
THE RIGHT OF INHERITANCE OF THE SECOND WIFE ACCORDING TO THE CIVIL CODE (STUDY OF SUPREME COURT DECISION NUMBER 942/K/PDT/2022)

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Abstract

This research discusses the inheritance system according to civil law in Indonesia. One of the cases that was the focus of the research was a dispute regarding the right to inherit a house in the Supreme Court decision Number 942/K/PDT/2022 involving Amin Sudartio and Fong A Foe alias Mrs. Mey. In this case, Amin Sudartio was initially recognized as the legal heir by the North Jakarta District Court, but the DKI Jakarta High Court declared Amin Sudartio's claim unclear and then the decision was annulled by the DKI Jakarta High Court. The Supreme Court also rejected Amin Sudartio's cassation request, resulting in the cancellation of the initial decision recognizing him as the legal heir. This research also discusses legal considerations and the implications of the court decision in this case. This research uses normative juridical methods and a statutory approach to discuss the inheritance rights of second wives according to the Civil Code. This study highlights the inheritance rights of second wives in second marriages and the inheritance rights of children or descendants. This research aims to determine the inheritance rights of the second wife according to the Civil Code and the extent of the rights obtained by the wife in the second marriage. In general, inheritance is a legal system that regulates the transfer of inherited assets from a deceased person to heirs or appointed people. The Civil Code differentiates between ab-intestato heirs and heirs, and determines who has the right to inherit according to law. Apart from that, this research also emphasizes the importance of inheritance law in providing legal certainty in resolving problems related to the transfer of assets after a person's death.

Keywords: Second Wife's Inheritance Rights, Civil Inheritance Law

INTRODUCTION

Inheritance is one of the most discussed issues and is an inseparable part of the law. In this case, the implementation of inheritance law must be seen in the family system that prevails in society. Basically, marriage law and inheritance law determine and reflect the family system that prevails in society, this is because inheritance law has a very close relationship with the scope of human life, because every human being will inevitably experience a legal event, namely birth, marriage and death (Manangin, Nurmala, & Martam, 2020).

Humans as members of society, as long as they are alive, have a position accompanied by various rights and obligations towards other members of society. Man has various legal relationships between humans in his life (Holmes, 2017). When a member of the community dies it cannot be said that all these relationships disappear immediately, but the legal relationship concerning the property of the deceased person automatically passes to the heirs he left behind. Therefore, a way of resolving the transfer of rights and obligations regarding the property of a deceased person to another living person is needed (Manangin et al., 2020). In this regard, inheritance law as part of civil law is a rule and provision to provide legal certainty to resolve problems regarding the legal consequences that arise (Suparman, 2007).

According to Indonesian jurists and in the Indonesian legal literature, there is no uniformity in the application of the inheritance law system that applies nationally, so that the inheritance law system applied in Indonesia is still diverse. *The theory of receptie* in the Dutch era in Indonesia had a very big influence on inheritance law in Indonesia, where until now inheritance law in Indonesia is still pluralistic (Abdul Manan, Ip, & Hum, 2008). The pluralistic

nature of inheritance law in Indonesia is certainly inseparable from the diversity of Indonesian society consisting of various ethnic groups that have customs and customary laws that vary from one another, and have their own characteristics (Muhibbin & Wahid, 2022).

With the pluralistic nature of inheritance law in Indonesia, the inheritance law that applies in Indonesia until now is still not a legal unification, where there are several legal systems that regulate inheritance in Indonesia which are divided into 3 (three) legal systems that regulate inheritance in Indonesia, namely the customary inheritance law system that originates from customs or customs that exist in the community, Islamic inheritance law system based on and sourced from the holy book of the Qur'an and Western inheritance law system or inheritance law system according to the Civil Code sourced from *Burgerlijk Wetboek* or the Civil Code (Manangin et al., 2020).

As one of the inheritance law systems in force in Indonesia, western inheritance law or civil inheritance law is very different from the other 2 (two) inheritance law systems. Civil inheritance law is a law that covers all material private law, namely the main law that regulates individual interests, rights and obligations among community members, especially the family area. In the division of inheritance according to civil law, that is, no heir can be compelled to leave the estate undivided, on the division of the estate can be prosecuted at any time (Subekti, 1978).

In civil inheritance law, there are 3 (three) important elements of inheritance, namely heirs, heirs and, assets left behind. Heirs are people who die by leaving property, while what is meant by heirs are people who replace the position of the heir in the field of property law, due to the death of the heir, then what is meant by inheritance is property which can be in the form of *assets* (assets) or *passiva* (obligations) of the heir that passes to the heirs (Kurniawan & Basri, 2020).

Inheritance is basically a legal system that regulates the transfer of inheritance from the heir to the heir or his appointee after the death of the heir. The Civil Code distinguishes heirs into 2 (two), namely *ab-intestato* heirs and *testamentary heirs*. Based on Article 832 of the Civil Code, *ab-intestato* heirs are heirs according to or under the law and those automatically entitled to become heirs are blood relatives, both legal and extramarital, and the husband or wife who lives the longest. While *testamentary* heirs are certain people who are desired by the testator to also have his estate with parts that have been determined by the testator, this will can be stated in a deed called a will and heirs specified in the will (Habib, 2017).

In addition, the Civil Code has also determined who is entitled to become heirs who is grouped into 4 (four) groups, namely (Haq, 2020):

1. The first group, families in a straight line downwards, include children and their offspring and their abandoned or longest-lived husband or wife;
2. The second group, the family in a straight line up, includes parents and relatives, both male and female, and their descendants;
3. The third group, including grandparents and subsequent ancestors and above of the testator;
4. The fourth group, including family members in the line to the side and other relatives up to the sixth degree

Based on the explanation above, actually the arrangements regarding the distribution of property or inheritance from the heir to his heirs have been clearly regulated, so that the arrangement regarding the division of inheritance should prevent problems regarding the division of inheritance in the community. However, in reality there are still problems arising regarding the distribution of inheritance among the community. As one example, there are problems arising regarding the division of inheritance due to the heir marrying for the second time as seen in the case of the Supreme Court decision Number 942 K / Pdt / 2022. The case stemmed from a dispute between Amin Sudartio and Fong A Foe alias Ibu Mey regarding the right to inherit a house located at Jalan Keting Blok F 1 Number 7, Teluk Gong, North Jakarta.

Initially, the house, which was located at Jalan Keting Block F 1 Number 7, Teluk Gong, North Jakarta, according to Amin Sudartio's confession, was the property of the deceased Budiman Sudartio obtained in his marriage with the late To Siok Tjing as Amin Sudartio's parents. Amin Sudartio is basically a child born in a relationship without marriage ties between Budiman Sudartio and To Siok Tjing in 1961 based on Citation of Birth Certificate No. 387 and has been approved by the Chief Justice of Bengkalis District Court dated January 4, 1979 has been legally recognized and entered into the family of Budiman Sudartio and To Siok Tjing as Amin Sudartio's parents.

In 1966 Budiman Sudartio and To Siok Tjing had established a marriage bond based on the Quotation of Marriage Certificate No. 230/1966 dated April 14, 1966 issued by the Jakarta Civil Registry. In the marriage between Budiman Sudartio and To Siok Tjing gave birth to a child Lanierawati Sudartio, so that in the relationship between Budiman Sudartio and To Siok Tjing both before and after marriage had given birth to 2 children, namely Amin Sudartio and Lanierawati Sudartio. Then after the deceased To Siok Tjing passed away, the late Budiman Sudartio remarried to Fong A Foe aka Mey's mother who then occupied the house of the late Budiman Sudartio obtained in his marriage with the late To Siok Tjing. After his father, the late Budiman Sudartio, passed away, Amin Sudartio considered that he and his sibling, Lanierawati Sudartio as biological children born in the marriage between Budiman Sudartio and the deceased To Siok Tjing were legal heirs and entitled to inherit the house located at Jalan Keting Block F 1 Number 7, Teluk Gong, North Jakarta, but after Lanierawati Sudartio had also passed away, Amin Sudartio also felt that he should be the only legal heir and entitled to inherit the house left by his parents.

The dispute then arose because the house left by his parents which was located at Jalan Keting Blok F 1 Number 7, Teluk Gong, North Jakarta is now controlled by Fong A Foe aka Ibu Mey who is the second wife of the late Budiman Sudartio. Amin Sudartio as the biological son of the late Budiman Sudartio felt aggrieved by the actions of Fong A Foe aka Mey's mother who controlled the house left by his parents, and stated that Fong A Foe aka Mey's mother had committed an act that had been against the law. Thus, based on the actions of Fong A Foe aka Mey's mother who was felt to have controlled the house left by her parents unlawfully, Amin Sudartio then filed a lawsuit addressed to Fong A Foe aka Mey's mother through his lawsuit letter which had been registered at the North Jakarta District Court Registrar on April 11, 2017, with Number 183 / Pdt.G / 2017 / PN. Jkt.Utr.

Furthermore, in decision Number 183/Pdt.G/2017/PN. Jkt.Utr, in its legal consideration, the panel of judges at the court of first instance stated that based on the evidence submitted, it has been proven that Amin Sudartio is an extramarital child who has been legally recognized, so that when the marriage of the heir (Budiman Sudartio) with To Siok Tjing, the plaintiff has been considered as a legal child, then after they, the plaintiff's father's mother dies as well as the plaintiff's sister dies, then for the sake of law the plaintiff is the only heir, so that thus it can be proven that the plaintiff is the legal heir of the heir Budiman Sudartio. In addition, it has been proven that it is true that the object of dispute controlled by the defendant now is the original property of Amin Sudartio's biological parents, which the late Budiman Sudartio brought into a second marriage with Fong A Foe alias Mey's mother, then Amin Sudartio's position by law is as the heir entitled to the object of the dispute, *in casu* as an active inheritance right of a recognized extramarital child.

That based on the provisions of the Civil Code, the principle has been adopted that, only those who have a legal relationship with the heir are entitled to inherit, where the legal relationship between an extramarital child and his mother's father, arises after recognition from the mother's father. In the provisions of article 865 of the Civil Code, it has been determined that, in the case of an extramarital child as the only heir, then the child inherits all existing heir property. However, because as has been proven from the fact of the law between the heir and

Fong A Foe aka Mey's mother during his marriage there was also a part of building the house from an ordinary building to a permanent 3-storey building, and also the actions of Fong A Foe aka Mey's mother who took care of Amin Sudartio and his sister after being left dead by his mother until schooled, it is fair if Fong A Foe aka Mey's mother can also be given rights on the basis of Amin Sudartio's willingness amounting to 1/4 (one-quarter) part of the value of the object of land and building prices.

Furthermore, in terms of whether the actions of Fong A Foe alias Ibu Mey who controlled the land and buildings of the object of dispute until now are Unlawful Acts, the panel of judges is of the opinion that to be said to be an act is Unlawful, it must meet the provisions of Article 1365 of the Civil Code, which states "Every unlawful act that brings harm to others, cause the person who by mistake published the loss, to compensate for the loss. In terms of what can be held legally accountable are legal subjects as supporters of rights and obligations, namely humans (*natuurlijk person*) and legal entities (*Recht Person*).

That with the actions of Fong A Foe alias Mey's mother who controls the object of the dispute which actually comes from Budiman Sudartio's original property obtained from his marriage with To Siok Tjing who is Amin Sudartio's biological parents, even though there are other heirs as entitled, then of course the defendant's actions have violated the subjective rights of Amin Sudartio in the form of losing the right to enjoy as heirs to the object Such and lost losses stemming from the results he expected from the object of *Boedel's* inheritance.

In addition, this has also contradicted the legal obligation of Fong A Foe aka Mey's mother who should be a parent, after the death of the heir, Fong A Foe aka Mey's mother in good faith contacted Amin Sudartio to settle it familiarly based on legal provisions for the existence of *boedel* The inheritance of the object of the dispute, in the form of land and buildings, does not necessarily mean that the defendant continues to control the object, so that the actions of Fong A Foe aka Mey's mother at the same time have also contradicted the rules of decency and decency that apply in the traffic of community associations. That on the basis of the above considerations, it can be proven that the act of Fong A Foe alias Ibu Mey controlling the land and building of the object of dispute is an Unlawful Act, while against the evidence of the letter submitted by Fong A Foe alias Ibu Mey, the panel of judges considered that there was no evidence to support the answer.

Thus, based on the legal considerations mentioned above, the panel of judges of first instance in decision Number 183 / Pdt.G / 2017 / PN. Jkt.Utr in his judgment decided to accept Amin Sudartio's lawsuit in part, stating that for the sake of law, Fong A Foe alias Mey's mother had committed Unlawful Deeds, unlawfully controlling land and buildings, stating for the sake of law, that Amin Sudartio was the legal heir and was fully the owner of the land and building whose address was known as Jalan 19 or by another name Jalan Keting Blok F.1, No. 7, Teluk Gong, North Jakarta, ordered Fong A Foe alias Ibu Mey to return the land and buildings in this case to be returned to Amin Sudartio, and gave Fong A Foe alias Ibu Mey the right to get 1/4 part of the value of the estate.

In terms of North Jakarta District Court Decision Number 183/Pdt.G/2017/PN. Jkt.Utr, Fong A Foe aka Ibu Mey thought that the panel of judges of the North Jakarta District Court did not apply the law correctly, especially regarding the law of evidence, because Amin Sudartio could not prove evidence on the basis of land ownership which was located at Jalan Keting Blok F.1, Number 7, Rt 06, Rw 10, Kelurahan Pajagalan Panjaringan District, Teluk Gong, North Jakarta in the form of a certificate as proof of legal ownership of the land.

Fong A Foe aka Mey's mother who disagreed and objected, then filed an appeal on February 21, 2018. The DKI Jakarta High Court in decision Number 88/PDT/2019/PT. DKI, after examining and examining and carefully examining the case file and paying close attention to the memory of the appeal filed by Fong A Foe alias Ibu Mey and the counter memory of the appeal filed by Amin Sudartio, in its legal consideration argued that both from the evidence

submitted by Amin Sudartio could not be known the length and width and boundaries of the disputed land, even from the local examination of the object of dispute dated September 29, 2017 conducted by the panel of judges of first instance only said that the object of dispute was located in Teluk Gong Block F 1 No.7 North Jakarta area of 200 M2 bordered west and east with north or did not clarify anything from the local inspection.

Furthermore, the appellate panel of judges also held that because the length and width and boundaries of land and buildings were unclear, the High Court *ex officio* declared Amin Sudartio's claim vague and vague, therefore declaring Amin Sudartio's claim inadmissible, this was in accordance with Supreme Court Jurisprudence No.1149 K/SIP/1975 dated April 17, 1979 which basically stated that the lawsuit was not It is clearly stated the boundaries of the land or object of dispute, then the lawsuit is declared inadmissible. So that the panel of appellate judges held the decision of the North Jakarta District Court Number 183 / Pdt.G / 2017 / PN. Jkt.Utr can no longer be maintained and must be canceled, and in its judgment decided to cancel the decision of the North Jakarta District Court Number 183 / Pdt.G / 2017 / PN. Jkt.Utr as well as the High Court will try themselves whose verdict declares Amin Sudartio's claim inadmissible.

Then, Amin Sudartio who objected then filed a cassation application which essentially requested that the Supreme Court accept and grant the cassation application, cancel the decision of the DKI Jakarta High Court Number 88 / PDT / 2019 / PT DKI, and uphold the decision of the North Jakarta District Court Number 183 / Pdt.G / 2017 / PN Jkt Utr dated November 21, 2017. However, in the Supreme Court decision Number 942 K / Pdt / 2022, in his ruling, the judge rejected the cassation application submitted by Amin Sudartio, where in his legal consideration the judge stated that the legal consideration of the *Judex Facti / DKI Jakarta High Court decision which overturned the Judex Facti / North Jakarta District Court decision by declaring Amin Sudartio's lawsuit inadmissible was justified, because based on the facts in the case a quo, Judex Facti has given sufficient consideration, and a lawsuit like this will complicate and may cause new problems in its implementation if granted, so Amin Sudartio's claim in a quo case is a vague or vague claim and/or formal defect and must be declared inadmissible.*

So, based on the background description above, the main issue that will be discussed in this study is how is the right of inheritance of the second wife according to the Civil Code? And this study aims to find out what and how much inheritance rights are obtained by wives in second marriages.

RESEARCH METHOD

In this study, the author uses a type of normative juridical research, where this research is carried out by examining and interpreting theoretical things such as principles, norms, and legal doctrines. Normative juridical research is research conducted based on the main legal material by examining theories, concepts, legal principles and laws and regulations and other documents related to this research (Muhaimin, 2020)

The research specifications used in this study are descriptive research, which is explanatory research with the aim of obtaining and explaining a complete picture of a legal situation that applies in a certain place, or a certain legal event that occurs in people's lives (Muhaimin, 2020).

Furthermore, the type of data used in this study is secondary data, where secondary data is detailed in various legal materials, including primary legal materials, secondary legal materials, and tertiary legal materials (Muhaimin, 2020). Meanwhile, the data collection technique used in obtaining secondary data is by means of a literature study conducted by

reviewing various written information about the law from various sources and widely published as needed in this study.

The research approach used in this study is a statutory approach. The legislative approach is an approach carried out by analyzing rules and regulations related to legal issues or problems raised in this study (Marzuki, 2013).

In addition, in this study the author uses qualitative data analysis techniques, namely by interpreting or interpreting the legal materials that have been obtained in this study. The use of interpretive or interpretive data analysis techniques also aims to interpret the law, whether there is a legal vacuum in the legal material obtained in this study, especially primary legal material (Muhaimin, 2020).

RESULT AND DISCUSSION

Second Wife's Inheritance Rights According to the Civil Code

According to Law number 1 of 1974 concerning Marriage as amended by Law number 16 of 2019, there are two types of property in marriage, namely congenital property and joint property. Article 35 paragraph (1) of the Marriage Law explains that joint property is property acquired during marriage, while inherited property is the property of each husband and wife and property obtained respectively as a gift or inheritance, where this property is under the control of each husband and wife as long as the parties do not specify otherwise as stipulated in Article 35 paragraph (2) of the Marriage Law (Suhartati & Hasriani, 2020).

With regard to the definition of joint property and congenital property as explained in Article 35 paragraph (1) and paragraph (2) of the Marriage Law, in another sense, the Marriage Law regulates that joint property is property acquired during marriage, while property obtained before marriage becomes the property of each husband and wife. The property and property acquired by each as a gift or inheritance shall be under the control of each so long as the parties do not specify otherwise. Meanwhile, in the Civil Code, all the property of the husband and wife will be merged into joint property. So it can be seen that there is a fundamental difference regarding property in marriage contained in the Civil Code and the Marriage Law which lies in the application of property (Achmad, 2023).

In the event that in a marriage that has never been agreed upon a separation of property agreement or combining property in a marriage agreement by the parties (Surbakti, 2023), if the marriage breaks up due to death, then the joint property is considered dissolved as stipulated in Article 126 of the Civil Code, from these provisions it can be concluded that in the event that the wife dies first, So the husband is entitled to half of the joint property as his share, while the rest becomes property bequeathed to the wife's heirs, in other words, in the event that the testator's wife leaves children, then the husband is not allowed to control all the property left behind, because, the property must be distributed to all the heirs who are entitled according to his division.

In the case of who is entitled to be heirs, Article 832 of the Civil Code has stipulated that the parties entitled to become heirs are blood relatives, both legal and extramarital, and the husband or wife who lives the longest. This shows that the principle of inheritance according to the Civil Code is that there is a blood relationship between the heir and the heir, except for the husband or wife of the heir (Suhartati & Hasriani, 2020).

Then, with regard to the share of inheritance of children or descendants, the provisions of Article 852 of the Civil Code stipulate that children or descendants, even if born and various marriages, inherit the property of their parents, grandparents, or their subsequent blood relatives in a straight line upward, without distinction of sex or birth first. If by the deceased they are all related to the family in the first degree and each is entitled by himself, they inherit

stake by stake, if they all upon part inherit in succession (Parinussa, Tjoanda, & Latupono, 2021).

In the event that one of the parties entitled to be the heir is the husband or wife who lives the longest, but if the wife is the wife who lives the longest is the wife in the marriage of both husbands, and in the second marriage it is not regulated about the merger of property, then the inheritance of the first wife obtained by the husband becomes the husband's property, and is not a common property. However, if in the future the husband dies earlier than the second wife, as seen in the case of the Supreme Court decision Number 942 K / Pdt / 2022, then the property that has previously been inherited to the husband on the death of the first wife should be distributed to the heirs as inheritance from the husband, including to the second wife.

In principle, in the event that the marriage is a second marriage and from the previous marriage there are children or descendants of the child, then as stipulated in Article 852 letter a of the Civil Code, the amount of the second wife's share of inheritance rights is more than the smallest share received by one of the children or his successor descendants, and the second wife's share of inheritance must not exceed 1/4 of the testator's estate.

CONCLUSION

In this article, we have discussed the law of inheritance according to the Civil Code, focusing on the case study of the Supreme Court decision Number 942/K/PDT/2022. The legal system of inheritance in Indonesia, including civil inheritance law, inheritance distribution, and who is entitled to be the heir has been explained. The article also discusses the problems that arise in the division of inheritance, with examples of cases of disputes regarding the right to inherit a house.

The case study of Amin Sudartio who filed a lawsuit against Fong A Foe aka Mey's mother has also been outlined, where court rulings regarding legal heirs and inheritance division have changed from the District Court to the Supreme Court.

This study also discusses the inheritance rights of second wives according to the Civil Code, using normative juridical research methods and statutory approaches. The results showed fundamental differences regarding property in marriage contained in the Civil Code and the Marriage Law. In addition, the study also highlighted the share of inheritance of children or descendants, as well as the inheritance rights of second wives in second marriages.

Thus, this article provides an in-depth understanding of inheritance law in Indonesia, as well as highlights problems and changes in rulings in inheritance law cases that can be taken into consideration by legal practitioners and parties involved in similar cases.

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