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VALIDITY OF THE INHERITANCE DEED IN THE CASE OF ABSENCE OF ONE OF THE HEIRS

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Abstract:

Background. Inheritance is an important aspect of civil law related to the transfer of rights to a person's property after death. The inheritance process involves not only the division of property but also the rights and obligations of the heirs who are left behind.

Aims. This study aims to analyze the validity of inheritance deeds in the context of one of the heirs' absence and identify the mechanisms for protecting their rights. The title of this study was chosen because the absence of heirs often triggers inheritance disputes that require legal certainty.

Methods. By using a qualitative approach and a juridical-normative method to the relevant articles in the Civil Code (KUHPPerdata), including Articles 490-492, Article 1024, as well as a study of the Supreme Court Decision No. 2180K/Pdt/2017, the Central Jakarta District Court Decision No. 1447/Pid.B/2016/PN.Jkt.Pst, and Article 49 of Law No. 3 of 2006 concerning Religious Courts.

Result. The results of the study indicate that inheritance deeds remain valid even if they do not involve all heirs, as long as the notary has carried out adequate verification and the rights

of the absent heirs are recognized.

Conclusion. This study also found that the right to think given to heirs and the authority of the Religious Court to determine the status of heirs contribute to legal certainty in the inheritance process.

Implementation. Thus, this study provides an overview of how the legal system in Indonesia provides flexibility in making inheritance deeds as long as the principles of justice and legal certainty are met.

Keywords: Heirs, Inheritance Deed, Civil Code, Religious Court.

INTRODUCTION

Inheritance is one of the important aspects in civil law related to the transfer of rights to a person's property after death. The inheritance process does not only involve the division of property, but also involves the rights and obligations of the heirs who are left behind. Inheritance deeds are a very important legal document, because they serve as legal evidence of who is entitled to inheritance property and how it is divided. However, in practice, problems often arise related to the validity of the inheritance deed, often a situation where one of the heirs cannot be present in the process of making the inheritance deed. For example, the heirs are out of town, abroad, or are sick so that it is not possible to be physically present. There are also cases where the heirs do not respond or their whereabouts are unknown. The absence of one of the heirs can cause various legal problems, ranging from uncertainty about the rights of the absent heirs to potential disputes between existing heirs.

Using a qualitative approach and juridical-normative research methods, this study will discuss the role of notaries, heirs, and courts in ensuring the validity of inheritance deeds if one of the heirs is not present in the process of making it and what mechanisms can be done to protect the rights of heirs who are not present in the preparation of inheritance deeds. The title "The Validity of the Inheritance Deed in the Case of the Absence of One of the Heirs" was chosen because this issue has high relevance in legal practice in Indonesia. There is a legal vacuum and the absence of explicit provisions in the UUJN as well as differences of opinion among legal practitioners on how to overcome the problem of absenteeism of heirs. Some argue that inheritance deeds should be canceled if there are absent heirs, while others argue that inheritance deeds remain valid as long as the rights of the absent heirs remain guaranteed.

Through this research, it is hoped that information can be obtained related to an in-depth understanding of the role of notaries, heirs, and the court in ensuring the validity of

the inheritance deed if one of the heirs is not present in the process of making it and can formulate what kind of mechanism can be used to protect the rights of heirs who are not present in the making of the inheritance deed.

METHOD

Types of Research

This study uses a qualitative juridical-normative method, which focuses on analyzing applicable legal norms, laws, and regulations related to inheritance and inheritance deeds. This approach aims to understand how legal provisions regulate the validity of inheritance deeds in the absence of one of the heirs.

Data Source

The data sources in this study consist of:

- Primary legal materials: Civil Code, UUJN, court decisions (especially Supreme Court Decision No. 2180K/Pdt/2017).
- Secondary legal materials: Textbooks, legal journal articles, legal expert commentary, and other official documents.
- Tertiary legal materials: Legal dictionaries, legal encyclopedias, and legal indexes.

Data Collection Techniques

Data collection was carried out through a literature study by reviewing legal literature related to inheritance deeds and provisions governing inheritance.

RESULTS AND DISCUSSION

The Role of Notaries, Heirs, and Courts in the Validity of Inheritance Deeds

Based on Articles 490-492 of the Civil Code: Legal Protection for Heirs Who Are Absent

- Article 490:

"If in the case of an absent person, the circumstances of his life or death are uncertain, an inheritance or grant of a will, which would have been the right of others if the absentee person had lived, or which should have been shared with others, then the inheritance or grant of the will, as if the person had died, without the obligation to prove the death of that person, but for that they must obtain the prior permission of the District Court in whose jurisdiction the house of death of the person is situated, and that court must order public summonses and issue necessary security regulations for the parties concerned." (*Civil Code (KUHPercivil)*),

n.d.)

This article regulates a situation in which if the heir is absent (afwezig) and his life/death is doubtful, other heirs can control their inheritance after obtaining permission from the District Court. The court must conduct a public summons for at least three months. Without news, the heirs can control the property as if the absent heir had died.

- Article 491:

"The provisions of the previous two articles do not exclude the right to claim inheritances and other rights which have subsequently fallen to the absent person or those who have acquired those rights from him. Those rights are only erased by the passage of time that is hinted at for the passage of time." (*Civil Code (KUHPercivil)*, n.d.)

This article confirms that even if the inheritance has been taken over by another heir under Article 490, the rights of the absent heir or his successor are not lost. They still have the right to claim the inheritance if it is later discovered that they are still alive or a successor exists. This right will only be lost if it has passed the expiration date (30 years without notice or 100 years since birth).

- Article 492:

"If the absent person returns home or his rights are claimed on his behalf, the return of his income and income may be demanded, starting from the day when the right falls on the absent person, on the basis and under the provisions of Article 482." (*Civil Code (KUHPercivil)*, n.d.)

This article regulates the return of inheritance if the heirs who were previously considered absent turn out to be returning. The returning heir has the right to demand the return of the proceeds and income from the inheritance managed by other heirs, since the right should belong to him based on the provisions of Article 482 of the Civil Code.

Articles 490-492 of the Civil Code are the primary legal basis that the absence of an heir does not necessarily cancel the inheritance deed. Other heirs can apply for a court order to manage the estate while waiting for the certainty of the status of the absent heir. A deed of inheritance remains valid if it is made after fulfilling this procedure, as the law recognizes the right of an absentee heir to have his status determined through the courts.

Based on the Supreme Court Decision No. 2180K/Pdt/2017, Decision

Points:

- Validity of the Deed of Evidence of Inheritance Rights: The Supreme Court (MA) in its decision still recognized the validity of the Deed of Evidence of Inheritance

Rights made by a notary, even though it was only based on the testimony of some heirs. (*Supreme Court of the Republic of Indonesia Decision 2017*)

- **Basis of Consideration:** This decision is based on the consideration that the notary has verified the documents provided by the heirs present, and the deed is made based on the notary's belief in the information provided.
- **Legal Protection for Absentee Heirs:** This judgment also considers legal protection for absentee heirs, allowing them to prove their rights and file a lawsuit if they feel aggrieved.

This ruling shows that the validity of the inheritance deed does not depend on the physical presence of all heirs, but on the notary's compliance with the verification procedure. Notaries are considered responsible for ensuring that the information of the heirs present is accurate. If the absent heirs feel aggrieved, they can sue for the cancellation of the deed, but the deed remains valid until there is a court decision canceling it.

Based on Article 1024 of the Civil Code: The Right to Think of Heirs

"The heirs are also given four months, starting from the day of the statement, to order the procurement of the property details and to think. Based on urgent circumstances, the District Court is authorized to extend the period mentioned above if the heir is sued before the Judge." (*Civil Code (KUHPercivil)*, n.d.)

- **Right to Think:** This article gives the heirs the right to think for four months after providing a statement regarding the inheritance. During this period, the heirs can consider whether they will accept or reject the inheritance left by the deceased.
- **Procurement of Property Details:** The heirs have the right to request details regarding the inheritance. This is important so they can make an informed decision about whether to accept the inheritance in full, accept it with a note (beneficiary), or reject it.
- **Extension of Time:** The District Court has the authority to extend the period of thought if there is an urgent circumstance. This provides flexibility for heirs to make better decisions without rushing.
- **Cannot Be Forced to Act:** During the period of thinking, the heir cannot be forced to act as an heir. This means they have no legal obligation to accept or reject an inheritance until the thinking period ends.

The Validity of the Inheritance Deed from the Aspect of Representation of Rights

- **Representation of Rights:** If one or more of the heirs are not present at the time of the

creation of the inheritance deed, their rights are still recognized as long as they exercise this right of thought. In this case, the inheritance deed made by a notary can still be considered valid as long as the notary has verified the rights of all heirs, including those who are not present.

- **Protection of Heirs' Rights:** If an absent heir appears and declares that they were not allowed to think or be involved in the deed-making process, they can file a lawsuit to cancel the deed. This shows that despite their absences, their rights are still protected by law.
- **Right to Think:** The right to think allows the heirs to consider all aspects before making a decision about accepting or rejecting the inheritance. This is important to ensure that the decisions are based on complete information and a clear understanding of the legal consequences of their actions.

This article protects the rights of absentee heirs by providing an opportunity to review decisions. The inheritance deed remains valid as long as the notary ensures this right is not violated. If the heir is absent, the notary must state in the deed that the right to think has been explained, and the heir can refuse/accept the inheritance later.

Based on Article 49 of Law No. 3 of 2006 concerning Religious Courts

The Religious Court has the authority to determine the heirs, including in cases of absence (*Law of the Republic of Indonesia Number 3 of 2006 concerning Religious Courts*, 2006). This determination is voluntary (without dispute) and legally binding.

Legal Implications for the Validity of Inheritance Deeds

- **The Obligation to List All Heirs.** Based on the Supreme Court Decision No. 353K/AG/2005, the deed of distribution of inheritance (such as the P3HP Deed) is invalid if it does not list all entitled heirs. Article 49 gives the Religious Court the authority to cancel inheritance deeds that do not meet this requirement.
- **Determination of Heirs by the Religious Court**
In the case of the heirs' absence, the Religious Court has the authority to designate the absent heirs through a voluntary application without having to wait for a dispute (Explanation of Article 49 letter b).
Example: If a deed of inheritance is made without involving a valid heir (e.g. an unlisted biological child), the Religious Court can cancel the deed and assign an entitled heir based on documents such as birth certificates or family cards.

- Legal Consequences If the Deed Is Invalid

Null and Void: Inheritance deeds that do not include legal heirs can be sued for cancellation through the Religious Court.

Procedural Sanctions: Notaries who make inheritance deeds without verification of absent heirs can be considered negligent, although the primary responsibility remains with the parties to the case.

- The Role of a Notary

Notaries must ensure that all heirs are listed in the inheritance deed. If any heirs are absent, the notary must ask for a valid letter of approval or a court determination to represent the heirs. If the deed is made without this effort, it can be cancelled by the Religious Court under Article 49. Thus, the Notary's authority over the inheritance information he makes has legal certainty and provides protection and justice for the heirs. His inheritance statement has perfect proof as long as the content of the information is based on the wishes of the parties and the truth is acknowledged (Bagaswara & Prananingtyas, 2023).

For Muslims, the inheritance deed is still valid even if an heir is absent if the Religious Court has determined the status of the heir. The court determination is a substitute for the presence of the heirs, so the inheritance deed made by the notary remains valid.

Based on the Decision of the Central Jakarta District Court (PN)

In case No. 1447/Pid.B/2016/PN.Jkt.Pst, the Central Jakarta District Court canceled the inheritance deed made without involving the absent heirs. However, this decision also affirms that a deed is still valid if the notary has verified documents (such as KK, birth certificate) and involved the heirs through a power of attorney or court determination (*Central Jakarta District Court Decision No. 1447/Pid.B/2016/PN.Jkt.Pst* 2016).

Analysis of the Role of Notaries Based on Decisions

Verification of Heirs

Notaries must ensure that all heirs are legally involved or represented (through a power of attorney/court designation). If there is an absent heir, the notary must:

- Request a legalized consent letter.
- Apply for the determination of the status of an absentee heir to the court

Legal Obligations of a Notary

- UUJN Articles 15 and 16: Notaries must ensure that the deed is made according to legal facts and does not contain elements of fraud.

- Article 1365 of the Civil Code: Notaries are responsible for losses due to procedural errors or false information.

Limitations on the Validity of the Inheritance Deed

An inheritance deed can be null and void if:

- Does not involve all heirs without valid reasons.
- Contains intentionally false information.
- Not meeting formal requirements (document verification, attendance of witnesses, etc.).

This ruling affirms that the validity of the inheritance deed depends on the notary's efforts to involve the absent heir. The deed can be canceled if the notary is negligent (e.g., does not verify the documents). However, if the procedure is followed, the deed remains valid despite the absence.

Mechanism for the Protection of Heirs' Rights

Absentee Heirs Protection Mechanism

Determination *of Absence* by the Court

If the heirs are absent for more than 5 years, the present heirs can apply for the determination of "*afwezigheid*" to the District Court (Article 468 of the Civil Code). The court will summon the absentee heirs by way of public notice. If there is no news, the present heirs may distribute the property permanently (Article 484 of the Civil Code). So, the state of *afwezigheid* does not cause the loss of his inheritance rights; it is just that the state *of afwezigheid* of an heir must be proven by the determination of the District Court judge (Heriyani & Yuniarlin, 2019).

The Role of the Heritage Center (BHP)

If the heirs are absent and their whereabouts are unknown, BHP is authorized to manage the temporary inheritance until the status of the heirs is clear (Article 463 of the Civil Code). BHP acts as a neutral party that ensures that the rights of absentee heirs are not ignored. So, in a situation where the heirs are not present or have no power, without waiting for the judge's order, the Heritage Center must take care of the heritage (Sukses, Zebua, and Habeahan 2024).

Power of Attorney or Notary Approval

Absent heirs can provide a power of attorney/letter of approval legalized by a

notary. This letter is proof that their rights are recognized in the inheritance deed.

Court Determination

If there is a dispute or doubt about the validity of the deed due to the absence of one of the heirs, the interested party can apply to the court for a determination regarding the status of the absence. This determination will provide legal certainty for all parties.

Principle of *Beneficiary Acceptance*

This principle stipulates that the absent heirs are entitled to receive a share of the estate with limited liability after a specific period to consider their decision (the "*rechtvanberaad* period"). This allows the heirs to consider whether to accept or reject the inheritance.

Absence Restrictions

Although the absence of one of the heirs is acceptable in the drafting of the inheritance deed, there are certain limitations:

1. It is invalid if the notary deliberately ignores the rights of the absentee heirs without making verification efforts or without a power of attorney or official approval from the party.
2. Null and void if the distribution of inheritance property is materially detrimental to the absent heirs. In this case, the relevant parties can sue the court to cancel the deed.

CONCLUSION

The Role of Notaries, Heirs, and Courts in the Validity of Inheritance Deeds

The notary's role is crucial in ensuring the deed's validity through document verification, the involvement of the heirs through a power of attorney or court determination, and the fulfillment of other formal requirements. If this procedure is violated, the court can cancel the deed. The validity of the inheritance deed is maintained even if one of the heirs is not present, as long as the applicable legal procedures are followed. Based on Articles 490-492 of the Civil Code, the rights of absent heirs are still recognized and can be reclaimed, so that absence does not abort their right to inheritance. Supreme Court Decision No. 2180K/Pdt/2017 emphasizes that the inheritance deed is still valid even though it does not involve all heirs, as long as the notary has conducted adequate verification of the documents and statements of the heirs present.

In addition, Article 1024 of the Civil Code, complements legal protection by giving the right to think to heirs for four months to consider the acceptance or rejection of

inheritance and in Article 49 of Law No. 3 of 2006 concerning Religious Courts which gives authority to the Religious Court to determine the status of heirs in cases of absenteeism. This determination is the legal basis for the validity of inheritance deeds, especially for Muslims, so the deed remains valid even if absent heirs exist.

Mechanism for the Protection of Heirs' Rights

Protection mechanisms such as the court's determination of *afwezigheid*, the role of the Property Authority (BHP), and the principle of *Beneficiair Aanvaarding* further strengthen legal certainty for all parties. Thus, the legal system in Indonesia provides flexibility in making inheritance deeds as long as the principles of justice and legal certainty are met. The inheritance deed remains valid and has legal force as long as the applicable procedures are complied with and the rights of all parties are protected.

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