



Protection of Heirs' Rights in the Transfer of Inheritance without Agreement

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Abstract: This study aims to analyze the protection of heirs' rights in the transfer of inheritance that occurs without mutual agreement. Ambiguity in the division of inheritance often leads to disputes and conflicts among heirs, which can potentially damage family relationships. The methodology used in this study is a qualitative approach with a juridical analysis of civil law and religious law regulations, particularly Islamic inheritance law (fiqh waris), as well as various dispute resolution mechanisms accessible to heirs. In this context, Indonesian civil law provides guidelines for inheritance division based on applicable provisions, while Islamic law offers more detailed portions for division according to fiqh waris. This study also emphasizes the importance of a will as a tool to avoid conflicts by providing clear instructions on how the inheritance should be divided. The findings of the study indicate that although there are regulations governing inheritance division, the practice of transferring assets without agreement still causes injustice and prolongs disputes among heirs. Therefore, protective measures for heirs' rights, such as mediation, will creation, and dispute resolution through legal channels, are necessary to ensure fair inheritance division and avoid the abuse of heirs' rights. Overall, this study underscores the importance of wisely resolving inheritance disputes based on applicable laws to maintain family harmony and fairly protect heirs' rights.

Keywords : Protection of Rights; Heirs; Transfer of Inheritance Property.

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1. Introduction

The inheritance of wealth is an important aspect of inheritance law that regulates how a person's property is transferred to their heirs after their death. In Indonesian society, inheritance is typically governed by customary law or state law, one of which is the Civil Code (KUHPerdata) or religious law provisions. However, in practice, issues often arise when the transfer of inheritance occurs without mutual agreement among the heirs. This can lead to disputes among the heirs regarding their rights and obligations concerning the inherited property.¹

Essentially, the transfer of inheritance without mutual agreement can create various legal issues, both in terms of the rights of the heirs entitled to a portion of the inheritance and in the management and division of the inheritance itself.² Therefore, a thorough review of the protection of heirs' rights in the context of inheritance transfers without their agreement is necessary. This is crucial to ensure legal certainty and prevent disputes from arising in the future.

In the context of Indonesian law, inheritance transfer without mutual agreement can occur in various forms, such as the unfair or unbalanced division of inheritance among heirs, or even one party taking control of the inheritance without involving or agreeing with the others.³ In such cases, it is likely that the heirs' rights, which should be protected, do not receive equal attention, ultimately causing harm to them. Additionally, the lack of clarity in dividing the inheritance or transferring ownership rights can also impact the welfare and stability of family relationships involved.⁴

Therefore, a legal review on the protection of heirs' rights in the transfer of inheritance without mutual agreement is highly relevant. A legal study is needed to identify whether there are adequate rules or mechanisms to protect heirs' rights in such

¹ Said Ali Assagaff and Wira Fanciska, "Perlindungan Hukum Bagi Ahli Waris Terhadap Harta Warisan Yang Beralih Tanpa Persetujuan Seluruh Ahli Waris," *Imanot : Jurnal Kemahasiswaan Hukum & Kenotariatan* 1, no. 1 (December 14, 2021): 279–90.

² Ahmad Ahmad, "Measuring The Application of Corporate Social Responsibility of PT. Gorontalo Minerals," *Estudiante Law Journal* 4, no. 2 (February 15, 2022): 132–45, <https://doi.org/10.33756/eslaj.v4i2.16489>; Margaretha Husain, Nur Mohamad Kasim, and Sri Nanang Meiske Kamba, "Implementation Of Occupational Safety And Health Management System At PT. Port Indonesia IV (Persero) Gorontalo Branch," *Estudiante Law Journal* 5, no. 3 (October 20, 2023): 601–12, <https://doi.org/10.33756/eslaj.v5i3.23606>; Rifky Pulubolo, Mutia Cherawaty Thalib, and Ahmad Ahmad, "Legal Process for Banking Negligence in Violations of Customers' Privacy Rights and Personal Data," *Estudiante Law Journal* 1, no. 1 (January 25, 2024): 1–13, <https://doi.org/10.33756/eslaj.v1i1.24195>; Abdusalam Rauf, Fenty U. Puluhulawa, and Ahmad Ahmad, "Ideal Arrangements for Fines to Enhance Legal Awareness and Minimize Waste Effectively in Society," *Estudiante Law Journal* 6, no. 3 (October 10, 2024): 593–606, <https://doi.org/10.33756/eslaj.v6i3.28916>.

³ Mohamad Rivaldi Moha et al., "The Comparative Law Study: E-Commerce Regulation in Indonesia and Singapore," *JURNAL LEGALITAS* 16, no. 2 (October 30, 2023): 248–59, <https://doi.org/10.33756/jelta.v16i2.20463>.

⁴ Setio Prabowo, M. Sudirman, and Cicilia Julyani Tondy, "Perlindungan Hukum Bagi Ahli Waris Terhadap Harta Warisan Yang Beralih Tanpa Persetujuan Ahli Waris," *Jaksa : Jurnal Kajian Ilmu Hukum Dan Politik* 1, no. 3 (August 19, 2023): 63–70, <https://doi.org/10.51903/jaksa.v1i3.1346>.

situations. This is also important in creating justice for all parties involved, both the heirs receiving the inheritance and the person providing the inheritance.

Law No. 23 of 2006 on Population Administration stipulates that every deceased individual must have a valid will or proof of who is entitled to inherit their wealth and how it should be divided. However, despite this regulation, in practice, families left behind by the deceased often do not have a mutual agreement on how the inheritance should be divided. The absence of such an agreement often results in conflict and disputes among heirs, exacerbating the situation and adding emotional burdens to the grieving family.

Legally, the transfer of inheritance carried out without the consent of all heirs can create legal uncertainty. This can happen when one heir decides to take control of or divide the inheritance unilaterally, without the knowledge or consent of other heirs. This situation can harm other heirs, as they are entitled to a specific portion of the inheritance. Another issue is the potential depreciation of the inheritance's value, which can affect the heirs' rights, whether the inheritance consists of land, buildings, or other valuable items.⁵

One aspect that needs attention in this legal review is how to protect the heirs' rights, especially in situations where there is no mutual agreement on the division or management of the inheritance. Legally, every individual has the right to bequeath their property according to their will, typically formalized through a will or declaration. However, in practice, there is often no mutual agreement among the heirs on how the inheritance should be divided. Therefore, clear protection is needed to ensure that heirs' rights are upheld, particularly for those who feel disadvantaged due to disagreements in the division process.

From a legal perspective, there are several regulations that can be used as references in resolving disputes related to inheritance without mutual agreement, such as the Civil Code that governs the division of inheritance based on civil law and Islamic law that governs inheritance division according to fiqh waris. However, the implementation of these regulations often faces obstacles in practice, especially in applying them in societies still bound by customary norms or existing traditions. Therefore, it is crucial to conduct a comprehensive legal review to find solutions to address this issue.⁶

Additionally, it is also important to consider the role of relevant institutions in the inheritance division process. Legal institutions such as courts or mediators who have the authority to resolve inheritance disputes can provide solutions to inheritance problems without mutual agreement. With clear regulations and standardized procedures, heirs can more easily reach a mutual agreement or obtain justice regarding their rights.

⁵ Nissa Alamsari and Wira Franciska, "Perlindungan Hukum Ahli Waris Pengganti Terhadap Harta Peninggalan Menurut Kompilasi Hukum Islam," *Imanot : Jurnal Kemahasiswaan Hukum & Kenotariatan* 1, no. 2 (December 27, 2022): 513–25.

⁶ Christiana Sri Murni, "Pendaftaran Peralihan Hak Milik Atas Tanah Karena Pewarisan," *Lex Librum : Jurnal Ilmu Hukum* 6, no. 2 (June 24, 2020): 130–45, <https://doi.org/10.46839/lljih.v6i2.177>.

The legal review of the protection of heirs' rights in the transfer of inheritance without mutual agreement should also not only refer to formal legal provisions but also incorporate moral and ethical perspectives. In many cases, inheritance disputes can create tension among family members, which could potentially damage the harmonious family relationships. Therefore, it is important to incorporate peaceful and deliberative dispute resolution within the legal framework, which can provide space for heirs to resolve issues in a more thoughtful manner.⁷

To realize the protection of heirs' rights in the transfer of inheritance without mutual agreement, there is a need for greater legal awareness in society. Education on the importance of mutual agreement and a deep understanding of heirs' rights as well as existing legal procedures is essential. By doing so, issues arising from inheritance transfers without mutual agreement can be minimized, and a fair inheritance system can be created and accepted by all parties involved.

Overall, the protection of heirs' rights in the transfer of inheritance without mutual agreement requires a holistic approach, involving legal studies while considering social, cultural, and moral aspects in society. This will provide a solid foundation for fair inheritance division and prevent conflicts among heirs that could harm them both legally and emotionally.

2. Method

The research method used in this study is a qualitative approach with a literature review and juridical analysis. This study will examine various legal sources, such as the Civil Code, Islamic law, and court rulings related to the transfer of inheritance without mutual agreement. The data collected consists of documents, legal literature, and related cases, which will be analyzed descriptively to understand the protection of heirs' rights. This study also employs a normative approach to explore how applicable legal regulations can be applied in the context of inheritance transfer without mutual agreement among the heirs.

3. Transfer of Inheritance without Agreement of Heirs

Inheritance of Property is a process that often carries a heavy emotional burden for the family left behind. When someone passes away, the property they leave behind often becomes a source of conflict, particularly when heirs disagree on how the property should be divided. This conflict often arises from disagreements about what constitutes a fair portion of the inheritance, and in some cases, it can escalate into a legal dispute that involves the court and damages previously good family relationships. In practice, it is common for heirs to not fully agree on how the inheritance should be divided, whether based on the existing laws or the will that may have been left by the deceased.

⁷ Avisena Aulia Anita and Muhammad Fajar Sidiq Widodo, "Urgensi Penggunaan Surat Keterangan Waris Dalam Peralihan Hak Sebagai Upaya Perlindungan Dan Kepastian Hukum Ahli Waris," *Mahakim: Journal of Islamic Family Law* 7, no. 2 (July 1, 2023): 215-34, <https://doi.org/10.30762/mahakim.v7i2.245>.

In Indonesia, inheritance law is governed by various laws and regulations, one of which is the Civil Code (KUHPerduta), which provides guidance on the division of inheritance. However, despite the clear legal guidelines, problems often arise when multiple parties have an interest in the inheritance or when no will specifies the detailed distribution of property. In such cases, heirs may feel that they are entitled to a larger or smaller share than expected. The absence of a mutual agreement on how to divide the inheritance often causes tension and even prolonged disputes that can affect family harmony.⁸

One of the main reasons inheritance transfer without agreement occurs is because the deceased did not leave a clear will. In some cultures, writing a will may be considered taboo or not particularly important, so the deceased may not feel the need to specify the division of their property in writing. Without a will, the inheritance will be divided according to the applicable legal rules, which may vary depending on whether the deceased adhered to civil law, religious law, or customary law. In many cases, even with clear legal provisions, the family may still feel dissatisfied with the division arranged by law. This is particularly true when there are differences in perception about what is considered fair or reasonable among the heirs.

When heirs disagree about the division of inheritance, the first thing that typically happens is tension in communication. Each heir may feel that their right to the inheritance is not being respected or that they are not receiving enough attention. For example, a child who has cared for aging parents for many years may feel that they deserve a larger share of the inheritance compared to siblings who were not involved in the care. On the other hand, other siblings may feel that they too are entitled to an equal share, as they are also the legitimate children of the deceased. These differences in perspectives often worsen the situation and trigger conflict.⁹

Not only are differences in perception a problem, but misunderstandings regarding the applicable law can also occur. In Indonesian civil law, if the deceased left a will, the inheritance will be divided according to the terms of that will. However, if no will exists, the inheritance will be divided according to the applicable civil or religious law. This division may require heirs to accept a larger or smaller portion than they expected. Despite the law providing guidance on inheritance division, differences in understanding and interpretation of this law often lead to dissatisfaction among the heirs.

Resolving inheritance disputes through legal channels is often the solution when there is no agreement among heirs. This legal process can involve the courts deciding how the inheritance should be divided. However, this route is not always advantageous

⁸ Patma Patma, Suwarti Suwarti, and Nam Rumkel, "Kedudukan Hukum Perjanjian Jual Beli Yang Dilakukan Oleh Ahli Waris Terhadap Harta Warisan Yang Belum Dibagi," *HERMENEUTIKA : Jurnal Ilmu Hukum* 5, no. 2 (August 31, 2021), <https://doi.org/10.33603/hermeneutika.v5i2.5703>.

⁹ Naufal Izza Arifin, "Peralihan Hak Atas Tanah Warisan Tanpa Persetujuan Ahli Waris" (other, UNIVERSITAS GRESIK, 2024), <http://elibs.unigres.ac.id/2959/>.

for all parties. The legal process can take years and incur significant costs. Even after a court ruling, one party may still feel that the decision is unfair and choose to appeal or find another way to challenge the decision. This creates greater uncertainty, where the heirs involved in the legal process may feel that they are not receiving their rightful share.

Moreover, the lack of agreement on the division of inheritance can also affect family relationships emotionally. When the legal process begins, relationships that were once harmonious can begin to deteriorate. Arguments and debates over who deserves a larger portion of the inheritance can damage the emotional bond that was previously strong. Sometimes, this conflict can persist for years, even leading to permanent estrangement between siblings or children and their parents. In extreme cases, inheritance disputes can lead to deep resentment between family members, affecting their lives long after the legal case is resolved.¹⁰

For example, there are many cases where one or more heirs feel that they deserve a larger portion of the inheritance because of their contributions in caring for or accompanying the deceased during their life. In practice, inheritance law generally does not take into account the emotional or practical contributions made by the heirs. The law only divides the property according to existing provisions, which can feel unfair to those who feel they have sacrificed more for the deceased. When this is not addressed in a will or mutual agreement, dissatisfaction can escalate into a complex legal dispute.

In addition to differences in perspectives and lack of clarity in the division of property, administrative issues often become obstacles in the inheritance division process. For example, if the inheritance consists of land or property that is not properly registered, or if there are no valid documents regulating the ownership of the property, the transfer of ownership rights can become more complicated. This further exacerbates the problem, as besides differences in opinions between heirs, administrative issues also require time and money to resolve. In some cases, heirs who feel excluded or disrespected may decide to ignore the legal process or even try to take control of the inheritance unilaterally, which will undoubtedly add complexity to the resolution of inheritance disputes.¹¹

It is important to remember that resolving inheritance disputes not only involves legal aspects, but also requires attention to social and emotional factors. In many cultures, the division of inheritance is not only seen as a legal issue but also as a matter of family and relationships among family members. Therefore, in many cases, efforts to mediate

¹⁰ 201000155 SILVIA MUNARTI, "Perlindungan Hukum Bagi Ahli Waris Dalam Sengketa Tanah Waris Yang Telah Terjadi Peralihan Hak Atas Dasar Jual Beli Dalam Perspektif Hukum Waris" (other, FAKULTAS HUKUM UNIVERSITAS PASUNDAN, 2024), <http://repository.unpas.ac.id/70947/>.

¹¹ "Implikasi Yuridis Terhadap Peralihan Harta Waris Tanpa Persetujuan Seluruh Ahli Waris di Kabupaten Madiun - ProQuest," accessed February 21, 2025, <https://www.proquest.com/openview/ac2aa084d21a80a609aa5c5ac89a927a/1?pq-origsite=gscholar&cbl=2026366&diss=y>.

or reach a peaceful resolution are highly recommended before pursuing more formal legal channels. Mediation can provide space for all parties to express their views and find a fair solution without going through a lengthy and costly legal process. However, while mediation can be a good alternative, not all parties may be willing or able to participate, especially if deep tension has already developed.

In addition, it is also important for each family to have a better understanding of the importance of inheritance planning. Creating a clear will can help reduce potential conflicts that may arise in the future. With a will, the deceased can ensure that their property is divided according to their wishes and reduce the possibility of disputes among heirs. However, even though a will can provide clarity, conflicts may still arise if the division is considered unfair by other heirs.¹²

The importance of communication within the family cannot be overlooked. When the deceased is still alive, discussing how the property will be divided can help reduce confusion among heirs who may feel that they are not being respected or included. Although this topic is often considered taboo or difficult to discuss, transparency within the family about inheritance division can minimize the chances of major conflicts in the future. Thus, maintaining good relationships among family members and ensuring that each party understands their rights can be an important step in avoiding inheritance transfers full of tension and conflict.

In conclusion, inheritance transfer without mutual agreement among heirs can indeed lead to various legal, social, and emotional problems. This process not only involves legal aspects but also includes emotions, family relationships, and values that develop within the family itself. Unfair inheritance division or unclear claims to the property can lead to tensions that not only end in court but also affect family relationships in the long term. Therefore, it is essential to ensure that there is a clear and transparent agreement on how the inheritance should be divided so that the process can be conducted fairly and without generating long-lasting conflict.¹³

One factor that triggers tension in inheritance division is the imbalance in contributions between heirs. It is not uncommon in families for members to feel that they deserve a larger share due to certain reasons, such as caring for elderly parents or having a closer relationship with the deceased. On the other hand, other siblings or heirs may feel that they are also entitled to an equal share because they are also legitimate children or family members of the deceased. Unfairness in considering emotional or physical contributions during the deceased's lifetime can be a major source of tension among heirs.

¹² Setiyowati Setiyowati and Farah Nur Haritsah, "Perlindungan Hukum Terhadap Ahli Waris Beda Agama (Studi Kasus Putusan Mahkamah Agung Nomor: 218 K/AG/2016)," *JURNAL ILMIAH HUKUM DAN DINAMIKA MASYARAKAT* 21, no. 1 (June 16, 2023): 1-11, <https://doi.org/10.56444/hdm.v21i1.4085>.

¹³ Israfil Israfil and Muzakir Salat, "Perlindungan Hukum Terhadap Ahli Waris Perempuan Menurut Hukum Kewarisan Islam Adat dan Khuperdata," *Jurnal Ilmiah IKIP Mataram* 7, no. 2 (2020): 273-83.

However, inheritance law does not always take into account emotional or physical aspects when determining the division of property. Inheritance law in Indonesia, which is generally based on the Civil Code (KUHPerdata) and Islamic law, emphasizes legal fairness in division, not based on the contributions made by heirs during the deceased's lifetime. This can be an issue for heirs who feel they have provided more care or support to the deceased than others. In other words, although someone may have cared for the deceased until the end of their life, the law does not grant a larger portion of the inheritance solely for that reason, unless it is stipulated in a will.¹⁴

This unfairness often fuels larger conflicts. When heirs are dissatisfied with the division arranged by law, they may be more inclined to seek unlawful means, such as manipulating or trying to take control of the inheritance unilaterally. This, of course, further complicates the inheritance division issue. One way to avoid this is by creating a clear and detailed will before the deceased passes away. With a will, the deceased can determine how their property will be divided and who will receive specific portions, which can reduce the potential for tension later on.

However, in practice, many families avoid discussing inheritance during the life of the deceased. Perhaps due to emotional reasons or discomfort in discussing death, the deceased may not feel the need to create a will or provide clear instructions on how their property should be divided. As a result, after the deceased's passing, heirs may be confused and unsure about how the property should be divided. Without clear instructions, they are forced to follow the legal procedures in place, which may not meet their expectations or perceptions of what is fair.

Often, even with legal provisions that regulate inheritance division, each heir may still feel that they are not treated fairly. For instance, under Indonesian civil law, legitimate heirs are entitled to a specific portion of the inheritance. However, even though their rights are regulated by law, each heir may feel that they should receive more, especially if they believe they have made a larger contribution to the deceased's life. This leads to dissatisfaction and tension in families that may have once been quite close.¹⁵

On the other hand, heirs who feel excluded or ignored in the division of inheritance may also feel marginalized. There is a possibility that they feel their contributions are not appreciated or that they did not receive a share that they consider fair. This dissatisfaction, while it may seem small initially, can escalate into a major conflict that damages the harmonious family relationship. Additionally, this sense of being

¹⁴ "Kepastian Hukum Pengaturan Surat Keterangan Waris Dalam Pendaftaran Peralihan Hak Atas Tanah Karena Warisan," *PROSEDING*, July 14, 2022, 102-11.

¹⁵ Rolando Marpaung et al., "Penyuluhan Hukum Tentang Peralihan Hak Atas Tanah Warisan Yang Di Laksanakan Tanpa Persetujuan Antar Ahli Waris Lainnya Di Desa Gayo Lues," *Jurnal Abdimas Mutiara* 3, no. 1 (February 7, 2022): 695-98.

undervalued can cause deep resentment between siblings or other heirs, which then impacts long-term relationships.

While legal processes can resolve many conflicts related to inheritance, these processes often add tension among heirs. Many families prefer to resolve issues peacefully, but if poor communication and disagreements continue, they may be forced to take the matter to court. In court, a judge will decide the division of inheritance according to the applicable law, which may not always meet the desires of every heir. This can cause greater dissatisfaction and worsen relationships already strained between heirs.¹⁶

Resolving inheritance disputes through legal channels may solve the division issue, but it often creates new problems, such as high costs and long delays. It is not uncommon for families that were once harmonious to become divided after undergoing a long legal process. Furthermore, in many cases, the court's decision may not fully meet one party's expectations, leading to potential appeals or further legal actions that prolong the resolution of the inheritance.

As an alternative solution, mediation can be an effective middle ground for resolving inheritance disputes. Mediation is a process where parties involved in a dispute attempt to reach an agreement acceptable to all, with the help of a neutral mediator. Through mediation, heirs can resolve their issues without undergoing lengthy and exhausting court proceedings. However, while mediation can be a good alternative, not all heirs may be willing to participate, especially if they feel wronged by the inheritance division.

Therefore, it is important for families to prepare well before the deceased passes away. One way to avoid inheritance disputes is by creating clear inheritance planning. This can be done by creating a will, specifying who is entitled to what property, and avoiding ambiguities that could lead to uncertainty. Additionally, if there are many heirs involved, the deceased can consider having an open discussion with heirs about their wishes for the inheritance division. This approach ensures no party feels overlooked or undervalued, and conflicts can be minimized.¹⁷

However, not all families are able or willing to engage in inheritance planning. In some cases, the topic of inheritance may be considered taboo to discuss, which could lead to greater problems later on. Nevertheless, the more openly the topic of inheritance is discussed within the family, the less likely it is that major conflicts will

¹⁶ Pramitasari Pramitasari and Habib Adjie, "Pengalihan Hak Atas Merek Kepada Ahli Waris Berdasarkan Surat Keterangan Waris," *ALADALAH: Jurnal Politik, Sosial, Hukum Dan Humaniora* 2, no. 2 (February 22, 2024): 199–207, <https://doi.org/10.59246/aladalah.v2i2.812>.

¹⁷ Abdullah Syafi'i et al., "Peralihan Hak Atas Tanah Warisan Yang Dilaksanakan Tanpa Persetujuan Antar Ahli Waris Lainnya (Studi Kasus Di Daerah Gayo Lues)," *JURNAL MUTIARA HUKUM* 5, no. 1 (June 24, 2022): 1–13, <https://doi.org/10.51544/jmh.v5i1.5198>.

arise when the time comes. Many families have successfully avoided inheritance disputes simply by having open discussions and creating clear and detailed plans.

However, even when efforts are made to create clear inheritance plans, life changes can alter everything. The deceased might change their mind about how their property should be divided, or there could be changes in financial circumstances that impact the inheritance. This could pose a challenge for heirs, who might feel that the previously arranged division is no longer fair according to the new circumstances. Therefore, it is important for the deceased to periodically review and update their will to remain relevant to the family and financial situation.¹⁸

It is also common for families facing inheritance disputes to feel confused about the various legal options available. They often do not know whether they should file a lawsuit or seek a peaceful resolution through mediation. The complicated legal process and the procedures involved often worsen this confusion. Therefore, it is important for heirs to receive good legal consultation from an experienced lawyer in inheritance matters so that they can understand their rights and choose the most appropriate legal path based on their situation.

Ultimately, while many families try to resolve inheritance issues peacefully, the reality is that many are forced to face unavoidable disputes. The uncertainty in the division of property, dissatisfaction with the division outcome, and unresolved tensions among heirs often push families toward legal channels. Although the law provides clear guidelines on how inheritance should be divided, the reality is often more complex. Therefore, families who wish to avoid conflicts must prepare well in advance by creating well-thought-out inheritance plans, involving heirs in open conversations, and ensuring that every decision made reflects fairness and clarity for all parties involved.

4. Legal Protection of the Rights of Heirs in the Process of Inheritance Distribution

In any legal system, whether civil or religious law, the protection of heirs' rights is crucial to ensure that inheritance distribution is fair and in accordance with applicable regulations. The purpose of this legal protection is to guarantee that heirs' rights are properly fulfilled, without any abuse or injustice that could harm the parties entitled to receive the inheritance. The property inherited is the rightful possession of the deceased, which becomes the right of the heirs after the deceased's passing. Therefore, every entitled party must receive their share in accordance with their rights, whether it is based on the law or an agreement made by the deceased.¹⁹

¹⁸ Yazmine Nabila Napitupulu, Hasim Purba, and Sutiarnoto Sutiarnoto, "Analisis Terkait Pembagian Harta Warisan Berupa Tanah Dan Rumah Yang Masih dikuasai Salah Satu Ahli Waris," *JOURNAL OF SCIENCE AND SOCIAL RESEARCH* 8, no. 1 (February 16, 2025): 980-90, <https://doi.org/10.54314/jssr.v8i1.2826>.

¹⁹ Wanda Inggrit Pramesti, "Perlindungan Hukum Pelepasan Hak Atas Tanah Bagi Ahli Waris Yang Masih di Bawah Umur," *JURNAL BEVINDING* 1, no. 03 (September 14, 2023): 5-13.

In Indonesia, inheritance division can be guided by two main legal sources: civil law and religious law, specifically Islamic law. Indonesian civil law provides rules for inheritance distribution through the Civil Code (KUHPerdata). Under civil law, if the deceased does not leave a will, the inheritance will be divided in accordance with the prevailing legal provisions, which typically results in an equal distribution among the rightful heirs, according to their relationship with the deceased. This division follows legal principles prioritizing equality among heirs and preventing injustice or the abuse of inheritance rights.

However, in practice, it is not uncommon for heirs to fail to reach an agreement regarding the division of inheritance. When this happens, the issue is often resolved through legal means. The court can be involved to settle inheritance disputes that arise among the heirs. The court has the authority to determine how the inheritance should be divided if no agreement exists among the parties involved. This legal process aims to provide justice and legal certainty for all parties involved in the inheritance division and to ensure that the division is made in accordance with the applicable legal provisions.²⁰

In Islamic law, inheritance division is governed by the applicable fiqh inheritance provisions. Fiqh inheritance regulates the detailed distribution of inheritance among heirs based on their relationship with the deceased, such as children, spouse, parents, and siblings. One of the fundamental principles in fiqh inheritance is justice, where the division of inheritance must consider each heir's rights in accordance with the portion determined by religious guidelines. Islamic law emphasizes the importance of a fair division so that no heir feels disadvantaged or does not receive their rightful share. In practice, if the deceased has made a will, the will becomes the primary guide for dividing the inheritance, as long as it does not contradict religious rules.

However, despite the legal provisions governing inheritance division, problems often arise when heirs disagree about the division. These disagreements are often caused by differing perceptions of fairness or the value of the inheritance, or even by external factors such as the family's financial condition, personal relationships among heirs, or pressure from third parties with vested interests. In such situations, it is important for the involved parties to respect the existing legal principles and seek fair solutions through the appropriate legal channels. If an inheritance dispute occurs, the court will play an essential role in resolving the conflict and ensuring that the inheritance division is fair.²¹

Legal protection of heirs' rights also includes preventive measures to avoid future inheritance disputes. One of the ways to do this is by making a clear and detailed will. A will is a document that contains the deceased's wishes regarding how the inheritance should be divided after death. By having a will, the deceased can ensure

²⁰ Berty Willy Wongkar, "Penyelesaian Hukum Penyerobotan Tanah Warisan Menurut Legitime Portie Dalam Hukum Waris Perdata," *LEX ADMINISTRATUM* 9, no. 1 (January 19, 2021), <https://ejournal.unsrat.ac.id/v3/index.php/administratum/article/view/32346>.

²¹ Klaudius Ilkam Hulu and Dalinama Telaumbanua, "Kepemilikan Hak Atas Tanah Warisan Yang Diperoleh Melalui Harta Peninggalan Orang Tua," *JURNAL PANAHA KEADILAN* 1, no. 2 (August 25, 2022): 52-61, <https://doi.org/10.57094/jpk.v1i2.453>.

that the inheritance is divided according to their desires, avoiding any uncertainty or tension among the heirs. A will can also prevent family division and ensure that each heir receives their rightful share. However, in practice, not everyone creates a will, so inheritance issues are often resolved through the court.

Protecting heirs' rights can also be achieved by educating the public about their rights in inheritance divisions. Many people are not fully aware of their rights as heirs or the legal process involved in dividing inheritance. Therefore, providing sufficient information about heirs' rights, how to resolve inheritance disputes, and the importance of making a will is essential. With proper education, it is hoped that the public can understand their rights and avoid inheritance disputes that could damage family relationships.²²

Additionally, the court plays an important role in ensuring that heirs' rights are adequately protected. If a dispute arises regarding inheritance division, the court will act as the final decision-maker regarding the division of the inheritance. The court will base its decision on the applicable law, whether civil law or religious law, to ensure that the inheritance division is fair and in accordance with the rules. In this process, the court will consider each heir's rights and interests in the division.

In cases where heirs cannot reach an agreement, third parties such as mediators or attorneys can also be involved to help resolve the dispute amicably. A neutral mediator can assist the parties involved in reaching an agreement on the inheritance division without going through a lengthy and complex court process. Mediation can provide a quicker and more cost-effective solution while maintaining family relationships. If mediation fails, the court process will be the last resort to resolve the inheritance dispute.²³

It is essential to remember that protecting heirs' rights is not just about legal aspects but also about moral and social aspects. In many cases, inheritance disputes can damage relationships among family members and cause prolonged tension. Therefore, protecting heirs' rights also involves efforts to maintain family harmony and prevent division caused by inheritance division. With a thoughtful approach and understanding between heirs, it is hoped that inheritance division can be carried out fairly without causing conflict.

The legal protection of heirs' rights in inheritance division is critical to ensuring justice and preventing injustice in society. By understanding their rights, making clear inheritance plans, and prioritizing peaceful resolutions, it is hoped that inheritance disputes can be minimized, and families can maintain harmony. The existing legal system in Indonesia provides various mechanisms to protect heirs' rights and ensure that inheritance is divided in accordance with the applicable provisions, whether civil

²² Ni Luh Putu Ayu Lestari, Ni Luh Made Mahendrawati, and I. Ketut Sukadana, "Perlindungan Hukum Terhadap Hak Waris Anak Yang Lahir Dari Perkawinan Tidak Dicatatkan," *Jurnal Preferensi Hukum* 2, no. 1 (March 19, 2021): 51-55, <https://doi.org/10.22225/jph.2.1.3050.51-55>.

²³ Anita and Widodo, "Urgensi Penggunaan Surat Keterangan Waris Dalam Peralihan Hak Sebagai Upaya Perlindungan Dan Kepastian Hukum Ahli Waris."

law or religious law. In this way, each heir will receive their rightful share, and family relationships will remain intact.²⁴

5. Conclusion

The conclusion of this discussion highlights that the transfer of inheritance without agreement among heirs can lead to various legal and emotional issues, which can potentially damage family relationships. Ambiguity in the distribution of inheritance often triggers conflicts that can be exacerbated by differing perceptions of fairness and disagreements about the appropriate portion. Civil law and religious law provide guidelines for inheritance distribution, but disagreements among heirs often result in resolution through legal channels, which can be time-consuming and costly. Therefore, it is crucial for every family to have clear inheritance planning, including creating a will, which can reduce the potential for disputes. A mediation approach can also be an effective alternative for peacefully resolving conflicts and minimizing tensions. The protection of heirs' rights should encompass not only legal aspects but also social and emotional factors to ensure fair distribution and maintain family harmony.

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²⁴ Patma, Suwarti, and Rumkel, "Kedudukan Hukum Perjanjian Jual Beli Yang Dilakukan Oleh Ahli Waris Terhadap Harta Warisan Yang Belum Dibagi."

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