

# IMPLEMENTATION OF THE DISTRIBUTION OF INHERITANCE OF AFWEZIG PEOPLE IN BANTUL REGENCY, YOGYAKARTA SPECIAL REGION

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**Abstract:** The person who is afwezig cannot be known with certainty whether he is alive or deceased. An afwezig person is a person who leaves his place of residence. In practice the right of heirs to demand the division of inherited property faces obstacles because the person who leaves the property in a state of afwezig. This research is normative and empirical legal research. This study aims to find out how the concept of the division of inheritance property belongs to afwezig people according to the Civil Code, and how is the implementation of the division of inheritance property belonging to afwezig people in Bantul Regency, DIY?. From the results of the study, it is known: (1) The concept of division of inheritance property belonging to afwezig is regulated in Articles 463 to 484 of the Penal Code, which specifies that the heirs are entitled to take the inheritance of the afwezig, after a judge's ruling that the afwezig 'may have died', with the obligation to make a record of the property taken, and must carry out calculations, accountability and hand over to the afwezig, if the afwezig returns to his place of residence, (2) The implementation of the division of the estate of the afwezig in Bantul District can only be carried out after there is an afwezig determination from the District Court. So the circumstances of a person's afwezig must be proved by the existence of an injunction from the District Court. In practice it turns out that the afwezig returns back to his place of residence, after his property is bequeathed by his brother. Furthermore, the property of the person who was afwezig by his brother was returned, but only part of it, so it did not follow the provisions of Article 482 of the Civil Code.

**Keywords:** Heir; afwezig; division of inheritance.

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## INTRODUCTION

Article 833 of the Civil Code specifies that all heirs by themselves by law acquire title to all goods, all rights, and all receivables of the deceased. The right of the heir is called the right of *saisine*. According to Satrio, the right of *saisine* is the right of the heir to do nothing, automatically or legally replace the position of the heir in the field of wealth law (Satrio, J., 1992: 87). The term *saisine* is a name taken from the verb *saisit* from *adagium* (legal proverb) which reads 'Le mort saisit le vif' which means the deceased holding on to the living (Ali Afandi, 1986: 35). In the *adagium* is contained the intention that an object must have an owner. So if a person dies then everything that belongs to him at the time of his death naturally passes to his surviving heirs.

Article 830 of the Civil Code specifies that inheritance lasts only by death. Thus, to be able to inherit someone's estate, it must be fulfilled the condition that the person who owns the relic property has died. So it is clear that the death of a person is the main condition for the occurrence of inheritance. With the death of a person, all his property passes to his heirs. In Islamic inheritance law, if the missing person is the heir, the scholars agree that his property should be withheld first until there is clear news that the heir who is in a *mafqud* state has actually died or is given a verdict by a judge of his death (Gerry Hard Bachtiar, 2013; 46). Thus, to be able to divide the

inheritance of the heir, it must have passed away.

An heir is a deceased person who leaves an estate (Gregor van der Burght translated by Tengker, F., 1995: 1). Likewise, according to Surini Ahlan Sjarif and Nurul Elmiyah, that the heir is a deceased person who leaves an inheritance (2005: 10). According to Anisitus Amanat that the absolute element that must be met to be worthy of being called an heir is a person who has passed away and left behind property (Anisitus Amanat, 2000: 6).

Heirs in addition to having *saisine* rights also have the right to demand the division of inherited property. According to Article 1066 of the Civil Code, no one who has a share in the heritage property is required to accept the continuation of the heritage property in an undivided state. The separation of the property at any time may be demanded, even if there is a prohibition against doing so, but consent may be made for a period of time not to make the separation. Such an agreement is only binding for 5 (five) years, but after the expiration of this grace period, the agreement may be renewed. From these provisions it can be seen that an heir may at any time demand a separation of the estate, provided that the estate is open or lost.

In practice the right of heirs to demand the division of inherited property faces obstacles, since the person who leaves the property in a state of absence. According to the Dutch-Indonesian

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Dictionary of Fockema Andreae Legal terms, the state of absence of a person who has left his place of residence is called *afwezigheid* (Fockema Andreae, 1983: 24). A person who is declared *afwezigheid* resulting in his position according to the Civil Law is considered to have died juridically (Sharifah Amalia binti Tahir et al., 2021:213).

An *afwezig* person is a person who leaves his place of residence without appointing another person to represent and take care of his interests (Satrio, J., 1999: 208). In the study of Islamic Law (*fiqh*) Muslims are called '*mafqud*', that is, people who are cut off from the news so that their life and death are unknown (Mirna Riswanti, 2019; 61).

According to Article 463 of the Civil Code, a person can be declared absent/absent from the premises must meet the following requirements (Soetojo Prawirohamidjodjo and Marthalena Pohan; 1995: 242):

- 1). Leaving his place of residence.
- 2). Without giving power to others to represent it.
- 3). Not appointing or giving power to others to take care of their interests.
- 4). The power that was once granted has fallen.
- 5). If circumstances arise that force to manage his property in a manner whole or in part.
- 6). To appoint a deputy there must be held legal measures to fill the vacancy as a result of such absence.
- 7). Representing and taking care of the interests of the absent, not

only covering the interests of property, but also for their personal interests.

The end of a person as a supporter of rights and obligations if he dies. This means that if a person is still alive, then his entitled authority does not end. Article 3 of the Civil Code specifies "No punishment shall result in civil death or loss of any civil right". Thus the state of *afwezig* does not deprive it of its status as a subject of law, that is, as a person with rights and obligations. This means that the person who is *afwezig* remains entitled and arbitrary to do over his property. The state of being absent/in place does not stop his status as a subject of law or person, as a person with rights and obligations.

A person who is absent (*afwezig*) while still alive, wherever he is in addition to having rights also remain burdened with obligations, and is capable of performing legal acts against his property. The obligations of an *afwezig* person are no different from those of a person present/on-site, for example; if his status as a husband is then obliged to provide a living to his wife and children. Likewise, if you are domiciled as a person who borrows money, then you are still obliged to make payments to the creditor. The obligations of the *afwezig* person may be paid or fulfilled with the property in his possession. The person who is *afwezig* is not known with certainty whether he is alive or deceased.

In community life, a person can leave his place of residence without notice, without giving a power of attorney to his family, or other people to represent

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himself, or take care of his property. This happens for various reasons, for example, a person suffers from a mental disorder, so he just leaves aimlessly. There were also those who were forced to leave their residences because they were forced by Dutch colonists to perform forced labor outside the area where they lived as *romusha*. In addition, the cause of someone leaving their place of residence because they committed immoral acts so that they were expelled from their hometown, there were also those who complained about the fate of finding a job, who finally did not return to their place of residence and did not give news to their relatives.

In the present as well as in the future, it is possible that the existence of *afwezigs* can be found. Indonesia is a country that often experiences natural disasters, such as; earthquakes, tsunamis, and calamities of sunken ships or airplanes that have crashed can cause a person to go missing whose whereabouts cannot be known.

The person who is *afwezig* has not necessarily passed away, at any time he

can return to his place of residence, he remains arbitrary and acts against his property, so his property and interests need to be protected. An absentee (*afwezig*) who does not appoint a representative/power of attorney to take care of his property or his interests may cause legal problems and uncertainties.

In inheritance, the heir is required to have died definitively and the heir is required to be still alive with certainty at the time of the heir's death. Inheritance will be carried out after someone dies by leaving the property and there is an expert who is entitled to the inheritance (Haryadi Sutanto and Henny Tanuwidjaja, 2017; 232).

Based on the description that has been mentioned above, the formulation of the problem is:

1. What is the concept of dividing the inheritance of the *afwezig* according to the Civil Code?
2. How is the distribution of inheritance belonging to the *afwezig* in Bantul Regency? .

## MATERIALS AND METHODS

### 1. Research Type

This research is normative and sociological/empirical legal research. The normative type of research examines conceptually the principles, norms and laws and regulations related to legal protection for *afwezig* in the division of inherited property according to the Civil Code. As well as the type of sociological / empirical research examining the

implementation of the concept in Bantul Regency, DIY.

### 2. How to Take Research Materials and Data

- a. Normative research uses legal materials, both primary, secondary, tertiary legal materials taken by means of literature studies. The description of the legal materials used is:

- 1) Primary legal material:  
Civil Code
  - 2) Secondary legal material consisting of:
    - a) Books on the Law of Persons and the Law of Inheritance.
    - b) Journals on the Law of Persons and the Law of Inheritance.
    - c) Papers on the Law of Persons and the Law of Inheritance.
  - 3) Tertiary legal material in the form of a legal dictionary.
- b. Sociological/empirical research will look for primary data and secondary data.
- 1) Primary data are sought by field research with interview techniques with the following description:
    - a) Research location: in Bantul Regency, Yogyakarta Special Region.
    - b) The method of sampling is carried out by direct appointment (purposive sampling) by researchers from the population of the community who divide the inheritance whose heir is in an afwezig state. The respondents in this study were:
      - (1) The party who is the heir of the afwezig person.
      - (2) Notaries in Bantul Regency.
  - 2) Secondary data  
Secondary data are searched for with literature studies. In this study, the process of searching for secondary data in empirical research was carried out in conjunction with the process of literature study in normative research.
3. Data Analysis Techniques
- The results of the research obtained are systematically compiled and analyzed. Analytical techniques for normative research are carried out with prescriptive methods, namely what is true or should be according to law, and sociological/empirical research is carried out with a descriptive method with a qualitative approach, namely by providing in-depth and thorough exposure.

## RESULTS AND DISCUSSION

### a. The Concept of Division of Inheritance Property belonging to the Afwezig According to the Civil Code.

Article 830 of the Civil Code specifies that inheritance occurs only by death. So the death of a person is the main condition for the occurrence of

inheritance. With the death of a person, his entire wealth passes to his heirs.

According to the Civil Code, regarding the division of the inheritance of the afwezig, the inheritance of the afwezig person cannot be directly inherited by his heirs. Instead, it must go through several stages to be able to pass on the property of the afwezig. According

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to the Civil Code, these stages are regulated as follows:

1. Preparatory stage or temporary measures.

In the preparatory stage or provisional measures are regulated in Articles 463 to 465 of the Civil Code. From the provisions of Articles 463-465 of the Civil Code, the following concepts can be known:

- 1) The District Court in which the person who is not on the premises may appoint a Heritage Hall to take care of all or part of his property and interests, as well as to defend the rights of the afwezig and represent himself.

The District Court also has the authority to order the management of property and the representation of interests to one or more of the inbred or inbred families of the absentee appointed by the court or to the wife or husband with the sole obligation that if the afwezig returns home, then the family, wife or husband must return to him the property and its price, after deducting all the debts of the afwezig which he has repaid and without his results or income.

- 2) The Heritage Hall after sealing is obliged to make a complete list of all the treasures entrusted to it.
- 3) Balai Harta Warisan is annually obliged to briefly give a calculation of responsibility to the Prosecutor's Office in the District Court that appoints it and shows the Office all the effects and letters regarding its management.

Thus the District Court may appoint the Heritage Hall or his family to take care

of his property and his interests, as well as defend the rights of the afwezig. So that if the afwezig returns home, it can recover its property, because the parties who control his property when the afwezig leaves his place of residence, have the obligation to return his property.

2. The stage of the statement may be deceased.

This second stage is regulated in Articles 467-481 of the Civil Code.

From the provisions of Articles 467-481 of the Civil Code, it can be seen that the concept in the period of the statement 'perhaps deceased' is:

- 1) A person who is afwezig can only be designated by the District Court as a person who is "Probably deceased", after 5 years since his departure from his place of residence or 5 years since the acquisition of the last news proving that he is still alive, or absent 10 years, if he leaves a power of attorney, but has expired, after 3 summonses every 3 months in a newspaper determined by the Court and not There is news, and the judge has held an examination of witnesses, in the presence of the Prosecutor's Office, must also pay attention to the causes of the absence, the causes that may have hindered the receipt of news from the person who was in the absenteeism, and matters relating to the allegations of death.
  - 2) The court may delay the making of a decision for up to 5 (five) years longer than the period prescribed in article 467 of the Civil Code and may order its further summons and placement in
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a newspaper, if it deems it necessary, for the benefit of an afwezig.

- 3) After a judge's ruling that the afwezig 'probably dies' his heirs are entitled to take and receive the estate of the afwezig, with the obligation to make a record of the property taken and give bail which must be approved by the judge. In addition, he must also carry out calculations, be accountable and leave to the afwezig, if he returns home or to his heirs.
1. All heirs after possession of all the property of the afwezig are required to immediately make a complete list of the existence of the goods, and shall also bind the insurer or give a treasury guarantee to guarantee that the goods will be used without becoming cluttered or neglecting them, as well as guaranteeing that the goods will be re-priced.
2. The heirs of the afwezig persons in the enjoyment of the property of the afwezig person have the same rights and obligations, as are arranged for the holders of the right to use the proceeds.
3. Those who have received some of the afwezig's possessions in their possession or management, each of them merely concerning himself, shall perform calculations, account and submit to the absent, whenever he may return home, or to the heirs or other rights holders, who may apply and prove their stronger rights.
4. The heirs of the afwezig persons shall be entitled to a separation and division provided that the fixed property cannot be sold or made into

collateral for the debt, unless there is an important reason, and with the permission of the judge.

5. If the afwezig returns home after the declaration of 'perhaps deceased', or signs of being alive are obtained, then everyone who has enjoyed the proceeds and incomes of the goods on him, shall return the proceeds and incomes in the amount of 1/2 part of the proceeds/income received, if the afwezig returns home within 15 years of the decision of the court, 1/4 part, if the afwezig returns home after 15 years but less than 30 years since the court's decision, keeping in mind the large number of inherited property left behind, the District Court may determine otherwise (Article 482 of the Civil Code).
3. The stage of inheritance definitively. At this stage, it is regulated in Articles 484, 486 and 487 of the Civil Code.

Based on these provisions, it can be known that the concepts in the definitive inheritance period are:

- 1) The estate of an afwezig person can be inherited definitively after there is a presumption that the person who is not in the place has passed away is stronger, i.e. after 30 years from the day of the judge's determination of "probability of death", or after 100 years past from the day of birth of the afwezig.
  - 2) If the afwezig returns home or gives signs of his or her life, after the expiration of 30 (thirty) years from the day the declaration of his death may be stated in the judge's
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determination, then he is entitled to reclaim his property, along with his transferred goods, or the goods he purchased with money for the sale of goods that originally belonged to the afwezig, without his proceeds or income.

- 3) If the afwezig returns after the definitive inheritance period, it has the right to requisition its property in the circumstances as it is and the price of the transferred property.
- 4) The children and descendants of the afwezig, may receive back their goods, to the extent that their rights arise within thirty years from the past time stipulated in article 484 of the Civil Code.

#### **B. Implementation of the Division of Inheritance of Afwezig People in Bantul Regency.**

The person who is afwezig as long as it has not been confirmed to have died, wherever he is located still has rights and also remains burdened with obligations, and is capable of carrying out legal actions against his property. According to Article 830 of the Civil, Code inheritance occurs only by death.

Thus, to be able to inherit one's inherited property, one must meet the condition that the person who owns the heritage property has passed away. People who are afwezig do not necessarily have passed away, at any time can return to their place of residence. The afwezig person remains arbitrary and acts against his property, so his property and interests need to be protected.

In the practice of the division of inherited property in Bantul District, the implementation of the division of inheritance belonging to the afwezig person is only carried out after a determination from the District Court, that a person has been designated afwezig. So the circumstances of a person's afwezig must be proved by the existence of an injunction from a District court judge. After a determination from the District Court judge that one has been afwezig, then the division of the estate is carried out.

An example of the case can be seen in the determination of the judge of the Bantul District Court, namely Determination Number: 10/Rev.P/2007/PN.Btl. In the said determination the petitioner a mother and the four siblings as heirs wish to divide the estate of an heir who since 1967 has left the hamlet of Watu 07 Argomulyo Village, Sedayu District, Bantul Regency; and his whereabouts are unknown, and have never returned and neither his whereabouts nor his place of residence are known, nor is it known whether he is alive or deceased. The family has tried hard to find the whereabouts of the heir, either seeking information from someone who recognizes him or reporting through the mass media/newspaper of The People's Sovereignty of Yogyakarta and through Radio Persatuan Bantul but still has not been found, his whereabouts are unknown, either alive or deceased. Furthermore, in order to deal with the inheritance or to divide the inheritance of the aforesaid land, to the heirs (the

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petitioners) there is a Determination of Absence (afwezig) against the respondent/heir of the Bantul District Court.

The heirs applied to the Chief Justice of Bantul District Court to legally establish that the heir was "In the absence (afwezig)".

Before the judge gives an injunction, the judge first considers several things, namely:

1) The Petitioners have attempted to find the whereabouts of the afwezig heir, either seeking information from someone who recognizes him or through the Call and Search through the People's Sovereignty newspaper and announcement via Bantul Union Radio, but have not been found so far.

2) The petitioners also submitted evidence of an Affidavit stating that if the heirs returned, the petitioners were able to return what was their right which was known to the village head of Argomulyo Village and Sedayu Sub-district.

3) That the determination of absence (afwezig) of the Bantul District Court is necessary to administer or carry out the division of inheritance in the form of 1 (one) plot of paddy land letter C No 108a area of 685 M2 of Argomulyo village.

Furthermore, the judge in view of Article 463 of the Civil Code and the provisions of applicable laws and regulations, finally the judge determined It is legally that the Heir/Respondent is "in a state of absence (afwezig)".

The judge in granting the injunction has given protection to the afwezig. This can be known from the considerations taken by the judge. To establish that a

person is in a state of absence (afwezig), first consider several things, namely having left home and no news for another 40 years.

In addition, the afwezig has been summoned through the newspaper 'People's Sovereignty' and through the radio of the Bantul Union. This is an effort to protect the law for the afwezig. By calling through newspapers or radio, it is hoped that the afwezig or someone else who knows the existence of the afwezig knows that the afwezig is waiting for news and his return. In addition, there is an affidavit from the petitioners (heirs) stating that if the afwezig returns, the petitioners are able to return what is their right known to the local sub-district and sub-district (the residence of the afwezig person).

In practice, after obtaining a judge's determination that the heir is in a state of absence (afwezig), the division of inheritance/relics in the form of one piece of paddy land is carried out by selling the inheritance. Further from the sale of the inherited land, the proceeds are divided to each heir.

After the inheritance of the afwezig is divided, it is possible that the afwezig returns to his place of residence. In practice, it turns out that the person who has been designated by the judge as afwezig returns to his place of residence again. According to the testimony of an heir, to the estate of the afwezig person which has been sold and divided among the heirs, not all of it is returned to the afwezig person who turns out to return to his place of residence. So it is only given a part of his property, so it does not follow

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the provisions contained in Article 482 of the Civil Code.

According to Article 482 of the Civil Code "If the afwezig returns home after the declaration of 'perhaps deceased', or signs of being alive are obtained, then everyone who has enjoyed the proceeds and incomes of the goods on him, shall return

the proceeds and incomes in the amount of 1/2 part of the proceeds/income received, if the afwezig return home within 15 years of the court's decision, returning 1/4 share if afwezig returns home after 15 years but less than 30 years from the court's decision".

## CONCLUSIONS

Based on the problems posed, and based on the analysis of the results of literature research and field research, the following conclusions can be drawn:

1. The concept of division of inheritance property belonging to afwezig is regulated in Articles 463 to 484 of the Penal Code, the essence of which is that the heir is entitled to take the estate of the afwezig, after there is a judge's ruling that the afwezig 'may have died', with the obligation to make a record of the property taken, and must make calculations, accountability and hand over to the afwezig, if he returns home.
2. Implementation of the division of inheritance of afwezig persons in

Bantul District.

In practice the division of the inheritance property belonging to the afwezig can only be done after there is a determination from the District Court that a person has been designated afwezig. So the circumstances of a person's afwezig must be proved by the existence of an injunction from a District court judge. In practice it turns out that the person who has been designated by the judge as an afwezig, returns again to his place of residence, even though his property has been divided by his heirs. Finally, his property was returned, but only part of it, so it did not follow the provisions contained in Article 482 of the Civil Code. .

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