

**JURIDICAL REVIEW IN DETERMINING THE HEIR AND THE AMOUNT OF EACH SHARE BASED ON THE WESTERN INHERITANCE LEGAL SYSTEM**

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**ABSTRACT:** Inheritance law is currently a question that is widely questioned among the public, considering that there are still many people who do not realize the importance of inheritance law or may not know and understand how inheritance issues must be resolved. Not infrequently when heirs have to share inheritance, disputes arise that don't need to happen, if each party can realize and understand the applicable inheritance law. Starting from the background above, the author is interested in raising inheritance law, especially related to western inheritance law. the question of how to determine the heirs and how to determine the share/potie of each of the heirs. The western inheritance law system regulates how to determine heirs either based on blood relations or because of a will, but given the breadth of inheritance issues, in this paper, the author limits the determination and share of each heir, when the heir does not leave a will.

Keywords: Determination of heirs

## **INTRODUCTION**

Of course, all of us are familiar with the term inheritance. According to the Big Indonesian Dictionary, the meaning of inheritance is inheritance. While Inherit means to accept something that is left behind. Inheritance is an important matter in our lives. Not only for ourselves, but also for our future children and grandchildren. Even though it is important, this inheritance often creates various problems. Brotherly relations can fall apart if the distribution of inherited assets such as houses or land is not done fairly.

To avoid these conflicts, it is better if the distribution of inheritance is done fairly. The distribution will be fair, of course, if it is used by the applicable laws and regulations.

In Indonesia, until now there are still three systems of inheritance law in effect, this is considering that the Indonesian people have not succeeded in making a national inheritance law that is unification, therefore, to maintain the legal vacuum related to inheritance issues, the three systems of inheritance law can still be used. to become a guideline for Indonesian citizens in terms of resolving inheritance issues.

The three systems of inheritance law<sup>1</sup>, that is

1. The Islamic inheritance law system, which is intended for Indonesian citizens who are Muslim
2. Customary inheritance law system for Indonesian citizens who live in indigenous peoples' communities, and
3. The western inheritance law system / based on the Civil Code which is intended for Indonesian citizens who are non-Muslims and do not live in an indigenous community environment. (especially for Indonesian citizens of Eastern Foreign Chinese descent, which until now are quite a lot.)

He further talked about how the western inheritance legal system regulates inheritance issues. In the western inheritance legal system, two types of heirs are regulated, namely heirs based on marital relations and blood relations; and heirs based on a will. The first heir is called the ab intestato heir, while the second is called the testamentary heir. Ab intestato heirs are regulated in article 832 of the Civil Code, which states that those who are entitled to become heirs are blood relatives, both legal and illegitimate, and the husband and wife who have lived the longest. If all are not there, then the one entitled to become the heir is the state.

Given the breadth of inheritance issues regulated in the western inheritance law system, in this paper the authors limit it to problems 1) How to determine the heirs of blood relatives if the heir does not leave a will? and 2) How to determine the amount of each share that can be obtained by the heirs? This issue, according to the author, is important to raise, considering that many families face this when one of their relatives dies.

## **RESEARCH METHOD**

The research method used in this writing is normative legal research. Normative legal research, namely library law research. Legal research with a statutory approach, law, articles, and opinions from leading legal scholars. Sources of Legal Materials Data used in this study include primary legal materials, secondary legal materials, and tertiary legal materials

## **DISCUSSION**

### **How to determine heirs**

Before discussing the issue of how to determine the heirs, it's a good idea to first understand what is meant by inheritance; Prof Dr R Wiryono Prodjodikoro, SH: Meaning that inheritance is a matter of whether and how various rights and obligations regarding a person's wealth when he dies will be transferred to other people who are still alive<sup>2</sup> Whereas Pitlo defines that inheritance law is a collection of rules governing the law regarding wealth left by the deceased

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<sup>1</sup> Eman Suparman *Hukum Waris Indonesia*, Reflika Aditama, Bandung, 2005 hal.7

<sup>2</sup> Liliana Tedjosaputo, *Hukum Waris Ab Intestato*, Agung Pres, Semarang, 1991 hal.1

and the consequences of this transfer for those who acquire it, both in their relationship with them, and in their relationship with third parties.<sup>3</sup>

From the understanding of inheritance law above, it can be seen that for the inheritance process to occur, there are 3 elements needed, namely:

1. Heir
2. Inheritance
3. Heirs

An heir is a person who dies leaving assets, while the definition of inheritance is all the assets left by the person who died in the form of all the assets of the deceased after deducting all his debts or in other words a collection of assets and liabilities.

And what is meant by heir is a person who replaces the heir in a legal position regarding his wealth both in whole and for a certain part.<sup>4</sup>

Next, regarding what conditions must be met for an inheritance process to occur, certain conditions must be fulfilled, both by the person who is the heir and the person who is the heir.

1. Conditions that must be met by the heir.

According to Article 830, it is stated that: inheritance only takes place because of death. Thus, with the death of the heir, it can be said that the inheritance has been opened.<sup>5</sup>

2. Requirements that must be met by the heirs

To determine who has the position as heir when someone dies, of course, can be said to be easy, but if we don't know and understand how the provisions govern it, the question of inheritance will of course be difficult/complicated, it can even cause disputes/conflicts among the heirs.

In the western inheritance law system, the names of blood families are grouped into four groups, where as long as blood relatives of group one still exist, the next blood family group/second, the third, and fourth class will be hindered. As for the four groups of heirs<sup>6</sup> these, namely:

- a) The first group, is blood relatives in a straight line downward without boundaries, including children and their offspring and the husband or wife who is abandoned or who lives the longest.
- b) The second group includes the biological parents and siblings of the heir, both male, and female, as well as their offspring up to the sixth degree, and up to the seventh degree if there is the closest blood relative in group six who also inherits.
- c) The third group, includes grandfathers, grandmothers from the father's side and grandparents from the mother's side, and the next ancestor upward from the heir;

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<sup>3</sup> F.Satriyo Wicaksono, *Hukum Waris, Cara Mudah dan Tepat Membagi Harta Warisan*, Visi Media, Jakarta, 2011, hal 87.

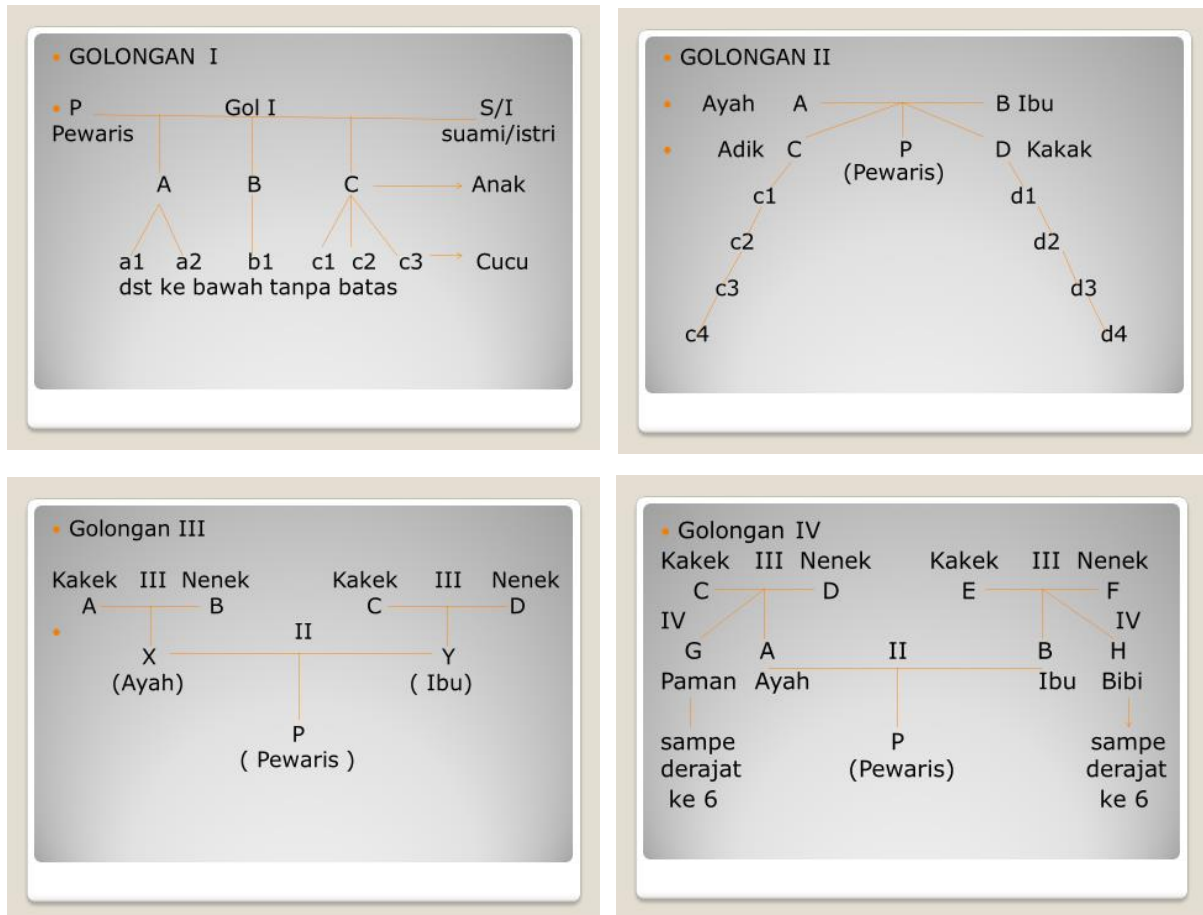
<sup>4</sup> Efendi Perangin, *Hukum Waris, Rajawali Pers*, Jakarta, 1997 hal 3-4

<sup>5</sup> Lihat pasal 830 KUHPerdara

<sup>6</sup> Op-cit .Eman Suparman. Hal.30

- d) The fourth group, which includes family members in the line to the side and other relatives up to the sixth degree (uncles and aunts from the father's side and the mother's side continue down to the sixth degree.)

The four groups above can be described as follows:



It should be noted in this regard that western inheritance law is based on no distinction between male and female heirs in terms of distribution and also does not differentiate birth order. There is only a stipulation that in order to determine who appears first as the heir, it must be traced from the first to the fourth class of heirs. If there are still class one heirs, then it will cover the next class of heirs. In addition, it should also be noted that within each group, the rule applies that whoever is closer in blood relationship to the heir will inherit first. To find out how close blood relations are, you can look at the degree, in this case, one degree per birth. For example, in group one, if there is a child in the first degree who is still alive, then he will inherit first, preventing his offspring (grandson/second degree) from being the heir. What is meant by blood family is a family relationship that occurs because of birth. Bearing in mind that in our society, apart from being known as blood relatives, we also recognize the existence of kinship families, namely family relationships that occur due to marriage, such as children-in-law, father/mother-in-law, brothers, and sisters-in-law.

Furthermore, regarding the problem of determining the heir, besides that we need to pay attention to what group/class a person belongs to in order to become an heir, it is still necessary to pay attention to other conditions, namely:

- 1) Heirs or heirs must already exist and still exist when the heir dies. this provision does not mean to reduce the meaning of Article 2 of the Civil Code, namely: "a child in the womb of a woman is considered as having been born, if the interests of the child so desire".
- 2) If he dies at birth, he is considered to have never existed. Thus, it means that the baby in the womb has also been regulated by law as an heir and is deemed entitled to inherit;
- 3) An heir must not be someone who is declared inappropriate (Onwaardig) <sup>7</sup> as stipulated in article 838 of the Civil Code or incompetent as stipulated in article 912 of the Civil Code.
- 4) Heirs do not refuse the inheritance

In addition to the several things mentioned above, in determining the heirs, it is also necessary to pay attention to the occurrence of death events, this is considering that there is a provision in Article 831 that regulates co-death.

Article 831 of the Civil Code states the following: If several people, one of whom is to become the heir of another, because of the same catastrophe, or one day have met their death, and it is not known who will die first, then it is considered that they have passed away at the same second, and the transfer of inheritance from one person to another did not take place because of it.

As a further explanation regarding the issue of inheritance, it is also necessary to understand the existence of rights owned by heirs as follows:

- 1) Saisine's Right This right comes from the French Adagium:<sup>8</sup>

"Le Mort Saisit Le Vif", (The dead hold on to the living). The meaning of the adage is: An heir automatically (sec. Automatic) at the death of the heir obtains ownership rights to the property and all obligations of the heir without taking any action.

Saisine's rights can be found in article 833 of the Civil Code which states:

"When the inheritor dies, all those who are with the will are appointed as heirs, as well as those who, by law, also obtain ownership rights to the deceased's assets. "

- 2) Petitio Hereditatis Rights (Article 834 of the Indonesian Criminal Code):<sup>9</sup>

"Each heir has the right to file a lawsuit to fight for his inheritance rights against all those who are good based on equal rights, whether without any basis for rights to control all or part of the inheritance as well as those who have treacherously stopped their control. He may file the lawsuit for the entire inheritance, if he is the only heir or only for a part if there are several other heirs.

- 3) The Right to Demand Distributions

According to Article 1066 of the Criminal Code, it is stated that:

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<sup>7</sup> Jurnal Ilmiah Hukum Dirgantara – Fakultas Hukum Universitas Suryadarma | Volume 5 No.1, September 2014

<sup>8</sup> Op-cit Liliana Tedjosaputro hal.8

<sup>9</sup> ibid

Paragraph 1 No one who has a share in the inheritance is obliged to accept that the inheritance continues undivided.

Paragraph 2 Separation of assets can be demanded at any time even though there is a prohibition against doing so

Paragraph 3 However, an agreement can be made for a certain period not to do so

Paragraph 4 Such an agreement is only binding for five years, however, after the expiration of this time limit, the agreement can be renewed.

From the provisions above, we can see that every heir at the time of open inheritance, besides having *saisine* rights and *hereditatis petitio* rights, also has the right to demand immediate distribution of inheritance.

Furthermore, in determining the heir, several things also need attention when there is a change of place/*plaats vervulling*<sup>10</sup>. Change of Place is the right of a person to act as a substitute in the degree and all rights of the person being replaced according to the article. 841 KUPerdata requirements that must be met in the event of a change of place, namely:

1. The heir who is replaced must have died more Formerly
2. The person acting as a surrogate must be of legal descent from a replaced person.
3. The successor must meet the requirements as an heir in general, namely:
  - It existed and was still there when the Heir died
  - Not fired for inappropriate and did not refuse

Substitution of places is possible in 3 cases:

- a. Substitution of places in goal I (psl 842)
- b. Substitution of places in goal II (psl 844)
- c. Substitution of places in goal IV (psl 845)

Substitution of places in group I can continue downwards indefinitely as long as they are still there, while changes of place in groups II & IV are only possible up to the 6th degree, it can be more up to the 7th degree if there are close relatives of the 6th degree who are still inheriting (Article 861)<sup>11</sup>

### **Rejecting Inheritance**

In the event of a refusal by one/or several heirs, the following provisions shall apply:

1. Can only be done when inheritance is open
2. Heirs who refuse have never been accepted, either quietly or decisively.
3. Heirs who refuse cannot be replaced by their descendants
4. The right to refuse inheritance cannot be canceled because it has expired<sup>12</sup>

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<sup>10</sup> Efendi Perangain, Op.Cit, hal 10-11.

<sup>11</sup> Pasal861 Kitab Undang Undang Hukum Perdata

<sup>12</sup> Untuk memahami lebih lanjut bagaimana proses penolakan warisan dan akibat hukumnya dalam Hukum Waris Perdata Barat bisa dikaji dalam Pasal 1057, 1058,1059 dan 1060 KUH Perdata

## Distribution of Inheritance

In determining the size of the share of each of the heirs, it is necessary to be guided by the distribution procedure as stipulated below.<sup>13</sup>:

### 1. Distribution of inheritance in group one

According to article 852 paragraph 2, it is stated:

They inherit head by head, if with the heir they are related in the family in the first degree and each has rights because of himself, they inherit stake by stake, if all of them or only a part of them act as substitutes

From the provisions above, we can see that if he inherits because of his own rights, then his share is head by head, meaning that it is equally equal without distinguishing between sons and daughters. . The definition of stake here is a group of heirs who replace the person who died earlier. Furthermore, according to Article 852 a it is stated:

The share of a husband or wife who lives longer has the same share as a child born from the first marriage. However, if he is a husband or wife in a second marriage, etc., then the share is maximum

### 2. Distribution of inheritance into groups of two (Article 854 to Article 857) The heirs of goal II appear after the heirs of goal I do not exist. If you are still there, according to article 854, the distribution is as follows:

Mr and Mrs got:

- 1/3 if there is only 1 sibling.,
- 1/4 if there are more than 2 siblings

The sibling's share is the remainder after deducting the parent's share. For parents, there are special rules that guarantee that their share will not be less than 1/4 (one quarter) of the inheritance even though they jointly inherit the heirs;

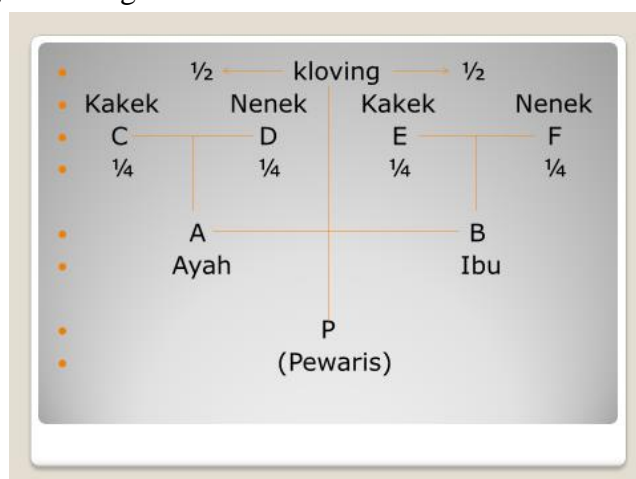
### 3. Distribution of Inheritance in groups of three

Goal III appears after goals I & II are absent

According to Article 858 of the Civil Code, the distribution is as follows:

Before the division of the inheritance is carried out, it is divided into two parts, 1/2 each for the father's pancer and 1/2 for the mother's pancer.

After cloving/splitting, then the two sides/halflings do not affect each other, each has its own way of inheriting according to its circumstances.



<sup>13</sup> Op-cit Lilianan Tedjosaputo hal.20

Distribution of inheritance in groups of four Group four comes after group three, no one has the right to inherit. Provisions governing inheritance in groups of four can be found in article 858 paragraph 2 which states as follows:

"In the event that there are no brothers and sisters and there are also no relatives in the two lines and above, then all the closest blood relatives in each line, each gets half of the inheritance".

What is meant in the article above, those belonging to group four are blood relatives in a sideways line and their descendants up to the sixth degree (uncles, aunts, paternal uncles and maternal uncles and aunts and their descendants up to the sixth degree), the distribution of which is for each of the paternal and maternal line gets half<sup>14</sup>

## CONCLUSION

From what has been described above it can be concluded that;

1. In terms of determining who is entitled to become an heir at the time of death/open inheritance, then in the western inheritance law system what needs to be guided is determining in advance which class the person belongs to and whether the conditions for becoming an heir must be fulfilled or not, with of course also paying attention to the time of the event of death whether the death occurred together or not. and also in the event of a change of place / plaats vervulling whether the person meets the requirements or not to be able to replace.
2. In terms of determining the size of each share, one thing that needs to be guided by is how many groups the person belongs to, bearing in mind that in each group the provisions for the distribution of inheritance apply in accordance with the provisions in that group. Which in essence, if he inherits because of his right his share is head by head meaning it is equally equal without distinguishing between sons and daughters, whereas if he/they inherit based on the change of place his share is stake by stake. The stake referred to here is a group of people/heirs who replace the person who died earlier.

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<sup>14</sup> Op-cit Liliana Tedjosaputro, hal.24



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