

# Regulations for Cancellation of a Will with the Existence of Legal Heir Based on Decision Number: 805/PDT/2018/PT.DKI

Sepwira Drana Wasistha Putra, Zainul Daulay, Muhammad Hasbi

Universitas Andalas

[sepwiradrana99@gmail.com](mailto:sepwiradrana99@gmail.com)

## ABSTRACT

A will deed is an authentic deed made before a Notary pursuant to Article 15(1) of Law No. 30/2004 on the Notary Profession (amended by Law No. 2/2014). Although a notarial will carries perfect evidentiary power, it may be cancelled when it conflicts with the rights of legitimate heirs (*legitieme portie*). This normative juridical study employs statutory and case approaches to examine: (1) the regulatory framework for cancellation of a will in the presence of legitimate heirs; (2) the judicial considerations in High Court Decision No. 805/PDT/2018/PT.DKI; and (3) the legal consequences of that cancellation for all parties. Results show that cancellation is governed by Articles 875–940 of the Civil Code; the High Court confirmed that Will Deed No. 32 violated the heirs' absolute share, rendering it without binding legal force; and the consequences include loss of the deed's evidentiary power, redistribution of the estate to lawful heirs, and potential civil liability for the Notary.

**Keywords:** *Cancellation; Will Deed; Legitimate Heirs; Legitieme Portie; Notary Liability*

## INTRODUCTION

Inheritance law in Indonesia recognizes two modes of succession: statutory inheritance (*Ab Intestato*) under Book II of the Civil Code (KUHPerdata), and testamentary inheritance through a will (testament). A will, defined by Article 875 of the Civil Code as a deed containing a person's wishes to be executed after death, enables the testator to distribute assets beyond the default statutory scheme. Three forms are recognised: the olographic will (handwritten and deposited with a Notary), the open public will (dictated before a Notary and two witnesses), and the secret/closed will (always sealed).

The role of a Notary is central to all three forms. As a public official authorised by Article 15 of Law No. 30/2004 (as amended by Law No. 2/2014) to make authentic deeds, the Notary bears responsibility for ensuring that a will meets both formal and substantive requirements. Formal requirements address the mode of drafting (written form, notarial presence, qualified witnesses aged at least 21, Indonesian citizens, unrelated to the heir).

Substantive requirements address the testator's capacity (sound mind, at least 18 years of age or married), the beneficiary's existence at the time of the testator's death, and—critically—respect for the *legitieme portie*.

The *legitieme portie*, regulated in Articles 913–929 of the Civil Code, is an absolute share of the estate that must be reserved for heirs in the direct ascending or descending line. It cannot be reduced by any *inter vivos* gift or testamentary disposition. Where a will violates this absolute share, the injured heir is entitled to seek judicial cancellation of the deed. The amount varies with the number of children: one child receives one-half, two children receive two-thirds, and three or more children receive three-quarters of the share they would obtain under intestate succession.

This article analyses the applicable regulatory framework and its application in High Court Decision No. 805/PDT/2018/PT.DKI, in which a notarial will was cancelled for violating the *legitieme portie* of the testator's wife and two children. Two analogous decisions—Supreme Court No. 677 K/AG/2009 (cancellation of a will exceeding the one-third limit for an adopted child under the Compilation of Islamic Law) and District Court No. 43/Pdt.G/2020/PN Medan (cancellation of a will incorporating joint marital property without spousal consent)—are cited comparatively to confirm the consistency of Indonesian jurisprudence on this issue.

## **RESEARCH METHOD**

This study employs normative juridical research. Data were drawn from primary legal materials (the Civil Code, Law No. 30/2004, Law No. 2/2014, and court decisions), secondary materials (legal textbooks and journal articles), and tertiary materials (legal dictionaries). Two approaches were applied: the statute approach, examining the coherence of legislative provisions; and the case approach, analysing courts' norming of legal rules through decided cases, principally Decision No. 805/PDT/2018/PT.DKI. Data were analysed qualitatively using the theories of legal certainty (*lex certa*) and inheritance distribution (*legitieme portie* protection).

## **RESULTS AND DISCUSSION**

## **Regulatory Framework for Cancellation of a Will Deed**

### **Position of Statutory Heirs**

Under Article 832 of the Civil Code, statutory heirs are blood relatives and the surviving spouse. They are classified into four groups, applied in order of priority:

- Group I – descendants (children and their issue), who share equally under Article 852 BW regardless of gender.
- Group II – parents and siblings (and their descendants), who inherit only when Group I is absent.
- Group III – further ascending relatives, inheriting only when Groups I and II are absent; the estate is divided equally between paternal and maternal lines.
- Group IV – collateral relatives to the sixth degree, inheriting only when Groups I–III are absent.

Testamentary heirs (Article 899 BW) are appointed by will, but their rights are always subordinate to the legitime portie of Group I and II heirs.

### **Conditions for Cancellation of a Will**

A will may be cancelled on the following grounds:

1. Non-fulfilment of formal requirements – failure to comply with the prescribed deed-form, witness qualifications (Article 944 BW), or notarial procedures (Article 931 BW) under Article 875 BW.
2. Violation of the legitime portie – under Article 913 BW, any testamentary disposition that reduces the absolute share of lineal heirs may be challenged through an inkorting (reduction) claim or a full annulment action.
3. Vitiating consent – under Article 893 BW, a will made under coercion, fraud, or undue influence may be cancelled.

Article 922 BW provides that a will can be revoked by the testator at any time, either through a subsequent will or a special notarial deed. However, once the testator dies, revocation is possible only through judicial action by an injured party.

Where a will violates mandatory law (*dwingendrechtelijk*), it may be declared null and void by operation of law without active judicial intervention; where it merely prejudices the *legitieme portie*, positive judicial action by the legitimate heir is required. The theory of legal certainty demands that such judicial cancellation rest on substantive legal grounds, not purely procedural technicalities, so as to maintain the authority of authentic deeds while protecting good-faith parties.

### **Judicial Considerations in High Court Decision No. 805/PDT/2018/PT.DKI**

#### **Facts of the Case**

The late Kwong Kiman Mulyadi died in Jakarta on 23 February 2016. He was survived by his legal wife, Khong Melani Setiadi (married 13 January 1980, registered post-mortem under Certificate No. 19/Ket.Perkw/PN/2016), and two biological children, Helen Mulyadi and Angel Mulyadi. During his lifetime, the testator had executed Will Deed No. 32 (19 March 2012) before Notary/PPAT Laurensia Siti Nyoman, SH, designating his siblings (the late Susanto, Suliaswati, Kwang Giok Lian, and Ernawati Kwong) as beneficiaries of the bulk of his estate, which included bank accounts at Panin Bank Fatmawati branch, time deposits, a land certificate (SHM No. 1459/Cirendeu), a save-deposit box at CIMB Niaga Bank, two shophouses, and one vehicle.

The plaintiff (wife), acting also on behalf of the two children, filed suit (Register No. 289/Pdt.G/2017/PN.Jkt.Sel) seeking a declaration that Will Deed No. 32 was null and void and that she be authorised to disburse all banking assets. Bank Panin, applying the Prudent Banking Principle under Article 2 of Law No. 10/1998 on Banking, refused to release assets to either party pending a court order with permanent legal force.

The South Jakarta District Court (Decision No. 289/Pdt.G/2017/PN.Jkt.Sel, 22 May 2018) upheld the plaintiff's claim and declared the will null and void. The defendants (the testator's siblings) appealed.

#### **Grounds of Appeal**

1. The validity of the marriage: the appellants argued the marriage was not registered at the Civil Registry as required by Article 2(1) and (2) of Law No. 1/1974 on Marriage.

2. The correctness of the cancellation: the first-instance court was said to have erred in treating the violation of the *legitieme portie* as sufficient ground for outright cancellation rather than a reduction (*inkorting*) action.
3. Validity conditions for a will: appellants argued a will is void only upon incompetence or defect of consent, not merely for exceeding the *legitieme portie*.

### **High Court Considerations and Decision**

The High Court adopted and affirmed the legal reasoning of the first-instance court. Its key considerations were:

- Article 913 BW prohibits a testator from disposing of any portion of the estate—whether by *inter vivos* gift or by will—to the detriment of heirs in the direct descending line. The wife and two children, as Group I heirs, hold an absolute share that is non-waivable absent their express consent.
- Will Deed No. 32 directed the bulk of the estate to the testator's siblings (collateral relatives), entirely bypassing the direct heirs, in plain violation of Article 913 BW.
- The law of evidence (Article 1865 BW) places the burden of proving entitlement on the party asserting it. The plaintiff discharged this burden through a marriage certificate, birth certificates, and the death certificate. The appellants offered no evidence sufficient to rebut the plaintiff's claim.
- The theory of inheritance distribution requires that the notary—as guarantor of the balance between testamentary freedom and the protection of legitimate rights—ensure that a will does not structurally prejudice direct heirs. Notary Laurensia Siti Nyoman failed this duty.

The High Court confirmed the district court's decision in full and ordered the defendants (original appellants) to pay court costs at both levels, fixed at Rp 150,000 at the appellate level. It further authorised Khong Melani Setiadi to liquidate all banking assets (savings, current account, and time deposits at Panin Bank Fatmawati) and to manage all other identified estate assets.

### **Legal Consequences of the Cancellation**

#### **Consequences for the Notary**

When a notarial deed is judicially cancelled for violating mandatory law, the deed loses its character as an authentic deed and is reduced, at best, to the evidentiary force of a private deed (Article 48(3) UUJN). This has three direct consequences for the Notary:

1. Civil liability – Article 1365 BW (unlawful act) allows injured parties to claim compensation, interest, and costs from the Notary where a deed made in breach of applicable law causes demonstrable harm.
2. Professional sanction – Article 16(1)(a) UUJN requires a Notary to act in a trustworthy, honest, thorough, independent, and impartial manner. Negligence in verifying that the contents of a will respect the *legitieme portie* constitutes a breach of professional duty that may be referred to the Notary Honorary Council.
3. Reputational consequence – the annulment of the deed demonstrates that the Notary failed in their role as guardian of substantive justice in inheritance distribution, contrary to Aristotle's principle of *sum cuique tribuere* (giving each person their due).

### **Consequences for the Testamentary Beneficiaries**

Upon cancellation of Will Deed No. 32, the siblings of the testator (defendants I–IV) lost all entitlement to the estate assets designated to them under the will. Because no other ground of inheritance existed for them—they are Group IV collateral relatives, which only inherits in the complete absence of Groups I–III—they are entirely excluded from succession.

Two options were, in principle, available to such beneficiaries: (a) to accept the situation without objection (*zich berusten*); or (b) to seek enforcement of any legitimate rights they might hold independently. Since they held no legitimate rights cognisable under BW against a surviving spouse and children, neither option altered the outcome.

### **Consequences for the Legitimate Heirs**

The practical effect of the decision was the full restoration of the statutory inheritance rights of the wife and two children as Group I heirs. All assets previously listed in Will Deed No. 32 reverted to the estate and became distributable according to the *Ab Intestato* rules: the surviving spouse retains rights over the joint marital property (*harta bersama*), and the residual estate is divided equally among the wife and children in accordance with Articles 832 and 852 of the Civil Code.

The bank's earlier refusal to release assets pending a court order with permanent legal force (putusan berkekuatan hukum tetap) is now resolved: Khong Melani Setiadi is authorised to manage and disburse all Panin Bank Fatmawati assets and to take possession of all identified real and movable property.

This outcome reflects the equilibrium required by the theory of inheritance distribution: testamentary freedom is respected up to the boundary set by the legitime portie, and the court's role is to redraw that boundary when the testator has exceeded it. The wife and children receive substantive justice (Aristotelian corrective justice); the relatives receive procedural justice through a fair evidential process; and the bank, as a prudent third party, is insulated from liability for its refusal to act unilaterally.

## CONCLUSION

This study leads to three principal conclusions:

1. The regulatory framework for cancellation of a will in the presence of legitimate heirs is governed by Articles 875–940 of the Civil Code. A will may be cancelled for non-fulfilment of formal requirements (form, witnesses, notarial procedure), vitiated consent (coercion, fraud), or—most significantly—violation of the legitime portie under Article 913 BW. The absolute share of lineal heirs (Group I and II) is non-waivable by testament or gift; breach triggers an inkorting claim or outright judicial annulment. The theory of legal certainty demands that such annulments rest on substantive legal grounds to preserve the integrity of authentic deeds as instruments of legal certainty while protecting good-faith parties.
2. In Decision No. 805/PDT/2018/PT.DKI, the High Court confirmed that Will Deed No. 32 violated Article 913 BW by diverting the bulk of the estate to collateral relatives, thereby excluding the testator's wife and children (Group I heirs) from their absolute share. The court applied the law of evidence, requiring proof of entitlement through documentary evidence; the plaintiff satisfied this burden while the defendants did not. Applying the theory of inheritance distribution, the court emphasised that the Notary's duty extends beyond technical execution of the testator's wishes to ensuring that the will does not cause structural injustice between heirs. The district court decision was fully affirmed.

3. The legal consequences of the cancellation are multidimensional: (a) Will Deed No. 32 lost its authentic evidentiary character, rendering the testamentary dispositions unenforceable; (b) the estate reverts to statutory distribution, restoring all rights to the wife and two biological children as Group I heirs; (c) the Notary faces civil liability under Article 1365 BW and potential disciplinary sanction under Article 16(1)(a) UUJN for failing to ensure that the deed's contents respected the mandatory provisions of inheritance law; and (d) third parties such as the bank, which applied the Prudent Banking Principle, are vindicated by the court's order providing the legal basis for asset disbursement.

## REFERENCES

### A. Legislation

- Civil Code (KUHPerdata / BW), Book II (Law of Property) and Book III (Law of Obligations).
- Law No. 1 of 1974 on Marriage (Undang-Undang Perkawinan).
- Law No. 7 of 1992 on Banking, as amended by Law No. 10 of 1998.
- Law No. 30 of 2004 on the Notary Profession (UUJN), as amended by Law No. 2 of 2014.
- Compilation of Islamic Law (Kompilasi Hukum Islam/KHI).

### B. Court Decisions

- High Court Decision No. 805/PDT/2018/PT.DKI (South Jakarta District Court, affirmed 2018).
- District Court Decision No. 289/Pdt.G/2017/PN.Jkt.Sel (South Jakarta, 22 May 2018).
- District Court Decision No. 315/PDT.P/2016/PN.JKT.PST (Central Jakarta, 29 September 2016).
- Supreme Court Decision No. 677 K/AG/2009 (annulment of will for adopted child under KHI).
- District Court Decision No. 43/Pdt.G/2020/PN Medan (cancellation involving joint marital property).

### **C. Books**

- Afandi, A. (2011). *Inheritance Law, Family Law and Evidence Law according to the Civil Code (BW)*. Jakarta: Rineka Cipta.
- Amanat, A. (2001). *Dividing Inheritance Based on Civil Law Articles BW*. Jakarta: Raja Grafindo Persada.
- Aprilianti & Idrus, R. (2015). *Inheritance Law According to the Civil Code*. Lampung: Justice Publisher.
- Hamidi, J. (2006). *Indonesian Legal Revolution*. Yogyakarta: Konstitusi Press & Citra Media.
- Kartikawati, D.R. (2021). *Civil Inheritance Law: Synergy of Civil and Islamic Inheritance Law*. Tasikmalaya: Elvaretta Buana.
- Muhammad, A. (2010). *Indonesian Corporate Law*. Bandung: Citra Aditya Bakti.
- Naja, D. (2012). *Techniques for Making Deeds*. Yogyakarta: Pustaka Yustisia.
- Rifa'i, A. (2011). *Legal Discovery by Judges in the Perspective of Progressive Law*. Jakarta: Sinar Grafika.
- Sunaryo, C. (2023). *The Authority and Responsibilities of Notaries in the Context of Legal Services in Indonesia*. Medan: USU Press.
- Sunggono, B. (2012). *Legal Research Methodology*. Jakarta: Rajawali Pers.

### **D. Journal Articles**

- Meliala, D.S. (2018). *Rejection of Heirs in the Perspective of Islamic Law and Civil Code*. Jakarta: Fikahari Aneska.
- Soerjopratiknjo, H. (cited in text). *Freedom of Testament in the Indonesian Inheritance System*.