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## The Urgency of Wills in Preventing Inheritance Disputes from the Perspective of Civil Law and Islamic Law

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### Abstract

*This study addresses a critical **gap** in the Indonesian inheritance system, where legal pluralism between the Civil Code and the Compilation of Islamic Law often creates ambiguity in the application of wills, leading to frequent inheritance disputes due to the absence or improper formulation of testamentary documents. The research **aims** to examine the urgency and legal function of wills as preventive instruments in minimizing inheritance conflicts from both civil and Islamic legal perspectives. This study employs a normative legal **research method** with statutory and conceptual approaches, relying on primary legal sources, doctrinal analysis, and qualitative interpretation. **The findings** reveal that a will possesses strong legal authority when it complies with formal and material legal requirements. However, its implementation is constrained by the doctrine of legitime portie in civil law and the one-third limitation in Islamic law, unless agreed otherwise by all heirs. Empirically, the absence of a written and authentic will often triggers disputes due to unclear asset distribution, conflicting interpretations, and weak evidentiary standing. The study emphasizes that wills drafted as notarial deeds provide stronger legal certainty and protection. The **global implication** of this research lies in offering a model for managing legal pluralism in inheritance systems, highlighting the role of formal legal instruments in dispute prevention, strengthening legal certainty, and promoting equitable wealth distribution across diverse legal traditions.*

**Keywords:** Will; Civil Code; Compilation of Islamic Law.

### Introduction

Inheritance disputes remain one of the most persistent legal and social issues in Indonesia, particularly due to the interaction between legal pluralism, unclear testamentary intentions, and weak documentary evidence [1]. In this context, a will should function not merely as a private expression of the testator's final wishes, but also as a preventive legal instrument capable of ensuring legal certainty[2], protecting the rights of heirs, and minimizing posthumous family conflict [3]. However, despite its normative recognition in both civil law and

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Islamic law [4], the use of wills in Indonesian inheritance practice remains limited and often legally problematic [5]. This condition makes it necessary to critically examine the urgency of wills as a mechanism for preventing inheritance disputes within the dual framework of the Civil Code and Islamic inheritance law

Legal pluralism in Indonesia creates normative uncertainty in inheritance distribution. One of the primary reasons why inheritance disputes frequently arise in Indonesia is the existence of a pluralistic legal system governing inheritance [6]. Indonesian inheritance law does not operate under a single unified legal regime; rather, it is shaped by the coexistence of the Civil Code (Kitab Undang-Undang Hukum Perdata), the Compilation of Islamic Law (Kompilasi Hukum Islam/KHI), and, in some contexts, customary law [7]. This plurality often creates uncertainty regarding which legal framework should apply in specific inheritance cases, especially when family members hold different legal, religious, or social expectations [8]. As a result, the absence of legal clarity may transform inheritance distribution from a matter of legal succession into a source of prolonged familial and juridical conflict

The absence of a valid will often becomes the immediate trigger of inheritance disputes. Inheritance disputes are not always caused by the existence of wealth itself, but often by the absence of a clear, legally valid, and enforceable declaration of the deceased's intentions [9]. When a person dies without leaving a properly formulated will, the distribution of the estate frequently depends on family interpretation, informal agreements, or unilateral claims made by certain heirs [10]. Such conditions create substantial room for disagreement over the identity of heirs [11], the classification of assets, and the proportional allocation of inheritance rights [12]. Consequently, a will should be understood not only as an instrument of testamentary freedom [13], but also as a crucial legal document that helps prevent ambiguity [14], evidentiary disputes, and competing interpretations among heirs

Differences between civil and Islamic legal limitations on wills require deeper legal examination. Another important reason for this study lies in the fact that wills are regulated differently under the Indonesian Civil Code and Islamic inheritance law [15]. Under the Civil Code, the principle of freedom of testation allows individuals to determine the posthumous distribution of their property, but such freedom is restricted by the doctrine of legitime portie, which protects the compulsory shares of certain heirs [16]. By contrast, under Islamic law as codified in the KHI, a will is generally limited to one-third of the total estate, unless all heirs consent to a larger portion. These differences reflect not only divergent legal doctrines but also distinct philosophical foundations concerning individual autonomy, family protection, and distributive justice [17]. Therefore, a comparative legal analysis is essential to understand how wills can function

effectively as instruments of dispute prevention within Indonesia's plural legal environment

Both the Civil Code and Islamic law formally recognize wills as valid legal instruments. The paper demonstrates that both civil and Islamic legal systems in Indonesia formally acknowledge the legal validity of wills [18]. In the Civil Code, a will is defined as a legal act containing a person's declaration concerning what should occur after death [19]. Likewise, the KHI recognizes wills as legitimate legal arrangements that may be made orally, in writing, or before a notary, provided that the applicable legal conditions are fulfilled [20]. This indicates that the problem does not lie in the absence of legal recognition, but rather in the underutilization [21], weak formalization, and inadequate public understanding of testamentary instruments in actual inheritance practice

The paper confirms that the lack of written wills often leads to family conflict. The manuscript explicitly highlights that, particularly in community settings where legal literacy remains limited, many individuals die without leaving a written and legally verifiable will. In such situations, inheritance distribution is often carried out through informal family deliberation or assumptions regarding the deceased's intentions [22]. This practice significantly increases the risk of conflict, especially when the estate consists of multiple assets, the number of heirs is large, or the legal status of particular heirs is disputed. The paper therefore provides strong support for the argument that the absence of a formal will contributes directly to inheritance disputes by creating uncertainty and weakening the evidentiary basis of estate distribution

Notarial wills provide stronger legal certainty and evidentiary value. The study also emphasizes that the legal strength of a will depends not only on its existence, but also on its form and method of execution. A will drafted as an authentic notarial deed carries stronger evidentiary value and legal certainty than a private or oral will. Conversely, informal or undocumented wills are more vulnerable to legal challenge, authenticity disputes, and claims of invalidity by dissatisfied heirs [23]. This finding is particularly important because it demonstrates that the preventive role of a will is not automatic; rather, it depends on whether the will is created in a legally sound, clear, and formally enforceable manner. Thus, legal formality plays a central role in transforming a will from a personal declaration into a reliable instrument of dispute prevention

Based on the foregoing discussion, it can be concluded that a will occupies a highly strategic position within Indonesia's inheritance system, particularly in the context of legal pluralism between the Civil Code and Islamic law. Inheritance is not merely a matter of transferring property after death; it is also closely connected to legal certainty, the protection of heirs' rights, distributive

justice, and the preservation of family harmony [24]. The absence of a valid and properly formulated will frequently becomes a major source of inheritance disputes, whereas a clear, lawful, and authentic will may function as an effective preventive mechanism [25]. Therefore, examining the urgency of wills is not only academically relevant for the development of inheritance law studies, but also practically important for strengthening legal awareness and reducing inheritance-related conflict in society

Inheritance law is a part of civil law that has an important role in regulating the transfer of a person's rights and obligations after death. In the Indonesian legal system, the regulation of inheritance does not only originate from a single legal regime, but is within the framework of legal pluralism that includes Western civil law, Islamic law, and customary law. In the Civil Code (KUHPerdata) as a general guideline of civil law, there is no explicit definition of the meaning of inheritance law. The Civil Code only affirms that inheritance occurs due to death, as stipulated in Article 830 of the Civil Code which states that inheritance only takes place due to death [26], [27].

Inheritance law in Indonesia operates in a pluralistic legal system that recognizes the application of the Civil Code, Islamic law as codified in the Compilation of Islamic Law, and customary law. Wills, as legal instruments, play an important role in determining the distribution of the estate of the deceased after death [28]. This study aims to analyze the importance of wills in the distribution of inheritance in preventing disputes from the perspective of the Civil Code and the Compilation of Islamic Law [29]. This research uses normative legal research methods using legal and conceptual approaches. The results of the study show that wills have legal force as long as they are made in accordance with the applicable legal provisions. However, its implementation remains subject to limitations, namely the doctrine of a valid portie (forced heirs) under the Civil Code and a maximum limit of one-third of the property under the Compilation of Islamic Law, unless all heirs agree to a larger portion [30]. In practice, the absence of a will often leads to family disputes due to unclear distribution of assets and different interpretations regarding the rights of each heir. Therefore, drafting a will – especially in the form of an authentic deed before a notary – is very important as a preventive measure to ensure legal certainty, justice, and protection of the rights of all parties concerned.

Thus, the event of death is an absolute condition for the birth of a legal relationship of inheritance. Conceptually, inheritance law is a set of norms that govern the settlement of the rights and obligations of a deceased person to his or her property [31]. In civil law, three main elements of inheritance are known, namely heirs, heirs, and inheritance [32].

An heir is a person who dies and leaves behind a fortune; heirs are parties who are entitled to receive and replace the position of the heirs in the field of property law; While inheritance is the entire inheritance property after deducting the heir's debts. The distribution of inheritance can be carried out based on the provisions of the law or based on a will made by the heir during his lifetime. A will is a unilateral legal act that only has the force of effect after the heir dies [33]. In general, a will is understood as a statement of a person's last will regarding what he or she wants for his or her property after he or she dies.

In the Civil Code, there are two main forms of wills, namely:

1. *Erfstelling* (appointment of heirs), which is the appointment of one or several people as heirs to receive all or part of the inheritance.
2. *Legaat* (grant of a will), which is the giving of certain objects to someone.

Article 876 of the Civil Code states that an appointment of an heir is a will that gives all or part of the inheritance to one or more people after the heir dies. This provision confirms that a will is a formal legal instrument recognized in the civil law system.

Furthermore, Article 921 of the Civil Code regulates the procedure for calculating inheritance, including the addition of all inheritances, the addition of grants that have been given during lifetime, the reduction of heirs' debts, and the protection of the absolute part (*legitime portie*) of the heirs. This provision shows that the freedom to make a will in the Civil Code is still limited by the protection of absolute heirs' rights. In addition to the Civil Code, the regulation of wills is also contained in the Compilation of Islamic Law (KHI). In KHI, a will can be made orally or in writing, as long as it meets the conditions and the stipulated harmony [35].

A will in Islamic law is limited to a maximum of one-third (1/3) of the entire inheritance, unless all the heirs agree to the gift of more than that limit. This difference shows that there is a philosophical difference between civil law and Islamic law. The Civil Code emphasizes freedom of will (freedom of test) with the limitation of *legitime portie*, while KHI emphasizes the principle of distributive justice based on sharia provisions.

In practice, the legal force of a will is closely related to the form of its creation. A will made in the form of an authentic deed before a notary has perfect evidentiary power. On the other hand, a will under hand has the potential to cause a dispute if its validity is questioned. According to Triwahyuni and Putih Nurfitriani, a will without a notary deed has a fairly high legal risk, especially if it is not supported by adequate evidence [36].

Therefore, although KHI allows oral wills, from the perspective of legal certainty, it is highly recommended that the will be made in written and authentic form. The position of the will on the inheritance that has not been distributed is important, because the will can determine the direction of the distribution of the property. However, its implementation must still take into account the consent of the heirs and not violate the provisions of the absolute section [37].

In practice in the community, especially in rural areas, there are still many who do not understand the making of wills and it is still not a common habit. Many heirs die without leaving a written will, so the distribution of inheritance is carried out based on family deliberation or applicable inheritance law. The absence of a will often causes internal family conflicts, especially if the number of heirs is large and the inheritance is not known for sure. Unclear divisions, the absence of written data on assets, and differences in legal understanding can trigger prolonged disputes.

In the context of customary law, wills are even seen as part of a social practice that develops from generation to generation [38]. This shows that the will is not only normative, but also sociological. From the description that has been explained, the author wishes to research more deeply about the Urgency of Wills in Preventing Inheritance Disputes from the Perspective of Civil Law and Islamic Law", the aim is to avoid inheritance disputes when viewed according to civil law and Islamic law, in order to ensure legal certainty, justice, and protection of the rights of interested parties.

## Methods

This research is a *normative legal research* that places law as a written norm (*law in books*) with a focus on analyzing the applicable positive legal provisions. This research is doctrinal because it relies on written legal materials as the main source in formulating legal arguments. The object of the study is directed at the arrangement of wills in the perspective of the Civil Code and the Compilation of Islamic Law in order to prevent inheritance disputes.

The approaches used include the statute *approach* and the *conceptual approach*. The legislative approach is carried out by examining and analyzing normative provisions related to the regulation of wills, including the principle of protection of the absolute rights of heirs (*legitime portie*) in the Civil Code and the maximum limits of wills in Islamic law. Meanwhile, a conceptual approach is used to build a theoretical foundation on the concepts of will, *freedom of will*, and legal pluralism in the Indonesian legal system based on the doctrines and views of scholars.

The legal materials used consist of primary legal materials (Civil Code and

KHI), secondary legal materials (textbooks, scientific journals, and expert opinions), and tertiary legal materials (legal dictionaries and encyclopedias). The collection of legal materials is carried out through *library research*. Furthermore, all legal materials are analyzed qualitatively normative through grammatical, systematic, and teleological interpretation to obtain a comprehensive understanding of the arrangement of wills in order to prevent inheritance disputes.

## Results and Discussion

This section analyzes the findings of the study by focusing on the legal function and urgency of wills as preventive instruments in inheritance disputes. The discussion is structured around the comparative framework of the Indonesian Civil Code and the Compilation of Islamic Law, with particular attention to the legal validity of wills, the limitations imposed by each legal system, and their implications for dispute prevention. In doing so, this section seeks to demonstrate that the effectiveness of a will lies not only in its normative recognition, but also in its capacity to provide legal certainty and reduce interpretive conflict among heirs.

## Results

A will can be explained along with a statement from a deceased person about something he or she would have wanted. The word from this statement gives legal meaning if the will can be used by one individual. If the statement is a statement from a party, then it can be retracted at any time by the person making the statement [39].

This statement can be created with provisions in the form of a deed that contains the wishes of the person who has created it. Sometimes the making of a will can not be carried out because the heir has died before the will can be made. This causes the abandoned property to be discontinued, eliminated, or diminished from some of the many wills that have been declared by an heir of the heir. Through the applicable legal provisions, this can be implemented. It can be seen that in fact a will requires a legal protection for the recipients of a will [40].

This must of course be the same in the understanding of a law to a will. In the Civil Code Article 875 explains that "what is called a will is a deed that contains a statement of what he wants to happen after he dies, and which can be revoked by the maker." Therefore, from this explanation, the reason for a will may occur if it has an element, as follows:

1. In the form of a deed; In the form of a deed, that is, the will is made with an authentic deed or deed under hand in the form of writing.
2. Unilateral declaration of will; There is a unilateral statement of desire. This desire can trigger a unilateral legal consequence.
3. Died; Death, that is, the will can only be accepted if the person who created the will is dead.
4. Revocable; It can be revoked by the will where the legal behavior of the will may not be carried out if what is written in the will has been revoked by the person who made it.

So if you look at the explanation that has been explained, it can be understood that the heir must make a will that needs to contain all his inheritance, to avoid disputes because the will is very important to be notified to the heirs so that the heirs can realize what assets have been left by the heirs. And the making of a will is also very important to be made in writing or called a deed so that it has legal certainty and legal protection which can then be used as proof in the present or in the future. A will in Islamic law is limited to a maximum of one-third (1/3) of all inheritance, unless all heirs agree to give more than that limit because KHI or the compilation of Islamic law emphasizes the principle of distributive justice based on sharia provisions. The Civil Code emphasizes freedom of will (freedom of test) with restrictions on legitime portie.

## Discussion

According to the Civil Code, "a will occurs in 4 stages of discussion. The four stages of discussion are as follows: [41]. General provisions of the will. The general provisions are regarding the general regulation of wills. In Articles 874 to 894 of the Civil Code, this can be seen. The core of the discussion contains a general explanation of the will, the content of the will statement, the wishes of the testator, the will made in a special or general way, the family relationship of the testator with the will, the will as the benefit of the poor, the will is carried out without discriminating religion.

1. Proficiency in will. The intellect in question is the ability to reason in distinguishing a gain or loss when a person wants to make a will. Such a person cannot make a will if he is not yet 21 years old.
2. Limitations in the will or *legitieme portie*. The restriction is caused by the existence of a part of the heirs which according to the law must be transferred directly to the heirs who cannot be prevented by a decision. Even a decree that is deliberately made to benefit one of the families, whether it is a close blood family or not, without an explanation, can be considered a limitation in the will. The limitation in the will is that it is necessary to look at the heirs, if the heirs are not there either heirs of the

up, down, or out-of-wedlock lines who are recognized according to the law, then the inheritance is granted.

3. Form a will. The form of making the will is made by means of a handwritten deed itself. This is done either by a public/open deed, a secret deed, or a closed deed."

The form of a will according to the Compilation of Islamic Law can be orally with two witnesses, written with two witnesses, or with a notary. Will created orally tends to be no longer used when examined according to the embodiment of flexible Islamic law. Some people have now made a will in the form of a deed for legal provisions [42].

According to what was explained above, several Muslim scholars who said that "actually an authentic deed will be more reliable proof in the present and in the future. Therefore, people tend to make wills in the form of writing or what is called a deed."

According to the Civil Code Article 832, it is stated that "heirs are members of the legal or extramarital blood family as well as husband and wife who live outside marriage and husband and wife who live the longest." Article 833 of the Civil Code also explains that "the heirs by law acquire ownership of all goods, all rights and all receivables owned by a deceased person [43]." Judging from the Civil Code, there are two ways for a person to get an inheritance, namely:

Inheritance System: "heirs who have been determined by law as well as heirs who have been determined by will." Thus, the inheritance system in the Civil Code gives the heir the freedom to determine who will receive his inheritance through a will, but still recognizes the existence of the heirs according to the law as the main basis for inheritance [44]. In practice, these two systems can coexist as long as they do not violate the provisions regarding the absolute share (*legitieme portie*) of a particular heir.

The Legal Basis in the Civil Code articles regarding: *Legitima Portie* (Absolute Part) is regulated in Articles 913 - 916 of the Civil Code, which states that:

- The heirs cannot take the rights of certain parts of the heirs in a straight line (children, parents) through a will. If the heir makes a will that gives all his assets to another party, the will is void as long as it harms the *legitima portie*.
- KHI regulates several forms/types of wills that are important to understand: Based on the Subject of the Recipient of the Will to the Heirs Article 195 of the KHI: A will to the heirs is only valid if it is approved by all other heirs. Without consent, the will is invalid.

Will to Non-Heirs:

- It is regulated in Article 194 of the KHI. A will to a person who is not an heir is valid without the consent of other heirs - as long as it is within the maximum limit (1/3 of the property).
- Will Exceeds One-Third: Can be valid only if the heirs agree, in accordance with Article 195 paragraph (2). If there is no → consent, it will be reduced.

## Will Disputes in the Indonesian Legal System

Will disputes generally arise due to the conflict between the will of the heir and the normative rights of the heirs. In Indonesia's system of legal pluralism, the regulation of wills is subject to the regime of the Civil Code (KUHPercivil) for certain groups and the Compilation of Islamic Law (KHI) for Muslims [45]. This difference in system often raises juridical problems, especially when there are differences in interpretation regarding the validity, limitations, and execution of wills.

From the perspective of the Civil Code, a person's freedom of *testation* is recognized as part of individual rights in civil law. However, this freedom is not absolute because it is limited by the provision regarding *legitime portie*, which is the absolute part that is the right of a certain heir and cannot be abolished by the will of the heir [46]. If the will violates these absolute rights, the heirs have the right to file a reduction lawsuit (*inkorting*) with the court. This is where potential disputes arise, especially when the contents of the will are considered detrimental to one of the parties.

Meanwhile, from the perspective of KHI, a will is limited to a maximum of one-third of the inheritance, unless all heirs agree to it. This provision aims to maintain a balance between the will of the heir and the protection of the rights of the heirs [47]. Disputes often occur when a will exceeds that limit or is made without meeting the formal and material requirements of Islamic law, such as skill, object of will, or elements of coercion.

## Factors Causing Will Disputes

Normatively and empirically, will disputes can be triggered by several factors:

1. The ambiguity of the drafting of the will, which opens up the space for multiinterpretation;
2. Violation of the absolute rights of heirs in the Civil Code;
3. Violation of the one-third limit of property in Islamic law;
4. Formal defects, such as not being made in the form prescribed by law;

## 5. Family conflicts that existed before the heir died.

When a will is made in the form under hand without notary verification, the potential for cancellation becomes greater because its authenticity is prone to questioning [48]. Therefore, making a will in the form of an authentic deed has a strong evidentiary value and can minimize disputes.

### Scholars' Opinions on Will Disputes

In the doctrine of civil law, Subekti in his book *Principles of Civil Law* argues that the freedom to make a will is a manifestation of the principle of freedom of will, but must still be subject to the restrictions determined by law in order to protect the interests of the nuclear family. According to him, the existence of *legitime portie* is a form of legal intervention to maintain justice in family relationships.

In line with that, R. Soeroso in *a Comparative Civil Law* explains that the Western civil inheritance law system prioritizes a balance between individual wills and heirs' protection, so disputes often arise when heirs try to override absolute heirs' rights through wills.

From the perspective of Islamic law, Ahmad Rofiq in *Islamic Law in Indonesia* states that the limitation of a maximum of one-third of the estate is a principle of distributive justice that aims to prevent inequality and conflict among heirs [49]. He emphasized that the approval of the heirs is the key if the heirs want to give more than this limit.

Furthermore, Eman Suparman in *Indonesian Inheritance Law* emphasizes that the pluralism of inheritance law in Indonesia has the potential to cause overlapping norms if it is not understood systematically [50]. According to him, harmonization of interpretation between the Civil Code and KHI is very necessary so that will disputes can be minimized through legal certainty.

From a normative perspective, a will dispute can basically be prevented if:

1. The will is made according to formal and material provisions;
2. Not violating the absolute rights of the heirs or the limit of one-third of the property;
3. Clearly and unequivocally arranged;
4. Made in the form of an authentic deed.

Thus, the existence of a will is not a source of dispute, but a preventive instrument that can actually prevent conflict if it is arranged legally and proportionately. The role of notaries, legal advisors, and public understanding of inheritance law is an important factor in realizing legal certainty and protection

for all interested parties.

## Conclusion

Based on the formulation of the questions and the results of the research, it can be concluded that a will is a legal act that has an important position in the inheritance legal system in Indonesia. A will reflects the last will of the heir whose execution only takes effect after he dies, so his existence must meet formal and material requirements in order to have valid legal force. In the perspective of the Civil Code, the heir's freedom to make a will is limited by the provision regarding *legitime portie* as a form of protection for the absolute rights of the heirs. Meanwhile, in the perspective of the Compilation of Islamic Law, wills are limited to a maximum of one-third of the inheritance, except with the consent of all heirs. Both legal systems basically place the will as a legal instrument, but still within the framework of the protection of the rights of heirs and the principle of justice.

The absence of a will or the making of a will without complying with legal provisions has the potential to cause disputes among heirs, either due to the unclear distribution of assets or the alleged violation of rights. Therefore, the preparation of a written will, especially in the form of an authentic deed, is very urgent to ensure legal certainty, provide legal protection, and function as strong evidence in the event of a dispute in the future. Thus, the urgency of the will does not only lie in fulfilling the last will of the heir, but also as a preventive instrument in preventing inheritance disputes and realizing justice and legal order in the distribution of inheritance.

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