



Consequences of the Marriage Law Below Hand to Heirs (Study of the Decision of the Medan District Court Number 674/Pdt.G/2020/PN Mdn)

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ABSTRACT

One of the cases of inheritance in marriage under hands occurred in the city of Medan. This case began when the heir's blood relatives demanded inheritance rights through the Medan District Court, this is because the inheritance is controlled by the heir's husband. It is known that the heir is married under the hand with the heir's husband in the Indonesian International Pentecostal Church (G.P.I.I) without registration by the authorized officials. In this study, the research method is normative juridical, with secondary data sources, and qualitative analysis. The findings and discussion show that the Civil Code does not accommodate the legal reason that a person is not entitled to inherit from a married couple or wife who is married under hand.

INTRODUCTION

Human beings in their journey in the world have 3 (three) very important events, namely the time he is born, the time he marries and the time he dies. Marriage is a bond between a man and a woman that is recognized as valid by state laws and regulations and aims to form and foster an eternal and eternal family life. The goal of marriage is to establish harmony within one's own family as well as a happy, lasting, prosperous, and inner family. Marriage will have legal ramifications for both the husband and wife, which will impact the family relationship in question. Because it involves the child's relationship with the parents, heirs, guardianship, and guardianship, this family relationship is extremely significant.

Marriage is defined as a physical and mental relationship between a man and a woman as husband and wife with the goal of creating a happy and lasting family or household based on the One Godhead, as stated in Article 1 of Law Number 1 of 1974 about Marriage. Meanwhile, The Marriage Law's Article 2 Paragraph (1) highlights that a marriage is deemed lawful if it is performed in accordance with the laws of each respective faith and belief. Additionally, each marriage is recorded in compliance with the relevant rules and regulations, as stated in paragraph (2). In line with this definition, marriage has a central position in human life, both as individuals and communally.

The provisions of Article 2 paragraphs (1) and (2) of Law Number 1 of 1974 concerning Marriage when viewed from the point of view of the positivism school where this school prioritizes legal certainty through "law is law" then the editorial of this article is no longer in doubt, the provisions of marriage are considered valid, clear and clear that marriage is considered valid if it is carried out according to their respective laws and beliefs and each marriage is recorded according to the regulations applicable laws. In addition to adhering to the terms and conditions of marriage in accordance with the laws of each religion and belief, it can be argued that marriage registration is a crucial component that establishes the validity of a marriage if the two paragraphs (1) and (2) of Article 2 of the Marriage Law are connected.

In essence, marriage will result in legal ramifications for both the husband and the wife; for this reason, marriage registration is necessary in order to realize benefits and provide legal certainty. Therefore, registering a marriage will help ensure that each partner maintains their rights while also serving as legitimate proof in the event of a disagreement or default.

The official process of registering a marriage certifies that the marital event actually took place and that it is now evident to the individuals involved as well as to others. The state views a marriage as nonexistent and does not grant legal certainty if it is not documented in the Marriage Certificate. Similarly, not all of the effects of marriage are documented.

The purpose of this marriage registration is to provide certainty and all protection for the parties who carry out the marriage, so as to provide the strength of authentic evidence that marriage has occurred and the parties can maintain the marriage to anyone before the law. The marriage between the

parties, however, lacks legal power and evidence as a marriage if it is not recorded.

Regarding the registration of marriage, it is further regulated in Article 2 of Government Regulation of the Republic of Indonesia Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage which reads:

(1) *"The registration of marriage of those who carry out their marriage according to the religion of Islam, shall be carried out by the registrar as intended in Law Number 32 of 1954 concerning the Registration of Marriage, Talak and Refer"*

(2) *"The registration of marriage from those who perform their marriage according to their religion and belief other than Islam, shall be carried out by the Marriage Registration Officer at the Civil Registry Office as intended in various laws concerning the registration of marriage"*

The above provisions, for Muslims in the implementation of marriage registration are carried out by the Office of Religious Affairs (KUA), while for non-Islamic religions such as Protestant Christianity, Catholic Christianity, Buddhism, Hinduism and Confucianism, the registration of marriage is carried out by the Marriage Registration Officer at the Civil Registration Office.

Marriages that are not registered are marriages that are only based on religious rules or customs and are not registered by marriage officials at the Religious Affairs Office (KUA) for Muslims and by Marriage Registration Employees by the Civil Registration Office (KCS) for non-Muslims. An unregistered marriage is generally known as a marriage under the hands as referred to in the Fatwa of the Indonesian Ulema Council is a marriage that fulfills all the principles and conditions set forth in fiqh (Islamic Law) but without official registration in the authorized agency as stipulated in the applicable laws and regulations.

Unregistered marriages are very detrimental to the wives or husbands and their descendants both legally and socially. A marriage that is not legally registered will harm the wife or husband is not considered a legitimate wife or husband and is not entitled to gono-gini property if the divorce and inheritance if one of the husbands or wives dies, because legally the marriage is considered to have never happened. Socially, having an impact on the loss will be considered invalid.

THEORETICAL REVIEW

Theoretical Framework

Theory has an important role in every legal research activity, because every research activity generally begins with a theoretical search and making a final decision with a theoretical conception.

Theory is a flow of reasoning or logic, which consists of a set of concepts or variables, definitions and propositions that are arranged systematically. The theory is actually a generalization that is achieved after conducting tests and the results concern a very wide scope of facts. Theory has a very important position because it gives us the means to summarize and understand the problem being discussed better.

A theoretical framework is a set of ideas, opinions, theories, or theses regarding a case or issue that serves as the basis for the author's legal comparisons. A framework of ideas or points of view, theory, or thesis on a case or issue under investigation that can be verified is another term for a theoretical framework.

Legal theory is very necessary because it plays an important role, namely it functions to provide direction or guidance and explain the observed symptoms. The purpose of legal theory is to analyze and explain the meaning of law and juridical concepts, which are relevant to answer problems that arise in legal research.

The theoretical framework used in this study is:

1. Legal Certainty Theory

Certainty is a provision, requirement, or definite (circumstance). The legislation ought to be equitable and hierarchically clear. Because the code of conduct must support an order that is deemed reasonable, it must be fair and a guideline of conduct. The law can perform its role simply because it is equitable and applied with certainty. The only way to answer the question of legal certainty is normatively, not sociologically.

According to Hans Kelsen, law is a system of norms. A norm is a statement that includes guidelines about what to do in order to highlight the concept of "should" or *das sollen*. Norms are human behaviors and deliberate products. General norms found in laws serve as recommendations for how people should act in society, both toward one another and toward society as a whole. These regulations restrict the community's ability to take action against certain people. Legal certainty is produced by the presence of these regulations and their application.

2. Theory of Legal Positivism

The positivist legal theory put forward by Jhon Austin (1790-1859) holds that law is a command of a lawgiver, which means an order from the holder of the highest power or who holds sovereignty. Furthermore, law is considered a logical, fixed and closed logical system, law is expressly separated from justice and is not based on good and bad values. The essence of the law itself, according to Jhon Austin, lies in the element of "command" made by a sovereign ruler addressed to the ruled with sanctions if the order is violated. Law is seen as a fixed, logical, and closed system.

Gustav Radbruch as a figure provides a view in legal positivism, which teaches that law must contain 3 (three) basic values, namely: the value of justice (philosophical aspect), the value of certainty (juridical aspect), and the value of usefulness (sociological aspect). Every legal regulation must be able to be restored to its validity value at that basic value. Gustav Radbruch conceptualized law as a combination between values that must be realized and reality that must not violate those values, the value in question is justice. Therefore, the pursuit of justice must be realized in real regulations, which are in the form of laws. In its development, the value of certainty is the core of the rule of law teaching.

Conception Framework

The conceptual framework is the most important part as the theoretical basis of legal research. Concept (English: concept, Latin: conceptus from concipere meaning to understand, receive, catch) is a combination of the words con (together) and capere (catch, tame).

The importance of operational definitions is to avoid differences in meaning or dual interpretations (dubius) of the terms used. The concept of law is used to formulate from the many meanings covered in a legal research, both variations and differences into one term only.

Thus, in order to produce research findings that align with the established objectives, namely:

- a) Marriage is a bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the One Godhead.
- b) Marriage under hand, according to Mohd. Idris Ramulyo is a marriage that is performed in violation of the law it may take place in front of religious authorities rather than the KUA. Such marriage can be interpreted as an intention for smuggling state provisions contained in the Law.
- c) Marimonial property is all property controlled by a husband and wife as long as they are bound in marriage, both family property that they control, as well as personal property derived from inheritance, grants, self-income property, livelihood property from the joint income of husband and wife, gift goods.
- d) Joint property is property that is obtained during the marriage bond without questioning whether it is registered in anyone's name.
- e) Acquired property is property that is personally owned by each couple (husband and wife) after the marriage bond occurs.
- f) Heirs are family members, people who are entitled to receive inheritance, the remains of people who have died.
- g) A dispute is something that causes differences of opinion, quarrels, arguments.
- h) An heir is a person who dies by leaving behind wealth and heirs.
- i) According to Sudikno Mertokusumo, "A Judge's Decision is a statement that the judge, as a state official who is authorized to do so, is uttered at the trial and aims to end or resolve a case or dispute between the parties".

METHODOLOGY

Types and Nature of Research

This research uses a legal/normative research method, It uses scientific research methods to determine the truth using normative scientific reasoning. It is called normative, because the law is assumed to be autonomous so that its enactment is determined by the law itself and not by factors outside the law. Philipus M. Hadjon asserts that normative legal research is research aimed at finding and formulating legal arguments through analysis of the subject matter. Meanwhile, Soerjono Soekanto and Sri Mamuji interpret normative legal research or also called literature law research as legal research material that is carried out by researching literature materials or secondary data.

Research Approach

The research approach that will be applied in the int research uses two approaches, namely the statute approach and the case study. The legislative approach is "an approach used to review and analyze all laws and regulations that are related to the legal issue being addressed". In this study, a statute approach is used, namely the Civil Code (KUHPerdata), Law Number 1 of 1974 concerning Marriage and other related regulations in this study. The Case Study Approach is "a method that is carried out comprehensively in order to gain a deep understanding of the problems faced with the aim of solving the problems". The case study (Case Approach) used in this study is the Medan District Court Decision Number 647/Pdt. G/2020/PN Mdn.

Source of Legal Materials

The source of legal materials used in this study is secondary legal materials, namely "data that supports information or supports completeness in research objectives obtained from various legal sources and literature".

Techniques and Tools for Collecting Legal Materials

Data collection techniques are the most strategic step in research, because the main purpose of research is to obtain data/sources of legal materials. Based on the approach and sources of legal materials in this study, in making it easier to obtain legal materials to be studied, this research uses library research techniques or documentary studies.

Analysis of Legal Materials

In this study, qualitative analysis is used, qualitative analysis refers to "efforts made by working with data, sorting it into manageable units, synthesizing it, searching and finding patterns, finding what is important and what is learned, and deciding what can be told to others". By using qualitative analysis, it can answer the problems in this study by explaining, analyzing and describing the existing data. Then a deductive conclusion was drawn, namely "from general things to special things according to the problems discussed in this study.

RESEARCH RESULTS

Legal Reasons That Can Be Used as a Person Not Entitled to Receive Inheritance According to the Provisions of the Civil Code Related to Decision Number 674/Pdt.G/2020/Pn.Mdn

Inheritance System According to the Civil Code

The law of western civil inheritance that is regulated in the Civil Code (Burgelijk Wetboek) which is a mere imitation of the old Dutch Burgelijk Wetboek, based on the principle of concordance applied in Indonesia for Europeans and those who are equated with Europeans as regulated in Article 131 of the Indische Staatsregeling, although it is a legal product of the Dutch colonial government, but until now it is still declared to be valid. The regular application

of inheritance law in the Civil Code (Burgelijk Wetboek) is based on the transitional rules of Article II and Article IV of the 1945 Constitution.

As a form of strengthening the two articles of the transitional rules of the 1945 Constitution, on October 10, 1945, the President issued a Presidential Regulation No. 2 of 1945 which reads as follows:

For maintaining public order in accordance with the Republic of Indonesia's Constitution's transitional provisions Article II and Article IV, we the President stipulate the following regulations:

Article 1

All state bodies and regulations that have existed until the establishment of the Republic of Indonesia on August 17, as long as they have not been held in accordance with this Constitution, are still in effect as long as they do not contradict the Constitution.

Article 2

That this regulation came into force on August 17, 1945 in the explanation of government regulation Number 2 of 1945, it is said that the holding of the Government Regulation is to further affirm the enactment of Article II of the transitional rules of the 1945 Constitution. In this regard, this is the basis for the applicable provisions, one of which is regarding inheritance in the provisions of the Civil Code until now it is still valid in Indonesia.

Definition of Inheritance

Inheritance in civil law is regulated in Article 830 of the Civil Code, which states that inheritance occurs due to the death of a person. This means that when a person dies, all rights and obligations related to his property will be transferred to his heirs.

Some experts provide a definition of inheritance law:

1. Wirjono Prodjodikoro: A legal rule that regulates the transfer of rights and obligations regarding a person's property to heirs after death.
2. Idris Ramulyo: Rules on who has the right to be heirs and how the distribution of inheritance is carried out fairly.
3. Subject: Only rights and obligations in the field of wealth can be inherited, not family or personality rights.
4. Surini Ahlan Sjarif: Inheritance law is related to family law and property law.

Elements of Inheritance

Inheritance can occur if it meets three main elements:

- a. There is an heir (a person who dies).
- b. The existence of inheritance (wealth left behind).
- c. There is an heir (a person who is entitled to receive an inheritance).

Inheritance includes all the assets of the heirs, including receivables and debts. If the property is joint property in marriage, it must be divided first before being inherited.

Heirs can be determined based on two conditions:

- a. Heirs according to the law (Article 832 of the Civil Code), namely families with blood relations and legal husband/wife.

- b. Heirs are based on a will (Article 875 of the Civil Code), where the heirs determine who will receive the inheritance through a will.

Principles of Inheritance Law

Some of the principles that apply in civil inheritance law include:

- a. Death principle: Inheritance only occurs after the heir dies.
- b. Basis of blood relations & marriage: Heirs are blood relatives or legal partners.
- c. Individual principle: Inheritance is divided individually, not as a group.
- d. Bilateral principle: Inheritance can be received from both the father and mother.
- e. Principle of superiority: Heirs with a closer relationship close the rights of distant heirs.
- f. The principle of "Le mort saisit le vif": The rights and obligations of the heirs are directly transferred to the heirs without the need for additional legal action.

Inheritance Process

The inheritance system in Indonesia can be done through:

- a. Islamic Law: Refers to faraid law.
- b. Customary Law: Varies depending on the local culture.
- c. Civil Code: Applies to non-Muslim citizens.

In the Civil Code, two types of heirs are known, Ab Intestato Heirs (without wills), which consist of four groups:

Group I: Legal child, the longest-lived husband/wife.

Group II: Parents and siblings.

Group III: Grandparents from both fathers and mothers.

Group IV: Blood relatives up to the sixth degree.

Testamentary heirs (based on a will), in which the heirs determine the inheritors themselves.

The inheritance law in the Civil Code regulates the transfer of property from heirs to heirs based on applicable legal principles. An inheritance can be given to the heirs based on the provisions of the law or through a will. In the division of inheritance, there is a hierarchy of heirs who determines who has the right first according to the closeness of the relationship with the heirs.

Authority to Refuse Inheritance by Heirs According to the Civil Code

Right to Refuse Inheritance by Heirs

The Civil Code states that inheritance includes assets and assets, so that the heirs not only receive property, but are also responsible for the heirs' debts (Article 1100 of the Civil Code).

The heirs have the right to:

- a. Receive the inheritance in full, including heirs' debts.
- b. Receiving an inheritance on the condition that it only pays debts according to the amount of inheritance received.
- c. Reject inheritance, so as not to be involved in heritage management.

To determine the attitude, the heirs are given time to think (recht van beraad) for four months (Article 1024 of the Civil Code). During that time, he had to take care of the inheritance.

Conditions for inheritance rejection:

- 1) It can only be done after the heir dies (Article 1334 paragraph (2) of the Civil Code).
- 2) It must be done before the District Court.
- 3) It cannot be canceled except due to fraud or coercion (Articles 1064-1065 of the Civil Code).

Legal Consequences of Inheritance Refusal

Heirs who reject inheritance are considered to have never been heirs. Consequences:

- a) The rejected portion of the inheritance is given to other heirs.
- b) The son of the heir who refuses cannot take his place.
- c) The heir creditor can ask the court to take the inheritance to pay off the debt.
- d) The refusal is valid forever and does not expire due to expiration.

However, restoration of inheritance rights is still possible:

- a. Article 1056 of the Civil Code: The heirs can withdraw the refusal if the inheritance has not fallen to another heir.
- b. Article 1065 of the Civil Code: If the refusal is made due to fraud or coercion, the inheritance rights can be returned even though the inheritance has been received by another party.
- c. If it has been granted by the court, the rejection of the inheritance is valid from the time the heir dies and cannot be canceled, except under certain conditions.

Legal Reasons for a Person Not Entitled to Receive Inheritance According to the Civil Code Related to Decision Number 674/Pdt.G/2020/PN.Mdn

The Civil Code accommodates the provisions in article 838 of the Civil Code for people who are not suitable to be heirs (onwaardig) as follows:

- 1) A person who has been convicted of killing the heir. In this case, there has been a judge's decision, but if before the judge's decision is handed down, the murderer has died, then his heirs can take his place. Forgiveness (clemency) does not eliminate the condition of not inheriting.
- 2) A person who by decision of the judge has been blamed for defaming the heir, in the form of slander with the threat of a sentence of 5 (five) years or more. In this case, there must be a judge's decision stating that the person concerned is guilty of defamation.
- 3) A person who by violence or deeds has prevented the heir from assisting or revoking his will.
- 4) A person who has embezzled, damaged or forged an heir's will.

The position of the husband as an heir in inheriting the heir's inheritance in marriage under his hands is related to Decision Number 674/Pdt.G/2020/Pn.Mdn
Marriage Law Regulation According to the Marriage Law
Definition of Marriage

According to Law No. 1/1974, marriage is an innate bond between a man and a woman in order to form a happy and eternal family (household) based on the One Godhead.

Five Essential Components:

- a. An inner innate bond that involves promises and emotional commitments.
- b. It is carried out between a man and a woman (rejects same-sex marriage).
- c. It is carried out by one man and one woman, although open polygamy is allowed under special conditions.
- d. Aiming to create a happy and eternal family (rejecting contract marriage).
- e. Based on godliness in accordance with the laws of their respective religions.

Legal Conditions of Marriage

Material Requirements:

1. Absolute
 - a. Both parties should not be bound in another marriage (the principle of monogamy).
 - b. Voluntary and coercive consent.
 - c. Minimum age of 19 years (according to the Marriage Law and Law No. 16/2019).
 - d. For women, they have to wait for a waiting period after divorce.
 - e. Permission from a third party is required for certain minors.

2. Prohibition

It is forbidden to marry between people who have family ties or who are involved in adultery, as well as as the result of a previous marriage.

Formal Requirements:

It includes procedures for notification of marriage intention, announcement, implementation of marriage, and signing of marriage certificates in accordance with Government Regulation No. 9/1975. This recording is mandatory to ensure legality and legal protection for all parties.

Marriage Registration Mechanism

After the marriage is carried out, the bride and groom sign a deed prepared by the registrar, witnessed by witnesses and/or marriage guardians. A marriage certificate as proof of legality is needed so that the marriage is recognized and receives legal protection from the state.

Legal Consequences for the Implementation of Marriage Under Hands

Views on Marriage Law Under the Hand

Marriage under hand is a marriage that, although it has been held according to religious teachings, is not officially recorded in the authorized agency so that it does not meet the legality requirements according to the Marriage Law.

Consequences of Marriage Law Under the Hand

- a. Unproven Legality: The absence of a marriage certificate results in a marriage not being legally recognized.

- b. Child Status: Children from the marriage have difficulty obtaining a valid birth certificate and recognition as legal children, thus having an impact on inheritance rights.
- c. Joint Property and Inheritance: Acquired property is not recognized as joint property, and the spouses are not entitled to inherit each other.
- d. Administrative Rights: Lack of legal evidence hinders the processing of official documents and other administrative protections.

Causes of Marriage Under the Hand

- a. Lack of Legal Awareness: The community has a lack of understanding of the importance of marriage registration.
- b. Pregnancy Out of Marriage: To avoid disgrace, couples choose to marry in series.
- c. Avoiding Legal Proceedings: Couples try to avoid legal processes and administrative procedures that are considered complicated.
- d. Regulatory Ambiguity: Differing interpretations of the provisions of the validity of marriage make recording not always considered important.
- e. Economic Factors: Recording costs and procedures that are considered expensive and convoluted also trigger marriage under the hands.

The position of the husband as an heir in marriage under his hands related to Decision Number 674/Pdt.G/2020/PN.Mdn

- a. The Importance of Marriage Registration:

According to Law No. 1/1974, a valid marriage must be held and recorded (with a marriage book) in order to receive legal recognition. This recording proves the validity of marriage and ensures rights, including inheritance rights, for husbands, wives, and children.

- b. Concept of Joint Property and Inheritance Rights:

Property obtained during marriage becomes joint property (Article 35 paragraph 1 of the Marriage Law) and inheritance rights are given to the legal spouse and their descendants. Unregistered marriages do not meet this requirement, so they are not guaranteed by the state.

3. Context of the Case of Decision No. 674/Pdt.G/2020/PN.Mdn:

In this case, Drs. Irsan Bukit married Almh. Kathrina Br. Sembiring religiously (through the church) but the marriage is not recorded. As a result, even though Kathrina's estate was the object of dispute, there was no legal evidence (marriage book) certifying the marital relationship.

4. Legal Implications:

Because it is not recorded, marriage is considered administratively invalid so that the husband should not have the right to inherit the wife's inheritance. Supposedly, the inheritance should be given to the rightful heirs (for example, the blood relatives of the deceased). However, in the decision, the judge granted inheritance rights to Irsan Bukit, which caused legal uncertainty because the judge only referred to the legal conditions of marriage according to religious law (Article 2 paragraph (1) of the Marriage Law) without paying attention to the conditions for recording (Article 2 paragraph (2)).

The absence of marriage registration resulted in Drs. Irsan Bukit not being recognized as a legal husband to obtain inheritance rights. This shows the importance of recording as a guarantee of legal certainty in the marriage relationship and the rights arising from it.

DISCUSSION

Analysis of Judge's Considerations and Decisions in Determining Legal Heirs in the Trial of Heir Lawsuits Based on Decision Number 674/Pdt.G/2020/PN Mdn Chronology of the Case in Decision Number 674/PDt.G/2020/PN Mdn

a) Identity of the Parties

In a civil case, it consists of 2 (two) parties, namely the plaintiff and the defendant. The parties can appear directly in front of the court or can delegate it to a power attorney with special powers. The parties are differentiated on: the material party and the formal party. The material party is the party with direct interest, namely the plaintiff and the defendant, the formal party is the party who formally appears and performs in front of the court, namely the plaintiff, the defendant and the legal representative.

b) Sitting Things

The plaintiff with his lawsuit dated October 12, 2020 which has been registered at the Medan District Court Clerk under Register Number 674/Pdt.G/2020/PN Mdn has filed a lawsuit on October 14, 2020, which is basically as follows:

- 1) That plaintiffs 1 to Plaintiff IV are legal blood relatives according to the contents of the Medan District Court Decision Number: 23/LEG/AW/2018/PN. MDN is also the heir of Almh. Kathrina br Brahmana who passed away in Medan on Friday, July 3, 2020, as stated in the Death Certificate Number: 474.3/306 dated July 8, 2020 issued by Babura District, Medan Baru District;
- 2) That at the time of the wedding of Almh. Kathrina br Brahmana with Irsan Bukit (Defendant) in 2011, Almh. Kathrina Br Brahmana is a Widow (who has been officially divorced at the Dumai Religious Court) and has no children, while Irsan Bukit has the status of a widower, during the marriage of Almh. Kathrina br Brahmana with Irsan Bukit (defendant), has no children;
- 3) That Almh. Kathrina br Brahmanah before marrying the Defendant had been married first to her first husband named Pamal Harahap in Islam and had been officially divorced at the Dumai Religious Court in accordance with the quotation of the divorce certificate Number: 197/AC/2005/PA DUM on Thursday, December 8, 2005. During the wedding of Almh. Kathrina br Brahmana with first husband Pamal Harahap had no children;
- 4) That when he got married, Almh. Kathrina br Brahmana with Pamal Harahap (both Muslims) and at the time of the marriage Almh. Kathrina br Brahmin with Pamal Harahap had raised a daughter named Riskiyana M. Harahap, to be nurtured and raised with affection and schooled until Riskiyana M. Harahap was mature and independent;
- 5) That the parents and biological father of Almh. Kathrina br Brahmana named M. S Brahmana has passed away in 1973 and her biological mother

named Petty br Sembiring has also passed away on November 3, 2017 in accordance with the Death Certificate Number: 474.3/1138;

- 6) That thus when the death of Almh. Kathrina br Brahmana on Friday, July 3, 2020 left her legal heirs as well as having the right to inherit the inheritance, namely:
 1. Ir. IRSAN BUKIT, husband of Defendant Ic
 2. 4 (four) blood siblings in accordance with the Medan District Court Decision Number 23/LEG/AW/2018/PN. MDN Named:
 1. Ir. MANAKEN BRAHMANA, Ic Plaintiff I;
 2. ROSMELIANY BRAHMANA, Plaintiff II IC;
 3. RINA AISYAH SEMBIRING; Plaintiff III IC;
 4. YANITA INGAN, Plaintiff IV IC;
- 7) That apart from the heirs mentioned above, there are no other heirs from Almh. Kathrina br Brahmin who is legally entitled to inherit her inheritance;
- 8) That there is a ranji / genealogy of the lineage of Almh. Kathrina br Brahmana who passed away in Medan on Friday, July 3, 2020 as stated in the Death Certificate Number: 474.3/306 dated July 8, 2020 issued by Babura Village, Medan Baru District.
- 9) That during his life Almh. Kathrina br Brahmana married to the defendant has inherited property that is considered to be her inheritance obtained with the defendant or during the marriage period with the defendant, namely in the form of:
 - I. Immovable Objects acquired during marriage
A plot of land covering an area of 1,912 M2 located in Bangun Sari Village, Tanjung Morawa District, Deli Serdang Regency, North Sumatra Province, with land boundaries as recorded in the Certificate of Ownership Number 540 in the name of Drs. IRSAN BUKIT, in accordance with the Sale and Purchase dated August 18, 2011 made before the Notary of JEJEK, S.H, PPAT Deli Serdang Regency (object of dispute I)
That the immovable object mentioned above was obtained during the marriage between Almh. Kathrina br Brahmin with Irsan Bukit;
 - II. Movable Objects acquired during marriage
1 (one) Car Unit, Expander Brand, Black, Serial Number BK 1362 HX, Year 2018, in the name of Kathrina br Brahmana, (Object of Dispute II)
 - a. That in addition to the object of dispute I and object of dispute II above, Almh. Kathrina br Brahmana has a savings account at PT. Bank Mandiri where Almh. Kathrina br Brahmana opened the savings at PT. Bank Mandiri Dumai Branch in 2005 with account number: 1080005343539 in the name of Almh. Kathrina br Brahmana, which is counted as the inheritance of Almh. Kathrina br Brahmana before marrying the defendant;
 - b. That is why it is the inheritance/legacy of Almh. Kathrina br Brahmana who passed away on Friday, July 3, 2020 is immovable property point 1 (one)/object of dispute I and movable object point

- 1 (one)/object of dispute II above is an inheritance that is divided according to the portion of each heir;
- c. That for and therefore the inheritance/heritage of both immovable and movable objects of Allah. Kathrina br Brahmana above has not been divided in whole and is partly controlled by the defendant and complicates the rights of the plaintiffs over the object in question. This is very detrimental to the plaintiffs as heirs who also have the right to inheritance from Almh. Kathrina br Brahmana;
 - d. That the plaintiffs have repeatedly warned the defendant to be fair and asked the defendant to be ready to divide the inheritance above the family, but this was ignored and ignored by the defendant, which of course is very detrimental to the plaintiffs as the legal heirs in accordance with Article 832 of the Civil Code on the inheritance from the deceased. Kathrina br Brahmana;
 - e. That because the plaintiffs have been harmed by the defendant who controls and makes it difficult for the plaintiffs to obtain their rights unilaterally which should be part of the plaintiffs' rights from the inheritance of the deceased. Kathrina br Brahmana and the defendant do not wish to divide and give what is the right of the plaintiffs' share of the inheritance when requested, to divide the inheritance object always refuses, therefore it is reasonable and appropriate for the plaintiffs to file this case to obtain a Decision in accordance with the provisions of the applicable law in Indonesia which in this case is the authority of the Special Medan District Court Class I-A;

Legal Considerations and Decision of the Panel of Judges of the Medan District Court Number 674/Pdt.G/2020/PN Mdn in conjunction with the Decision of the Medan High Court Number 548/Pdt/2021/PT Mdn

The considerations contained in a decision are divided into two, namely: "considerations regarding the sitting of the case or the event and also about the law". Regarding events or sitting cases, it is the duty of the party presenting and proving it in the trial by presenting or providing evidence, while the decision is the duty of the judge.

Medan District Court Decision Number 674/Pdt.G/2020/PN Mdn

The defendant, Drs. Irsan Bukit, stated that his marriage to Almh. Kathrina Br Brahmin is legal and has no children in the marriage. He emphasized that the disputed land was obtained before marriage.

The defendant filed a counterclaim (reconvention) to establish himself as the sole heir of Almh. Katharina Br Brahmana, with inheritance in the form of:

- a. Mitsubishi Expander BK 1362 HX Car
- b. Savings at Bank Mandiri and Bank BNI in the name of Almh.
- c. Other treasures found later

Legal Considerations:

The judge considered Article 852 of the Civil Code, which states that the heirs of the first group are the longest-lived spouses and their descendants. Because there

were no children in the marriage, the husband (Drs. Irsan Bukit) became the sole heir, while the lawsuit was from the brothers and sisters of the deceased. rejected. Verdict:

- a. Under the Convention: The plaintiff's lawsuit is partially granted, but is not recognized as an heir.
- b. In the Reconvention: Drs. Irsan Bukit lawsuit was granted in full, establishing him as the sole heir to all of Almh's estate. Katharina Br Brahmana.

Medan High Court Decision Number 548/Pdt/2021/PT Mdn

The plaintiffs appealed, but the High Court stated that the appeal argument only repeated the previous answer and that nothing new could overturn the decision of the Medan District Court.

Amar Verdict:

- a. Accept appeals.
- b. Strengthening the Decision of the Medan District Court Number 674/Pdt.G/2020/PN Mdn.
- c. Punishing the appellants to pay the costs of the case.

CONCLUSIONS AND RECOMMENDATIONS

Conclusion

1. The Civil Code accommodates the legal reasons for a person not being entitled to receive an inheritance as stated in Article 838 of the Civil Code which states that a person who is considered unfit to be an heir, and thus impossible to receive an inheritance is: 1. who was found guilty of the deceased person's murder or attempted murder; 2. He who by the judge's decision has been blamed for defaming the heir, that the heir has committed a crime that is threatened with a prison sentence of 5 (five) years or a heavier sentence; 3. He who obstructs the deceased person by violence or real deeds to make or withdraw his will; 4. He who has embezzled, destroyed or falsified the will of the deceased. Regarding the subject matter of the case in Decision number 674/Pdt.G/2020/PN.Mdn, it is known that a husband or wife who performs a marriage under their hands is one of the legal reasons a person is not entitled to receive an inheritance.
2. The position of the husband as an heir in a marriage under his hands is not recognized because the marriage is not recognized by the state because the marriage is not recorded by the marriage registrar in accordance with the mandate of Article 2 paragraph (2) jo PP No. 9 of 1975. So that because the marriage is not recognized, the husband is not entitled to be the heir. However, this is not in accordance with the Decision of the Panel of Judges in case Number 674/Pdt.G/2020/PN.Mdn which grants inheritance rights to husbands who hold marriages under their hands.
3. The Panel of Judges in Decision Number 674/Pdt.G/2020/PN Mdn was not careful in giving legal considerations that only recognized a valid marriage according to Article 2 paragraph (1) of the Marriage Law, without paying attention to the provisions of Article 2 paragraph (2) jo PP No. 9 of 1975 that the marriage was recorded by the marriage registrar. So that the imposition of

inheritance rights is not in accordance with the provisions of Article 852 of the Civil Code, which should have landed on Group II, namely the heirs' blood relatives.

Recommendation

1. The Government together with the House of Representatives should make regulations specifically related to inheritance, with the aim of making it easier for the community to access regulations and updates to things that develop in society.
2. The House of Representatives should provide legal certainty in the Marriage Law, especially the legal sharia of marriage, ambiguity in the legal conditions of marriage Article 2 of the Marriage Law due to the infirmity of legal norms in Article 2 of the Marriage Law which results in multiple interpretations regarding the legal conditions of marriage.
3. The Panel of Judges in Case No. 674/Pdt.G/2020/PN Mdn, should pay careful attention to the legal provisions carefully and thoroughly, that the legal conditions of marriage mentioned in Article 2 paragraph (1) are also related to paragraph (2) this is because there is no phrase "exception" in paragraph (2) so it is a unit.

ADVANCE RESEARCH

The decision in case Number 674/Pdt.G/2020/PN Mdn raises a fundamental legal issue regarding the validity of marriage in relation to inheritance rights, particularly in the context of unregistered marriages. While Article 2 paragraph (1) of the Marriage Law states that a marriage is valid if conducted according to the respective religious and customary laws, Article 2 paragraph (2) in conjunction with Government Regulation No. 9 of 1975 explicitly requires marriage registration to obtain state recognition. The legal consequence of an unregistered marriage is significant, as it affects the status of the spouse in inheritance matters. Under the Civil Code, particularly Article 852, heirs are determined based on legally recognized relationships. The failure of the Panel of Judges to consider the implications of an unregistered marriage contradicts the principle that only legally valid spouses are entitled to inheritance rights. This inconsistency suggests the need for a more harmonized interpretation of marriage validity in inheritance disputes, ensuring that judicial decisions align with statutory inheritance provisions while upholding the principle of legal certainty in marital status recognition.

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