



## THE ACCURACY OF THE NOTARY IN MAKING A DEED OF DISTRIBUTION AND SEPARATION OF INHERITANCE PROPERTY TO A RECOGNIZED ILL-WED CHILD

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### Abstract

*This research discusses the meaning and legal consequences of an illegitimate child whom his biological father recognizes with a letter of decision from the District Court but who receives an inheritance share that he should not receive following vide. 285 of the Civil Code written in the Inheritance deed and the Deed of Division and Separation of Inheritance Assets made by a Notary. The heirs only consist of 2 (two) people, namely the husband and an illegitimate child. There is no marriage agreement between husband and wife and a will. The research method used is normative juridical, using primary legal materials in the form of statutory regulations, including the Civil Code, Marriage Law No. 1 of 1974, KHI, and Customary Law. Secondary legal material was obtained from several articles that had been written by previous researchers with other problems related to illegitimate children. The results obtained are that the illegitimate child only gets 1/4 share of all the assets left behind by his biological mother. The remainder is controlled by the stepfather or second husband of the illegitimate child's biological mother, who should have received 1/3 of the share if he were a legitimate child or included in the group. I.*

**Keywords:** *Illegitimate Children, Parts of Illegitimate Children, Notarial Deed of Inheritance of Illegitimate Children, Accuracy of Notary*

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### 1. INTRODUCTIONS

Every human being must have an attraction to each other. It is his nature to have the desire to continue this by building a family through marriage. According to Law Number. 1 of 1974, marriage is a physical and spiritual bond between a man and a woman to form a happy and eternal family (household) based on God Almighty. An ideal marriage is everyone's dream, consisting of a legal husband and wife according to religious and state laws. However, sometimes, there are times when desires do not match reality. Many situations cause a marriage to not live up to expectations. For example, there are still many ordinary people who do not have a marriage/marriage book because when preparing for their marriage, they did not take care of it themselves at the Religious Affairs Office for Muslim citizens and the Population and Civil Registration Service Office for non-Muslim citizens. However, many of them ask for help from the Head of the Neighborhood Unit (RT) or the Head of the Rukun Warga (RW) in the area where they live to arrange their marriage documents to get a marriage/marriage book that does not continue.

This information is usually obtained when arranging documents for buying and selling at a Notary's Office, where one requirement is a marriage book. The result is that each partner cannot give their consent. Because those who can give each other consent to act legally are those who have a legal and registered marriage bond. There are also male and female couples who do not get married because many factors hinder them; for example, they have not yet received the blessing of one of their parents or even both parents. So that extramarital relations occur. The goal of every person in a marriage is to continue their offspring, but offspring or children resulting from a marriage can have different statuses in the eyes of the law. If the child results from a valid marriage, the child becomes a legitimate child; if the child results from an illegitimate marriage, he becomes an illegitimate child (ALK). A legitimate

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child is any child resulting from a legal marriage (Rosnidar, 2019). This research began with the author's interest in undergoing an internship as a requirement to become a candidate for a Land Deed Drafting Officer (PPAT) as stipulated in the regulations of the Minister of ATR/Ka BPN No. 10 of 2017. At that time, the writer was in charge of checking all incoming documents. According to the author, there are exciting things to discuss among the many documents submitted. One of them is a document for transferring the name of an heir. Where the person who submitted the document was a man who wanted to take care of all the assets left behind by his late wife, who had just died about 2 (two) years ago, through the services of a notary whose jurisdiction was different from the jurisdiction where the writer was interning. Of the many assets inherited from his late wife, one of the objects of his inheritance is in the same jurisdiction where the author carried out the internship process. What is exciting and also a problem in this research is that the portion of an illegitimate child who is also the only child of the heir is only  $\frac{1}{4}$  of the total inheritance of his biological mother, who is none other than his late wife, even though the illegitimate child has a letter of acknowledgment from his biological father via District Court determination long before the mother knew her stepfather. There is information in the letter recognizing the illegitimate child, such as whether the biological father and mother were married by church or religiously married, but it was not recorded at the Population and Civil Registry Office.

## **2. METHODS**

Legal research is a scientific activity based on a systematic method with specific thoughts that aims to discover one or several particular legal symptoms by analyzing them (Soerjono, 2015). Normative legal research is legal research that is not based on field research because it researches legal materials, and library data is the basis of reference. It focuses on reading and analyzing primary legal materials and secondary legal materials (Johnny, 2019). The method used in this research is normative juridical research, which analyzes various primary and secondary legal materials presented descriptively. The primary legal materials used are statutory regulations and other legal regulations, as well as secondary legal materials taken from several journal articles on topics relevant to the problem of this research.

## **3. RESULT AND DISCUSSION**

### **3.1 Definition and Legal Consequences of Illegitimate Children**

Indonesia is a country of law, where everything is regulated in such a way as to create order, security, tranquility, prosperity, and happiness. The preamble to the 1945 Constitution states that every citizen has equality in law and government, or in legal terms, it is known as "equal before the law." Including issues regarding marriage and the results of marriage, namely marital assets and children resulting from marriage. Including illegitimate children. (Adhelian & Sheha, 2019). In law, everyone gets attention. In the Civil Code, the following chapters regulate the problems of children and their relationships:

- a. Chapter XII discusses Fatherhood and the Origins of Children's Offspring, and Chapter XIV discusses Parental Power.
- b. Chapter XV discusses Guardianship and Immaturity, and Chapter XVI discusses Maturity. Chapters XII and XIV discuss the issue of child-parent relationships specifically.
- c. Chapter XII and Chapter XIV concerning Fatherhood and the Origins of Children's Descendants consist of 3 (three) parts, namely; Regarding legitimate children, Regarding validation and recognition of foreign children



The regulation of illegitimate children in terms of recognition and inheritance based on bare legal references is divided into 4 (four), namely:

1. Based on Civil Law

A civil relationship is formed between the father or mother of an unmarried child with the recognition of the child following Ps. 280 Civil Code. Recognition here means the confession made by the biological father.

Illegitimate children are also called *ana kalam*, where the share of the wife or husband and their children may not be reduced by the presence of illegitimate children who are recognized during the marriage (I Ketut, 2016).

2. Based on Customary Law

Children born from illegal marriages, so they only have family relations with their mother or their mother's family.

According to customary law, inheritance arrangements for illegitimate children depend on each region. An example of inheritance arrangements for illegitimate children, according to Javanese customary law, is that it must involve the extended family and elders or people who are considered the most mature in thinking and agreeing with the extended family, which results in equality of inheritance in the distribution between legitimate and illegitimate children. Marriage (Thoib, Ibnu Jazari, 2020).

3. Based on Marriage Law Number. 1 in 1974

Illegitimate children only have a civil relationship with their mother and their mother's family, according to Ps. 34(1). However, as time went by and Hajjah Machicha Mochtar's lawsuit was filed with the Constitutional Court with the issuance of Number 46/PUU-VIII/2010, "Children who are born without marriage have a civil relationship with their mother and family, as well as with the man who is considered their father. "This civil relationship can be proven by researching knowledge, technology, as legal evidence."

So the legal consequence of the Court's decision is that as long as the mother can prove that the illegitimate child is the flesh and blood of the biological father, the illegitimate child born can have any civil relationship, not only with the mother and the mother's family but also with the father. Biological and biological father's family.

4. Based on Islamic Law

The *fuqaha* use the method of said *addzara'iy*, which means blocking the door to evil, to recognize illegitimate children. This *ushul* method is used to isolate something so that evil and slander do not spread to it in the social life of Muslims. Because Islam prohibits all forms of adultery, including adultery committed against the father, Muslims will arbitrarily commit adultery before marriage if the illegitimate child is legally recognized' (Thoib, Ibnu Jazari, 2020). Recognition of illegitimate children is contained in Ps. 100 KHI, but the division of inheritance is not explained in the KHI because inheritance is closely related to civil relations. Meanwhile, according to KHI, illegitimate children do not have a civil relationship with their biological father, including in the distribution of inheritance.

Maybe it could be a discourse in the future so that illegitimate children can also get civil rights, especially in the division of inheritance with a mandatory will. This rationale is based on the fact that every child born is pure, and the ones who have sin/mistake are the parents who committed adultery or sexual relations between husband and wife/sexual intercourse which was carried out before the existence of a marriage bond that was legal according to religion and the state. Then why should only the woman/mother of the illegitimate child be held civilly responsible when the illegitimate child is the result of the actions of both of them (the man and the woman who engaged in the sexual intercourse)

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Illegitimate children have a broad and narrow meaning. The broad definition of an illegitimate child is a child resulting from a relationship between a man and a woman where neither of them is married. Whereas illegitimate children, in the narrow sense, are children born as a result of a relationship between a man and a woman, both of whom are not married to each other, and there is no prohibition against marrying each other, such children can be legally recognized by his father as stated in Ps. Children born as a result of a relationship between a man and a woman who are not married to another person and are not prohibited from marrying each other are called illegitimate children in the narrow sense. Their father can legally recognize these children, as stated in Article 280 280 of the Criminal Code (Rosnidar, 2019).

The regulation of illegitimate children in Indonesian law is contained in the Civil Code of Ps. 272 to Ps. 289, and the regulation of inheritance rights is from Ps. 862 to Ps. 873. Meanwhile, Marriage Law no. 1 of 1974 regulated in Ps. 43 (1) juncto Ps. 100 KHI, namely children born out of wedlock who only have a civil relationship with their mother and their mother's family.

Meanwhile, natural children or illegitimate children from outside marriage can be recognized when their biological father recognizes them according to Ps. 280 Civil Code. If the illegitimate child is recognized by his biological father, the legal consequence is that the illegitimate child is in group 1 in terms of distribution of inheritance. The result of recognizing an illegitimate child is that the illegitimate child has a civil relationship with the father or mother who recognizes him. With the existence of civil relations, illegitimate children are recognized and have a better status than illegitimate children who are not recognized (Sandra Bowontari, 2019). Meanwhile, the term illegitimate child according to Marriage Law no. 1 of 1974 junction KHI is a child born out of wedlock, which, as a legal consequence, does not have a civil relationship with his biological father and his biological father's family but only has a civil relationship with his biological mother and his biological mother's family. According to Law Number 1 of 1974, extramarital relationships are relationships between men and women who are the same as husband and wife without marriage (Rosnidar, 2019).

Different from the inheritance rules for illegitimate children according to Islamic law according to the Compilation of Islamic Law Ps. 186 in conjunction with Marriage Law no. 1 of 1974 Ps. 43 paragraph 1, namely that children resulting from an invalid marriage only have a civil relationship with their mother. However, since the Constitutional Court Decision Number 46/PUU-VIII/2010, children born out of marriage have a civil relationship with their mother and their mother's family as well as with a man as their biological father as proven based on science and technology and other evidence with the provisions legally there is a blood relationship, including civil relations and the father's family. The principles of regulating the kinship of illegitimate children with their father and mother are strongly influenced by principles. The Civil Code supports monogamous marriage, as regulated in Article 27, which states that "a man may only be bound by marriage to one woman and a woman only to one man," and the principle of absolute recognition, which is regulated in Article 280 which states that "with the recognition of children outside of marriage, a civil relationship is born between the child and his father or mother" (Adhelian & Sheha, 2019).

Civil relations between illegitimate children and parents who recognize them are limited by Article 285 of the Civil Code, which defines the recognition of illegitimate children as illegitimate children must not harm their wives or husbands and the legitimate children from their marriage. Also, if an illegitimate child receives recognition from his father before the recognized father marries someone else, the illegitimate child can become an heir (Adhelian & Sheha, 2019). The case of research starts from the information contained in a deed of inheritance and a deed of division and separation of inherited assets made by a Notary. Some husbands and wives marry in a church manner without having their marriage registered at the Population and Civil Registry Office. As time passed, the marriage



foundered in the middle of the road. Each of them found their soulmate. The result of this marriage is an illegitimate child and several assets. After the breakdown of their marriage, the husband remarried another woman. The illegitimate child is then recognized by his biological father with a confession through a District Court decision. After several years of dissolution of the religious marriage, the illegitimate child received a letter of confirmation from the Court recognizing his biological father. Then, the mother fell in love with another man. They continued their dating relationship for more or less several years, and then the mother of the illegitimate child fell ill in 2020. Not long after that, 2 (two) years later, the mother of the illegitimate child died in 2022, leaving behind a married husband. Legitimate. Several months before he died, in 2022, the mother of an illegitimate child entered into a legal marriage with her boyfriend without executing and making a marriage agreement deed and recorded at the Population and Civil Registry Office. While dating or married to his girlfriend, there were no marital assets, and it can be concluded that the inherited assets obtained by the mother were assets that existed before the mother met her boyfriend, who later became her husband. These inherited assets consist of property obtained by the mother during her marriage to the biological father of the illegitimate child and assets inherited from the mother herself.

In 2023, the new husband of the mother of the illegitimate child asked for help from a Notary to manage the inheritance of the wife or mother of the illegitimate child. Some inherited assets are spread across 3 (three) cities, including 1 (one) house in the jurisdiction where the author is carrying out an internship as a candidate for Land Deed Official. The name change process will be carried out. What is interesting in this research case is that in the process of dividing the inheritance of illegitimate children, which is recognized, where the illegitimate child only gets a  $\frac{1}{4}$  share of the mother's entire inheritance, the remaining  $\frac{3}{4}$  of the share is controlled, and owned by the mother's boyfriend who later becomes the husband of the mother of the illegitimate child. In the marriage, the mother of an illegitimate child and her new husband have no children. Likewise, the new husband of the mother of an illegitimate child is single. This violates the provisions of the Law where Ps. 863 of the Civil Code states that illegitimate children receive  $\frac{1}{3}$  of all property/inheritance. (Habib et al., 2020) In cases where the heir leaves illegitimate children who have been legally recognized, a large or small part of the illegitimate child's share is inherited depending on who inherits. So the division is as follows:

- a. If the heir dies and leaves behind legitimate descendants or a husband or wife, then illegitimate children inherit  $\frac{1}{3}$  of the share if they are legitimate children;
- b. If the heir leaves no offspring or husband or wife, but there are blood relatives from the upper line and brothers and sisters or their descendants, then illegitimate children inherit half of the inheritance.
- c. Illegitimate children are  $\frac{3}{4}$  half of the inheritance if there are only relatives in a more distant degree

So what can be concluded is:

1. Illegitimate children can inherit from class I heirs, namely  $\frac{1}{3}$  of the portion if they are legitimate children.
2. Illegitimate children can inherit from class II and III heirs  $\frac{1}{2}$  of their inheritance.
3. Illegitimate children can inherit from class IV heirs, namely  $\frac{3}{4}$  of their inheritance.

Likewise, if an illegitimate child is an heir, following the provisions of Ps. 886 of the Civil Code, if an illegitimate child dies first, all legitimate children and descendants have the right to apply for the share received by them based on Ps. 863 junctions 865 Civil Code. Likewise, descendants of illegitimate children can act as substitute heirs.

The Notary's Accuracy in the Deed of Inheritance Information He Makes In everyday life, we interact with other people. The consequence is that the law regulates this, including when someone promises to another person or when two people give each other a promise to do something or what is better known as an "agreement" (Subekti, 2001). In an agreement, it is known as freedom of contract. Ps. 1338 of the Civil Code is the primary basis for freedom of contract, even though it is not entirely

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free (Adjie, 2107). However, there are certain things in the field of Civil Law where the term freedom of contract cannot/does not apply, namely regarding the legal regulation of inheritance distribution. Because the division of inheritance according to the Civil Code only applies in 2 (two) ways, namely Ab Instato (automatic by law) following Ps. Eight hundred thirty-two of the Civil Code and in Testamentary (will) following Ps. 874 Civil Code. To manage everything related to law and authentic deeds, we need a legal profession, namely a notary. As UUJN Ps. 1 (1) intended, A notary is a public official authorized to do authentic deeds. According to KUHPs. 1868, an Authentic Deed is a deed whose drafting must follow the format determined by law by or in the presence of a public official with the authority to do so where the deed is made. The Notary profession is required not to be careless in carrying out its duties and position, meaning that it must be in accordance with principles that can guide it. (Adjie, 2008) Several principles of the Notary's position in carrying out their duties, include: Principle of equality. The principle of treating all prospective clients as equals who must be served and not discriminating between people who have money and those who do not, this is stated in Ps. 37 UUJN: "A notary must provide legal services in the field of a notary for those who cannot afford it free of charge."

1. Principle of trust. A Notary must be trustworthy in keeping the deeds he makes confidential, which is stated in Ps. 16 (1) (f) UUJN, namely the obligation to deny the Notary.
2. The principle of legal certainty. Notaries must uphold all applicable legal regulations to provide legal certainty in the deeds they make for the parties.
3. Principle of accuracy. A Notary must be careful and thorough with all documents that exist as evidence of letters from the parties, as stated in Ps. 16 (1) (a) UUJN.
4. 5. The principle of giving reasons. The Notarial Deed must have reasons and facts as legal considerations when explaining it to the parties.
5. Prohibition of abuse of authority. Notaries may not abuse their authority in their position to the parties' detriment. If proven, the parties can sue the Court for costs, compensation, and interest.
6. Prohibition of acting arbitrarily. A notary must not be careless in making a deed to express the parties' wishes because not all the parties' wishes follow applicable legal regulations. If it is not appropriate, then you must explain the reasons.
7. Principle of proportionality. In carrying out his duties, a notary must balance the parties' rights and obligations proportionally as recorded in a deed.
8. Hope of professionalism. Notaries must, when carrying out their duties and positions, understand legal knowledge, especially in the field of notarial matters, and always adhere to UUJN and the Notary's code of ethics.

The consequence is that if the deed made by the Notary does not comply with the UUJN rules and the Code of Ethics, then the deed can be said not to fulfill the "valid requirements of the agreement" as stated in Ps. 1320 of the Civil Code, which in this case relates to the deed he made which is not following the object of inheritance or the distribution of inheritance rights for illegitimate children, so the deed could potentially become "null and void."

#### **4. CONCLUSION**

Indonesian law has completely regulated marriage, marital property, children resulting from marriage or outside marriage, and their legal consequences. Not all extramarital relationships lead to the birth of illegitimate children; in some cases, they can. Giving birth to a child out of wedlock, such as a marriage carried out only according to custom and not recorded following applicable laws and regulations (Sandra Bowontari, 2019). The legal regulation of illegitimate children is contained in the Civil Code, Customary Law, UU. Marriage No. 1 of 1974 and KHI. Inheritance is the act of someone



who has died being replaced by the people left behind (heirs). What can be replaced are the rights and obligations regulated in the field of wealth (rights and obligations that can be valued in money) (I Ketut, 2016). So, the conclusion from the case in this research is that there is injustice in the distribution of inheritance carried out by the stepfather to the illegitimate child regarding the assets inherited from his own late biological mother and who is the only child owned by the illegitimate child's biological mother as stated in the Deed statement. Inheritance Rights and Deed of Division and Separation of Inheritance Assets made by a Notary. According to John Rawls' "justice as fairness" theory, justice is "justice as equality." This view is very different from that of utilitarians. Not by judging what the right thing to do is but by making logical choices in a fair environment (Karen, 2015). This means that logically, the heir only leaves behind her husband and 1 (one) illegitimate child. Of course, a Notary should understand how to calculate it if there are 2 (two) heirs, namely the husband and 1 (one) illegitimate child without a will. Do not let the parties ignore the rules of inheritance law when expressing all their wishes. Inheritance law cannot be negotiated, unlike other agreements that contain the values of freedom of contract, which then become law that must be obeyed by the parties who make them.

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Permen ATR/Ka. BPN Nomor 17 Tentang Tata Cara Ujian, Magang, Pengangkatan Dan Perpanjangan Masa Jabatan Pejabat Pembuat Akta Tanah  
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