

Legal Consequences of an Heir's Delay in Accepting Inheritance under Civil Law

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Abstract: The purpose of this research is to find out how the impact of the Consequences of a Delay in Receiving an Inheritance is reviewed in terms of Civil Inheritance Law, which is what if an heir can be said to have lost his right to get an inheritance or inheritance and to find out the consequences of the delay of an heir to know and obtain or receive an inheritance from the heir. The research method used in this writing uses a normative method with a legal approach and can find the conclusion that the loss of the right of the heir to receive the inheritance is also caused by the impropriety where the impropriety is that the heir kills, harms, or tries to harm the heir, the heir slanders the heir, the heir tries to harm the heir to revoke his will, the heir embezzles, damages, and forges the will of the heir, and the heir rejects an inheritance and the expiration date of an heir to exercise his right to receive the heir is within 30 (thirty) years from the date of disclosure of the inheritance which is not entirely the right of the heir.

1. Introduction

When a person dies or has been legally declared dead on his death, then the person who has died automatically becomes the heir¹. When a person dies, they will leave an inheritance or inheritance as well as heirs, consisting of various groups, and their division depends on the existence of a group and the number of those groups. However, in its distribution, the property also has a deadline or expiration so that when the heir has died, the distribution of the inheritance or inheritance to the entitled heirs must be expedited. However, what becomes a problem or problem is if there are one or several heirs who are late to know and get the inheritance or inheritance. This makes the heir fall into the category of rejecting an inheritance or inheritance or is still entitled to an inheritance or inheritance considering that what can have an expiration period is the right of the heirs to receive an inheritance, while the right of the heirs to refuse an inheritance does not have an expiration period². In its regulation, several regulations govern, ranging from civil or western

¹ Siti Maryam Qurotul Aini and Etik Nur Millati, "Hukum Waris Prespektif Hukum Perdata (Burgerlijk Wetboek)," *Jurnal Hukum Dan Ahwal Al-Syakhshiyah* 1, no. 1 (2021): 1-9, <https://ejournal.staidapondokkrempyang.ac.id/index.php/jmjh/article/view/136>.

² C Chaterina and B Djaja, "Akibat Hukum Terhadap Warisan Yang Dialihkan Tanpa Persetujuan Ahli Waris (Studi Putusan Nomor: 107/PDT. G/2019/PN. PLK)," *UNES Law Review* 6, no. 4 (2024): 10736-43, <https://www.review-unes.com/index.php/law/article/view/2048%0Ahttps://www.review-unes.com/index.php/law/article/download/2048/1642>.

inheritance law, customary inheritance law, and Islamic inheritance law, or in Indonesia it is called the Compilation of Islamic Law.

There is confusion or uncertainty regarding the regulations that regulate the delay of an heir in knowing and obtaining or receiving inheritance, for Indonesian citizens who adhere to the Islamic religion, the regulation has been regulated in the Compilation of Islamic Law by Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law (Presidential Instruction 1/1991)³. However, for Indonesian citizens who are non-Muslim or non-Muslim, the regulation regarding an heir being late to know and obtain or receive an inheritance is only regulated in the Civil Code (*Burgerlijk Wetboek*), which is only explained implicitly or unspecifically⁴.

2. Method

The research in this scientific article is using a method whose type of research is in the form of legal research with normative studies, where one of the research models uses norms and legal rules in applicable laws and regulations, and is related to the topic written⁵. This type of research is crucial in analyzing the legal implications of the topic at hand and providing recommendations for future actions. By examining the existing laws and regulations, the researchers aim to shed light on the potential legal challenges and opportunities in the field. This method offers a comprehensive and systematic approach to understanding the legal framework surrounding the topic. The approach used in this study is to use a legislative approach (Statute Approach) by examining laws that have a close relationship with inheritance⁶. and property rights.

By focusing on specific statutes that govern inheritance and property laws, researchers can gain a deeper understanding of the legal landscape and identify any gaps or inconsistencies that may exist. This approach allows for a thorough analysis of how current laws impact the topic and provides insight into potential areas for improvement or reform. By taking a legislative approach, researchers can provide valuable insights and recommendations to policymakers and stakeholders in order to enhance the legal framework and ensure that it effectively addresses the complexities of inheritance and property rights.

3. Loss of the right of heirs to obtain inheritance

The occurrence of inheritance due to a death⁷The death of a person determines their status as an heir who then leaves property called inheritance or inheritance. A person who has the right and responsibility to obtain or receive inheritance or inheritance from an heir is an heir⁸The heirs themselves consist of various groups. In the Civil Code (*Burgerlijk Wetboek*), it is explained that there are 4 (four) groups of heirs with the following details:

³ Muchamad Zamroni et al., "Kasus Waris Di Kota Malang/ : Tinjauan Hukum Waris Islam Dan KHI Dalam Pembagian Harta Warisan" 3, no. 2 (2024): 38–49. DOI: <https://doi.org/10.61610/ash.v3i2.50>

⁴ Aliya Sandra Dewi, Dian Fitriana, and Elvira, "Penerapan Hukum Waris Perdata Di Indonesia," *The Juris* 8, no. 1 (June 16, 2024): 105–12, <https://doi.org/10.56301/juris.v8i1.1242>.

⁵ Soerjono Soekanto, "Pengantar Penelitian Hukum". Jakarta. Universitas Indonesia. 2014..

⁶ Kornelius Benuf and Muhamad Azhar, "Metodologi Penelitian Hukum Sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer," *Jurnal Gema Keadilan* 7 (2020): 20–33. <https://doi.org/10.14710/gk.2020.7504>.

⁷ Pasal 830 Kitab Undang - Undang Hukum Perdata.

⁸ Diana Anisya Fitri Suhartono, Naysha Nur Azizah, and Claressia Sirikiet Wibisono, "Sistem Pewarisan Menurut Hukum Perdata," *Jurnal Hukum, Politik Dan Ilmu Sosial* 1, no. 3 (2022): 204–14, <https://doi.org/10.55606/jhpis.v1i3.921>.

Table 1. Explanation of the Division of Inheritance Groups According to the Civil Inheritance Law

DIVISION OF HEIRS ACCORDING TO B.W	
Heirs of Group I	1. The longest-living husband or wife; 2. Children or disabilities.
Heirs of Group II	1. Parents; 2. Heir's Siblings.
Heirs of Group III	1. The family is in a straight line upwards after the heirs.
Heirs of Group IV	2. Uncles and aunts of the heirs, both from the father's side and from the mother's side; 3. The descendants of uncles and aunts up to the sixth degree are counted from the heirs; 4. Brothers of grandparents and their descendants, up to the sixth degree, are counted from the heirs.

From the table above, it can be seen that in the Civil or Western Inheritance Law used in Indonesia there are 4 (four) types of heir groups, but what needs to be known is that the priority in obtaining inheritance is the heirs who are still in the nearest line and close the farthest line. The rights of heirs arise or arise after the disclosure of the inheritance, the heirs can exercise their right to determine their attitude towards the inheritance, which among others are as follows⁹: 1. The right to receive the inheritance in full; 2. The right to receive an inheritance with the provision to pay debts from the heirs whose share exceeds the inheritance; 3. The right to refuse inheritance.

When an heir has accepted or rejected an inheritance, it will have different legal consequences. When the heir receives an inheritance from the heir, it will fully become the heir's property. However, if the heir refuses, then he is not entitled to the inheritance, and the inheritance that should be given by the heir to the heir will automatically become the inheritance of the children or descendants of the heir who refuses.

Anisitus Amanat, in his book entitled "Dividing Inheritance", explains the consequences of an heir rejecting an inheritance¹⁰: 1. The position as an heir is considered non-existent; 2. Descendants of heirs who refuse cannot inherit due to a change of place (*Plaatsvervulling*); 3. If there is a testament or will from the heir addressed to the person who refuses, then the testament or will cannot be executed; 4. If the heir who refuses the inheritance has ever received a grant from the heir, then the grant is not obliged to *be included* in the heir's property; 5. The refusal is only limited to the inheritance belonging to the heirs and the refusal must be sincere and not signed with other conditions.

The loss of heirs' rights can be due to the impropriety (*onwaardig*) committed by the heirs towards their heirs, the impropriety is as follows: a. For having killed or attempted to kill the heir¹¹; b. Because they slander or have filed a complaint against the heirs for committing a crime with a

⁹ Chesya Maranatha Rantung, "Hilangnya Hak Seorang Ahli Waris Menurut Kitab Undang-Undang Hukum Perdata," *Lex Privatum*. VI, No. 1 (2018) <https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/25836>..

¹⁰ Emilda Kuspraningrum, "Hak Tolak Seorang Ahli Waris Dalam Perspektif Kitab Undang-Undang Hukum Perdata dan Hukum Islam (Beneficiary ' s Rights of Rejection in the Perspective of Burgerlijk Wetboek and Islamic Law)," *Risalah Hukum*, 4(1), 43-47. <https://e-journal.fh.unmul.ac.id/index.php/risalah/article/view/273>.

¹¹ Pasal 838 ayat (1) Kitab Undang - Undang Hukum Perdata.

threat of punishment of more than 5 years¹²; c. Because violence or deeds do not prevent the heir from making or revoking his will¹³; d. Because they have embezzled, damaged or forged the heir's will¹⁴; e. Refusing to become an heir¹⁵.

In points (a) to (d), there is bad faith or bad faith from the heirs towards their heirs, which causes there to be elements of criminal acts. This results in the loss of heirs' rights; the impropriety (*onwaardig*) referred to by the Civil Inheritance Law is bad behavior towards the heirs carried out by the heirs so that the heirs' rights in obtaining inheritance are lost. When the heir commits an impropriety (*onwaardig*), the inheritance from the heir will be received by the descendants of the heirs in a close line so that this is called inheritance in his position (*Uit Eigen Hoofde*) where when the heir is *onwaardig*, the descendants of the heirs will take the place of the heir who is *onwaardig* in his position¹⁶.

Judging from the court process, heirs can never inherit if it has been decided by a final and binding judge's decision that is punished for¹⁷: 1. Blamed for killing or attempting to kill or severely persecuting the heirs; 2. Accused of defamation for filing a complaint that the heir has committed a crime that is threatened with a sentence of 5 years in prison or a heavier sentence.

It should be noted that in the Civil Inheritance Law, the distribution of inheritance for heirs is divided into 2 (two, which among others are ab intestato, namely the heirs have a blood relationship and a marital relationship with the heir, and testamentary, namely the heirs are determined by the heirs in the will¹⁸. The division of intestate heirs is divided into 2 (two), namely inheriting by their position (*Uit Eigen Hoofde*) and inheriting by changing places (*Plaatsvervulling*). The distribution of inheritance by testamentary occurs because if there is a death, but in this case, the testament or will has been or has been determined before the heir dies, so that it has been recorded what will be received, and the heirs will receive it.

In the book entitled "Inheritance Law" by J. Satrio, it is stated that there are 3 (three) types of wills, which are as follows: 1. Olographic will, it is a will made and written by the testator himself, which explicitly explains that the will must be written entirely by the testator and signed by himself¹⁹ which is then entrusted to a notary and must be presented by 2 witnesses who then make a deed of storage (*deed van depot*). After being signed by the testator, witnesses, and notaries, the will has the same force as a general will²⁰. 2. General will, a will made in front of a notary. The notary, as an expert, must provide guidance and guidance to the testator. 3. Secret will, it is made by the testator and then submitted to a notary in a sealed or sealed state. The Notary who receives must make a deed of address (*super-scriptie deed*) which is attended by 4 (four) witnesses.

¹² Pasal 838 ayat (2) Kitab Undang - Undang Hukum Perdata.

¹³ Pasal 838 ayat (3) Kitab Undang - Undang Hukum Perdata.

¹⁴ Pasal 838 ayat (4) Kitab Undang - Undang Hukum Perdata.

¹⁵ Pasal 1057 Kitab Undang - Undang Hukum Perdata.

¹⁶ Oktavia Milayani, "Pewarisan Dan Ahli Waris Pengganti 'Bij Plaatsvervulling,'" *Al-Adl/ : Jurnal Hukum* 9, no. 3 (2017): 405, <https://doi.org/10.31602/al-adl.v9i3.1186>.

¹⁷ Chesya Maranatha Rantung, "Hilangnya Hak Seorang Ahli Waris Menurut Kitab Undang. Huk. Perdata." *Lex Privatum*. VI, No. 1 (2018) <https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/25836>

¹⁸ Milayani, "Pewarisan Dan Ahli Waris Pengganti 'Bij Plaatsvervulling.'"

¹⁹ Pasal 932 Kitab Undang - Undang Hukum Perdata.

²⁰ Pasal 933 Kitab Undang - Undang Hukum Perdata.

4. Consequences of the Late Inheritance of an Heir to Know and Obtain or Receive Inheritance From the Heir

Often or often an heir does not know the inheritance belonging to the parents or heirs this causes When the parent or heir dies, the inheritance does not automatically fall directly to the heirs who are entitled to receive²¹. When the inheritance does not arrive or falls to the heirs who are entitled to receive, then the inheritance will be held and there may be irregularities such as those who control the property based on what is under their authority or supervision while the heirs are still alive, there are those who immediately control the heritage property when the heir dies, there are those who directly sell the heritage without the knowledge of other heirs or before The distribution of inheritance is carried out, some divide the inheritance according to the taste of the divider, and many more forms and methods carried out by the heirs²². If an heir does not receive an inheritance, it is feared that it will cause legal problems in the future, but what is the polemic point of this problem is when the deadline is for an heir to receive an inheritance from the heir.

Late receipt of an inheritance cannot be said that the heir rejects an inheritance, there are no standard rules regarding it. However, there are regulations that regulate the time limit or expiration of an inheritance, as follows: Article 1055 of the Civil Code (*Burgerlijk Wetboek*) *"The right to receive an inheritance is erased due to the expiration of 30 (thirty) years, starting from the date of disclosure of the inheritance, as long as the inheritance has been received by one of them by law or by a will appointed as an heir; but without prejudice to the rights of third parties to the inheritance, which are obtained because of a legitimate right"*.

It is explicitly or expressly explained that the right of the heirs to receive the inheritance will be considered lost if they do not receive the inheritance for 30 (thirty) years, so if an heir is late in receiving an inheritance, he will not completely lose his rights as long as it is not more than 30 (thirty) years from the day the inheritance is opened.

Within 30 (thirty) years from the day of the opening of the inheritance, there is a risk of irregularities in the control of inheritance, which includes inheritance whose part has been regulated both by the heir and in the law used by the heirs without the knowledge of the other heirs. In this case, when the heirs who feel that they have not received the inheritance or are late in receiving the inheritance who then want to receive the inheritance and part of their inheritance have been reduced because it is used by other heirs without their knowledge, then the heirs can use their rights, namely in the form of *Hereditatis Petitio*²³ dan The Right to Demand the Distribution of Inheritance²⁴. *Hereditatis Petitio* is a right contained in Article 834 of the Civil Code, which explains that every heir has the right to prosecute to fight for his inheritance, This right of prosecution resembles the right to prosecute an owner of an object, and according to the meaning the prosecution must be addressed to the person who controls an inheritance to own it²⁵. The separation can be demanded

²¹ Gagah Hotma Parulian Siregar and Widhi Handoko, "Kajian Studi Kasus Hukum Waris Putusan Mahkamah Agung Nomor 784 K/Pdt/2014 Terhadap Kententuan Hukum Waris Barat," *Notarius* 15, no. 2 (2022): 607-15, <https://doi.org/10.14710/nts.v15i2.36976>.

²² Andi Herawati Andi Herawati, "Urgensi Penyelenggaraan Pelaksanaan Warisan," *Ash-Shahabiah/ : Jurnal Pendidikan Dan Studi Islam* 6, no. 2 (2020): 183-91, <https://journal-uim-makassar.ac.id/index.php/ASH/article/view/294>.

²³ Pasal 834 - 835 Kitab Undang - Undang Hukum Perdata.

²⁴ Pasal 1066 Kitab Undang - Undang Hukum Perdata.

²⁵ Mia Putri Suci Anggraini, "Penyelesaian Sengketa Harta Warisan Yang dikuasai Oleh Salah Satu Ahli Waris (Studi Kasus Perkara Nomor 10/Pdt.G/2020/PN.Skt)," *Jurnal Bebinding* 01, no. 05 (2023): 1-8, <http://journal.uniba.ac.id/index.php/JB/article/view/892%0Ahttp://journal.uniba.ac.id/index.php/JB/article/download/892/631>.

at any time, although there is a prohibition on doing so. However, there can be an agreement not to do a separation for a certain period. This means that if one heir demands the separation or division of the inheritance in front of the court, the claim cannot be rejected by the other heirs²⁶.

5. Conclusion

Based on the provisions of the Civil Code, heirs have 3 (three) types of rights in responding to inheritance, which include the right to receive inheritance, the right to receive inheritance with the provision to pay debts from heirs whose share exceeds the inheritance, and the right to reject inheritance. Each of the rights has different legal consequences or consequences, but if the heir uses the right to refuse the inheritance, the heir will not get the inheritance from the heir or lose their right to receive the inheritance. The loss of the heir's right to receive the inheritance is also caused by impropriety (*onwaardig*) where the impropriety is that the heir kills, harms, or attempts to harm the heir, the heir slanders the heir, the heir tries to harm the heir to revoke his will, the heir embezzles, damages, and forges the heir's will, and the heir rejects an inheritance. When the heir is late in knowing the existence of an inheritance or in receiving an inheritance from the heir, then the right of the heir is not completely lost. The expiration date of an heir to exercise his right to receive an heir is within 30 (thirty) years from the day of the opening of the inheritance and if the part of the inheritance which is the right of one heir has been used or used by another heir without his knowledge, the heir can exercise his right, namely Hereditatis Petitio, namely the right to legal prosecution to fight for their rights in inheritance and the right to distribute inheritance.

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²⁶ Nadia Boyoh, Engeline R. Palandeng, and Jemmy Sondakh, "Kekuatan Hukum Surat Wasiat Sebagai Bukti Kepemilikan Tanah Warisan Yang Sah Menurut Kitab Undang-Undang Hukum Perdata," *Lex Privatum* IX, no. 4 (2021): 143-52, <https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/33349>.

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