
Legal Certainty Regarding Inherited Property in Marital Status and Its Implications for the Criminal Act of Embezzlement in Indonesia

Ulya Shafa Firdausi¹, Ferry Irawan Febriansyah², Dian Rosita³

^{1,2} Universitas Muhammadiyah Ponorogo, Ponorogo, Indonesia

³ Universitas Muhammadiyah Kudus, Kudus, Indonesia

E-mail: ulyashafa@umpo.ac.id

ABSTRACT

This study discusses the legal certainty of inheritance in marital status and its threat to criminal acts of embezzlement in Indonesia. There is often legal communication about inheritance in marital status, even often there is a husband and wife's illness due to the division of the property. Therefore, the purpose of this study is to analyze the legal certainty of inheritance in marital status in Indonesia. The research method used is the normative legal research method, namely research that uses law as what is written in the Law with a jurisprudence and statutory approach and data collection using literature studies. The results of this study are that the Civil Code Law provides a clear legal basis for the division of inheritance, but there are still often abnormalities and continuation to the legal path, in addition, legal permits related to inheritance cause loopholes for criminal acts of embezzlement, especially for heirs who want to control the inheritance unilaterally. Prevention of disputes related to inheritance by managing assets from the start, one of which is making a prenuptial agreement by protecting the status of the property. This is one of the preventive steps to prevent criminal acts of embezzlement or misuse of inheritance rights by one of the irresponsible parties

Keywords: *Inheritance, Criminal Acts, Embezzlement.*

INTRODUCTION

Marital status gives rise to several legal consequences for husband and wife, namely the issue of property and descendants which must be clearly regulated¹. One of the legal consequences that arises after marriage is the emergence of joint property. Article 35 of Law No. 1 of 1974 concerning Marriage regulates that property obtained during marriage becomes joint property and the property brought by each husband and wife and property obtained as a gift or inheritance remains in the control of each as long as the parties do not determine otherwise. Determining the origin of the property in the marriage can later affect the provisions in the inheritance distribution process².

Article 38 of Law No. 1 of 1974 concerning Marriage explains that a marriage can be terminated due to death, divorce and court decision. When a marriage is terminated for one of these three reasons, the status of property in the marriage becomes an aspect that must be resolved immediately. In the case of death, joint property must be separated from personal property, while

¹ Suryati, S., Awaludin, A., & Waluyo, B. (2023). Perlindungan Hukum Atas Harta Perkawinan Melalui Akta Perjanjian Kawin. *Cakrawala Hukum: Majalah Ilmiah Fakultas Hukum Universitas Wijayakusuma*, 25(1), 22-32.

² Achmad, A. S. (2023). Pemberlakuan Pembedaan Asal Usul Harta Perkawinan Dalam Pembagian Waris Bagi Golongan Timur Asing. *Repertorium: Jurnal Ilmiah Hukum Kenotariatan*, 12(1), 38-47.

heirs who are entitled to inheritance must be determined based on applicable legal provisions, both Islamic Inheritance Law, Customary Inheritance Law, and Civil Law.

Inheritance law is the law that regulates the rights and obligations towards the property of a deceased person, given to one or more people. In addition, inheritance is the law that regulates the assets of a deceased person, and all matters related to the transfer of rights and obligations towards an asset or wealth. Article 830 of the Civil Code states that an heir can only occur upon the death of a person³.

But in reality, the management of inheritance in marriage often gives rise to legal conflicts, especially when one party of the husband or wife misuses or controls the inheritance without the owner's consent. In practice, the management of inheritance is often not carried out in accordance with applicable law. Most Indonesian people do not have a broad understanding of the legal status of inheritance, which will eventually lead to disputes.

The above conflict will become a complex problem when one of the spouses believes that he or she controls the inheritance without an agreement between the two parties or without the knowledge and permission of the other party. Ignorance and deliberate violation of the law by one of the parties will result in criminal acts of embezzlement of inheritance, or even other things related to violations of the law in inheritance.

The issue of legal certainty regarding inheritance in the context of marital status is an important issue in Indonesia, considering the frequent occurrence of family conflicts related to the distribution of inheritance. Such disputes can be exacerbated by the unclear legal regulations, especially when it comes to the status of property in marriage and the rights of heirs. On the other hand, management of inheritance that is not in accordance with the law can open up opportunities for criminal acts, such as embezzlement, which is regulated in Article 372 of the Criminal Code (KUHP). This article explains the act of controlling property unlawfully.

Many cases of inheritance embezzlement occur because one party takes advantage of legal uncertainty or weak family supervision of inheritance distribution. Often there is unlawful control of inheritance by one of the spouses on the grounds that the property is joint property, which causes confusion. Embezzlement of inheritance occurs when one party controls or uses inheritance illegally, without the consent of the other heirs.

The above problems will cause disputes between husband and wife. This situation can be exacerbated by the weak legal knowledge of the community and the lack of mediation efforts before bringing the case to court. Problems regarding inheritance often end up in court due to disagreements among the heirs regarding the division of assets, ownership status, or categories of assets inherited, such as joint assets and personal assets. Therefore, it is necessary to have a

³ Pratama, A. P. (2024). Kepastian Hukum Terhadap Aset Waris Di Luar Negeri. *Das Sollen: Jurnal Kajian Kontemporer Hukum Dan Masyarakat*, 2(02).

broader understanding of the position of inheritance, so that there is no conflict and to find solutions in accordance with applicable laws and regulations.

This study aims to analyze the legal certainty of inheritance in marital status in Indonesia, and to identify its implications for the crime of embezzlement. With in-depth analysis, it is hoped that the results of this study can provide relevant recommendations to strengthen inheritance law regulations and maintain justice and harmony in the family.

METHOD

This study uses a normative legal research method, namely a research method that uses law as what is written in the law⁴. This research approach uses a jurisprudence and statutory approach, namely the structure of norms in the form of rules or regulations that need to be considered. The data sources used in this study are library data consisting of primary legal materials, namely laws and regulations, secondary legal materials in the form of books, legal journals and research results related to legal rules and criminal liability carried out by artificial intelligence and tertiary legal materials in the form of books, journals and non-legal research results. Data collection was carried out by means of literature study in the form of related laws and regulations, legal literature, and academic journals related to inheritance law and the crime of embezzlement. Data analysis techniques were carried out qualitatively by examining the relationship between legal rules and their application in practice.

RESULTS AND DISCUSSION

Legal Certainty Regarding Inheritance in Marital Status in Indonesia

Legal certainty regarding inheritance in marital status is an important issue in inheritance law in Indonesia. The Indonesian legal system regulates the distribution of inheritance based on marital status, which often creates legal problems related to the rights and obligations of heirs. Clear regulations regarding inheritance in marriage are essential to avoid disputes and provide legal protection for the parties entitled to the inheritance.

The legal position of inheritance in marriage is closely related to the concept of joint property. Although Islamic law strictly regulates joint property, the provisions governing it are not explicitly stated in the Qur'an and Hadith. Scholars in Indonesia have different views, but generally agree that joint property exists as property obtained during the marriage by both husband and wife. Assets brought into the marriage before its commencement remain under the control of each party as individual assets⁵. In the past, the husband was the main breadwinner while the wife took care of the household. However, in the modern era, both husband and wife

⁴ Efendi, J. (2022). *Metode Penelitian Hukum Normatif dan Empiris Edisi 2*. Prenada Media.

⁵ Limbong, P. H., Siregar, S. A., & Yasid, M. (2023). Pengaturan hukum dalam pembagian harta bersama perkawinan menurut hukum perdata yang berlaku saat ini di Indonesia. *Jurnal Retentum*, 5(2), 177.

contribute financially, and sometimes the wife even earns more than the husband. Consequently, the assets generated during the marriage from both parties' work become joint property.

Law No. 1 of 1974 divides assets into four groups: first, goods obtained through inheritance or family gifts that were brought into the marriage; second, goods obtained by either spouse individually before or during the marriage; third, goods acquired during marriage as joint property; and fourth, goods given to the husband and wife at the time of marriage⁶. The Compilation of Islamic Law also regulates inheritance, where Article 171 defines inheritance law as the law governing the transfer of ownership rights of the deceased (tirkah), determining heirs, and the distribution they are entitled to. Islam itself recognizes the individual property rights of both husband and wife. For example, if a husband inherits property or receives a gift without his wife's participation, the property belongs solely to him, and vice versa for the wife

Nonetheless, in practice, assets are often mixed, either through written or oral agreements, stipulations of the law, or simply by the realities of married life⁷. The marriage bond thus creates joint property, but provisions regarding inherited assets must be clarified before marriage to prevent future conflicts⁸. Wealth obtained during marriage, until the dissolution of the marriage by death or divorce, is generally considered joint property. This often leads to disputes, especially when inherited assets are merged into joint property without a prior agreement⁹. In reality, many cases show that assets are automatically merged, including inheritance, which can later cause conflicts such as embezzlement when problems arise.

The Role of Wills and Inheritance Deeds

Legal certainty in inheritance distribution often depends on the existence of a will or inheritance deed. Both instruments play a crucial role in ensuring that inheritance is distributed according to the wishes of the testator while avoiding disputes among heirs. Although their functions differ, wills and inheritance deeds complement one another in establishing legitimate inheritance rights. A will, also known as "tacharruf," is essentially the release of inheritance after the testator's death, in which the appointed person carries out the testator's orders¹⁰. The Compilation of Islamic Law interprets a will as property donated to a person or entity, valid only after the testator's death, thus serving as one form of property transfer¹¹.

⁶ Purba, B. P. S. D., Fakhir, A. F., Hardja, A., Irawan, B., (2024). Kepastian Hukum Pembagian Waris Istri dalam Perkawinan Poligami Menurut Hukum Islam dan Hukum Perdata. *SYARIAH: Jurnal Ilmu Hukum*, 1(4), 139-144.

⁷ Muthmainnah, M., & Santoso, F. S. (2019). Akibat Hukum Harta Bersama Perkawinan Dalam Pewarisan Di Indonesia Analisis Komparatif Hukum Islam Dan Hukum Adat. *Ulumuddin: Jurnal Ilmu-ilmu Keislaman*, 9(1), 81-96.

⁸ Kenedi, J. (2019). Penyelesaian Sengketa Harta Bersama Dengan Harta Bawaan Ketika Terjadi Perceraian. *Manhaj: Jurnal Penelitian dan Pengabdian Masyarakat*, 3(1), 92-106.

⁹ Candra, I., Asba, P., Balla, H., & Pransisto, J. (2022). Penerapan Hukum Terkait Pembagian Harta Gono-Gini Akibat Perceraian. *Jurnal Litigasi Amsir*, 9(3), 183-188.

¹⁰ Lumbansiatar, R. A., Sinaga, R. D. F., Simanjuntak, A. S., & Manalu, S. A. R. (2023). Peran Notaris Untuk Menentukan Hak dan Tanggung Jawab Ahli Waris dalam Perspektif Hukum Islam. *Mandub: Jurnal Politik, Sosial, Hukum dan Humaniora*, 1(4), 234-243.

¹¹ Hartawati, H., Syam, E. S., & Tarmizi, T. (2022). Pembuatan surat wasiat terhadap ahli waris dalam masyarakat. *Journal of Lex Generalis (JLG)*, 3(9), 1557-1569.

Through a will, the testator provides clear instructions on who is entitled to receive inheritance and in what portion, thereby minimizing disputes among heirs. A legally valid will has binding force under the law. Meanwhile, an inheritance deed is an official legal document prepared by an authorized official, such as a notary or religious court, which certifies who is entitled to be heirs and what portion they should receive¹². These two documents are interrelated: while a will expresses the testator's wishes, an inheritance deed formalizes heir status and ensures legal certainty. Both are essential for preventing disputes, protecting heirs' rights, and ensuring that inheritance distribution proceeds smoothly in accordance with the law.

Implications for the Crime of Embezzlement

The crime of embezzlement of inheritance is one of the legal consequences arising from uncertainty in inheritance management. Article 372 of the Indonesian Criminal Code (KUHP) defines embezzlement as the unlawful control or appropriation of another person's property with the intent to own or use it without the owner's consent. In the context of inheritance, embezzlement frequently occurs when heirs take possession of, conceal, or use inheritance without the agreement of other entitled heirs. Such acts not only cause material losses but also damage family relationships. Under Article 372, perpetrators may face up to four years' imprisonment and may also be subject to civil lawsuits to restore the rightful share of inheritance.

Embezzlement can also arise in the divorce process. In such cases, one party unlawfully conceals or controls assets that should rightfully be divided under the law, whether joint property, personal assets acquired during marriage, or inheritance assets. Common forms of embezzlement during divorce include the concealment or transfer of assets to avoid fair distribution, unilateral appropriation of inheritance without notifying other parties, and forgery of inheritance documents, such as falsifying wills or inheritance deeds. These practices violate the rights of other heirs and may be subject to criminal sanctions. Beyond legal consequences, embezzlement in divorce intensifies family conflicts, prolongs legal disputes, and causes significant material and emotional damage. Criminal and civil remedies exist to address such issues, but they often deepen family rifts.

Prevention and Legal Protection of Inheritance in Marriage

To prevent disputes, legal protection for inheritance in marriage is crucial. Article 35 of Law No. 1 of 1974 distinguishes between inherited assets and joint assets. Joint assets are controlled collectively by husband and wife, whereas inherited assets remain under the control of the individual heir. The Civil Code, however, provides that if no marriage agreement is made,

¹² Muslimah, M., & Kartikawati, D. R. (2022). Analisis Akta Wasiat yang Tidak Diketahui Oleh Ahli Waris Berdasarkan Hukum Waris Perdata. *Krisna Law: Jurnal Mahasiswa Fakultas Hukum Universitas Krisnadwipayana*, 4(1), 17-31.

then all assets obtained before and during marriage may be merged as joint property (Article 119). This creates risks for protecting individually inherited assets¹³.

To mitigate this, couples are advised to make a marriage agreement before marriage, specifying the ownership and protection of each party's assets. Although not very common in Indonesia, marriage agreements are often used by couples with significant assets or inheritances to prevent future disputes, including embezzlement. Article 29 of Law No. 1 of 1974 allows such agreements, provided they do not contradict legal, religious, or moral norms. A marriage agreement, once ratified, binds both parties and third parties with interests. It remains valid throughout the marriage unless terminated by divorce, death, mutual revocation, or court annulment due to legal defects¹⁴.

Thus, marriage agreements serve as a legal safeguard to distinguish between joint and individual assets, protecting heirs' rights and minimizing the risk of embezzlement or disputes. They are a preventive tool that upholds legal certainty in inheritance and asset management within marriage, ensuring fairness and stability in both marital and family relationships.

CONCLUSION

Legal certainty regarding inheritance in marital status in Indonesia plays a crucial role in maintaining justice and preventing conflicts among heirs. Law Number 1 of 1974 on Marriage and the Civil Code (KUHPer) provide a legal foundation for regulating the division of inheritance, both for joint property acquired during marriage and personal assets owned individually. However, the absence of a prenuptial agreement or a valid will often creates ambiguity in determining the status of assets within marriage. This uncertainty frequently leads to disputes among heirs, which may escalate into lengthy legal proceedings.

The lack of clarity in asset regulation also creates loopholes for criminal acts such as embezzlement, particularly when heirs attempt to unilaterally control inheritance. Such acts often involve concealing or transferring assets that legally belong to other heirs, whether in the context of divorce or after the death of a spouse. These actions not only constitute a violation of inheritance rights but also damage family relationships and can result in serious legal consequences.

To minimize these risks, preventive measures are necessary, one of which is the establishment of a clear prenuptial agreement that regulates the status of assets acquired during marriage. A prenuptial agreement serves as a safeguard against potential misuse or embezzlement of inheritance by irresponsible parties. With well-defined regulations, families can avoid

¹³ Giyanthi, P. I. S., Budiarta, I. N. P., & Ujianti, N. M. P. (2022). Status Hukum Harta Perkawinan Jika Terjadi Kepailitan Suami/Istri Tanpa Adanya Perjanjian Kawin. *Jurnal Preferensi Hukum*, 3(1), 37-41.

¹⁴ Ani, N. K., Budiarta, I. N. P., & Widiati, I. A. P. (2021). Perjanjian perkawinan sebagai perlindungan hukum terhadap harta bersama akibat perceraian. *Jurnal Analogi Hukum*, 3(1), 17-21.

prolonged disputes and ensure that inheritance is distributed fairly, in accordance with the intentions of the parties involved, thereby fostering both legal certainty and family harmony.

REFERENCES

- Achmad, A. S. (2023). Pemberlakuan Pembedaan Asal Usul Harta Perkawinan Dalam Pembagian Waris Bagi Golongan Timur Asing. *Repertorium: Jurnal Ilmiah Hukum Kenotariatan*, 12(1), 38-47.
- Ani, N. K., Budiarta, I. N. P., & Widiati, I. A. P. (2021). Perjanjian perkawinan sebagai perlindungan hukum terhadap harta bersama akibat perceraian. *Jurnal Analogi Hukum*, 3(1), 17-21. <https://doi.org/10.22225/ah.3.1.2021.17-21>
- Candra, I., Asba, P., Balla, H., & Pransisto, J. (2022). Penerapan Hukum Terkait Pembagian Harta Gono-Gini Akibat Perceraian. *Jurnal Litigasi Amsir*, 9(3), 183-188. <http://journalstih.amsir.ac.id/index.php/julia/article/view/83/73>
- Efendi, J. (2022). Metode Penelitian Hukum Normatif dan Empiris Edisi 2. Prenada Media.
- Giyanthi, P. I. S., Budiarta, I. N. P., & Ujianti, N. M. P. (2022). Status Hukum Harta Perkawinan Jika Terjadi Kepailitan Suami/Istri Tanpa Adanya Perjanjian Kawin. *Jurnal Preferensi Hukum*, 3(1), 37-41. <https://doi.org/10.22225/jph.3.1.4621.37-41>
- Hartawati, H., Syam, E. S., & Tarmizi, T. (2022). Pembuatan surat wasiat terhadap ahli waris dalam masyarakat. *Journal of Lex Generalis (JLG)*, 3(9), 1557-1569.
- Kenedi, J. (2019). Penyelesaian Sengketa Harta Bersama Dengan Harta Bawaan Ketika Terjadi Perceraian. *Manhaj: Jurnal Penelitian dan Pengabdian Masyarakat*, 3(1), 92-106. <http://dx.doi.org/10.29300/mjppm.v3i1.2345>
- Limbong, P. H., Siregar, S. A., & Yasid, M. (2023). Pengaturan hukum dalam pembagian harta bersama perkawinan menurut hukum perdata yang berlaku saat ini di Indonesia. *Jurnal Retentum*, 5(2), 177. <https://doi.org/10.46930/retentum.v5i2.1346>
- Lumbansiatar, R. A., Sinaga, R. D. F., Simanjuntak, A. S., & Manalu, S. A. R. (2023). Peran Notaris Untuk Menentukan Hak dan Tanggung Jawab Ahli Waris dalam Perspektif Hukum Islam. *Mandub: Jurnal Politik, Sosial, Hukum dan Humaniora*, 1(4), 234-243.
- Muslimah, M., & Kartikawati, D. R. (2022). Analisis Akta Wasiat yang Tidak Diketahui Oleh Ahli Waris Berdasarkan Hukum Waris Perdata. *Krisna Law: Jurnal Mahasiswa Fakultas Hukum Universitas Krisnadwipayana*, 4(1), 17-31.
- Muthmainnah, M., & Santoso, F. S. (2019). Akibat Hukum Harta Bersama Perkawinan Dalam Pewarisan Di Indonesia Analisis Komparatif Hukum Islam Dan Hukum Adat. *Ulumuddin: Jurnal Ilmu-ilmu Keislaman*, 9(1), 81-96. <http://dx.doi.org/10.47200/ulumuddin.v9i1.286>
- Pratama, A. P. (2024). Kepastian Hukum Terhadap Aset Waris Di Luar Negeri. *Das Sollen: Jurnal Kajian Kontemporer Hukum Dan Masyarakat*, 2(02).

<https://doi.org/10.11111/dassollen>.

- Purba, B. P. S. D., Fakhir, A. F., Hardja, A., Irawan, B., (2024). Kepastian Hukum Pembagian Waris Istri dalam Perkawinan Poligami Menurut Hukum Islam dan Hukum Perdata. *SYARIAH: Jurnal Ilmu Hukum*, 1(4), 139-144. <https://doi.org/10.62017/syariah.v1i4.1509>
- Suryati, S., Awaludin, A., & Waluyo, B. (2023). Perlindungan Hukum Atas Harta Perkawinan Melalui Akta Perjanjian Kawin. *Cakrawala Hukum: Majalah Ilmiah Fakultas Hukum Universitas Wijayakusuma*, 25(1), 22-32. <https://doi.org/10.51921/chk.v25i1.225>