

## LEGAL REVIEW OF WILLS BASED ON CIVIL LAW

**Rykson Thri Mahatulus<sup>1\*</sup>, Tjempaka<sup>2</sup>**

<sup>1,2</sup>*Universitas Tarumanagara*

\* [ryksontm@gmail.com](mailto:ryksontm@gmail.com)

### ABSTRACT

Creating a will, also known as a testament, is a crucial legal process through which an individual shapes the destiny of their assets posthumously. Inheritances frequently give rise to a multitude of legal and social complications, necessitating the implementation of clear-cut regulations in accordance with prevailing legal norms. Wills serve as a vital instrument in averting conflicts among heirs, enabling the fulfillment of the deceased's final wishes. This process allows for a structured distribution of assets, thereby minimizing disputes and familial discord. However, the formulation of a will is subject to specific limitations and constraints, mandating adherence to relevant statutory provisions. These constraints may include requirements for witnesses, mental capacity assessments, and the legal age at which one can create a will. Discrepancies between legal statutes and societal customs regarding wills cast doubt on the continued suitability of existing regulations within the evolving legal landscape. Therefore, delving into the regulation of wills as stipulated in the Civil Code (Kitab Undang-Undang Hukum Perdata) is imperative to gain insight into the contemporary legal framework governing this matter in Indonesia. Thorough research into these legal provisions will shed light on their applicability and efficacy, aiding in the development of a more relevant and coherent legal framework for wills in Indonesian society. Such an updated framework would serve to better protect the rights and interests of individuals, ensuring that their final wishes are carried out smoothly and justly, while also reducing the potential for legal disputes and societal conflicts.

**Keywords:** *inheritance, civil law, heirs*

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### INTRODUCTION

A will is an important legal instrument in the civil law system. This will allows someone to arrange the distribution of their property or assets after death according to personal wishes. Wills reflect the principle of autonomy of will in civil law, where individuals are given the freedom to determine the fate of their property after death. Wills are generally made with the aim of maintaining confidentiality and the heir's policies regarding the distribution of inherited assets. The heirs want the contents of the will to remain confidential until it is read, so that the heirs cannot know for sure what will happen to their inheritance. This often creates conflict between the heirs and other parties who may receive the inheritance based on the contents of the will (Boyoh, 2021).

In many cases, conflicts arise because some parties feel disadvantaged or doubt the truth of the contents of the will made by the testator. They may feel that the contents of the will are not in accordance with the testator's intentions or that there may be an element of abuse or pressure that influenced the making of the will (Lukmanto & Chalim, 2017). Civil law is an integral part of the legal system that regulates relationships between individuals in society, including regulations relating to ownership, contracts, inheritance, and so on. In this context, a will becomes a relevant tool to regulate the transfer of property ownership after the death of the owner (Kurniawan et al., 2022).

However, the implementation of a will does not always go smoothly, and legal issues often arise related to the interpretation, implementation, or validity of a will. Therefore, in this legal

review, various aspects related to wills based on civil law will be discussed, including the process of making a will, its legal requirements, the rights and obligations of the parties involved, as well as legal remedies that can be taken in cases of dispute (Fhadel Usman, 2018).

This review will examine the various legal regulations governing wills in civil law, as well as identifying current legal developments and legal practices that are relevant in the context of wills. Apart from that, comparisons with civil law in other countries will also be an important part of this discussion (Istiawati, 2021). The existence of a will can indeed help avoid conflicts between heirs in dividing inheritance. This is because heirs tend to respect the testator's last wishes, which have been expressed through a will. However, to carry out the distribution of inheritance in a practical and fair manner, the law regulates restrictions related to making a will. These limitations may not conflict with applicable law (Paendong & Perdata, 2021).

Regarding the differences between applicable legal provisions and legal practice in society, this can raise questions about the relevance and adequacy of existing legal provisions in dealing with developments in society and the law. Because civil law regulates various aspects of making wills and distribution of inherited assets, it is important to consider whether existing legal provisions are still in line with societal developments and whether there needs to be any changes or improvements to these regulations.

The aim of this research is to analyze the legal construction of wills in the Civil Code and the legal requirements that must be met for a will to be considered valid under civil law, and how this is implemented in practice.

## **METHOD**

This research is normative research. This research will focus on the analysis of legal documents, such as statutory regulations and relevant legal literature. The aim is to understand the legal framework governing wills in civil law and analyze the related legal aspects. This research will access and analyze various relevant legal documents, such as laws, government regulations and utilize legal literature related to wills in the context of civil law. Additional data sources will involve access to library materials in libraries or legal databases, as well as utilization of online sources such as legal databases and legal repositories. In addition, where possible, interviews with legal experts who have specialized knowledge of civil law and wills will also be used. With this data collection technique, this research aims to provide an in-depth understanding of the legal aspects related to wills in civil law and analyze them comprehensively to support a better understanding of this topic in the context of civil law.

## **RESULTS AND DISCUSSION**

### **Legal Construction of Wills in the Civil Code**

A will or testament is a statement that expresses a person's wishes about what should happen after he or she dies. This is essentially a one-way statement (*eenzijdig*) that can be revoked by the maker at any time (Al mulia et al., 2022). Therefore, it needs to be understood that not everything someone wants in a will can always be permitted or carried out. Article 872 of the Civil Code states that a will or testament must not violate the law. In a testament, there is what is called an "*erfsling*," who will receive part or all of the inheritance. The person appointed to receive this inheritance is called "*testamentaire erfgenaam*," that is, the recipient of the

inheritance in accordance with the will, and has the same rights and obligations as heirs under the law, known as "onder algemene titel."

Wills in the Civil Code are regulated from Article 874 of the Civil Code to Article 1002 of the Civil Code. These articles have various provisions which can be summarized as follows:

General Provisions (Article 874 of the Civil Code to Article 894 of the Civil Code): This section regulates the basic principles regarding the inheritance of someone who dies. In essence, inheritance belongs to the heirs, as explained in Article 874 of the Civil Code. A will or testament is a document that contains a person's statement about what they want to happen after death, and this document can be revoked by the maker in accordance with Article 875 of the Civil Code (Indradewi, 2022). Further provisions regarding wills and their arrangements can be found in the following articles in the Civil Code. Property can be regulated in various ways in the Civil Code, either in general, on the basis of general rights, or on the basis of special rights, in accordance with the provisions of Article 876 of the Civil Code (Lukmandan et al., 2019).

In addition, Article 877 of the Civil Code regulates that provisions contained in a will can be made for the benefit of the closest blood relatives or heirs according to law. This means that a will can be used to benefit heirs who are more closely related to the testator in accordance with legal provisions.

Article 878 of the Civil Code regarding provisions in a will for the benefit of poor people indicates that a will can be used for charitable purposes without the need for further explanation. This means that wills can be made for the benefit of all people regardless of their religion.

A person's ability to make or take advantage of a will is regulated in Article 876 of the Civil Code to Article 906 of the Civil Code with various provisions, which can be summarized as follows: The person who wants to make or revoke a will must have reasoning ability. This means that they must have sufficient mental capacity to make these decisions. In general, everyone can make a will and benefit from a will, except those who are declared incompetent to do so in accordance with existing provisions (Rivayanti, 2018).

Minors who have not reached the full age of eighteen are not permitted to make a will. The heir's competence is assessed based on his condition when the will was made. These provisions do not apply to persons who have the right to benefit from foundations. A husband or wife cannot benefit from their partner's will if their marriage was consummated without valid permission. A husband or wife who has children or descendants from a previous marriage and then remarries may not make a will to their partner. A husband or wife may only donate or bequeath items from the joint assets, but the recipient of the will cannot claim the items unless the testator has given them to the heirs in accordance with their respective shares in the joint assets (Mahmurodhi, 2021).

Minors may not gift or bequeath anything for the benefit of their guardian, except after their guardian has closed their trust accounts. Some exceptions apply, such as blood relatives of minor children in the immediate upward line who are still their guardians (Hamdani et al., 2022). Minors may also not make gifts for the benefit of their teachers or guardians, except in cases where the gift is made in return for services received. These articles explain in detail the provisions relating to a person's ability to make or take advantage of a will in the Civil Code. These provisions cover aspects such as age, mental capacity, marriage consent, types of

benefits that can be bequeathed, and various exceptions that apply in certain cases. All of these regulations aim to maintain justice and protect the rights of heirs and prevent misuse of wills in civil law (M. WIJAYA. SM. WIJAYA. S, 2014).

The Legitime Portie or Part of the Inheritance According to the Act and the Grant Deductions that Reduce the Legitime Portie are regulated as follows:

1. Article 913 of the Civil Code explains that the Legitime Portie or inheritance portion in accordance with the law is a portion of the assets that must be given to the heirs in a straight line according to law. The person who dies is not permitted to determine anything regarding this section, either through a gift during life or a will.
2. Article 915 of the Civil Code confirms that provisions in a will for the benefit of the closest blood family or closest blood and heirs are deemed to have been made for the benefit of the heirs in accordance with the law.
3. Article 916 of the Civil Code states that in the line of descent and above, Legitime Portie is always equal to half of what is regulated by law for each blood relative in that line in the distribution of inheritance due to death.
4. Article 916a of the Civil Code confirms that children born outside of marriage but who have been recognized as legitimate receive half the share as regulated by law.
5. Article 917 of the Civil Code regulates that to calculate Legitime Portie, it is necessary to pay attention to who is the heir in the line of descent.
6. Article 918 of the Civil Code states that if there are no blood relatives in the upper or lower lineage and there are no illegitimate children who are recognized as legitimate, then the inheritance must be gifted.
7. Article 919 of the Civil Code explains that if a determination by deed or will grants usufructuary rights that are detrimental to Legitime Portie, the heirs who are entitled to receive a share of the inheritance can choose to carry out the determination.

Inherited assets may be gifted, in whole or in part, either by deed between the living or by will. The gift can be given to people who are not heirs, the heir's children, or to other individuals who have rights to the inheritance. However, this does not reduce the obligation to take into account certain conditions that must be considered in accordance with Article 920 of the Civil Code. Gifts to living heirs that are detrimental to the Legitime Portie's share can be reduced (Article of the Civil Code). To determine the amount of Legitime Portie, the first step is to add up all the assets that existed when the testator died (Article 922 of the Civil Code)(Hariyanto, 2021).

The transfer of an item with interest is considered a gift (Article 923 of the Civil Code). If the donated item is lost without the heir's fault before the heir dies, then the loss of the item will be included in the Legitime Portie calculation (Article 924 of the Civil Code). Gifts given during life may not be reduced, unless it is proven that all the assets that have been willed are not sufficient to guarantee Legitime Portie (Article 925 of the Civil Code).

Return of goods in their original condition is mandatory (Article 926 of the Civil Code). Deductions from what is bequeathed must be done without distinguishing between one heir and another (Article 927 of the Civil Code). Grant recipients who use the donated goods must return the proceeds from that use (Article 928 of the Civil Code). Items in their original condition must be returned to the inheritance (Article 929 of the Civil Code).

**Legal claims for reduction or return can be filed by the heirs against third parties who control the goods.**

In these articles, it is explained in detail the forms permitted in making a will and the related procedures. Article 930 of the Civil Code confirms that one deed cannot be used by two or more people to make a will. Then, Article 932 of the Civil Code gives the heir the option to make a will in various forms, namely a graphic deed (written in his own hand), a public deed (made before a Notary or authorized official), or a secret deed or deed closed.

Furthermore, Article 933 of the Civil Code explains that a written will must be completely handwritten by the testator and signed by him. Article 934 of the Civil Code regulates that a graphic will that has been kept by a Notary has equal legal force to a will made by public deed.

Article 935 of the Civil Code gives the testator the right to request the return of his or her written will at any time, as long as the purpose is for the accountability of the Notary. Article 936 of the Civil Code explains that a letter written in the testator's own hand in full can be considered a will.

Finally, Article 937 of the Civil Code regulates the procedure for discovering a will after the death of the testator. If a will is found after death, the letter must be submitted to the Probate Court in the jurisdiction where the inheritance was made.

These provisions provide a clear legal framework regarding the form of wills and their management, thus regulating the process of making, finding and monitoring wills appropriately (Monica Sriastuti Agustina, 2020).

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**Legal Requirements That Must Be Fulfilled in Order for a Will to be Considered Valid Based on Civil Law, and How They Are Implemented in Practice**

For a will to be considered valid under civil law, several conditions must be met. The following are the legal requirements for a will and how they are implemented in practice:

1. Valid Form
  - a. Olographic Deed: A will must be written in the testator's own hand and signed by him (Article 933 of the Civil Code). The implementation is that the testator must

personally write the entire will and sign it with his own hand. In practice, this means that there is no interference from other parties in making a will.

- b. General Deed: A will made before a Notary or authorized official (Article 932 of the Civil Code). The implementation is that the heir must go to a Notary or authorized official to make a will. The notary will ensure the validity of the will and record it in a public deed.
- c. Secret Deed or Closed Deed: A will can be made in the form of a secret deed or closed deed (Article 932 of the Civil Code). This means that a will can be kept secret and will only be opened at a specified time or after the testator's death.

## 2. No Joint Will Making

It is not permitted for two or more people to make wills in the same deed (Article 930 of the Civil Code). This means that each heir must make their own will, there can be no collaboration or joint will making.

## 3. Proper Storage

An olographic will after being deposited by a Notary has the same power as a will made by public deed (Article 934 of the Civil Code). This means that the Notary has an obligation to store the olographic will safely and appropriately.

## 4. Return of the Will by the Testator

The testator has the right to request the return of his or her written will at any time for the purposes of Notary accountability (Article 935 of the Civil Code). This gives the testator flexibility to manage his or her will.

## 5. Reporting Wills Found After Death

If a will is found after the testator's death, the letter must be submitted to the Inheritance Hall in the jurisdiction where the inheritance was made (Article 937 of the Civil Code). The implementation is that the party who finds an unknown will must report it to the competent authority.

## CONCLUSION

In the context of civil law in Indonesia, a will is an instrument regulated by the Civil Code. A will, or what is often referred to as a testament, is a written statement used by someone to regulate the fate of their assets after they die. The main function of this will is to provide clarity regarding how a person's inheritance will be distributed to the desired beneficiaries after the testator's death. In the Civil Code, the rules regarding wills are regulated starting from Article 874 of the Civil Code to Article 1002 of the Civil Code. These articles outline the basic principles related to the inheritance of someone who has died. The main principle is that inheritance belongs to the heirs. A will is a legal instrument that allows the testator to express his wishes regarding how the inherited property will be divided.

In the context of making a will, the Civil Code recognizes several valid forms. First, there is an olographic will which must be completely handwritten by the testator and signed by him, in accordance with Article 933 of the Civil Code. Furthermore, a will can be made in the form of a general deed, namely made before a Notary or authorized official (Article 932 of the Civil Code). Finally, there is a form of secret deed or closed deed which allows the testator to keep the will confidential and will only be opened at a specified time or after the testator's death. Where in making a Deed or storing a Will, a Notary must be involved.

Apart from the form provisions, there are also provisions that regulate who has the right to make or receive benefits from a will. Article 876 of the Civil Code to Article 906 of the Civil Code regulates this matter in detail. One of the principles underlying this provision is that the testator must have sufficient mental capacity to make decisions regarding the will. This involves considering age, marriage consent, types of benefits that can be bequeathed, and so on.

In the case of gifts, the Civil Code regulates that inherited assets can be gifted during life or through a will. However, there are provisions that must be taken into account regarding gift deductions which can reduce the legal share for heirs under the law. All of these provisions are designed to maintain a balance between the heir's rights to manage his inheritance and the rights of heirs and to prevent misuse of wills in civil law.

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