

# CHAPTER I

## INTRODUCTION

### 1.1 Background

Inheritance law practice in Indonesia frequently encounters challenges when one or more heirs refuse to give their consent to the sale of jointly inherited property. Such circumstances create obstacles to the management and utilization of the inherited assets. Inheritance may be understood as the legal process through which ownership rights are transferred from a deceased person (the decedent) to the individuals who are legally entitled to inherit the estate in accordance with applicable laws. This transfer involves not merely the succession of ownership but also serves broader social and economic purposes, namely to ensure that the inherited property can be utilized effectively to support the welfare and continued livelihood of the surviving family members. The existence of inheritance law is essential to provide legal certainty, uphold justice, and prevent disputes among heirs. Upon the death of the decedent, all legal rights and obligations are transferred to the heirs or other individuals who are legally entitled to inherit the estate, including the surviving spouse, children, parents, or other lawful beneficiaries. Inheritance should not be understood merely as the transfer of rights and obligations; rather, it encompasses the entirety of the deceased's estate left behind after death, including both movable and immovable property.<sup>1</sup>

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<sup>1</sup> Suhartono, D. A. F., Azizah, N. N., & Wibisono, C. S. (2022). *Sistem pewarisan menurut hukum perdata*. Jurnal Hukum, Politik dan Ilmu Sosial (JHPIS). 1(3), hlm. 205.

Discussions regarding inheritance are an ongoing issue, as conflicts often arise in practice when one party feels their rights have not been fairly fulfilled during the division of the estate. Such situations have the potential to disrupt family harmony and lead to prolonged disputes. To prevent such rifts, mediation efforts among the heirs are necessary.<sup>2</sup> One of the mechanisms for resolving legal disputes is mediation. The term mediation is derived from the Latin word *medius*, meaning "middle" or "intermediary," and refers to a dispute resolution process in which an impartial third party acts as a neutral facilitator to assist the disputing parties in reaching a mutually acceptable settlement. According to Black's Law Dictionary, mediation is an alternative method of dispute resolution in which an independent and impartial third party assists the disputing parties in identifying and reaching a mutually acceptable and voluntary settlement. This neutral third party is known as a mediator. In the mediation process, two or more parties may be involved, and the mediator's role is to facilitate communication, encourage constructive dialogue, and assist the parties in resolving the issues underlying their dispute. In the context of inheritance disputes, mediation serves as a means of reconciling conflicting interests and facilitating consensus, thereby enabling the parties to reach an agreement that promotes fairness and balance in the distribution of the deceased's estate.<sup>3</sup> Inheritance law plays a crucial role in governing the fair

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<sup>2</sup> Suwarni, N. L. G., Budiarta, I. N. P., & Arini, D. G. D. (2020). *Pembagian harta warisan ditinjau dari Kitab Undang-Undang Hukum Perdata*. Jurnal Interpretasi Hukum, 1(2), hlm. 149.

<sup>3</sup> Cahyani, T. D. (2022). *Metode Alternatif Penyelesaian Sengketa: Mediasi Terhadap Permasalahan Hukum (Dalam Teori Dan Praktek)* (Vol. 1). UMMPress. hlm 2-3.

distribution of a deceased person's estate and ensuring legal certainty for all rightful heirs.

Inheritance law forms an integral part of family law and is closely connected to every individual's life, as death is an inevitable legal event that gives rise to the transfer of a person's rights and obligations. Fundamentally, inheritance law comprises a body of legal rules that determine the individuals or legal entities entitled to inherit from the deceased, establish the legal status of each heir, and regulate the proportion of the estate to which each is entitled in accordance with applicable legal provisions and principles of fairness.<sup>4</sup> Inheritance law in Indonesia is characterized by a pluralistic legal system consisting of customary law (*adat* law,) Islamic law, and Western civil law derived from the *Burgerlijk Wetboek* (BW). Although these three legal systems share the common objective of regulating the transfer of a deceased person's estate to those legally entitled to inherit it, they differ significantly in their legal principles and application. Under both Islamic law and the BW, the death of the decedent constitutes a prerequisite for the distribution of the estate. In contrast, under customary law, the distribution of property may take place while the property owner is still alive, as it is generally based on the applicable kinship or lineage system.<sup>5</sup> This study focuses specifically on inheritance law under the *Burgerlijk Wetboek* (BW), which serves as the primary legal framework for the analysis.

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<sup>4</sup> Suparman, M. (2022). *Hukum Waris Perdata*. Sinar Grafika, hlm. 7-8.

<sup>5</sup> Nasution, A. (2018). Pluralisme Hukum Waris di Indonesia. *Al-Qadha: Jurnal Hukum Islam dan Perundang-undangan*, 5(1), hlm. 23

Civil law plays a significant role in the resolution of inheritance disputes, particularly through the substantive provisions of the Indonesian Civil Code (*Kitab Undang-Undang Hukum Perdata or KUHPerdata*) and the procedural rules governing civil litigation. This legal framework provides a systematic mechanism for addressing the complexities of inheritance-related disputes. In Indonesia, inheritance disputes commonly arise from a combination of interrelated factors. According to Harahap, the principal causes include ambiguity in the contents of a will, perceived unfairness in the distribution of the deceased's estate, particularly where family members have made unequal contributions to the care of the deceased or the management of the estate and conflicts among family members. Disputes may also arise from divergent interests among the heirs, such as when some heirs seek to sell inherited property while others refuse to consent to its sale.<sup>6</sup>

In the inheritance dispute adjudicated by the Central Jakarta District Court under Case No. 174/Pdt.G/2023/PN Jkt.Pst, two siblings filed a lawsuit against their sister concerning the estate of their late parents, Iksan Utojo and Livia Utojo. The dispute arose because the defendant, the third child of the deceased, was alleged to have obstructed the administrative process required for the sale of two inherited residential properties located in Jakarta and Denpasar. The plaintiffs, Katharine Utojo and Steve Utojo, asserted that they had acted in good faith by intending to distribute the proceeds of the sale equally among all the

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<sup>6</sup> Sarmadi, A. S. (2024). *Sengketa waris dalam keluarga: Analisis pustaka tentang penyebab dan penyelesaiannya dalam perspektif hukum perdata*. Jurnal Hukum Keluarga Islam, 4(1), hlm. 354-356.

heirs, including the defendant, Imelda Utojo. However, the defendant's refusal to sign the inheritance declaration and other documents required to complete the transaction prevented the sale from proceeding.

This case illustrates that inheritance disputes extend beyond economic considerations and may also have profound implications for family relationships. The refusal of one heir to cooperate in the necessary administrative procedures may prevent the estate from being utilized by the other heirs, despite their equal legal entitlement to the inherited property. Accordingly, legal certainty and the role of the courts are essential in resolving inheritance disputes, ensuring justice among the heirs, and preventing further deterioration of familial relationships.<sup>7</sup>

Based on the foregoing background, the author considers the issue of an heir's refusal to consent to the sale of jointly inherited property to be a significant legal issue that warrants further examination from both theoretical and practical perspectives. Such disputes give rise not only to legal questions concerning the validity of legal acts involving inherited property but also to issues relating to the protection of the civil rights of heirs, who are entitled to legal certainty and justice. This study adopts the Central Jakarta District Court Decision No. 174/Pdt.G/2023/PN Jkt.Pst as its primary object of analysis, with the aim of examining the legal reasoning underlying the court's decision and evaluating its implications for the protection of the rights of the heirs. Accordingly, the author is motivated to undertake this research in an

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<sup>7</sup> Putusan PN Jakarta Pusat Nomor 174/Pdt.G/2023/PN Jkt.Pst

undergraduate thesis entitled "A Juridical Analysis of an Heir's Refusal to Consent to the Sale of Jointly Inherited Property (A Study of the Central Jakarta District Court Decision No. 174/Pdt.G/2023/PN Jkt.Pst)."

## **1.2 Problem Statement**

1. What are the judge's legal considerations in rejecting the sale of inherited property without the consent of one of the heirs?
2. How does this decision affect the protection of the heirs' rights?

## **1.3 Research Objectives**

**The objectives of this research are as follows:**

1. To analyze the judge's legal considerations in rejecting the sale of jointly inherited property without the consent of one of the heirs, based on the Central Jakarta District Court Decision No. 174/Pdt.G/2023/PN Jkt.Pst.
2. To examine the legal implications of one heir's refusal to give consent for the sale of jointly inherited property on the protection of the rights of all heirs.

## **1.4 Research Benefits**

### **1. Practical Benefits**

This research is expected to provide benefits for various parties. For legal professionals, such as judges, advocates, and notaries, the findings of this study are expected to serve as a useful reference in making fair legal decisions, especially in cases involving parties who may suffer losses. In addition, this research is expected to contribute to the

development and application of civil inheritance law in a way that is fair and consistent with the principles of protecting the rights of heirs. For the public, this research is expected to increase awareness and understanding of how inheritance disputes can be resolved based on the principles of justice and the applicable legal rules, thereby helping to prevent similar disputes in the future.

## **2. Theoretical Benefits**

This research is expected to make an academic contribution to the development of legal studies, especially in the field of inheritance law concerning the legal requirements for the sale of jointly inherited property. It is also expected to expand and enrich the existing academic literature on this topic. In addition, this research is expected to serve as a reference for future studies that discuss similar issues, particularly those related to disputes over the sale of inherited property.

### **1.5 Originality of Writing**

This research has several similarities and differences compared to previous studies that discuss legal issues related to the refusal to consent to the sale of inherited property. These similarities and differences are presented in the following table:

**Tabel 1. Differences Between Previous Studies**

| <b>No</b> | <b>Name, Author, Title, and Year</b>                                  | <b>Statement of the Problem</b>                                                    | <b>Similarities and Research Focuses</b>                          | <b>Key Differences</b>                                          |
|-----------|-----------------------------------------------------------------------|------------------------------------------------------------------------------------|-------------------------------------------------------------------|-----------------------------------------------------------------|
| <b>1.</b> | Nurul Adha Yani Siregar, Kedudukan Hukum Penjualan Harta Warisan Bagi | 1. The Legal Implications of the Sale of Inherited Property Without the Consent of | Selling Inherited Property Without the Consent of the Other Heirs | The comparative study uses the Compilation of Islamic Law (KHI) |

|    |                                                                                                                                                   |                                                                                                                                                                                                                    |                                                                                                                     |                                                                                                                                                                                                |
|----|---------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|    | Beragama Islam Tanpa Persetujuan Ahli Waris Lainnya Berdasarkan Khi (Studi Putusan Nomor 1047/Pdt.G/2023/Pa-Rap), (2024) (SKRIPSI)                | the Other Heirs from the Perspective of the Compilation of Islamic Law<br>2. The Legal Status of the Sale of Inherited Property Without the Consent of the Other Heirs in Case Decision No. 1047/Pdt.G/2023/PA-RAP |                                                                                                                     |                                                                                                                                                                                                |
| 2. | Amellia Fitria Hamidah, Sri Budi Purwaningsih, Tanggung Gugat Penjualan Tanah Warisan Tanpa Seizin Ahli Waris yang Lain (2024) (JURNAL)           | 1. The Legal Consequences of the Sale of Inherited Land Without the Consent of the Heirs<br>2. Payment Status in the Sale and Purchase of Inherited Land Without the Consent of All Heirs                          | Both studies examine the sale of inherited property/land without the consent of the other heirs                     | The study discusses the sale of inherited land without the consent of the other heirs in general, without focusing on a specific case, and uses Customary Law as one of its legal bases        |
| 3. | Ari Rahmatsyah Sinaga, Penyelesaian Sengketa Tanah Waris Yang Telah Terjual Tanpa Persetujuan Seluruh Ahli Waris (2022) (JURNAL)                  | 1. Transfer of Rights Through the Sale and Purchase of Inherited Property<br>2. Legal Consequences of the Sale and Purchase of Inherited Land Without the Consent of All Heirs                                     | The study discusses inherited property that has been sold without the consent of all heirs.                         | In this study, the inherited property had already been sold without the consent of all heirs. In contrast, in the present study, the inherited property has not yet been sold                  |
| 4. | Anita Sofiana, Akibat Hukum Pengalihan Hak Jual Beli Melalui Akta Pejabat Pembuat Akta Tanah Atas Tanah Warisan Tanpa Persetujuan Salah Satu Ahli | 1. What is the procedure for the sale and purchase of inherited land in accordance with the provisions of the Basic Agrarian Law<br>2. What are the legal consequences of a deed of sale and purchase              | 1. The study focuses on inheritance law, particularly disputes arising from the sale of jointly inherited property. | In the comparative study, the inherited property had already been sold without the consent of the other heirs. In contrast, in the present study, the inherited property has not yet been sold |

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|--|-------------------------------|-------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------|--|
|  | Waris Lainnya (2017) (JURNAL) | executed by a Land Deed Official for inherited land sold by an heir without the consent of the other heirs? | 2. The Sale of Inherited Property Without the Consent of the Heirs |  |
|--|-------------------------------|-------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------|--|

## 1.6 Research Methods

### 1.6.1 Type and Nature of the Research

This research uses a normative juridical research method. According to Ahmad Mukti Fahar ND and Yulianto, normative legal research is a type of legal research that examines law as a system of legal norms. These norms include legal principles, rules, and regulations derived from legislation, court decisions, and legal doctrines developed by legal scholars. The main purpose of this method is to develop legal arguments that can be used to determine whether a legal event is consistent with or deviates from existing legal rules, as well as how the event should be interpreted under the law. Therefore, normative legal research usually begins with a legal issue or event, followed by an examination of legal sources, such as legislation, legal principles, and legal doctrines developed by legal scholars, to understand the relevant legal relationships and provide a proper legal analysis.<sup>8</sup>

This research is descriptive-analytical in nature. According to Husein Umar, descriptive research is a type of research that describes a phenomenon as it exists at the time the study is conducted and examines

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<sup>8</sup> Muhaimin. (2020). *Metode penelitian hukum*. Mataram University Press, hlm. 46-52.

the factors or causes behind that phenomenon.<sup>9</sup> A descriptive-analytical approach uses data that have been systematically collected and analyzed to provide a clear description of the issues or events that are the focus of the research.<sup>10</sup> The findings of this research are presented descriptively based on the issues examined in the study. This research uses a normative juridical approach, with primary data obtained from the Central Jakarta District Court Class IA. The collected data are then analyzed and supported by secondary sources, including journals, books, undergraduate theses, and other relevant legal studies.

### **1.6.2 Legal Approach**

The author conducted this legal research using legal approaches as the basis for analyzing the issues under study. This research applies several legal approaches to examine and analyze the legal problems, namely:

#### **a. Statute Approach**

This method is commonly used in normative legal research and is carried out by examining various laws and regulations related to the legal issues being studied. Through this approach, the researcher seeks to identify and understand the applicable legal norms that form the basis for regulating the legal issue. This approach provides a comprehensive understanding of how positive

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<sup>9</sup> Husein Umar, *Metode Penulisan untuk Skripsi dan Tesis Bisnis*, (Jakarta, Raja Grafindo Persada, 2009), hlm. 22.

<sup>10</sup> Nana Syaodih Sukmadinata, *Metode Penulisan Pendidikan* (Bandung: Remaja Rosdakarya, 2010), hlm. 60.

law functions in regulating legal matters, providing legal protection, and offering solutions to the legal problems that arise.

b. Case Approach

The case approach is carried out by examining and analyzing court cases that are relevant to the legal issue under study, particularly court decisions that have become legally binding. In this research, the case approach is applied through an analysis of the Central Jakarta District Court Decision Number 174/Pdt.G/2023/PN Jkt.Pst to gain a better understanding of how the law is applied to the legal issue being examined. This decision was selected because it is directly related to the issue of the refusal of one heir to give consent for the sale of jointly inherited property. By analyzing the judge's legal reasoning in the decision, the author is able to evaluate the application of civil inheritance law and its implications for the protection of the rights of the heirs.

c. Conceptual Approach

This approach is based on legal theories and doctrines that have developed within the discipline of law. The conceptual approach is used to identify solutions to the legal issues examined in the research. It focuses on analyzing the relationship between legal doctrines and the opinions of legal scholars regarding the legal issues under study. Through this approach, the researcher obtains a theoretical foundation in the form of legal concepts, definitions, and legal principles, which serve as the basis for

analyzing the subject of the research.<sup>11</sup> The theories applied in this approach are the Theory of Legal Certainty proposed by Gustav Radbruch and the Theory of Utilitarianism developed by Jeremy Bentham.

### 1.6.3 Source of Data

The data sources used in this research consist of primary data sources and secondary data sources, as follows:

#### 1. Primary Legal Materials

Primary legal materials are legal sources that have binding legal force. They include fundamental legal rules, legislation, legal norms, uncodified legal provisions, and judicial decisions.<sup>12</sup> The primary legal materials used in this research are as follows:

- a. Book II of the Indonesian Civil Code (*Kitab Undang-Undang Hukum Perdata / KUHPerdata*).
- b. The Central Jakarta District Court Decision Number 174/Pdt.G/2023/PN Jkt.Pst.

#### 2. Secondary Legal Materials

Secondary legal materials are legal sources that support the analysis of primary legal materials.<sup>13</sup> In this research, the secondary legal materials used are as follows:

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<sup>11</sup> Muhaimin, *Metode Penulisan Hukum* (Mataram: University Press, 2020) hlm. 54-57.

<sup>12</sup> Soeryono Soekanto, *Pengantar Penelitian Hukum*, Keenam (Jakarta: UII-Press, 2004), hlm. 63.

<sup>13</sup> Ibid, hlm. 158.

- a. Legal literature, including books on inheritance law, civil law, civil procedure law, and legal doctrines developed by legal scholars that are relevant to the inheritance dispute examined in this research.
- b. Scholarly legal journals discussing the distribution of inherited property, the sale of jointly inherited property, the consent of heirs, and the mechanisms for resolving inheritance disputes through the courts.
- c. Previous research, including undergraduate theses, master's theses, and doctoral dissertations, that examine inheritance law, the refusal of an heir to give consent, and similar case studies in the practice of the Indonesian courts.

#### **1.6.4 Legal Materials Collection Procedure**

The method used to collect and process the legal materials in this research is carried out through the following steps:

##### **1. Bibliography Study**

A bibliography study is carried out by reviewing various written legal sources that are relevant to the research. These sources have been published and are used to support normative legal research. The written sources used in this research include:

##### **a. Legislation**

The legal materials consist of legislation containing provisions related to inheritance law and legal actions

concerning jointly inherited property. These include the Indonesian Civil Code (*Kitab Undang-Undang Hukum Perdata / KUHPerdata*) and other relevant laws and regulations.

b. Court Decisions

Court decisions (case law) are legal materials used in this research. This study mainly focuses on the Central Jakarta District Court Decision Number 174/Pdt.G/2023/PN Jkt.Pst as the primary object of analysis. The decision is an important legal material for examining the judge's legal reasoning regarding the refusal of one heir to give consent to the sale of jointly inherited property.

c. Relevant Parties

Legal documents, such as contracts, agreements, or other legal documents related to the distribution or management of inherited property, are used as supporting materials to understand the legal position of the heirs.

d. Legal Scholars and Their Publications

This category includes books, scholarly journals, and previous research discussing inheritance law, civil law, and legal theories relevant to this research. These materials are used as the conceptual and theoretical foundation for analyzing the legal issues examined in this study.

## 2. Document Study

A document study is a method used to examine written information related to the law, especially legal documents that are not widely published and can only be accessed by authorized or interested parties. In this research, the document study is conducted to obtain authentic legal materials, including a copy of the Central Jakarta District Court Decision Number 174/Pdt.G/2023/PN Jkt.Pst as the main object of the research, as well as other documents related to the court proceedings, particularly those concerning the resolution of the case and the distribution of inherited property. Through this method, the author is able to understand the content and substance of the legal documents that form the basis of the analysis in this research.

### 1.6.5 Analysis of Legal Materials

After all the legal materials have been collected, the analysis stage is carried out. The author analyzes the legal materials thoroughly and systematically using a descriptive analytical method. According to Muhaimin, descriptive analysis aims to provide a clear description and explanation of the research subject and object based on the findings of previous studies.<sup>14</sup>

### 1.6.6 Thesis Writing Systematic

This thesis is designed to provide a clear overview of its structure and the sequence of the discussion. It is intended to help readers

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<sup>14</sup> Muhaimin, *Op.Cit.*, hlm. 65-105.

understand the relationship between each chapter and the overall content of the research. This thesis, entitled "A Juridical Analysis of the Refusal of One Heir's Consent in the Sale of Jointly Inherited Property (A Study of the Central Jakarta District Court Decision Number 174/Pdt.G/2023/PN Jkt.Pst)," is organized into four chapters as follows:

Chapter One, presents the introduction and provides a general overview of the issues that form the basis of this research. This chapter explains the background of the study, the research objectives and benefits, the originality (novelty) of the research, the literature review, and the research methodology. The research methodology includes the type and nature of the research, the legal approaches used, the sources of legal materials, the method of analyzing the legal materials, and the organization of the thesis, which provides an overview of the overall structure of the research.

Chapter Two, discusses the first research question: *How does the judge consider the refusal of the sale of inherited property without the consent of one of the heirs?* This chapter is divided into two sections. The first section provides a description of the Central Jakarta District Court Decision Number 174/Pdt.G/2023/PN Jkt.Pst. The second section discusses the judge's legal considerations in deciding inheritance case Number 174/Pdt.G/2023/PN Jkt.Pst.

Chapter Three, discusses the second research question: *What are the implications of the decision for the protection of the rights of the heirs?* This chapter consists of two sections. The first section explains the legal

consequences for the parties involved in Central Jakarta District Court Decision Number 174/Pdt.G/2023/PN Jkt.Pst. The second section provides a legal analysis of the decision by applying the Theory of Legal Certainty proposed by Gustav Radbruch and the Theory of Utilitarianism developed by Jeremy Bentham.

## 1.7 Literature Review

### 1.7.1 General Overview of Inheritance Law

Inheritance law is generally considered a part of property law because it is directly related to the ownership and transfer of property. In general, inheritance law is defined as a set of legal rules that govern the transfer and distribution of a deceased person's estate to his or her heirs. In other words, inheritance law determines the rights and obligations that arise when the property of the deceased is transferred to the surviving heirs in accordance with the applicable law.

Furthermore, inheritance law not only regulates the technical process of distributing the estate but also provides legal certainty. It serves to ensure that the transfer of property is carried out fairly and in accordance with the applicable legal provisions, while protecting the rights and obligations of the heirs.<sup>15</sup> Inheritance law is a set of legal rules that governs the transfer of property, including the rights and obligations of a deceased person, to one or more heirs.<sup>16</sup>

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<sup>15</sup> Natania, M., & Lesmana, J. (2024). *Analisis Sistem Pewarisan di Indonesia Dalam Prespektif Hukum Perdata*. Jurnal Kewarganegaraan, 8(1), hlm. 992.

<sup>16</sup> Meliala, D. S. (2018). *Hukum Waris Menurut Kitab Undang-Undang Hukum Perdata*. Bandung : Nuansa Aulia. hlm 4

Inheritance law is closely related to family law and marriage law. In Indonesia, marriage law has been unified under Law Number 1 of 1974 on Marriage as the national legal framework governing marriage. However, Indonesia does not yet have a comprehensive national inheritance law. As a result, people may still apply and choose the inheritance law that is most appropriate to their background and circumstances, whether it is based on the Indonesian Civil Code (*Kitab Undang-Undang Hukum Perdata / KUHPerdata*), customary law, or Islamic law.<sup>17</sup>

Civil inheritance law is a set of legal rules that governs the transfer of a person's property after death and the legal consequences for the heirs. The legal basis of civil inheritance law is the *Burgerlijk Wetboek* (BW), which is known in Indonesia as the Indonesian Civil Code (*Kitab Undang-Undang Hukum Perdata / KUHPerdata*). It applies to individuals who are subject to the Western civil law system.<sup>18</sup>

The Indonesian Civil Code (*Kitab Undang-Undang Hukum Perdata / KUHPerdata*) recognizes three main principles of inheritance law. The first is the principle of individuality, which provides that an heir must be an individual person. The second is the bilateral principle, which states that inheritance rights may arise through either the paternal or maternal line of the deceased or the heirs. The third is the principle of

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<sup>17</sup> Prof. Dr. Hj. Yulia Mirwati, S.H., C.N., M.H. (2021) *Hukum Waris Ab Intestato di Indonesia*. Rajawali Pers, hlm. 5-9.

<sup>18</sup> Rahmi, A., & Chairunnisa, C. (2024). *Hukum waris perdata* (I. Iswara, Q. U. Lasia, & J. Siregar, Eds.). Medan: UMSU Press, hlm. 6-7.

degree of kinship, which means that the right to inherit belongs to those who have the closest family relationship with the deceased.<sup>19</sup>

The legal basis of Western Civil Inheritance Law is set out in Book II of the Indonesian Civil Code (*Kitab Undang-Undang Hukum Perdata / KUHPerdata*), which regulates property law. The provisions on inheritance are specifically contained in Chapters Eleven to Seventeen, covering approximately 300 articles, from Article 830 to Article 1130 of the Indonesian Civil Code. The placement of inheritance law in Book II of the Indonesian Civil Code has long been debated among legal scholars because of differing opinions on this arrangement. Some legal scholars support this classification, while others disagree. The following are some views regarding the placement of Western Civil Inheritance Law in Book II of the Indonesian Civil Code:

a. The View of the Legislators

According to the legislators, the placement of Western Civil Inheritance Law in Book II of the Indonesian Civil Code is appropriate because Book II regulates property rights, which are closely related to inheritance law..

b. The Views of Pitlo Veegens, Oppenheim, and other Legal Scholars

According to Pitlo, Veegens, Oppenheim, and other legal scholars, the placement of Western Civil Inheritance Law in Book

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<sup>19</sup> Diana, D. A. F. S., Azizah, N. N., & Wibisono, C. S. (2022). *Sistem pewarisan menurut hukum perdata*. Jurnal Hukum, Politik dan Ilmu Sosial, 1(3), hlm. 206.

II of the Indonesian Civil Code is not appropriate. They argue that inheritance law is not only part of property law but is also closely related to the law of obligations and family law.<sup>20</sup>

#### Elements of Inheritance under Civil Law

##### a. Decedent

A deceased person (decedent) is an individual who has passed away and leaves behind property, rights, and obligations to be inherited by his or her heirs. In other words, a deceased person is someone who dies and leaves his or her estate to those who are legally entitled to inherit it.<sup>21</sup>

##### b. Heirs

An heir is a person who has the legal right to inherit the estate of a deceased person. Under civil inheritance law, the status of an heir is not determined by gender, unlike in some customary law systems. A person may become an heir based on a marital relationship or a blood relationship, as provided in Article 832(1) of the *Burgerlijk Wetboek* (BW). In principle, the person who has the closest blood relationship with the deceased has the right to inherit the estate.

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<sup>20</sup> Prof. Dr. Hj. Yulia Mirwati, S.H., C.N., M.H., *Op.Cit.*, hlm. 9.

<sup>21</sup> Maru'atun, D. R., Juniyanto, D., Rivaldi, W., & Sunarya, A. (2024). *Analisis pembagian harta warisan kepada ahli waris menurut hukum perdata (BW)*. Amandemen: Jurnal Ilmu Pertahanan, Politik, dan Hukum Indonesia, 1(3), hlm. 353.

According to the Indonesian Civil Code (*Kitab Undang-Undang Hukum Perdata/KUHPerdata*), there are several factors that determine who is entitled to become an heir, as follows:

1. Heirs by Law

Under the law, the close family members of the deceased person who leaves the estate are entitled to inherit. According to the Indonesian Civil Code, legal heirs are generally divided into four groups: children, the surviving husband or wife, siblings, and grandparents.

2. Heirs by Will (Testamentary Succession)

A will is the second method of inheritance, known as testamentary succession. Under this method, a person expresses his or her wishes regarding the distribution of his or her estate after death. A will may be amended or revoked by the testator at any time during his or her lifetime, as provided in Article 997 of the Indonesian Civil Code (*Kitab Undang-Undang Hukum Perdata / KUHPerdata*).

If a person dies without leaving a will, the distribution of the estate will be carried out in accordance with civil law provisions, namely:

- a. The first group entitled to inherit consists of the spouse and the children. Each of them receives an equal share of the estate in accordance with Article 852 of the *Burgerlijk Wetboek* (BW).

- b. If the parties mentioned above do not exist, the next entitled heirs are the parents and siblings of the deceased. In this case, each parent is entitled to at least one-fourth of the estate, as provided in Article 854 of the *Burgerlijk Wetboek* (BW).
- c. If none of the above parties exist, the estate is divided into two equal parts: one half goes to the family of the mother and the other half goes to the family of the father of the deceased. The closest relatives have the right to inherit. Children or siblings of the deceased may be represented by their lawful descendants if they predecease the deceased, as stated in Article 853 of the *Burgerlijk Wetboek* (BW).

Article 838 of the Indonesian Civil Code (*Kitab Undang-Undang Hukum Perdata / KUHPerdata*) provides that certain persons who do not meet the requirements of eligibility as heirs are not entitled to inherit the estate, namely:

- a. Persons who have been convicted of committing or attempting to commit murder against the deceased.
- b. Persons who have been declared guilty by a court decision of defaming the deceased by making accusations of a criminal act punishable by

imprisonment of at least five years or a more severe penalty.

- c. Persons who use violence to prevent the deceased from making, changing, or revoking a will.
- d. Persons who intentionally alter, destroy, or falsify a will made by the deceased.<sup>22</sup>

c. Inherited Property

An inheritance refers to all the assets of a deceased person, including both assets and obligations. The estate of the deceased, whether already distributed or not yet divided, is considered inheritance.<sup>23</sup>

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<sup>22</sup> Aini, S. M. Q., Millati, E. N., & Nabila, M. (2021). *Hukum waris perspektif hukum perdata (Burgerlijk Wetboek)*. JAS MERAH: Jurnal Hukum dan Ahwal al-Syakhsiyyah, 1(1), hlm. 98-99.

<sup>23</sup> Palayukan, Y. (2021). *Tanggung Jawab Ahli Waris Terhadap Harta Warisan Pewaris Menurut Kitab Undang Undang Hukum Perdata*. Lex Privatum, 9(4), hlm, 131-134.

### 1.7.2 General Overview of Gustav Radbruch's Theory

In the work of Gustav Radbruch, *Einführung in die Rechtswissenschaften*, the concept of legal certainty was first discussed. In this book, Radbruch explains that law is based on three fundamental values: (1) justice (*Gerechtigkeit*); (2) expediency or purpose (*Zweckmäßigkeit*); and (3) legal certainty (*Rechtssicherheit*).<sup>24</sup>

#### 1) Legal Certainty

Gustav Radbruch's experiences during and after World War II had a major influence on the development of his legal thought. During this period, he directly observed how the Nazi regime used legal rules as an unjust tool to legitimize actions that were contrary to human values. Radbruch argued that legal certainty is the most important element in a legal system. He viewed clear and stable legal rules as having priority over justice and expediency, because legal certainty is considered the foundation for social order and consistency in the application of law.

The principle of legal certainty means that legal rules must be clearly stated, consistent, and predictable in their application. Some main aspects of legal certainty include:

- a. Clarity of Norms: Laws must be formulated clearly and be understandable to everyone, so that people can know with

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<sup>24</sup> Julyano, M., & Sulistyawan, A. Y. (2019). *Pemahaman terhadap asas kepastian hukum melalui konstruksi penalaran positivisme hukum*. Crepido, 1(1), hlm. 14.

certainty which actions are allowed and which are not.

This clarity helps minimize uncertainty and prevent errors in the application of legal rules.

- b. Consistency and Stability: Law must be enforced consistently across the judicial system. In other words, cases with similar circumstances should result in similar decisions, and any changes to the law should be made in a planned and transparent manner.
- c. The principle of non-retroactivity means that laws cannot be applied retroactively. In other words, a person cannot be punished based on a law that was not in force at the time the act was committed. This principle provides protection for individuals and ensures fairness in the application of law.
- d. Predictability means that individuals are able to foresee the legal consequences of their actions. Legal certainty ensures a sense of security because the law is enforced fairly and is not changed arbitrarily.<sup>25</sup>

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<sup>25</sup> Supriyadi, M. W., Achmad, M. M., Putra, N. R., & Syahuri, T. (2025). *Pokok pikiran dan sumbangsih fundamental Gustav Radbruch terhadap perkembangan ilmu dan hukum*. Quantum Juris: Jurnal Hukum Modern, 7(1), hlm. 395-413.

## 2) Justice

In *Statutory Law and Statutory Lawlessness*, Gustav Radbruch places justice as the primary value underlying the other two legal values. He states that legislation must be based on the value of justice, because if a legal rule is unjust, its enforcement in society may also result in injustice. This view shows that, for Radbruch, law cannot be separated from morality, including the value of justice. Radbruch argues that law which is not based on justice may become an arbitrary instrument, as was seen during the Nazi regime. He therefore considers justice as a criterion for determining whether a legal rule can truly be regarded as law.<sup>26</sup>

## 3) Utility

In law, social benefit or social purpose refers to the function of law in creating welfare and protecting the public interest. In this context, law is considered good if it can contribute to the creation of an orderly, prosperous, and humane society. Expediency cannot be defined merely as utility, but must always be balanced with the values of justice and legal certainty.

Gustav Radbruch emphasizes that these three values form an inseparable unity. Justice without legal certainty may become arbitrary, legal certainty without justice may become

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<sup>26</sup> Afif, *Buku Ajar Pengantar Ilmu Hukum* (Semarang: Yoga Pratama, 2024), hlm. 35–45.

oppressive, and expediency without both may be misused for opportunistic purposes.<sup>27</sup>

### 1.7.3 General Overview of Jeremy Bentham's Theory of Utilitarianism

Jeremy Bentham was born on February 15, 1748, in Spitalfields, London. At the age of seven, he attended Westminster School and later entered Queen's College, University of Oxford at the age of twelve. In 1763, Bentham registered as a prospective barrister at The Honorable Society of Lincoln's Inn and passed his professional qualification in 1768. After that, he returned to Queen's College and participated in the election of university members of parliament. During this period, he took a break at a café, where he came across a pamphlet by Joseph Priestley entitled *Essay on Government*, which introduced the phrase "the greatest happiness of the greatest number." This concept later became the foundation of Bentham's utilitarian thinking, namely that the happiness of the majority can be used as a basis for law-making.

Classical utilitarianism does not focus on how an action, event, or phenomenon is used to produce benefits, but rather evaluates whether it truly generates utility. Thus, if an action or event produces greater benefit, it is considered useful for society, and vice versa. Therefore, utilitarianism is more appropriate as an ethical evaluative approach in

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<sup>27</sup> Firdaus, M. B. (2025). Dialektika Keadilan, Kepastian, Kemanfaatan Hukum dalam Perspektif Gustav Radbruch pada Hukum Indonesia. *Jurnal Kajian Hukum Dan Kebijakan Publik* | E-ISSN: 3031-8882, 3(1), 357-367. Hal 360

assessing the usefulness of actions or events for society based on considerations of pleasure and pain.

Jeremy Bentham further developed classical utilitarianism by incorporating legal elements. In detail, Bentham explained that when dealing with moral issues, it is necessary to analyze the parties affected and the amount of pleasure and pain produced. Based on this analysis, the action that maximizes happiness or minimizes suffering for the affected parties should be chosen.<sup>28</sup>

#### **1.7.4 General Overview of Ronald Dworkin's Theory**

Ronald Dworkin is one of the most influential legal philosophers, particularly for his theory concerning the content of law. According to Dworkin, a legal system possesses four essential characteristics: elements, relationships, structure, and wholeness. Dworkin does not approach law from the perspective of a social scientist. Instead, he examines it from the perspective of judges and other participants who are directly engaged in legal practice, an approach that he later developed in his work *Law's Empire*. One of Dworkin's primary concerns is the development and defense of a theory of legal interpretation and adjudication. Through this theory, he seeks to explain not only how courts and judges decide difficult cases but also how they ought to decide them. In particular, Dworkin focuses on hard cases in

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<sup>28</sup> Pratiwi, E., Negoro, T., & Haykal, H. (2023). *Teori Utilitarianisme Jeremy Bentham: Tujuan Hukum atau Metode Pengujian Produk Hukum? Jeremy Bentham's Utilitarianism Theory: Legal Purpose or Methods of Legal*. Jurnal Konstitusi, 19, hlm. 270-281.

which existing legal rules have been exhausted or where no established legal rule directly applies. In such circumstances, judges should interpret the law by relying on the legal principles that best fit and justify the legal system as a whole, rather than merely applying rules mechanically.

Ronald Dworkin rejected the Social Fact Thesis of legal positivism on the ground that certain legal standards cannot be explained solely by reference to social facts. In deciding hard cases, for example, judges frequently rely on moral principles, which, according to Dworkin, do not derive their legal authority from the social criteria of legal validity embodied in the rule of recognition. Nevertheless, because judges are legally required to consider such principles whenever they are relevant, these principles must be regarded as part of the law. Accordingly, Dworkin concluded that "if we treat principles as law, we must reject the positivists' first tenet, that the law of a community is distinguished from other social standards by some test in the form of a master rule."

Furthermore, with regard to legal interpretation, Dworkin argues that a successful interpretation consists of two essential elements. First, because an interpretation is successful only to the extent that it justifies a particular legal practice within a given community, it must fit that practice by being coherent with the existing legal materials that define it, including statutes, judicial precedents, and other relevant legal sources. Second, because interpretation also provides a moral

justification for those legal practices, it must present them in their best moral light. Accordingly, an interpretation should not merely be consistent with existing law but should also reflect the principles of justice, fairness, and political morality that best justify the legal system.

Based on these two dimensions, Dworkin contends that judges should decide hard cases by first determining whether a proposed interpretation satisfies a minimum threshold of fit with the existing legal materials. If more than one interpretation satisfies this threshold, the judge should not choose between them solely by making increasingly precise comparisons of their degree of fit. Instead, the judge should adopt the interpretation that is substantively superior, namely the one that best advances the political and moral principles that provide the strongest justification for the legal system as a whole.

Accordingly, Dworkin argues that the legal authority of a binding legal principle is derived from the extent to which it contributes to the best moral justification of the legal practices of a community viewed as a coherent whole. Therefore, a legal principle contributes most effectively to that justification if and only if it fulfills the following three conditions:

- 1) The principle must fit the existing legal materials, including statutes, judicial precedents, and other relevant legal sources;
- 2) The principle must be the most morally compelling standard

- 3) The principle must provide the best moral justification for the law.