

# Analysis of Loss of Heir Rights on the Consequence of Activities Against the Law Control of Individual Assets (Example of Decision Case No: 601/Pdt.G/2019/PN. Jkt.Pst)

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## ABSTRACT

Inheritance law is a subset of family law that is heavily influenced by social conditions. Indonesia does not have a single inheritance law due to its pluralistic existence. If an heir's inheritance rights are violated, he has the right to sue. The judge agreed not to grant compensation to the defendant in his judgment No: 601/Pdt.G/2019/PN Jkt.Pst, and in the case of an act committed by the defendant, he nevertheless received a percentage of the inheritance, despite the fact that the act he committed had already violated the provisions of Article 838 of the Civil Code. Normative analysis was used as a research tool. The findings revealed that an heir who had been found to have committed an act considered unacceptable as described by Article 838 of the Criminal Code should no longer be eligible to inherit. This is the condition where the judge can decide thus, because the case refers to the Civil Law which is a family law which is very likely in terms of its forgiving element. Furthermore, the judge instructed the defendants to prove an illegal act in a criminal context first, so that the facts at the Civil Court trial would be clearer and could be considered by the judge while making decisions in court in a civil context.

**Keywords:** *The property rights of heirs are trampled on, Act in disobedience to the law, Inheritance regulation on another basis.*

## 1. INTRODUCTION

Inheritance law is one part of family law and is very closely related to society, because in essence living humans will inevitably experience death, so the problem of inheritance is something that is likely to exist in people's lives because, the definition of inheritance is the process of transferring assets from deceased person to the heirs. [1] The process of transferring the property is an event of inheritance from the deceased to the living who are their descendants automatically.

The regulation of inheritance law in Indonesia is still pluralism because Indonesia is a country that is rich in culture and customs, as well as its people who consist of various tribes, customs and various beliefs or religions that are adhered to by the people to this day. So that until now Indonesia still does not have a unified inheritance law, in Indonesia there are 3 (three) kinds of inheritance laws that apply in Indonesian society, namely: Customary Inheritance Law, Islamic Inheritance Law, and Western Inheritance Law.

The three inheritance laws that apply in Indonesia, namely Customary Inheritance Law, Islamic Inheritance Law and Western Inheritance Law, each of which has different rules and regulations.

Customary inheritance law because Indonesia is an archipelagic country consisting of various ethnic groups, religions, and different customs. This affects the law that applies in society, known as customary law. Customary law is an unwritten law but only in the form of norms that have developed for a long time and are used as guidelines that must be obeyed by certain communities in an area and only apply in that area with certain sanctions for those who violate it.

Customary inheritance law is heavily influenced by social or kinship structures. In Indonesia, customary inheritance law recognizes several kinds of inheritance systems.

- a. Individual Inheritance System: ie this system in which the heirs inherit the inheritance of the heirs individually. In general, this system is

applied to communities such as in Java and Batak and others.

b. Collective Inheritance System: namely where the heirs inherit the inheritance of the heirs together (collectively). This happens because the inherited assets are hereditary assets and cannot be divided between their respective heirs, in other words, the inheritance cannot be owned by one person alone, but must be owned jointly.

c. Mayorat system: the inheritance system in which the inheritance of the heir is only inherited to the eldest son .[2]

Islamic inheritance law. As it is known that the majority or the majority of Indonesian citizens are Muslims, it can be said that what regulates everything regarding the transfer of rights and obligations on the assets of a person who adheres to the Islamic religion after he dies to his heirs is contained in Islamic inheritance law originating or found in the Qur'an, the Hadith of the Prophet and also the *ijtihad* of Islamic jurists.

The form of inheritance or inheritance according to Islamic law is very different from the form of inheritance according to western inheritance law as regulated in BW (*Burgerlijk Wetboek*) and according to customary inheritance law. Inheritance or inheritance according to Islamic law is "a number of property and all rights of the deceased in a clean condition". that is, the inheritance inherited by the heirs is a number of property and all rights, "after deducting the payment of the debts of the testator and other payments caused by the death of the testator. [3]

Western inheritance law is included in civil inheritance law which is regulated in the Civil Code, including in the field or field of civil law. All branches of law that are included in the field of civil law have the same basic nature, among others, are regulatory and do not contain elements of coercion. But for civil inheritance law, even though it is located in the field of civil law, it turns out that there is an element of coercion in it.

The element of coercion in civil inheritance law, for example the provision of granting absolute rights (*legitime portie*) to certain heirs over a certain amount of inheritance or provisions that prohibit the testator from making provisions such as granting a certain part of his inheritance, then the recipient of the grant has the obligation to return the property. which has been granted to him in the inheritance in order to fulfill the absolute portion (*legitime portie*) of the heirs who have absolute rights, with due observance of Article 1086 of the Civil Code, concerning grants that must be inbren (income).[4]

In civil inheritance law, a principle applies, namely if a person dies (heir), then by law and immediately his rights and obligations pass to his heirs, as long as these rights and obligations are included in the field of

property law or in other words rights and obligations. and liabilities that can be valued in money. The civil inheritance law system has a distinctive feature that is different from other inheritance law systems, namely that it requires the inheritance of the testator to be distributed as soon as possible to those entitled to the property. Even if the inheritance of the heir is to be left in an undivided state, it must be approved by all heirs.[5]

According to article 834 of the Civil Code, an heir has the right to demand that everything including the inheritance of the deceased be handed over to him based on his rights as heirs.[6] This determination right resembles the right of prosecution of a person who owns an object, and according to its purpose the prosecution must be shown to the person who controls an inherited object with the intention of owning it. An heir who uses the right of prosecution, it is sufficient to file in his lawsuit that he is the heir of the deceased and that the object he is asking for is an inheritance.[7]

In civil inheritance law, it is known that there are two ways to obtain inheritance, namely:

1. The provisions of the law or *wettelijk Erfrecht or Abintestato* , namely heirs who have been regulated by law to get a share of the inheritance, because of kinship or blood relations with the deceased.
2. Testament or will or *testamentair erfrecht* , namely heirs who get part of the inheritance, because they are appointed or stipulated in a will left by the deceased.[8]

The provisions regarding the distribution of inheritance, that the method of dividing the inheritance is entirely left to the discretion of the heir himself at the time before death as stipulated in the thirteenth chapter of the Civil Code concerning wills. From the heir regarding the distribution of inheritance or a mutual agreement has been made, disputes often arise between the heirs related to the distribution of inheritance. This is due to the greedy nature of humans who want to control more than the inheritance obtained. To get the inheritance as desired, the heirs take all possible means to achieve their goals, either through legal means or by way of unlawful means.

From one of the disputes that arise, for example, one of the heirs intends to unlawfully control the inheritance given by the heir in the form of land and building rights and by using deceit to embezzle, damage or falsify the will given by the testator. With the intent to cheat or fool the other heirs.

An act committed by one of the heirs who intends to unilaterally control the inheritance is a form of action that violates applicable legal regulations or is referred to as an unlawful act. Unlawful acts are regulated in **Article 1365 of the Civil Code (KUHPerdata)**, which states: "Every act that violates the law and causes harm

to others, obliges the person who caused the loss because of his mistake to replace the loss." [9]

Acts against the law contain a very broad meaning, namely by interpreting the law is not the same as the law. Unlawful acts are not only contrary to the law, but also to do or not do something that violates the rights of others or is contrary to the obligations of people who do or do not do things that are contrary to decency or the nature of prudence, appropriateness and propriety in social life. . An act can be said to be against if it fulfills the following elements:

1. The act must be against the law  
Such actions must be contrary to the rights of others, their own legal obligations, good morals, etc.
2. The act must cause harm  
Losses caused can be in the form of material losses (can be valued in money) and immaterial losses (cannot be valued in money).
3. The deed must be done wrong  
An error can be intentional or negligent.
4. There must be a causal relationship.  
A causal relationship is a cause-and-effect relationship between an unlawful act and a loss.[10]

In a narrow sense, an act against the law is defined as "a person who violates the rights of others or has acted contrary to his own legal obligation".[11] Acts of violation of the rights of others, the rights violated are rights recognized by law, including but not limited to the following rights, namely personal rights, property rights , rights to freedom and right to honor and good name.[12] Also included in the category of unlawful acts if the act is contrary to a legal obligation of the perpetrator. By the term "legal obligation", what is meant is that an obligation given by law to a person, both written law and unwritten law. So not only contrary to the written law, but also contrary to the rights of others under the Act - legislation[13]

So with the unlawful act committed by one of the heirs, the other heirs who feel aggrieved can file a lawsuit in order to fight for their rights that have been violated in order to get justice in the distribution of inheritance, because of the actions of one of the experts. heirs who have committed acts against the law can change the mechanism for the division of inheritance that occurs.

One example is in the case that occurred in the decision No : 601/Pdt.G/2019/PN Jkt. Pst in the case contained in the decision, there is a family of a husband and wife who have or are blessed with 7 (seven) children, the husband (heir) has died first leaving a wife and 7 (seven) children along with inheritance or property legacy. In the applicable law, the inheritance or inheritance left by the husband becomes joint property or those entitled to under the provisions of the law must be divided among the heirs, namely a wife and 7 (seven) children.

However, in this case one of his children wants to unilaterally control the inheritance, the child (defendant) uses all means such as embezzling, falsifying grants, property rights and wills and deceiving one of his younger siblings (plaintiffs) and also deceiving or cheating, take advantage of and injure his own mother who was lying weak in bed sick, unable to walk, talk and unable to sign because of tremors. The defendant forced his mother to sign the deed of grant in front of a notary by using the thumbprint of her mother in order to control the inheritance individually or unilaterally.

In this case the child (the defendant) was found guilty by the judge for having committed a deviant act by abusing his rights as an heir and could be categorized as an unlawful act, therefore it could affect the mechanism in the distribution of inheritance. But in the judge's decision No: 601/Pdt.G/2019/PN Jkt.Pst the judge decided not to grant the compensation given to the defendant, and in the case of the actions committed by the defendant he still got part of the inheritance even though the actions he committed were have violated the provisions contained in Article 838 of the Civil Code, namely those deemed inappropriate to inherit and excluded from inheritance are:

- a. Those who have been convicted of murder or attempted murder of the heir.
- b. Those who, by the judge's decision, have been blamed for slanderously filing a complaint against the deceased, that is, a complaint has committed a crime which is punishable by a five-year prison sentence or a heavier sentence.
- c. Those who by force or action have prevented the deceased from making or revoking his will.
- d. Those who have embezzled, tampered with, or falsified the deceased's will.[14]

In this case, based on article 838 of the Civil Code, the defendant or the party who has violated one of the elements contained in article 838 of the Civil Code can be calculated regarding the application of the distribution of his inheritance.

In connection with the above description has prompted the author to express or discuss the problems that occur in the description above by focusing on the juridical analysis of the control of inheritance unilaterally by deceiving other parties.

## 2. METHOD

The type of research method used in this study is normative. The nature of this research is exploratory, descriptive, and explanatory. Types and sources of data include: the main material, namely the Civil Code, Decision Letter No: 601/Pdt.G/2019/PN Jkt.Pst, secondary material consisting of books and journals and non-legal material consisting of

KBBI. The research approach uses legal research and case research. The data analysis technique uses deductive logic.

### 3. DISCUSSION

#### 3.1 Issue

The problems that will be studied by the author in writing this proposal are: "How is the application of inheritance law to the loss of inheritance rights due to acts against the law of unilateral control of inheritance in the district court decision No: 601/Pdt.G/2019/PN Jkt.Pst in terms of article 838 of the Civil Code?"

#### 3.2 Discussion

As already described in Chapter III before, that in the judgment P trials were N egeri Jakarta Center No: 601 / Pdt.G / 2019 / PN Jkt.Pst , Mrs. Yanti Sariwati Tjiputra ( Tjie January Jan ) as Plaintiffs I, Mrs. Core Sariwati Tjiputra ( Tjie Jin Jin ) as Plaintiff II, Mr. Kian Djaya Tjiputra ( Tjie Hin Jan ) as Plaintiff III, Mrs. Sanny Sariwati Tjiputra ( Tjie San San ) as Plaintiff IV, and Mr. Mega Djaya Tjiputra as Plaintiff V filed a lawsuit against Mr. Sampaidjaja Tjiputra ( Tjie Hin Ol ) as Defendants , Mrs L anny Sariwati Tjiputra ( Tjie Lan Lan ) as Co- Defendant I, Maria Rahmawati Gunawan, SH as Co- Defendant II and the Head of the Land Office Jakarta Center as Co- Defendant III because the plaintiffs feel right to them as experts heir superbly infringed by the defendants are related .

On the date of 17 June 1974 Mr. Sentosa Tjiputra have died world in Jakarta as a place of residence which tercatatkan in the Deed of Death No. 497 / JP / 1974 Date 3 July 1974 issued by the Employee Beyond Ordinary Notes Civil Jakarta Center . Mr. Sentosa Tjiputra ( Heir ) left a wife and seven (7) children . In addition it was also Mr. Sentosa Tjiputra leave treasure relics ( property inheritance ) that form among others: A plot of land Hak Guna Building following the building house living are standing on top of umtuk hereinafter called the " land and buildings " and a place of business in Project Senen by name , "Store TS SENTOSA" . According to the Law of Inheritance which applies treasure relics of Mr. Sentosa Tjiputra be owned jointly and divided according to the law to the experts heir ie , a isetri and seventh (7th) children . Because According to Khairani Bakri [22] The definition of the Law of Inheritance in Civil or Waris West is the governing law of displacement or legal position of wealth a person after he dies, especially the migration of a fortune heir to another person or expert heir . which refers to the Civil Code, although not dijelaksan in detail about the notion of inheritance that , under Article 830 of the Civil Code describes that inheritance only lasts for their death. In case this then Inheritance Southwestern only be done if there is someone who died and left the estate as well as having

expert heir who legitimately on his estate that. According to Article 832 of the Civil Code describes in brief tetnatng who alone are entitled to receive property inheritance or are entitled to become proficient heirs are those family incest , both legitimate as well as outside of marriage which has ties with the heir , but if the testator wills in the will the people do not have blood relations or marital ties can also obtain inheritance from the heir . Therefore it is , in chapter IV, the writer wants to provide analysis of the loss of the right of inheritance on a result of acts against the law of mastery treasure heritage SCARA unilaterally if the terms of Article 838 of the Civil Code .

Regarding the cases were investigated occurred division of treasure relics Mr. Sentosa Tjiputra as an heir who is described as stated in the Deed Description Rights of Inheritance were made before a Notary with the division of each were given to the expert beneficiary as follows :

1. His wife, Mrs. A Jusari Liris received (half) of the share plus 1/16 (one-sixteenth) of the share or a total of 9/16 (nine-sixteenth) of the share .
2. Mr. Untildjaja Tjiputra, (formerly named Tjie Hin Ol) / the Defendant received 1/16 (one-sixteenth) of the
3. Mrs. Yanti Sariwati Tjiputra, (formerly Tjie Jan Jan)/Plaintiff I, received 1/16 (one sixteenth)
4. Mrs. Inti Sariwati (formerly Tjie Jin Jin)/Plaintiff II received 1/16 (one-sixteenth) share
5. Mr. Kian Djaya Tjiputra (formerly Tjie Hin Jan)/Plaintiff III received 1/16 (one-sixteenth) share
6. Mrs. Sanny Sariwati Tjiputra (formerly Tjie San San)/Plaintiff IV received 1/16 (one-sixteenth) share
7. Mrs. Lanny Sariwati Tjiputra (formerly Tie Lan Lan) / Co-Defendant I received, 1/16 (one sixteenth)
8. Mr. Mega Djaya Tjiputra/Plaintiff V received 1/16 (one-sixteenth) share

In the case that it is supposed to be the division of property inheritance h flow immediately realized in accordance with the division that has been determined , because according to Article 830 of the Civil Code of inheritance only take place because of the death. According to Endang Pandamdari , with the immediate death of the heir , all rights and obligations of the heirs are transferred to the heirs. So immediately the distribution of the inheritance will be carried out [23], Will but in case this does not happen the division of property inheritance that is where the treasure heritage are only controlled by one of the experts beneficiary is Mr. Hinggadjaja Tjiputra .

Where Mr. Sampaidjaja Tjiputra or referred to as the Defendant has begun to carry out arbitrary acts as if the one in power and as the owner of the "land and building" including the warehouse which is the inheritance (inheritance) of the father, by pressing and forcing the Plaintiff III in order to leave the "land and buildings" tersebut and asked to sign the Statement that has been created and prepared by the Defendants .

Defendant too often commit a fraudulent act and arbitrary fatal of t ergugat is to outwit Mother of his own who are already in a state of sickly lying in bed, unable to walk and talk and could no longer signatures as tremors of Parkinson rations ran must be in the blender fed by the nurse who takes care of it . To make the letter grant will it for the sake of interest and benefit her own that in which case it can be detrimental to experts heir others or the claimant in a way t ergugat prepare the necessary documents included to bring the Notary / PPAT or t sequence the second defendant to make a letter of grants will the recorded in the Deed of Grant No.17/2013 Dated July 12, 2013 . P erbuatan cheaters who do not ergugat against the law (PMH) which violate the provisions that have been regulated in Article 1365 of the Civil Code , namely : *"Every act that violates the law and bring harm to others, requires that the person causing the loss was because of his mistake to replace the loss ."* [24] According to M. Bashir PMH itself not only the things that conflict with the law, but also did or did not do an infringing the rights of others or in conflict with the obligations of those who do or do not do that is contrary to morality and the nature of prudence prudence , appropriateness and propriety in social life . [25] Its where p erbuatan is very detrimental p ara p enggugat because the Defendant has abused and deviating from the intent and purpose originally.

Where according to the theory of rights which are owned expert heirs are some rights that are owned expert beneficiary is Right Heredity Petition namely the right to sue a person or an expert heir others who mastered sebgain or entire property inheritance that be right .

In Article 838 of the Civil Code menjelaskan that were deemed not worth becoming an expert heir and excluded from the inheritance are:

1. Those who have been convicted of murder or attempted murder of the heir.
2. Those who, by the judge's decision, have been blamed for slanderously filing a complaint against the deceased, that is, a complaint has committed a crime which is punishable by a five-year prison sentence or a heavier sentence.
3. Those who by force or action have prevented the deceased from making or revoking his will.
4. Those who have embezzled, tampered with, or falsified the deceased's will.

While the P envoy P trials were N egeri Jakarta Center No: 601 / Pdt.G / 2019 / PN .Jkt.pst Defendants still get a piece of property inheritance are or are still regarded as an expert heir while the actions of the Defendant were included into Deeds Against the Law (PMH ) has violated the provisions are contained in article 838 of the Civil Code .

In case this judge can decide to so , because the cases are referred to the Law of Civil who is a Law Kinship were very big chance in terms of the elements pema afnya , then from it in terms of allowing the judge put the elements forgiving it , but if there is evidence that reasonably strong the action that has been done should indeed people who have been

doing things that are not who should get a piece of property inheritance or not entitled to again become an expert heir .

#### 4. CONCLUSION

From a series of inheritance dispute cases regarding the loss of inheritance rights due to unlawful acts (PMH) unilaterally controlling inheritance assets in terms of Article 838 of the Civil Code which the author has described, the legal issues to be discussed, research data, to the problem analysis that the author has done. , then the author draws the conclusion that in the case related to the Defendant, it has been proven that he has committed an unlawful act (PMH) which has been regulated in Article 1365 of the Civil Code where the actions of the defendant have exceeded the limit of his rights as heirs by abusing his right to control the inheritance given legally. individually or unilaterally by justifying any means such as deceiving other heirs, embezzling and falsifying Wills and Property Rights and forcing and injuring his own mother who is in a condition of Parkinson's tremor.

Which is where the defendant is proven to have falsified the Will Grant, where in the judge's decision that the Will Grant is invalid or null and void because the Will Grant was made by the Defendant by taking an action against the law (PMH)

Thus the defendant has been proven that the action he has taken is an act of unlawful acts (PMH) which has been regulated in article 838 of the Civil Code where the defendant should no longer be able to receive or get the inheritance given by the testator but in this case the defendant is still obtain inheritance even though they have violated what has been regulated in Article 838 of the Civil Code, namely those who are deemed inappropriate to inherit or who are no longer entitled to receive inheritance.

Meanwhile, in the Central Jakarta District Court Decision No: 601/Pdt.G/2019/PN.Jkt.pst the Defendant still gets part of his inheritance or is still considered an heir while the Defendant's actions have violated the provisions contained in article 838 of the Civil Code.

Which is where the judge can decide, because the case refers to the Civil Law which is a Family Law which is very likely in terms of the element of forgiveness, therefore in terms of allowing the judge to prioritize the element of forgiveness, but if there is strong enough evidence regarding the action what has been done should be that the person who has done these things is not worthy of getting a share of his inheritance or is no longer entitled to be an heir.

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