

Separation Of Inheritance Assets And Its Implications In Indonesian Civil Law

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Abstract: This research employs qualitative methods with a literature study approach to explore the legal phenomenon of inheritance separation in Indonesian civil law. The approach involves collecting, reviewing, and analyzing relevant literary sources, including books, journal articles, regulations, and court decisions. The initial step is identifying and collecting relevant literature, followed by an analysis to understand basic concepts, legal principles, and procedures. Researchers critically analyze the collected literature to identify key issues, challenges, debates, and evaluate each source's relevance and validity. Findings indicate that inherited assets are significantly regulated by the Indonesian Civil Code. The Code addresses heirs' rights and obligations, inheritance separation procedures, and special conditions that must be met. The process aims to end joint ownership and distribute assets to each heir according to their rights, requiring all heirs' agreement or a court decision in case of disputes. Article 1075 regulates dispute resolution, allowing courts to intervene. Provisions for canceling inheritance separation protect heirs' rights, with Articles 1112 and 1116 providing a basis for cancellation if there is coercion, fraud, or actions harming more than a quarter of the inheritance value. Overall, Indonesian law offers comprehensive protection for heirs, ensuring the inheritance process aligns with justice and legal principles.

Keywords : Inheritance Separation, Indonesian Civil Law Legal Protection, Asset Distribution

INTRODUCTION

Inheritance is an important social and legal aspect affecting many individuals and families. In civil law, inheritance includes all assets and rights left by someone who has died, which then becomes the property of their heirs. Separation and division of inheritance is often a complex issue and gives rise to various legal problems, especially when many heirs have different interests. Therefore, a deep understanding of inheritance law is very important to ensure this process takes place fairly and by applicable regulations.¹ Indonesian civil law comprehensively regulates inheritance through the Civil Code. It covers the rights and obligations of heirs, procedures for inheritance separation, and special conditions that must be met. The process aims to end joint ownership and distribute assets to each heir according to their rights, requiring either unanimous agreement among heirs or a court decision in case of disputes. Article 1075 addresses dispute resolution, allowing courts to intervene and make final decisions. Articles 1112 and 1116 provide provisions for canceling inheritance separation if there is evidence of coercion, fraud, or actions harming more than a quarter of the inheritance value. These laws ensure protection for all heirs, aligning the inheritance process with justice and legal principles.

¹ S Sunari, "Kekuatan Hukum Anak Angkat Atas Harta Warisan Orang Tua Ditinjau Dari Hukum Perdata Di Indonesia," *ACTUAL*, 2023, <https://journal.unimas.ac.id/index.php/actual/article/view/274>.



One of the problems that often arises in separating inheritance is individuals who need help managing their inheritance. This can be caused by various factors, such as being a minor, being under guardianship, or a health condition that does not allow them to take care of the assets. According to civil law, people who are still minors, people who are under guardianship, heirs whose share of the inheritance is in the hands of a special administrator (bewindvoerder), adults who, due to memory problems, are in mental hospitals, and declared heirs, bankruptcy are examples of individuals who cannot manage their inheritance.²

Article 1069 of the Civil Code stipulates that inheritance separation must be carried out by individuals who are free to manage their assets and are present in the process. If this condition is not met, then the separation of inheritance must follow the provisions of Article 1071, paragraph 2, which regulates the cancellation of the separation and distribution of inheritance if these provisions are violated. Articles 1072 and 1074 further stipulate that the BHP (Civil et al.) must be present at the separation of inheritance, and the deed of separation must be made before a notary. Differences of opinion between heirs regarding inheritance separation are also a frequent problem. If BHP does not approve the draft inheritance separation deed and the other party considers the rejection unreasonable, then BHP must provide reasons for the rejection in a notarial deed. BHP marks the draft separation deed, and the notary is brought to the district court for a decision. The heirs can also submit their objections to the court, which will then decide after hearing all interested parties.³

The undivided nature of inherited assets is also important in inheritance law. Article 1083 of the Civil Code states that when the testator dies, the assets left behind immediately become the property of all joint heirs. These joint assets can only be transferred or charged with the consent of all owners. For example, if the inheritance consists of a house, car, and household furniture, these items can only be sold or encumbered with the consent of all the heirs. An heir's disagreement with the sale of inherited property can cause problems in the inheritance separation process.⁴ If an heir with a small share of the inheritance does not want to sign the deed of sale, the item cannot be legally sold. This emphasizes the importance of agreement and cooperation between all heirs in separating and dividing inheritance. This research will discuss various aspects of inheritance separation in civil law in depth, including the legal procedures that must be followed, the role of notaries and the courts, and the challenges often faced by heirs. It will use qualitative methods and literature studies to examine relevant legal provisions and case studies that occurred in Indonesia.⁵

A deeper understanding of inheritance separation law is hoped to provide clear guidance and assist heirs, notaries and legal practitioners in handling inheritance issues more effectively and fairly. This research also aims to provide policy recommendations that can improve the inheritance separation process to be more efficient and based on the principles of justice.

METHOD

² N T Shalsahbila and DRARA Sigit, "... Hukum Pembagian Harta Warisan Terhadap Anak Diluar Nikah Ditinjau Menurut Hukum Islam Dan Hukum Perdata Di Indonesia," *E-Journallppmunsa.Ac.Id*, n.d., <http://ejournallppmunsa.ac.id/index.php/jhp/article/view/1074>.

³ u Vivi, ... *Warisan Terhadap Pasangan Suami Istri Berbeda Agama Dalam Perspektif Kompilasi Hukum Islam (Khi) Dan Kuh Perdata Indonesia* (repository.ummat.ac.id, 2020), <http://repository.ummat.ac.id/id/eprint/747>.

⁴ Sungguh Ponten, "Perlindungan Hukum Terhadap Konsumen Dalam Transaksi Jual Beli Online Melalui Sosial Media," *Realism: Law Review* 1, no. 3 (2023): 79–90.

⁵ M S A Manangin, L D Nurmala, and N K Martam, "Pengalihan Atas Harta Warisan Di Indonesia," *DIH: Jurnal Ilmu Hukum* (core.ac.uk, 2020), <https://core.ac.uk/download/pdf/347572309.pdf>.

This research uses qualitative research methods with a literature review approach. This method was chosen because it is suitable for exploring and understanding the legal phenomenon of inheritance separation in Indonesian civil law.⁶ Literature studies allow researchers to collect, review, and analyze relevant literary sources, including books, journal articles, laws, and court decisions relating to inheritance separation. The first step in this method is to identify and collect relevant literature. These literary sources include scientific works discussing the theory and practice of inheritance law, provisions in the Civil Code (KUHPerdata), and previous studies that have studied similar topics.⁷ The literature is then analyzed to understand the basic concepts, legal principles and procedures that apply to inheritance separation. Next, the researcher carried out a critical analysis of the literature collected. This analysis includes identifying the literature's main issues, challenges and debates. Researchers also evaluate the relevance and validity of each source and compare findings from various literature to gain a comprehensive understanding of the topic under study.⁸

This literature study method also allows researchers to integrate theoretical and practical perspectives in their analysis. Researchers examine how inheritance law theories are applied in real cases and how legal provisions influence the inheritance separation process. This approach helps identify gaps between theory and practice and provides recommendations for improving more effective legal policies and procedures.

RESULTS AND DISCUSSION

Inheritance

Inheritance assets are an integral part of civil law in Indonesia, which is regulated comprehensively by the Civil Code (KUHPerdata). According to the Civil Code, inheritance is all assets left by someone who has died, which are then transferred to their heirs. Article 830 of the Civil Code states that "inheritance only occurs due to death," and the heir automatically becomes the owner of the inherited property from the moment the testator dies. This includes all forms of movable and immovable assets,⁹ including land, buildings, vehicles and other personal belongings. Separating and dividing inherited assets is regulated in more specific articles in the Civil Code, including Articles 1066 to Article 1085. These articles explain the rights and obligations of heirs, procedures for separating inheritance, and special conditions that must be met. Noticed. For example, Article 1066 states that a co-owner can demand separation of inheritance despite prohibitions from other owners, and an agreement not to separate inheritance is only valid for five years. This provides flexibility and legal protection for heirs in managing inherited assets.¹⁰

Furthermore, the Civil Code also regulates who has the right to be an heir and how their rights are protected. People who cannot manage their inheritance, such as those who are minors, under guardianship, or experiencing mental disorders, are specifically regulated in certain articles. Article 1071, for example, stipulates that applicable legal provisions must carry out inheritance separation, and if it is violated, the

⁶ K Wowor, "Suatu Tinjauan Hak Ahli Waris Atas Harta Warisan Berdasarkan Testamen," *Lex Privatum*, 2020, <https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/29912>.

⁷ H Sarah, *Pelaksanaan Pembagian Harta Warisan Berdasarkan Hukum Adat Pada Masyarakat Suku Minangkabau Di Kota Matsum II Medan* (repository.uma.ac.id, 2020), <https://repository.uma.ac.id/handle/123456789/12240>.

⁸ W Ramadhana and SSOR Lumbantoruan, "Harta Waris Pada Pasangan Yang Tidak Memiliki Keturunan Menurut Hukum Adat Batak Toba," *Jurnal Dialektika* (academia.edu, 2022), <https://www.academia.edu/download/101151661/1582.pdf>.

⁹ S Khayati, "Pembagian Harta Warisan Berdasarkan Metode Hukum Waris Islam Dan Kompilasi Hukum Islam," *Arus Jurnal Sosial Dan Humaniora*, 2023, <http://jurnal.ardenjaya.com/index.php/ajsh/article/view/174>.

¹⁰ M F Tambi, "Studi Komparasi Pembagian Warisan Menurut Hukum Islam Dan Hukum Adat," *Lex Privatum*, 2019, <https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/25824>.

separation can be canceled. This is to ensure that the rights of all parties, including those who are vulnerable, are protected during the inheritance process.¹¹

In practice, dividing inheritance often faces various challenges, including differences of opinion between heirs. Article 1075 provides a resolution mechanism in a dispute by allowing the courts to intervene and provide a fair decision. In addition, the nature of undivided inheritance is regulated in Article 1083, ¹²which stipulates that all heirs have joint ownership of the property until official separation takes place. This joint ownership requires agreement from all heirs for any inheritance-related actions, maintaining fairness and avoiding conflicts between heirs.

The Nature of Inheritance and Separation of Inheritance

Inheritance assets in Indonesia have unique characteristics based on the provisions of the Civil Code (KUHPerdata). When an heir dies, all of his inheritance automatically becomes the joint property of the heirs, by Article 833 of the Civil Code.¹³ This inheritance includes all types of movable and immovable assets, such as land, buildings, vehicles and other personal belongings. The nature of joint ownership confirms that each heir has equal rights to all inherited assets, and no heir can claim a certain share unilaterally without going through a legal separation process.¹⁴

The inheritance separation process is regulated in detail in the Civil Code, especially in Articles 1066 and 1085. Inheritance separation aims to end the joint ownership status and distribute the inherited assets to each heir according to their rights. Article 1066 confirms that the separation of inheritance can be demanded by one of the co-owners, even if there is a prohibition from the other owners. This shows that other parties cannot hinder an individual's right to receive a share of the inheritance.¹⁵ This separation process must be carried out with the agreement of all heirs or through a court decision if a dispute occurs. Article 1072 and Article 1074 of the Civil Code regulate formal procedures for separating inheritance,¹⁶including the presence of a Civil Legal Entity (BHP) and making a deed of separation before a notary. Article 1072 requires that BHP, the supervising guardian, and the supervising curator must be present in the separation process, ensuring that each step is carried out legally and fairly. Article 1074 stipulates that

¹¹ W Ahmad, "Pandangan Islam Terhadap Sistem Pembagian Warisan Anak Laki-Laki Dan Perempuan Menurut Hukum Perdata," *Jurnal Az-Zawajir*, 2022, <http://ejournal.iaitfdumai.ac.id/index.php/jaz/article/view/138>.

¹² D Siki and Y T Masriani, "Kedudukan Anak Perempuan Dalam Pembagian Harta Warisan Berdasarkan Hukum Waris Adat Timor Amarasi Di Desa Soba Kecamatan ...," *Notary Law Research*, 2021, <http://jurnal.untagsmg.ac.id/index.php/NLR/article/view/3395>.

¹³ A Riyanto, *Hukum Waris Indonesia* (books.google.com, 2024), <https://books.google.com/books?hl=en&lr=&id=Bxv7EAAAQBAJ&oi=fnd&pg=PA123&dq=harta+%22warisan+hukum%22+perdata+indonesia&ots=UtiP6-faB3&sig=mlZ0SLfTlWtwis7GyvgCMPxFyoY>.

¹⁴ M K Hesa, *Analisis Yuridis Tentang Kedudukan Anak Angkat Dalam Pembagian Harta Waris Menurut Sistem Hukum Perdata Di Indonesia* (eprints.uniska-bjm.ac.id, 2020), <https://eprints.uniska-bjm.ac.id/3611/>.

¹⁵ R Hidayat, *Pembagian Harta Warisan Menurut Hukum Islam Dan Adat Melayu (Studi Kasus Desa Sungai Muntik Kecamatan Kapuas Kabupaten Sanggau Provinsi Kalimantan ...* (repository.unisma.ac.id, 2022), <https://repository.unisma.ac.id/handle/123456789/5118>.

¹⁶ M Z Putri and E Suparsetyani, "... Pembagian Harta Warisan Almarhum Vincensius Papilaya Kepada Ahli Waris Berdasarkan Kitab Undang Undang Hukum Perdata Dan ...," *Reformasi Hukum Trisakti*, 2019, <https://e-journal.trisakti.ac.id/index.php/refor/article/view/10541>.

the deed of separation must be made by a notary chosen by the parties or determined by the court if there is no agreement. This procedure is designed to provide legal guarantees and avoid future disputes.¹⁷

If there is a difference of opinion between the heirs regarding the separation of inheritance, Article 1075 provides a settlement mechanism through the courts. District courts can intervene to hear all interested parties and render a final decision. During this process, the court may request an opinion from the prosecutor's office and consider all the evidence and arguments presented. All heirs must then follow the court decision, and the judge's approval of the separation deed must be formalized before a notary. Thus, Indonesian law ensures that the division of inheritance is carried out fairly and transparently, protects the rights of all heirs, and reduces potential conflicts that may arise.

Cancellation Of Separation Of Inheritance

Inheritance assets in Indonesia have unique characteristics based on the provisions of the Civil Code (KUHPerdata). When an heir dies, all of his inheritance automatically becomes the joint property of the heirs, by Article 833 of the Civil Code.¹⁸ This inheritance includes all movable and immovable assets, such as land, buildings, vehicles and other personal belongings. The nature of joint ownership confirms that each heir has equal rights to all inherited assets, and no heir can claim a certain share unilaterally without going through a legal separation process.¹⁹

The inheritance separation process is regulated in detail in the Civil Code, especially in Articles 1066 and 1085.²⁰ Inheritance separation aims to end the joint ownership status and distribute the inherited assets to each heir according to their rights. Article 1066 confirms that the separation of inheritance can be demanded by one of the co-owners, even if there is a prohibition from the other owners. This shows that other parties cannot hinder an individual's right to receive a share of the inheritance. This separation process must be carried out with the agreement of all heirs or through a court decision if a dispute occurs.²¹

Article 1072 and Article 1074 of the Civil Code regulate formal procedures for separating inheritance, including the presence of a Civil Legal Entity (BHP) and making a deed of separation before a notary. Article 1072 requires that BHP, the supervising guardian, and the supervising curator must be present in the separation process, ensuring that each step is carried out legally and fairly.²² Article 1074 stipulates that the deed of separation must be made by a notary chosen by the parties or determined by the

¹⁷ W Pinggala and C R P Afrianda, "Tantangan Dan Adaptasi Praktik Pembagian Warisan Adat Jawa Ditinjau Dari Hukum Positif Indonesia," *Kultura: Jurnal Ilmu Hukum, Sosial, Dan ...*, 2023, <http://jurnal.kolibi.org/index.php/kultura/article/view/606>.

¹⁸ S Muhti, R Yuliansyah, and T Lestari, "Problematika Dalam Penerapan Pembagian Warisan," *Doktrin: Jurnal Dunia ...*, 2024, <https://journal.widyakarya.ac.id/index.php/Doktrin-widyakarya/article/view/3289>.

¹⁹ W Shicilya, I N P Budiartha, and ..., "Peralihan Hak Atas Harta Warisan Kepada Ahli Waris Yang Dikuasai Secara Sepihak Oleh Keluarga Pewaris," *Jurnal Analogi ...* (jdih.fh-warmadewa.ac.id, 2022), <https://www.jdih.fh-warmadewa.ac.id/common/dokumen/peralihanhakataswarisankepadaahliwarisyangdikuasaisecarasepihakolehkeluargapewaris.pdf>.

²⁰ H A Alamsyah, *Analisis Yuridis Pembagian Harta Warisan Terhadap Ahli Waris Beda Agama Serta Akibat Hukumnya* (repository.unisma.ac.id, 2021), <https://repository.unisma.ac.id/handle/123456789/4068>.

²¹ Y K Setiawan and D Keumala, "... PEMBAGIAN HARTA WARISAN ALM. LUMBANGAOL KEPADA AHLI WARISNYA BERDASARKAN KETENTUAN KITAB UNDANG-UNDANG HUKUM PERDATA ...," *Reformasi Hukum Trisakti*, 2019, <https://e-journal.trisakti.ac.id/index.php/refor/article/view/7134>.

²² A Mufid, "Rekonstruksi Hukum Warisan Di Indonesia Perspektif Pluralisme Agama," *Al-Qadha: Jurnal Hukum Islam Dan Perundang ...*, 2020, <https://journal.iainlangsa.ac.id/index.php/qadha/article/view/1531>.

court if there is no agreement. This procedure is designed to provide legal guarantees and avoid future disputes.²³

If there is a difference of opinion between the heirs regarding the separation of inheritance, Article 1075 provides a settlement mechanism through the courts. District courts can intervene to hear all interested parties and render a final decision. During this process, the court may request an opinion from the prosecutor's office and consider all the evidence and arguments presented. All heirs must follow the court decision, and the judge's approval of the separation deed must be formalized before a notary.²⁴ Thus, Indonesian law ensures that the division of inheritance is carried out fairly and transparently, protects the rights of all heirs, and reduces potential conflicts that may arise.

CONCLUSIONS

Inheritance assets are an essential element in civil law in Indonesia, which is regulated comprehensively by the Civil Code (KUHPerdata). According to the Civil Code, inheritance includes all assets the heir leaves after death, which are transferred to his heirs. The process of separating and dividing inherited assets is regulated in detail in Articles 1066 to 1085,²⁵ which explain the rights and obligations of heirs, formal procedures for separation, and special conditions that must be met to ensure that the rights of all parties are protected.²⁶ The nature of inherited property in Indonesia is joint ownership among heirs until formal separation is carried out. This means that each heir has equal rights to all inherited assets, and any actions related to these assets require the consent of all heirs. Articles 1072 and 1074 establish formal procedures for inheritance separation, including the presence of a Civil Legal Entity (BHP) and the preparation of a separation deed before a notary. This procedure is designed to provide legal guarantees and prevent future disputes.²⁷

If heirs dispute the division of inheritance, Article 1075 provides a settlement mechanism through the courts. The district court can hear all interested parties and decide which heirs must follow. This process ensures that the division of inheritance is carried out fairly and transparently, protects the rights of all heirs, and reduces the potential for conflict. Provisions regarding cancellation of inheritance separation are also regulated to protect the rights of heirs. Article 1112 of the Civil Code allows the separation to be annulled if there is an element of coercion, fraud, or actions that harm more than a quarter of the inheritance value. In addition, the provisions of Article 1116 provide three years for the heirs to apply for an annulment of the separation. Thus, Indonesian law provides comprehensive protection for all heirs, ensuring that the principles of justice and applicable law carry out the inheritance process.

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²⁴ R Rusfandi, "KEDUDUKAN HUKUM DARI WALI ANAK DI BAWAH UMUR DALAM MELAKUKAN TRANSAKSI PENJUALAN HARTA WARISAN," *Jurnal Jendela Hukum*, 2020, <https://www.ejournalwiraraja.com/index.php/FH/article/view/1569>.

²⁵ N T W Dari and D Rani, "Pelaksanaan Pembagian Harta Warisan Di Desa Tuntungan II Kecamatan Pancur Batu Kabupaten Deli Serdang Menurut Hukum Adat," *Wajah Hukum*, 2023, <http://wajahhukum.unbari.ac.id/index.php/wjhkm/article/view/1307>.

²⁶ M D A Yamarizky, "Pembagian Warisan Hukum Adat Menurut Sistem Matrilineal (Adat Minangkabau)," *Jurnal Hukum, Politik Dan Ilmu* ..., 2023, <https://ejurnal.politeknikpratama.ac.id/index.php/jhpis/article/view/967>.

²⁷ D Dewi and H S Bakhtiar, "... LAW PEMBAGIAN WARISAN ANAK WARGA NEGARA INDONESIA YANG DIADOPSI WARGA NEGARA ASING MENURUT HUKUM WARIS PERDATA INDONESIA," *Jurnal Hukum DE RECHTSSTAAT*, 2023, <https://ojs.unida.ac.id/LAW/article/view/8535>.

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