

The Position of the Departing Child Leaving His Parents in Inheritance According to Western Inheritance Law (Case Study of Surakarta District Court Decision Number 70/Pdt.G/2018/PN Skt)

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ABSTRACT

In Indonesia, there are no rules governing the termination of the relationship between parents and children, but the termination of the inheritance relationship between parents and children due to certain reasons is regulated in the Civil Code. In civil inheritance law, when a parent dies, the child is the heir of the parents, but if the child commits an inappropriate act as stipulated in Article 838 of the Civil Code, he is excluded from inheritance. In this study, to examine the position of children who leave their parents in inheritance according to western inheritance law based on the decision of the Surakarta District Court Number 70/Pdt.G/2018/PN Skt. The background of this research is that parents break the relationship and exclude their children from inheritance because they feel hurt and disappointed with children who leave their parents for 21 (twenty one) years. Based on the results of the research, it can be understood that in inheritance according to western inheritance law, it does not determine the legal consequences of the breakup of the parent-child relationship, the child will continue to inherit if he does not fulfill the reasons for inappropriate inheritance as regulated in Article 838 of the Civil Code.

ABSTRAK

Di Indonesia belum ada aturan yang mengatur mengenai putusannya hubungan antara orangtua dan anak, namun putusannya hubungan pewarisan antara orangtua dan anak karena sebab tertentu diatur dalam Kitab Undang-Undang Hukum Perdata. Dalam hukum waris perdata, ketika orangtua meninggal dunia, anak adalah ahli waris orangtuanya, namun bilamana anak melakukan perbuatan yang tidak patut sebagaimana ditentukan dalam Pasal 838 KUHPerdata ia dikecualikan dalam pewarisan. Dalam Penelitian ini membahas mengenai kedudukan Anak Yang Pergi Meninggalkan Orangtuanya Dalam Pewarisan Menurut Hukum Waris Barat Berdasarkan Putusan Pengadilan Negeri Surakarta Nomor 70/Pdt.G/2018/PN Skt. Adapun yang melatarbelakangi penelitian ini adalah orangtua memutuskan hubungan dan mengecualikan anaknya dalam pewarisan karena merasa sakit hati dan kecewa terhadap anak yang pergi meninggalkan orangtuanya selama 21 (dua puluh satu) tahun. Berdasarkan hasil penelitian dapat dipahami bahwa dalam pewarisan menurut hukum waris barat tidak menentukan akibat hukum dari putusannya hubungan orangtua dan anak, anak akan tetap mewaris jika tidak memenuhi sebab-sebab tidak patut mewaris yang diatur dalam Pasal 838 KUHPerdata.

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I. INTRODUCTION

Inheritance law is a law that regulates the legal position of the property of a deceased person (heir) and the transfer to another party (heir). (Sri Harini Dwiyatmi, 2013) In Indonesia, it consists of 3 (three) applicable inheritance laws, namely The West Inheritance Law, Islamic Inheritance Law and Customary Inheritance Law. The three inheritance laws have different provisions and in practice cannot be combined.

According to Article 830 of the Civil Code, inheritance can only take place in the event of death. (Kitab Undang-Undang Hukum Perdata, n.d.-a) Related to the sustainability of inheritance, there are 3 (three) important points that need to be known, namely: The existence of a deceased person, who is called the heir; The existence of the inheritance left by the heir; The existence of a beneficiary of the inheritance, either by statute or other will of the testator. (Kitab Undang-Undang Hukum Perdata, n.d.-a)

Inheritance can occur in 2 (two) ways, namely: Inheritance by statute or *ab intestato*, is the inheritance that has been determined by law due to the existence of an attachment to blood relations and/or marital relationships. Inheritance by virtue of a will or testament, is the inheritance of the last will of the testator stated in the will.

The western inheritance law provided for in the Civil Code provides protection for heirs according to the law which is specifically granted to the heirs because of blood relationships if by the last will the heir removes or reduces the share of the heirs that have been determined by law. Article 913 of the Civil Code confirms that the absolute part or *Legitimie Portie* is the part that must be given to the heirs of a straight line in a blood relationship if the heir determines otherwise regarding his estate. (Kitab Undang-Undang Hukum Perdata, n.d.-a)

If a person dies, all heirs according to the law become heirs of the inheritance of the heir, except for improper heirs so as to be excluded in inheritance under Article 838 of the Civil Code, are: Heirs who have been convicted of killing or attempting to kill the heir; The heirs who have received punishment based on the judge's ruling for defaming the heir committed the crime; Heirs who commit violence or prevent the testator from making or revoking the will of the testator; Heirs who embezzle, damage or forge the will of the testator.

Basically, if the heir does not meet these criteria every heir is entitled to receive an inheritance from the inheritor's estate, unless he himself chooses to refuse the inheritance. As is well known, although there are 3 (three) different inheritance arrangements, the arrangements are sufficient to regulate regarding inheritance, only how the heir determines to be subject to what kind of inheritance law is used. However, it is undeniable that problems related to inheritance in Indonesia still often occur in terms of various aspects of the interests of heirs. As in one of the cases behind this research, namely in the Surakarta District Court Decision Number 70 / Pdt.G / 2018 / PN Skt, namely JTP (plaintiff) is the heir *ab intestato* is considered to have never existed and is excluded in inheritance. This case started from, Mr. Soegiman, BE and Mrs. Wismiarsi are a married couple who in their marriage have 3 children, namely: Rina Dwi Asfricani Handayani, S.H; Drs. Sanjaya Wisnu Martana; Jenny Tri Purnaningsih.

In the marriage obtained a plot of land SHM Number 463 / Jajar with an area of 385 M2 (three hundred and eighty-five square meters). Before marrying Mrs. Wismiarsi, Mr. Soegiman, BE had been married to Mrs. Surtiwati and in that marriage had one child Named Djoni Priyono but the marriage had been broken up due to divorce.

Before Mrs. Wismiarsi passed away, she had made a will which in essence against a piece of land SHM No. 463/Jajar in the name of Mrs. Wismiarsi with an area of 385 M2 (three hundred and eighty-five square meters) was to be divided into 2 i.e. the north became hers and the south belonged to her husband, Mr. Soegiman, BE. The division plan is to give a share to her children if Mrs. Wismiarsi and Mr. Soegiman, BE pass away with equal parts. Mrs. Wismiarsi's part is to be given to her son Rina Dwi Asfricani Handayani, S.H., and Drs. Sanjaya Wisnu Martana while Mr. Soegiman's part, BE wants to be given to Jenny Tri Purnaningsih and Djoni Priyono, who in essence each get the same

share, namely 1/4 part with the provision that those who want to own the land must give replacement money to the heirs who waive their rights.

Then on March 18, 2016, Mrs. Wismiarsi passed away leaving her husband Mr. Soegiman, BE and her three children Rina Dwi Asfricani Handayani, S.H., Drs. Sanjaya Wisnu Martana and Jenny Tri Purnaningsih. On June 13, 2016, Mr. Soegiman, BE made a will which in essence agreed with the will that had been made by his wife, Mrs. Wismiarsi and also made a special will to his son named Ananda Yeni Tri Purnaningsih to make a statement of leaving the soegiman extended family because he no longer considers his parents.

This is because Mr. Soegiman, BE, feels hurt and disappointed for his son Ananda Jenny Tri Purnaningsih who left his parents and family for 21 (twenty-one) years. He never visited his parents, contacted his parents, even when his parents were so ill that he died he also did not attend his parents' funeral.

However, it turned out that in making the certificate of the will, the heirs explained that in the marriage of Mrs. Wismiarsi and Mr. Soegiman, BE only had 2 (two) children, namely Rina Dwi Asfricani Handayani, S.H., and Drs. Sanjaya Wisnu Martana so that in the certificate of inheritance No.594.3/09/V/2016 dated May 24, 2016 who became the heirs of Mrs. Wismiarsi only Mr. Soegiman, BE and his 2 (two) children.

Based on the certificate of inheritance, there was a transfer of rights to SHM Number 463 / Jajar on behalf of Mrs. Wismiarsi with an area of 385 M2 (square meters) namely a plot of land SHM Number 463 / Jajar divided into 2, namely (two) SHM No. 03460 / jajar and 03461 / jajar both on behalf of Bpk Soegiman, BE, Sanjaya Wisnu Martana and Rina Dwi Asfricani Handayani. Before Mr. Soegiman, BE passed away, the heirs had transferred rights again, namely against SHM No. 03460/jajar to be in the name of Rina Dwi Asfricani Handayani. And SHM. No. 03461/jajar on behalf of Mr. Soegiman, BE. However, due to the long management process, it was completed on December 2, 2017, while Mr. Soegiman, BE. Passed away on September 28, 2017.

In the certificate of inheritance that has been made, in addition to not mentioning Jenny Tri Purnaningsih because it is excluded, it also does not mention Djonri Priyono as the heir of Mr. Soegiman, BE because based on the letter of question whose contents will not claim the Inheritance Rights of his parents named Soegiman,

Based on the background in this study, the author is interested in conducting further research through several formulations of the problems to be discussed, namely: What is the position of inheritance for children who leave their parents according to western inheritance law based on the Surakarta District Court Decision Case Number 70 / Pdt.G / 2018 / PN Skt ? and How is the distribution of inheritance to the estate of Mr. Soegiman, BE and Mrs. Wismiarsi according to civil inheritance law based on the Surakarta District Court Decision Case Number 70 / Pdt.G / 2018 / PN Skt?

II. RESEARCH METHOD

In this study using normative juridical research methods, in the form of prescriptives that want to describe problems in research that are associated with legal rules so that they can provide advice in solving problems in this study. Normative juridical research method is a legal research conducted by examining library materials or secondary data as a basis for research by conducting a search for regulations and literature related to the problem under study.(Soerjono Soekanto; Sri Mamudji, 2009)

By using normative juridition research methods, in research, of course, it uses secondary data obtained through the study of documents in the form of primary legal materials and secondary legal materials. Primary legal materials obtained in the Civil Code, while secondary legal materials are in the form of textbooks, scientific writings and articles on the internet related to this research.

The data collection tool in this study uses a document study (library research), where the data obtained will be analyzed using qualitative analysis methods, namely by reading and analyzing data

to answer problem formulations and make conclusions in a descriptive form. The objectives of this study specifically aim to: Analyzing the position of inheritance for children who leave their parents according to western inheritance law based on the Surakarta District Court Decision Case Number 70 / Pdt.G / 2018 / PN Skt and Analyzing the distribution of inheritance to the estate of Mr. Soegiman, BE and Mrs. Wismiarsi according to civil inheritance law based on the Surakarta District Court Decision Case Number 70 / Pdt.G / 2018 / PN Skt.

III. RESULTS AND DISCUSSION

1. Inheritance According to Western Inheritance Law

Basically inheritance is the process of transferring the inheritance from a deceased person to his heirs.(Sudarno, 1991) However, the transfer cannot just happen because it can cause problems in its implementation, thus to be able to provide certainty in the transfer of the property of a deceased person regulated in the inheritance law. That the law of inheritance is the laws or rules governing whether and how the various rights and obligations concerning a person's property at the time of his death will pass to another living person.(Yovanca Azer Lawendatu; et.al, 2021).

In Indonesia, there are 3 (three) inheritance laws that apply to date, namely western inheritance law, Islamic inheritance law and customary inheritance law, which in practice these 3 (three) inheritance laws cannot be applied cumulatively because they have different arrangements. The enactment of the inheritance law depends on what kind of inheritance law the heir (the deceased person) is subject to what kind of inheritance law. If the heir is subject to western inheritance law, the inheritance provisions in the Civil Code apply, if the heir is subject to Islamic inheritance law, then the inheritance provisions apply according to Islamic law and if the heir is subject to customary inheritance law, the inheritance provisions in the inheritance customary law that are still ongoing,

The Law of Inheritance of the West is regulated in the second book on the treasury in the Civil Code, starting from Article 830 to Article 1130 of the Civil Code. Inheritance under civil law can only occur due to death.(Kitab Undang-Undang Hukum Perdata, n.d.-a) In the law of inheritance according to Burgerlijk Wetboek applies a principle that, if a person dies, then immediately all rights and obligations pass to all his heirs.(Fajar Nugraha; et.al, 2020) According to civil inheritance law, inheritance can occur in 2 (two) ways, namely : Inheritance according to the Act or ab intestato, that is, inheritance due to the transfer of rights and obligations from the heir to his heirs is carried out under the law; Inheritance by testament or testament, i.e. inheritance because a person is domiciled as an heir because he is appointed in a will made by the testator before the person concerned dies.(Budhayati, 2017).

If there is an inheritance by these 2 (two) methods simultaneously, then the inheritance based on the will will be carried out first compared to inheritance according to the law, this is to respect the last will made by the testator before he dies.

Inheritance according to the Law or ab intestato occurs due to the existence of a kinship relationship between the heir and the heir either because of the attachment between the blood relationship and also the marital relationship. Civil inheritance law divides into 4 (four) classes of heirs ab intestato, namely: Heirs of Group I, namely the Husband/Wife of the Heir and the children/descendants of the heir; Heirs of Group II, namely the Heir Father and Mother, along with the heir's siblings (siblings, brothers and sisters) and their descendants; Heirs of Class III, i.e. Grandparents of the Heirs of the Line of Father and Mother Line and so on upwards; Heirs of Class IV, i.e. the family of the Heirs in the other further sidelines, namely the brothers of the heirs of Class III and their descendants both from the Paternal line and from the Maternal line.(Alwesius, 2021)

The order of the class of heirs indicates which heirs will take precedence to obtain the estate from the heir (Selvia Ardita; et.al, 2019). Meanwhile, the heir in inheritance based on testaments is someone who is desired by the heir to become his heir without the limitations of family relationships, which can be from the side of family, friends or closest relatives or other people. Against the last will

of the testator in the will there is often a gift to the heirs of third parties by not considering the position of the legitimatic heirs so as to reduce and even eliminate their share of the inheritor's estate.

In the Civil Code, it specifies the existence of absolute rights of heirs (*legitime portie*) that should not be reduced or eliminated, including by the heir himself. (Nurhamidin, 2017) Such absolute rights are only determined for legitimarian heirs because of the existence of blood relations in a straight line down or upwards, even the heir as stipulated in Article 913 of the Civil Code cannot determine otherwise against the absolute share of the legitimaris heir. This means that the heir is not allowed to subtract or eliminate the absolute share of the legitimaris heir by other provisions

Basically every heir has the right to declare his final will relating to his estate which is to give part or all of it to someone. But against the last will of the heir, the Civil Code also gives the right to legitimalist heirs in the form of protection in case of violation of the absolute part of the heirs i.e. to obtain his absolute share by giving the right to make claims against a will that has clearly violated their absolute rights. The right granted by law is the right to make a claim for deduction or return against a will granted to a third party in the will against the property of which it is an absolute part (*legitime portie*). (Yanuar Suryadini; et.al, 2020) However, if on which will the heirs of legitimaris violate the absolute share of the heirs of legitimaris by not making a claim against the absolute part then on the will the heirs of legitimaris are deemed to agree and have no objection. The provisions of the absolute share received by each heir vary depending on the position of the heir of the absolute part and to its application also refer to the class in inheritance. The provisions of the absolute share of heirs are regulated in Articles 913 to 929 of the Civil Code

Although there is a provision regarding the absolute share for the heirs, it does not mean that all heirs receive their share in the inheritance, because western inheritance law gives the right to the heirs if they want to refuse the division of the inheritance property. (Nurhamidin, 2017)

According to the Civil Code not all heirs automatically inherit everything that is owned by the heir because the law gives the heir the option to be able to accept or reject the inheritance this relates to the object of inheritance not only the property but includes all debts of the heir. (Sudarno, 1991) This means that when the heir receives the inheritance of the heir he not only receives a share of the inheritor's estate but also pays off the debts of the testator if any amount corresponds to the share of the inheritance he receives in the inheritance

Article 1045 of the Civil Code states that no one is obliged to receive an inheritance that falls upon him. (Kitab Undang-Undang Hukum Perdata, n.d.-a) This means that the heir has the right to consider accepting or rejecting the inheritance. Usually the things of rejection of the inheritance are because the heir leaves the pasiva property or debts exceeding the ability of the heir in fulfilling these debts. (Fajar Nugraha; et.al, 2020)

The refusal of the division of the estate must be expressly stated and stated in a statement in the clerkship of the district court where the inheritance is open. If the heir who refuses the inheritance cannot declare his will to the clerk of the district court where the inheritance is open he can make the power of refusal of the inheritance to another person (Fajar Nugraha; et.al, 2020) through an application filed by the heir who refuses the inheritance, then the court will issue an injunction of the refusal of heir. (Fajar Nugraha; et.al, 2020)

With the refusal of inheritance, the heir who refuses is considered to have never been an heir and his share falls to another heir if he does not live at the time of the open heir. (Kitab Undang-Undang Hukum Perdata, n.d.-a) Based on the description above, it can be understood that if the refusal of heirs is not expressly stated by the determination of the district court regarding the refusal of heirs, then the heirs who refuse are still considered as heirs who receive inheritance.

2. Exceptions In Inheritance According To Western Inheritance Law

In addition to the rejection of inherited property, the Civil Code also regulates heirs who are not allowed to obtain inherited property due to certain circumstances. (Nurhamidin, 2017) Persons or heirs who are deemed unfit to be heirs because of their actions are thus excluded from inheritance,

as specified in Article 838 of the Civil Code, namely: Heirs who by the judge's ruling are convicted of having killed or attempted to kill the heir; The heirs who by the judge's ruling are blamed for having defamed by filing a complaint against the testator have committed a crime with the threat of imprisonment of 5 years or more severe; The heir by force or deed has prevented the testator from making or revoking his will; Heirs who have embezzled, damaged or forged the will of the testator.(Rantung, 2018).

Article 839 of the Civil Code confirms that for heirs who are excluded from inheritance because they are unfit to receive inheritance are obliged to return all proceeds and income received since the inheritance was opened. Article 840 of the Civil Code states that the children of the improper heirs, should not be harmed by the fault of the parents, if the children become heirs of their own power (*uit eigen hoofed*) meaning that if according to the law the inheritance of the children without the intercession of the parents gets the right as heirs.(Syaiful Anugerah Adhitama Napitupulu; et. al, 2022).

Heirs who are excluded as heirs because they are unfit to accept the inheritance also lose their absolute share and their position is the same as that of the heirs who refuse the inheritance.(Syaiful Anugerah Adhitama Napitupulu; et. al, 2022) This means that the heir who is excluded in inheritance because he is not fit to bequeath even though he has legal protection against the absolute part that he should receive from the inheritor's estate then he is also excluded in the provisions of his absolute part.

Related to the case raised in this study, namely a child who left his parents for approximately 21 (twenty-one) years, he never saw his parents and extended family, never contacted his parents. Even when his parents were seriously ill until he died he also did not attend his parents' funeral. For the actions of his son who never returned home and visited made his parents hurt, so through the will that his father made before he died he asked the child to break the family relationship by making a statement. In addition, in the surta of the inheritance statement ever made that he was excluded in inheritance by making false information he did not include the child born in his marriage and thus was considered not included in the inheritance. Against the father's will it is necessary to further understand whether the child's deeds can get him excluded in inheritance.

In the research of Syaiful Anugerah Adhitama Napitupulu, et al entitled 'Juridical Review of the Legal Consequences of the Statement of The Breakdown of Relations Between Parents and Children According to Positive Law' which examined by raising a case that occurred in the city of Medan where parents made a statement of the termination of the parent's relationship with their child through newspapers because their child always insulted parents and was declared disobedient by their parents and in order to immediately return all the property that had been given to him. Based on the results of the study that the break in the relationship between the parent and the child must be with a valid statement for a certain reason and has been declared broken by the judge on grounds that it is not appropriate to inherit and against the case the child has not fulfilled the element of improper inheritance as stipulated in the Civil Code.(Syaiful Anugerah Adhitama Napitupulu; et. al, 2022) The breakup of the parent-child relationship with a valid statement means that it must be by the judge's ruling that the child is not fit to inherit so that the relationship can be terminated. This means that there is no provision governing the termination of *ornagtua* relations with children, but through improper acts so that they are excluded in inheritance as specified in Article 838 of the Civil Code can be the basis for the termination of the parent's relationship with his child in inheritance.

Syaiful Anugerah Adhitama Napitupulu, et al. have also conducted an interview with the clerk of the Medan High Court that the lawsuit to terminate the relationship between parents and children has never happened in the scope of the court, even if there is, it will be resolved through mediation so that it does not reach the court..(Syaiful Anugerah Adhitama Napitupulu; et. al, 2022)

According to Letezia Tobing in an article published in the online law entitled 'Is There Any Way That Heirs Do Not Get a Share of Inheritance ?' explaining that basically children are protected by the Civil Code regulated in Article 913. So even if the parent has given to another to transfer his

estate, the grant can be withdrawn if the absolute share of the child has not been fulfilled as provided in Article 924 of the Civil Code. Meanwhile, if it relates to a lawless child who is excluded in inheritance, according to Letezia Tobing, it should be noted that the excluded lawless child has fulfilled the provisions of improper bequeathing regulated in Article 838 of the Civil Code. (“Adakah Cara Agar Ahli Waris Tidak Mendapatkan Bagian Warisan?,” n.d.)

According to Togar S.M. Sijabat in an article published in the online law entitled 'Termination of Legal Relations between Children and Parents' that basically there is no rule of law that regulates the termination of legal relations between parents and children, but there are provisions that regulate the termination of the relationship between parents and children in the field of inheritance, which is regulated in Article 838 of the Civil Code. (“Pemutusan Hubungan Hukum Anak Dengan Orang Tua,” n.d.)

According to Amin Songgiri in his research entitled 'The Position of the Child of Lawlessness in the Right to Inheritance (Review of KHI Article 171 Point C, Article 173 and Article 174)', that even in inheritance according to Islamic law, the child of law of law remains as an heir, because lawlessness is not a barrier to becoming an heir. (Songgiri, 2019) But if the child of lawlessness who kills and makes efforts to speed up the division of inheritance then criminal and civil acts as one of the factors causing the death of the heir are categorized as obstructions of obtaining inheritance. (Songgiri, 2019)

That basically the right of inheritance for the heirs will always be attached to the heirs unless he chooses to refuse to accept the inheritance and is excluded as an heir because it is not proper in bequeathing as specified in Article 838 of the Civil Code. Even against heirs whose existence is unknown, in the Civil Code it has been determined that the right of inheritance remains attached to an heir whose existence is unknown as stipulated in Article 463 and Article 467 of the Civil Code, unless there is an allegation that the heir whose whereabouts are unknown has passed away. (Anak Agung Krisna Kumala Dewi; et. al, n.d.)

Based on the description above, it can be understood that the termination of the relationship between parent and child can basically legally occur only in inheritance, that is, the fulfillment of the causes of exclusion in inheritance due to improper acts. The exception is regulated in Article 838 of the Civil Code which is considered unfit to be an inheritance and therefore also excluded from inheritance is: Those who have been convicted of being blamed for killing, or attempting to kill the deceased; Those by the judge's ruling have been blamed for libelously having filed a complaint against the deceased, is a complaint of having committed a crime that is threatened with a five-year imprisonment or a more severe sentence; Those who have by force or deed have prevented the deceased from making or revoking his will; Those who have embezzled, damaged or forged the will of the deceased. (Kitab Undang-Undang Hukum Perdata, n.d.-a; *Kumpulan Kitab Undang-Undang Hukum KUH Perdata, KUHP KUHP*, 2014)

Thus, regarding the case that is the object of this study, the child who left the parents for 21 (twenty-one) years by not fulfilling the causes of exclusion in inheritance, namely that he did not commit murder or tried to kill his parents, did not defame by making complaints against his parents, nor committed violence against his parents in connection with the will and did not damage the referee's letter so that he could not be excluded in inheritance as in a will made by his parents and against a certificate of heir not naming him as heir.

3. The right to bequeath for the heirs based on the Decision of the Surakarta District Court Number 70/Pdt.G/2018/PN Skt.

As it is well known that inheritance according to western inheritance law when the heir dies, all his heirs have the right to inherit the inheritance of the heir. Even if the heir makes a will by giving to a person or several persons to be his heirs so as to make the legitimaris heir lack or lose his share of the inheritance then against the legitimaris heirs who have been determined by law to have an absolute share of the inheritor's estate must pay attention to his share.

In the process of transferring rights to the inheritor's estate, the heirs must have a certificate of inheritance made by a Notary as the authorized official to make it which will be used in the process of transferring inheritance rights. The certificate of heir is made by a Notary based on what is the information of the heirs, in which in practice the information of the heirs is stated in the form of a notarial deed, namely the deed of statement of the heirs. By making a deed of statement if it turns out that the information given by the interceptors is not true, the Notary does not have to be responsible. To blame are the interceptors who gave false statements. (Selvia Ardita; et.al, 2019)

The case in this study, regarding children who leave their parents for 21 (twenty-one) years excluded in inheritance and in the certificate of inheritance made based on the information or statement of heirs only mentions that the child in the marriage of Mrs. Wismiarsi and Mr. Soegiman, BE only has 2 (two) children, namely Rina Dwi Asfricani Handayani, S.H., (RDAH) and Drs. Sanjaya Wisnu Martana (SWM) even though they have 3 (three) children in the marriage, besides that against Djoni Priyono the legal son of Mr. Soegiman, BE in the previous marriage as the legal heir of Mr. Soegiman, BE is also not mentioned as the heir of Mr. Soegiman, BE because it is considered to refuse to accept the inheritance without a court decision, namely only based on Djoni Priyono's letter of repentance which will not claim the Inheritance Rights of his parents named Soegiman.

Thus, based on the Decision of the Surakarta District Court Number 70 /Pdt.G/2018/PN Skt, the panel of judges in essence granted the plaintiff Jenny Tri Purnaningsih's lawsuit by appointing Jenny Tri Purnaningsih the plaintiff, Rina Dwi Asfricani Handayani, S.H., Defendant 1 and Drs. Sanjaya Wisnu Martana Defendant 2. and Djoni Priyono as the heirs of Mr. Soegiman, BE and canceled the division of SHM No. 463/Jajar Village with an area of about 385 M2 (three hundred and eighty-five square meters) became 2 parts and reversed the name to be in the name of Mr. Soegiman, BE and Rina Dwi Asfricani Handayani, S.H., thus establishing SHM No. 463 / Jajar Village with an area of about 385 M2 (three hundred and eighty-five square meters) belongs to Jenny Tri Purnaningsih plaintiff, Rina Dwi Asfricani Handayani, S.H., Defendant 1 and Drs. Sanjaya Wisnu Martana Defendant 2 and Djoni Priyono also defendant 1.

As for what the judge considers, namely the excluded heirs are not broken up as heirs and in the case of children who have been away for 21 years are not included in the exempt heirs and based on Article 874, Article 913 of the Civil Code and the opinion of Aji Pranoto, S.H. that the Heirs are all descendants of the proceeds of marriage and if in the family will make a Certificate of Inheritance then all descendants must be listed in the Certificate of Inheritance, by not listing his name as an heir is an unlawful act.

Thus, the transfer of rights of SHM No. 463/Kelurahan Jajar with an area of about 385 M2 (three hundred and eighty-five square meters) made based on the certificate of inheritance is an act against the law, because the certificate of inheritance made is wrong and against the transfer under the Deed of Division of Common Rights is invalid because it is defective according to law. Thus, the estates of Mrs. Wismiarsi and Mr. Soegiman, BE will be taken into account as stipulated in the western inheritance law.

When Mrs. Wismiarsi passed away, she left her husband Mr. Soegiman, BE and her three children, namely Rina Dwi Asfricani Handayani, S.H., Defendant 1 and Drs. Sanjaya Wisnu Martana Defendant 2 and Jenny Tri Purnaningsih plaintiff where before she died she made a will against her share in the estate given to Rina Dwi Asfricani Handayani, S.H., Defendant 1 and Drs. Sanjaya Wisnu Martana Defendant 2, while at the time of Mr. Soegiman, BE passed away, he left Rina Dwi Asfricani Handayani, S.H., Defendant 1 and Drs. Sanjaya Wisnu Martana Defendant 2, Jenny Tri Purnaningsih plaintiff and Djoni Priyono also defendant 1 which before Mr. Soegiman, BE died he also made a will against his share in his estate given to Jenny Tri Purnaningsih plaintiff and Djoni Priyono also defendant 1. Thus, for the relics left by Mrs. Wismiarsi and Mr. Soegiman, BE applies the division of inheritance to the heirs of the first group.

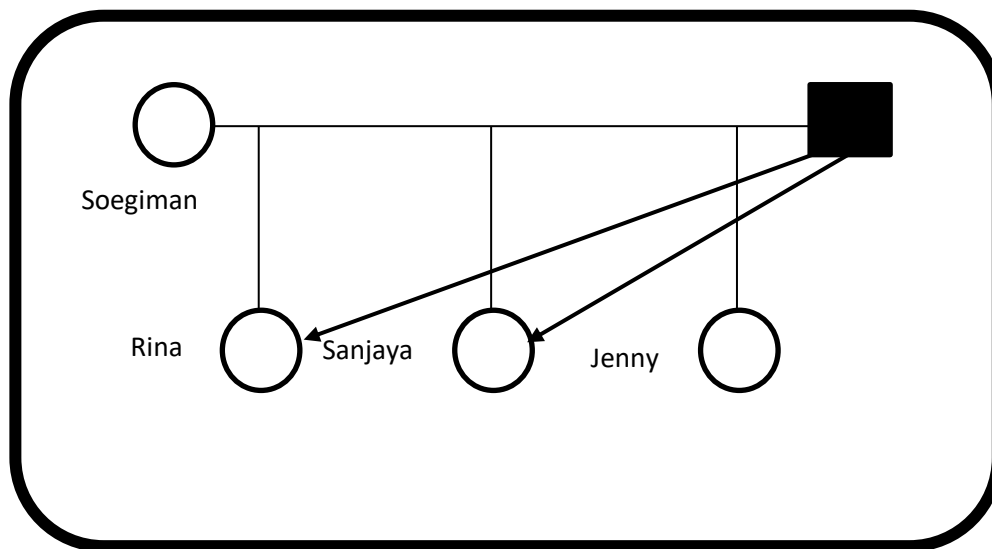
The heirs of the first class are their children or descendants indefinitely, together with the husband or wife of the heir left behind. Under Article 852 of the Civil Code, if the testator leaves his

children or descendants, bequeaths head by head if related in the first degree, bequeathing stake after stake. (Kitab Undang-Undang Hukum Perdata, n.d.-b; *Kumpulan Kitab Undang-Undang Hukum KUH Perdata, KUHP KUHAP*, 2014) The division between them does not care who is older or younger is male or female and also does not care about some marriages. (Kie, 2000) This means that each heir has an equal position and share of the estate.

Mr. Soegiman, BE and Mrs. Wismiarsi are a married couple, in their marriage they obtained a property in the form of land SHM No. 463 / Jajar Village with an area of about 385 M2 (three hundred and eighty-five square meters), with the death of Mrs. Wismiarsi first, there was a separation of marital property between Mr. Soegiman, BE and Mrs. Wismiarsi as stipulated in Article 126 of the Civil Code. The separation of marital property is divided into 2 (two) parts, namely 1/2 (one-half) part belonging to the husband and 1/2 (one by two) part belonging to the wife.

Based on the will made by Mrs. Wismiarsi, against the estate of Mrs. Wismiarsi who is her heir Rina Dwi Asfricani Handayani, S.H., Defendant 1 and Drs. Sanjaya Wisnu Martana Defendant 2, each of whom gets 1/2 (one-half) part of the estate of Mrs. Wismiarsi. But in this case, Jenny Tri Purnaningsih the plaintiff is the heir of Mrs. Wismiarsi who on the will of Mrs. Wismiarsi has violated her absolute share, thus the division of Mrs. Wismiarsi's inheritance is as follows:

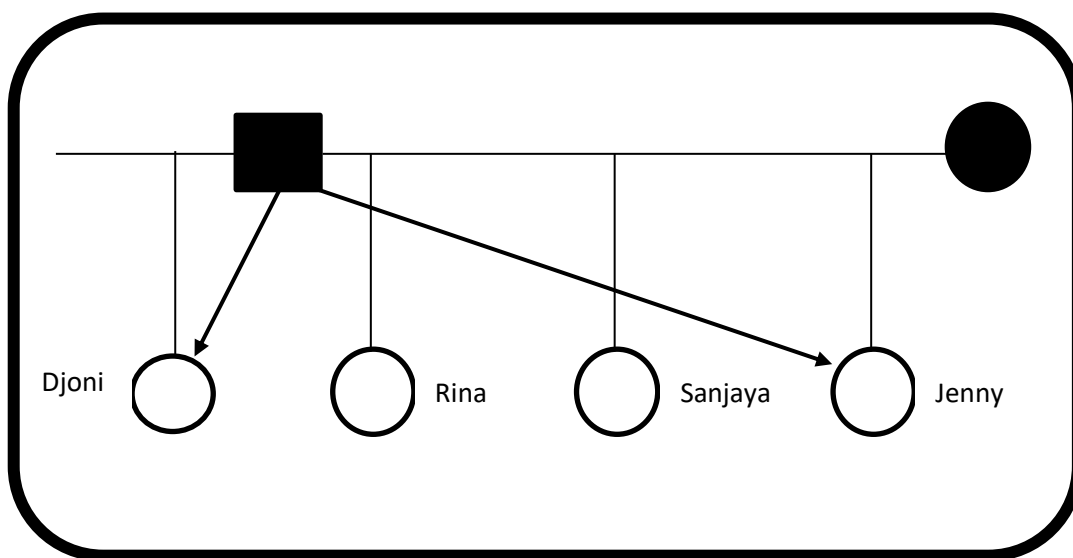
- = Heir
- = living heirs
- = The heirs who died first
- ↓ = appointment of heirs



Based on the will of Mrs. Wismiarsi who appointed Rina and Sanjaya as heirs to her share of the estate had violated the absolute share of Jenny who was the heir to Mrs. Wismiarsi's legitimacy. Thus, under Article 914 of the Civil Code, the part that must be given to Jenny is $(\frac{3}{4} \times \frac{1}{3} \text{ part ab intestato Jenny } \times \text{ of Mrs. Wismiarsi's estate is } \frac{1}{2} \text{ part of the mixed property})$ is $\frac{1}{8}$ part obtained by correlating (subtracting) Rina and Sanjaya's share ($\frac{1}{2}$ of the mixed property belonging to Mrs. Wismiarsi - $\frac{1}{8}$ part = $\frac{4}{8} - \frac{1}{8} = \frac{3}{8}$ part), then Rina and Sanjaya's share each get $\frac{3}{8} : 2 = \frac{3}{16}$ part of the mixed property. As for Djoni, he is not the heir of Mrs. Wismiarsi because Djoni is the son of Mr. Soegiman from the previous marriage so he only has a civil relationship with Mr. Soegiman. Thus on Mrs. Wismiarsi's share of 1/2 (one-half) of the estate, her heirs will get as follows:

Rina = 3/16 part
 Sanjaya = 3/16 part
 Jenny = 1/8 = 2/16 part
 amount = 8/16 = 1/2 the share of mrs. Wismiarsi's mixed property.

Meanwhile, the division of the inheritance of Mr. Soegiman, BE, based on the will made by Mr. Soegiman, then against the estate of Mr. Soegiman, who became his heir Jenny Tri Purnaningsih the plaintiff and Djoni Priyono were also defendants, each of whom received 1/2 (one-second) part of Mr. Soegiman's estate. But in this case, Rina Dwi Asfricani Handayani, S.H., Defendant 1 and Drs. Sanjaya Vishnu Martana Defendant 2 are the heirs of Mr. Soegiman who on the will of Mr. Soegiman has violated his absolute share, thus the division of Mr. Soegiman's inheritance is as follows:



Based on the will of Mr. Soegiman who appointed Jenny and Djoni as heirs to his share of the mixed property has violated the absolute share of Rina and Sanjaya who are the legitimatic heirs of Mr. Soegiman. Thus under Article 914 of the Civil Code the part that must be given to Rina and Sanjaya is $(\frac{3}{4} \times \frac{1}{4} \text{ part ab intestato Rina and Sanjaya} \times \text{the estate of Mr. Soegiman is } \frac{1}{2} \text{ part of the mixed property})$ is $\frac{3}{32}$ part each obtained by subtracting (subtracting) the share of Jenny and Djoni ($\frac{1}{2}$ part of mr. Soegiman's mixed property - (the absolute part of Rina and Sanjaya $\frac{3}{32} + \frac{3}{32} = \frac{6}{32}$ part) = $\frac{16}{32} - \frac{6}{32} = \frac{10}{32}$ part), then Jenny and Djoni's share each gets $\frac{10}{32} : 2 = \frac{5}{32}$ part of the mixed treasure. Thus on Mr. Soegiman's share of 1/2 (one-second) of the estate, his heirs will get as follows:

Rina = 3/32 part
 Sanjaya = 3/32 part
 Jenny = 5/32 part
 Djoni = 5/32 part
 Amount = 16/32 = 1/2 part of Mr. Soegiman's mixed property.

Based on the description of the division of inheritance of Mrs. Wismiarsi and Mr. Soegiman, it can be concluded that the estates of Mrs. Wismiarsi and Mr. Soegiman in the form of SHM No. 463 / Jajar Village with an area of about 385 M2 (square meters) each heir gets the following share : Rina Dwi Asfricani Handayani, S.H., Defendant 1 = 3/16 part of Mrs. Wismiarsi's property + 3/32 part of

Mr. Soegiman's property = 9/32 part; Drs. Sanjaya Vishnu Martana, Defendant 2 = 3/16 part of Mrs. Wismiarsi's property + 3/32 part of Mr. Soegiman's property = 9/32 part; Jenny Tri Purnaningsih, Plaintiff = 2/16 part of Mrs. Wismiarsi's property + 5/32 part of Mr.'s property = 9/32 part; Djoni Priyono Co-Defendant 1 = 5/32 part of Mr. Soegiman's; Amount = 32/32 of the estates of Mrs. Wismiarsi and Mr. Soegiman

IV. CONCLUSION

Based on the discussion in this study, it can be concluded that 2 things are:

1. That in the western inheritance law provided for in the Civil Code has determined that the exception of the heirs in inheritance is the heirs who fulfill one and or all of the causes of the exception because it is not appropriate to inherit the one provided for in Article 838 of the Civil Code. Thus the exception for a child who leaves his parents for 21 (twenty-one) years from inheritance is defective according to law because it does not include the exclusion element in Article 838 of the Civil Code so that he is still entitled to inherit.
2. That against the cancellation of the certificate of inheritance and transfer of inheritance rights in the Surakarta District Court Decision No. 70/Pdt.G/2018/PN Skt made on the basis of false information thus against the inheritance property of the testator, the plaintiff gets 9/32 parts, defendant 1 gets 9/32 shares, defendant 2 gets 9/32 share and co-defendant 1 gets 5/32 part of the estate.

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