs to not be able to receive an inheritance due to several reasons, namely:

1. he who has been sentenced for killing or attempting to kill the deceased person;
2. he who, by a judge's decision, has been accused of having slanderously filed an accusation against the heir, that the heir has committed a crime which is punishable by a prison sentence of five years or a more severe punishment;
3. he who has prevented the deceased person by force or actual action from making or withdrawing his will; he is the one who has embezzled. destroying or falsifying the deceased person's will

RESEARCH METHODS

This research uses normative legal research. This research is based on an analysis of primary and secondary legal sources, such as the Civil Code, court decisions, as well as legal literature and related writings. The research steps carried out include collecting data from these sources, then analyzing and interpreting the data in a systematic and structured manner, resulting in conclusions and recommendations related to the problem being studied. The normative legal research method itself aims to identify and analyze applicable legal regulations, so that it can provide a clearer understanding of legal issues related to the problem being studied.

RESULTS AND DISCUSSION

Arrangement of Inheritance Rights for Heirs whose Existence Cannot Be Determined

In Indonesia, guidelines for inheritance issues are mainly regulated by the Civil Code and the Compilation of Islamic Law for Muslims. Article 830 which states "inheritance occurs due to death". However, this must take into account the rights of other heirs who are more closely related. The transfer of inheritance can have various impacts on the heirs, both practically and emotionally. Redistribution of wealth from one generation to the next, potentially leading to a redistribution of assets. This can have wider social implications, as it can influence wealth inequality and economic inequality in a society. It is important to recognize that the impact of an inheritance on heirs can vary greatly depending on individual circumstances, family dynamics, and the nature of the assets inherited. Emotional, financial, and relational consequences may vary from person to third party.

The right to inheritance refers to an individual's legal right to receive a portion of a deceased person's assets and property. This is based on the principle that certain people, usually family members, have a legal claim to a share of the deceased person's estate. The right to inheritance is generally recognized as a fundamental aspect of property and family law in many jurisdictions. The specific rights and privileges of heirs may vary depending on the laws and cultural practices applicable in a particular country.

It is important to note that inheritance laws can differ significantly between jurisdictions and may be influenced by cultural or religious practices. Consulting with a legal professional knowledgeable in the

¹ A. Pitlo Hukum Waris Menurut Kitab Undang Undang Hukum Perdata Belanda, terjemahan oleh Isa Arief [Jakarta Intermedia 1979] hlm. 1.

inheritance laws of the relevant jurisdiction is advisable to understand the specific rights and entitlements associated with inheritance in a particular context.

In Indonesia, the inheritance rights of heirs are regulated in the Civil Code. According to law, heirs have the right to inherit the deceased's assets, including assets and liabilities. In general, inheritance rights are divided equally among heirs, unless the deceased has made a special will stating otherwise. The inheritance rights of heirs can also be affected by the existence of debts or obligations that must be settled from the assets left by the deceased.

The inheritance rights of heirs in Indonesia can also be affected by the presence of unknown heirs or heirs whose whereabouts cannot be determined. In such cases, the inheritance can be distributed among known heirs, with the remaining assets held by the state until such time as the unknown heirs come along. It is important to note that inheritance rights in Indonesia can vary depending on factors such as the type of property involved and the relationship between the deceased and the heirs.

Regarding inheritance rights for heirs whose whereabouts cannot be determined and who are absent, this is specifically regulated in the Civil Code, namely in Book One Chapter left his residence either with permission or without permission and it is now unknown whether the person is dead or still alive (Syarifuddin, 2005). A person whose whereabouts cannot be determined can also be said to be a missing person.

Based on Article 830, since then the heir has the right to inherit the testator's inheritance. Article 463 regulates people who are thought to have died, which states that a person who has left his residence without giving power of attorney to a representative, then under the authority of the prosecutor, the local district court orders the Inheritance Hall to manage his assets and take care of all his interests and when he returns home then all rights must be given to those who are absent. 467 of the Civil Code explains that regarding people who are thought to have died five years after their last news, the local court has the right to summon other people to prove that the absent person is still alive, this must also be included in the newspaper in accordance with the provisions of Article 468 of the Civil Code.

According to Sudikno, "if the heir cannot be found or identified, it can complicate the inheritance settlement process, then the inheritance rights will be lost and will be given to other living heirs. However, if the heir then appears, he is still entitled to receive the share that has been determined for him in the distribution of the inheritance, even though he cannot ask for a share of the inheritance that has been given to other heirs."² Apart from that, there is also a need for legal protection for heirs whose whereabouts cannot be determined. According to M. Yahya Harahap, "if the heir cannot be found or identified, then the inheritance rights will be lost and will be given to other living heirs. However, if the heir appears after the distribution of the inheritance, he is still entitled to the share determined for him in the distribution of the inheritance. However, if the heir who has received part of the inheritance feels that he has been disadvantaged because of the appearance of another heir, then he can file a claim for compensation against the heir who then appears."³ Regarding legal protection for heirs who are absent, remember that in accordance with the provisions of Article 463 of the Civil Code, their rights can still be fought for as heirs. And, the provisions of Article 467 of the Civil Code also provide legal certainty regarding the right to life of an heir who is absent.

Legal consequences for heirs whose whereabouts are known after their inheritance is divided

In the context of inheritance law, there are three main elements regarding the position of heirs:

- Right of Inheritance: Heirs have the legal right to inherit assets and property from the deceased. These rights are usually determined by the applicable laws and regulations governing inheritance in a particular jurisdiction. The right to inherit may be based on legislation, such as the Civil Code, or on religious law, depending on the religion of the deceased person and the religious laws applicable in that jurisdiction;
- Order of Heirs: The position of heirs is determined by the order of heirs which determines

² Sudikno Mertokusumo, 2017, *Hukum Waris*, Liberty, hal. 168-170.

³ M. Yahya Harahap, 2018, *Hukum Perdata: Pengantar Ilmu Hukum dan Tata Hukum Indonesia*, Sinar Grafika, hal. 275-276..

the priority or hierarchy among potential heirs. The order of succession may vary depending on the legal system and cultural or religious traditions of a particular country. Commonly recognized heirs in many jurisdictions include the spouse, children, parents, and siblings of the deceased, but the specific order and rules may vary; and c) Inheritance Share: The position of the heirs also determines their share or portion of the inheritance. Distribution of inheritance can be based on equal distribution among all heirs or on a specific distribution scheme regulated in applicable law. The share of the inheritance can be influenced by factors such as the number of heirs, the existence of a will or testament, debts or obligations that must be settled, and special terms or conditions set by the deceased.

According to Article 953 of the Civil Code (Civil Code), people who are prevented from obtaining inheritance include:

1. Persons who have been sentenced to criminal penalties for killing or attempting to kill an heir;
2. A person who has intentionally harmed or hastened the death of the testator;
3. Persons who have resisted or violently obstructed the heir in making or revoking a will or in carrying out other legal acts relating to inheritance;
4. People who have committed acts of violence or threats against heirs or other heirs to take or maintain inheritance rights; And
5. People who have committed fraud or embezzlement of the assets of an heir or heir.

In this case, people who are prevented from obtaining inherited assets are excluded from their inheritance rights, so that the assets can be distributed to other heirs in accordance with applicable provisions.

Apart from that, the Civil Code also regulates the groups of heirs which are divided into four groups, namely:

1. Group I: children, grandchildren and other direct descendants of the heir.
2. Group II: the testator's parents and siblings.
3. Group III: the heir's grandfather/grandmother and the heir's grandfather/grandmother's siblings.
4. Group IV: other parties who are related to the testator, such as cousins or uncles/aunts.

Apart from these group divisions, the Civil Code also recognizes that there are four types of heirs, namely:

1. Hereditary Heirs (Descendants)

Hereditary heirs or descendants are a group of heirs who have a vertical kinship relationship with the testator. This group consists of children, grandchildren, great-grandchildren, and so on.

2. Lateral Heirs (Siblings and Half-Brothers)

Lateral heirs or siblings/siblings are a group of heirs who have a horizontal kinship relationship with the testator. This group consists of siblings and siblings.

3. Heirs of Husband/Wife

Husband/wife is the expert wAris who is related by marriage to the heir.

4. Agnatic Heirs

Agnatic heirs are a group of heirs who are related to the testator through the father's line (male lineage). This group consists of grandfathers, uncle, male cousin, and so on.

Regarding the issue of heirs whose existence cannot be ascertained by a decision that considers the absent heir to have died, their position is replaced by an heir immediately after the heir's death. Inheriting a position gives the heir the right and obligation to replace the person whose position he replaces. Regarding this replacement, it is regulated in Article 841 of the Civil Code. According to Article 468 of the Civil Code, it is stated that after a court decision states that the absent person is suspected of having died, his position will immediately be replaced by a replacement heir. Those who are entitled as replacement heirs are the husband or wife left behind by the absent person or the children of the absent person or also the blood relatives of the absent person according to the distribution on a stake-by-stake basis.

Apart from that, issues regarding the legal consequences for heirs whose whereabouts cannot be determined returning home can create challenges in the inheritance settlement process. The legal consequences for missing heirs will depend on the specific laws and procedures of that jurisdiction. If

missing heirs cannot be found within a certain period of time or after careful efforts are made, their inheritance rights may be threatened. In some jurisdictions, if heirs cannot be found, their share of the inheritance may be forfeited or redistributed among the remaining heirs.

In certain cases, if an heir cannot be found, the inheritance may be subject to escheat, meaning reversion to the state or government. Escheat laws vary between jurisdictions and determine how unclaimed property or assets are handled. In some situations, the court may appoint a legal representative to act on behalf of the missing heir. A legal attorney will guard potential missing heirs' share of the inheritance until their whereabouts are determined or until the court makes a decision on the division of assets. If the missing heirs eventually reappear or are found, they may have a chance to claim their inheritance rights. The legal representative or executor of the estate will then work to reconcile the heirs' claims and distribute the assets accordingly.

CONCLUSION AND SUGGESTION

Conclusion

According to the Civil Code, if the whereabouts of the heir cannot be determined, then his share of the inheritance will be distributed to other known heirs. The unknown heir's share will be divided among the known heirs according to their respective shares. If the existence of an heir cannot be determined and there are no known heirs, then the inheritance is considered to be empty. In such cases, the inheritance will be transferred to the state. It is important to note that the specific procedures and requirements for dealing with the inheritance of unknown heirs may vary in practice and may also be subject to interpretation by the courts.

In general, after an inheritance is divided among known heirs, the legal consequences for the heirs whose existence is later discovered can vary depending on the circumstances and the laws applicable in the jurisdiction. The following are some possible scenarios, namely no legal consequences, additional distribution, legal proceedings.

Suggestion

1. There needs to be clearer confirmation or regulation in the Civil Code regarding inheritance rights for heirs whose existence cannot be determined. This can facilitate the process of settling inheritances in the future and prevent differences in views and interpretations that can be confusing.
2. In practice, there needs to be a standard operating procedure (SOP) or clear guidelines for dealing with the problem of heirs whose whereabouts cannot be determined. This can make it easier for related parties to handle these problems and prevent errors or uncertainty in the inheritance settlement process.
3. In legal cases regarding heirs whose whereabouts cannot be determined, it is necessary to carry out further analysis of the factors that influence the judge's decision in deciding inheritance rights. This can provide broader and more comprehensive insight into this problem and can be used as a reference in solving similar problems in the future.
4. It is hoped that these suggestions can become a reference in further development and research regarding juridical analysis of inheritance law for heirs whose existence cannot be determined according to the Civil Code in Indonesia.

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