

ENTITLEMENTS TO INHERITANCE FOR CHILDREN OF TNI PERSONNEL IN MARRIAGES NOT COMPLIANT WITH THE MARRIAGE PROCEDURES ESTABLISHED BY THE COMMANDER'S RULING

Rana Mahirah

Rana.mahirah@ui.ac.id

Dr. Abdul Salam, S.H., M.H.

Master of Notarial Law Postgraduate Program, Faculty of Law,
Universitas Indonesia

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Abstract

The marriage process for the Indonesian National Armed Forces or *Tentara Nasional Indonesia* (TNI) personnel is more complex than civilians. A TNI personnel who intends to marry shall obtain permission from their superior, in accordance with the provisions of Article 63 of Law No. 34 of 2004 on the Indonesian National Army, which is further regulated by the Indonesian National Army Commander Regulation No. Perpang/50/XII/2014 on the Procedures for Marriage, Divorce, and Reconciliation for TNI Personnel (Perpang/50/XII/2014). However, in practice, there have been discrepancies in the implementation of the marriage procedure for TNI personnel. One such case occurred in Case No. 22/Pdt.G/2022/PN Sbg, in which the Panel of Judges declared the marriage of a TNI personnel, the late FH, to MS valid, despite the marriage not adhering to the internal procedures set forth by the TNI. A subsequent issue arising from such marriages, which bypass official procedures, concerns inheritance law specifically, the determination of heirs or parties most entitled to inherit the estate of a deceased person. This study examines the procedures for marriage for TNI

personnel and the inheritance rights of children from such marriage, as addressed in the Sibolga District Court Decision No. 22/Pdt.G/2022/PN Sbg. The research employs a doctrinal legal research method, utilizing statutes, books, and journals to obtain clear data through a statutory approach and case law approach. The research findings indicate that the marriage procedures for *TNI* personnel are regulated under Law No. 1 of 1974 on Marriage and Government Regulation No. 9 of 1975 on the Implementation of Law No. 1 of 1974 on Marriage. In Decision No. 22/Pdt.G/2022/PN Sbg, there was an error in determining the inheritance, where the Panel of Judges declared land located on Jalan S/Jalan T as the inheritance of the plaintiff's parents, plaintiff II, plaintiff III, the counterclaim/defendant I, defendant II, defendant III, and the late FH's parents, namely the late CH and the late IS. However, according to inheritance law, if heirs in the first group (primary heirs) are present, heirs in the second, third, and fourth groups are excluded from receiving a share of the inheritance. Therefore, this research recommends that judges, in their role as decision-makers in, should provide a just and balanced rulings for all parties and heirs by applying the principle of justice.

1. Introduction

The role and primary duties of the Indonesian National Armed Forces or *Tentara Nasional Indonesia (TNI)* are to uphold the sovereignty of the state, maintain the integrity of the Unitary State of the Republic of Indonesia, which is based on Pancasila and the 1945 Constitution of the Republic of Indonesia, and to protect all the people and the entire territory of Indonesia from threats and disturbances to the unity of the nation and state. Therefore, every *TNI* personnel is required to adhere to and comply with all applicable regulations.¹ In the life of a *TNI* personnel, which is characterized

¹ Eka Martiana Wulansari, "Hukum Disiplin Prajurit Tentara Nasional Indonesia (TNI) Paska Reformasi", Jurnal RechtsVinding Online, Pg. 3

by discipline, it is essential to have a harmonious marital relationship, one based on mutual understanding, loyalty, respect, trust, and support. Such relationship helps to ensure that soldiers can perform their duties without being significantly distracted by domestic issues.² Marriage is a fundamental right for every individual to establish a family and seek happiness, as articulated in Law No. 1 of 1974 on Marriage (Law 1/1974). According to Law 1/1974, marriage is defined as a physical and spiritual bond between a man and a woman as husband and wife, with the goal of forming a family and a household that is both happy and lasting, based on belief in the One and Only God.³

However, for *TNI* personnel, the process of marriage union is more complex than civilians.⁴ A *TNI* personnel wishing to marry shall obtain permission from their superior,⁵ in accordance with Article 63 of Law No. 34 of 2004 concerning the Indonesian National Armed Forces (Law 34/2004). This requirement is further detailed in the Indonesian National Armed Forces Commander's Regulation No. Perpang/50/XII/2014 (Perpang/50/XII/2014), which governs the procedures for marriage, divorce, and reconciliation for *TNI* personnel. Despite these regulations, there have been instances where the procedural requirements for marriage among *TNI* personnel has not been enforced.⁶ A pertinent example is found in Decision No. 22/Pdt.G/2022/PN Sbg, where the panel of judges upheld the validity of the marriage between a *TNI* personnel, the late FH, and MS, despite their failure to comply with the internal procedures required by *TNI* internal regulations.⁷ The subsequent issue that arises from a marriage that does not follow the established procedure concerns inheritance law, specifically the determination of heirs or those entitled to inherit the property of the deceased. The issue arises regarding the consequences when a marriage is carried out without official registration under the applicable laws, which results in the marriage deemed legally invalid.

According to The Civil Code or *Kitab Undang-Undang Hukum Perdata* (Civil Code), inheritance is defined as one of the ways to acquire ownership rights.⁸

² Frans Simangunsong, "Perkawinan dan Perceraian Anggota TNI menurut Keputusan Menhankam No. KEP/01/I/1980, Ratu Adil, Jurnal Hukum dan Kebijakan Sosial Volume 3 Nomor 1, Pg. 1.

³ Santoso, "Hakekat Perkawinan Menurut Undang-Undang Perkawinan, Hukum Islam Dan Hukum Adat", Jurnal Yudisia, Vol 7, No 2, Desember 2016, Pg. 143.

⁴ Dedi Suryadi, "Penanggulangan Tindakan Poligami yang Bertentangan Dengan Ketentuan Administratif TNI di Lingkungan Kodam VI Mulawarman", Risalah HUKUM Fakultas Hukum Unmul, June 2012, Pg.33-43 Vol. 8, No. 1 ISSN 021-969X

⁵ Halimatus, Sa'adah, "Upaya Bintaldam V/Brawijaya Dalam Pencegahan Perceraian Anggota Tentara Nasional Indonesia (TNI) Angkatan Darat (Studi Kasus di Komando Distrik Militer (Kodim 0833 Kota Malang)". Sakina, Volume.3 Nomor 1. Pg.10. e-ISSN:2580-9865

⁶ Mumtazinur dan Elvina Amanda, "Problematisasi Perceraian tanpa Izin Atasan bagi Anggota TNI (Analisis Putusan Mahkamah Syar'iyah Banda Aceh Nomor 295/Pdt.G/2019/MS-Bna), el-Usrah, Jurnal Hukum Keluarga, Vol 3, No, 1 (2020), Pg. 35.

⁷ Decision No. 22/Pdt.G/2022/PN Sbg.

⁸ Sudarsono, Hukum Waris dan Sistem Bilateral, (Jakarta: Rineka Cipta, 1994), Pg. 2.

Specifically, Articles 832 and 852 letter (a) of the Civil Code stipulates that those entitled to inherit include blood relatives, regardless of whether the marriage was legally formalized, as well as the surviving spouse.⁹ Furthermore, Article 250 of the Civil Code regulates that children born within a lawful marriage have the right to inherit from their deceased parent.

2. Research Method

The type of research conducted by the researcher is doctrinal legal research. The approach used in this research is a combination of the statute approach and the case approach. The statute approach involves research that prioritizes legal materials in the form of statutes and regulations as the primary reference for the study. This approach is carried out by reviewing all relevant laws and regulations pertaining to the issue at hand. Moreover, the case approach builds legal arguments based on concrete cases. This approach involves analyzing cases that are directly related to the legal issues being addressed.¹⁰

3. Results And Discussion

3.1. General Overview of Marriage under Indonesian Law

1) Marriage under Indonesian Law.

Marriage is defined as a bond, both physical and spiritual, between a man and a woman.¹¹ Wirjono Prodjodikoro defines marriage as the cohabitation of a man and a woman who meet certain requirements and a contract that binds both parties, physically and spiritually, based on faith.¹² Meanwhile, R. Subekti stated that marriage is a legitimate bond between a man and a woman intended to last for a long time.¹³ To conduct a marriage, there are several requirements that must be met. Requirements for a legally valid marriage are regulated under Articles 6 to 12 of Law 1/1974, with the primary condition being the mutual consent of the two parties.¹⁴ If any of these conditions are unmet and the parties proceed with the marriage, the marriage is considered legally invalid.¹⁵ In such cases, the marriage may only be valid

⁹ Idris Ramulyo, *Perbandingan Hukum Kewarisan Islam dengan Kewarisan Kitab Undang-Undang Hukum Perdata*, (Jakarta; Sinar Grafika, 2004), hlm 84

¹⁰ Kadarudin, "Penelitian di bidang ilmu hukum (sebuah pemahaman awal)", (Semarang : Formaci, 2021), Pg. 106-107.

¹¹ Taurat Afiati, Ani Wafiroh, Muhamad Saleh Sofyan, "Upaya Pasangan Suami Istri Tidak Memiliki Keturunan Dalam Mempertahankan Keharmonisan Rumah Tangga (Studi Kasus di Desa Siru Kabupaten Manggarai Barat NTT)" *Al-Ihkam: Jurnal Hukum Keluarga Jurusan Ahwal al-Syakhshiyah Fakultas Syariah IAIN Mataram* Des 2022. Vol. 14, No. 2, Pg. 161.

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ Akhmad Munawar, "Sahnya Perkawinan Menurut Hukum Positif Yang Berlaku di Indonesia", *Al' Adl Journal*, Vol. 7 No. 13, 2015, Pg. 25.

¹⁵ Barzah Latupono, "Penyelesaian Perkawinan Yang Tidak Memenuhi Syarat Perkawinan Melalui Istbath Nikah", *Jurnal Hukum dan Pembangunan*, Vol. 49 No.4, 2019, Pg. 960.

under religious law, but it will not be recognized by the state.¹⁶ Consequently, neither spouse can divorce unless there is a religious annulment (*istbath*) to legalize the marriage.¹⁷

According to Law 1/1974, there are two types of marriage requirements: material requirements, which pertain to the conditions inherent to each individual, also known as "subjective requirements," and formal requirements, which pertain to the procedures and formalities involved in conducting a marriage according to both religious law and state regulations, also referred to as "objective requirements."¹⁸ A marriage is considered valid if it meets the requirements and is duly registered, ensuring legal certainty. Then, the marriage will have legal consequences. A man, as a husband, acquires various rights associated with his role within the family, and similarly, a woman, as a wife, gains rights as a spouse. Additionally, both the husband and wife share responsibilities, as they have committed to each other in marriage.¹⁹

According to Article 2 paragraph (2) of Law 1/1974, a marriage is considered valid if it is registered before an official registrar in accordance with the requirements and provisions established by law. For Muslim couples, the marriage shall be registered with the Office of Religious Affairs or *Kantor Urusan Agama* (KUA). Whereas non-Muslim couples could register their marriage at the Civil Registry Office before an official registrar in accordance with the provisions of Article 2 paragraph (2) of Government Regulation No. 9 of 1975.²⁰ The regulation on marriage certificates is stipulated in Government Regulation No. 9 of 1975. According to this regulation, every marriage must be registered before a marriage registrar, and this registration must be proven by a marriage certificate. Thus, a marriage that cannot be proven by a marriage certificate is not considered legally valid.²¹

2) The Procedure of Marriage for Indonesian National Armed Forces or *Tentara Nasional Indonesia* (TNI) Personnel.

In essence, both civilians and *TNI* personnel are required to comply with Law 1/1974. However, with the stipulation of Article 63 of Law 34/2004, the marriage process for *TNI* personnel is more complex than civilians.²² A *TNI*

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ Abdulkadir Muhamad, *Hukum Perdata Indonesia* (Bandung: PT. Citra Aditya Bakti, 2000), Pg. 76.

¹⁹ Rizky Perdana, "Rukun dan Syarat Perkawinan Menurut Hukum Islam di Indonesia", *Lex Privatum*, Vol. 6 No. 6, 2018, Pg. 123-124.

²⁰ *Ibid.*

²¹ *Ibid.*, Pg. 262.

²² Agung Prama Sarno, Asni, Siti Nurul Fatimah, "Perspektif Hukum Islam Terhadap Perkawinan Siri Bagi Prajurit Tni Terhadap Istri Kedua", *QaḍāuNā* Volume 3 Nomor 2 Bulan April Tahun 2022, Pg. 380.

personnel wishing to marry shall obtain permission from their superior, as regulated by the Perpang/50/XII/2014. However, in practice, there are still discrepancies in the implementation of marriage procedures for *TNI* personnel. A subsequent issue arising from marriages conducted without adhering to the prescribed procedures concerns inheritance law, which involves determining the heirs or the parties most entitled to inherit the assets of the deceased. This situation gives rise to the concept of a marriage being legally valid according to religious law, national law, or military law.

Regarding marriage for *TNI* personnel, all procedures are regulated under Chapter III on Perpang/50/XII/2014. First, a *TNI* personnel intending to marry must obtain written permission from the commanding officer or authorized superior.²³ This marriage permit is granted only if the marriage does not violate the religion of the parties, with proven by Religious Official's Statement or *Surat Pendapat Pejabat Agama (SPPA)*.²⁴ In principle, permission is granted to personnel if the marriage demonstrates prospects for happiness and welfare for both parties and will not have a negative impact on military duties.²⁵ Secondly, the marriage must be officially registered with *KUA* for Muslims²⁶, or with the Civil Registry Office for Christians, Catholics, Hindus, Buddhists, and Confucians.²⁷ Third, the marriage permit is valid for only six months, meaning that if the marriage does not take place within six months, the personnel must immediately report the cancellation to the superior who issued the permit, accompanied by a written explanation. Additionally, if the marriage does not occur within the six-month period, the *TNI* personnel must reapply.²⁸ To complete personnel and financial administration, a copy of the marriage certificate from the authorized institution and a copy of the marriage permit must be submitted to the Personnel Officer in the respective unit.²⁹

Marriage permit requests may be denied by the competent authority if:

- a. The character, behavior, or reputation of the prospective husband or wife is inconsistent with societal norms;
- b. There is a reasonable suspicion that the marriage could tarnish or harm the reputation and dignity of the *TNI*, either directly or indirectly;
- c. The requirements for marriage are not met.³⁰

²³ *Peraturan Panglima Tentara Nasional Indonesia tentang Tata Cara Pernikahan, Perceraian dan Rujuk bagi Prajurit, Perpang Nomor 50 Tahun 2014*, hereinafter referred to as *Perpang/50/XII/2014*, Article 8 (1).

²⁴ *Perpang/50/XII/2014*, Article 8 Paragraph (2).

²⁵ *Perpang/50/XII/2014*, Article 8 Paragraph (3).

²⁶ Eman Suparman, *Hukum Waris Indonesia dalam Prespektif Islam, Adat dan BW*, (Bandung; PT Refika Aditama, 2005), Pg. 8.

²⁷ *Perpang/50/XII/2014*, Article 9.

²⁸ *Perpang/50/XII/2014*, Article 10 Paragraph (1-3).

²⁹ *Perpang/50/XII/2014*, Article 10 Paragraph (4).

³⁰ *Perpang/50/XII/2014*, Article 11.

Furthermore, the marriage application must include several documents, submitted at least 15 days before the intended marriage date:³¹

- a. A Statement Letter with details of the names, dates of birth, place of birth, religion, occupation, and address of the prospective husband and wife, and if either has been previously married, the names of former spouses;
- b. A Statement Letter stating the names, religion, occupation, and addresses of the parents of the prospective husband and wife;
- c. A statement from the prospective spouse affirming their willingness to become a soldier's spouse and abide by the norms of military family life;
- d. A Statement Letter from the relevant authority confirming that the prospective husband is 21 years old and the prospective wife is 19 years old;
- e. Parental consent or approval from a designated official if either prospective spouse has not reached the required age;
- f. Parental consent from the father/guardian of the prospective wife;
- g. A Statement Letter from the personnel officer stating the marital status (single or previously married) of the soldier;
- h. A Statement Letter from the relevant authority confirming the marital status (single, widow, or widower) of the prospective spouse;
- i. A divorce certificate from the prospective wife or a death certificate of the previous wife from the prospective husband if either has been widowed;
- j. A police certificate from the local police regarding the behavior of the prospective spouse who is not a soldier;
- k. A Doctor's Statement from a *TNI* doctor regarding the health of the soldier and their prospective spouse;
- l. Six 4x6 photos of the soldier and the prospective spouse;
- m. A baptism or confirmation certificate from the relevant church authority for Protestants, a recent baptismal certificate (no older than six months) for Catholics, and a Sudhi Wadani certificate for Hindus.

Chapter VI on the Authority to Grant Marriage, Divorce, and Reconciliation Permits of Perpang/50/XII/2014, regulates that the authority to grant marriage permits lies with the President for the Commander of the Indonesian National Army and the Chiefs of Staff of the Armed Forces. The *TNI* Commander grants marriage permits to the *TNI* Chief of Staff, Vice Chiefs of Staff, and senior officers at the *TNI* Headquarters. The Chief of Staff of each Armed Force grants permits to senior officers within their respective branches, while the *TNI* Headquarters' Assistant Personnel Officer, as well as heads of relevant military units and regional commanders, may grant permits to mid-ranking officers (Lieutenant Colonel, Major). The final authority to grant permits for junior officers, non-commissioned officers (NCOs), and enlisted

personnel (*Tamtama*) lies with the commanding officers in charge of military units.³² Violations of these regulations are considered breaches of military discipline and are subject to military disciplinary action, which may include administrative sanctions.³³

3.2 The Validity of Marriage of TNI Personnel in Accordance with the Sibolga District Court Decision No. 22/Pdt.G/2022/PN Sbg

According to Article 26 of the Civil Code "The law regards the matter of marriage only in civil relationships," as a civil agreement (*burgerlijke overeenkomst*), which consists of the requirements that must be fulfilled for a marriage to be valid and executable. Subsequently, the formal requirements and procedures for marriage according to the Civil Code are regulated in provisions that essentially stipulate: the intention to marry must be notified to the Civil Registry Officer at the domicile of one of the prospective spouses, either personally or by letter (Article 51 and 52 of the Civil Code), and an announcement must be made by the Civil Registry Officer by posting the notice on the door of the office (summary of Articles 52, 53, and 54 of the Civil Code). Furthermore, a marriage can only be proven with a Marriage Certificate that has been registered in the Civil Registry. However, if the marriages have not been registered, or if the Marriage Certificate is absent from the records, the existence of the marriage must be determined by a court decision (summary of Articles 100 and 101 of the Civil Code). Thus, in Indonesia, marriage is considered a civil relationship, and marriage is governed by Law 1/1974, with the conditions and procedures as outlined in Government Regulation No. 9 of 1975.

In the case of No. 22/Pdt.G/2022/PN Sbg, the Plaintiff, MS, claims to be the legitimate wife of the late FH (a TNI personnel), based on a Christian religious marriage conducted on July 30, 2011, at the Hosana Medan Pentecostal Church and recorded in the Civil Registration Office of Medan City on April 23, 2012. MS filed a lawsuit against the family of the late FH, consisting of Defendants I, II, and III, asserting her right to the inheritance of the deceased. Additionally, several other parties, including the government and related companies, were also named in the lawsuit. MS and the late FH had a child, RNH, but FH's family denied the validity of the marriage, claiming that FH died unmarried and had no children, and contended that the marriage was invalid since RNH was born only four months after the claimed marriage. Although MS did not seek to have her marriage legally validated, the Panel of Judges considered the legitimacy of the marriage. Several parties including FH's family and the TNI, stated that FH was listed as single in his official records up to his

³² Perpang/50/XII/2014, Article 19.

death. However, witnesses confirmed that MS and FH had conducted religious marriage union on July 30, 2011, and that their marriage was recorded in the Civil Registration Office of Medan.

Based on the decision, the Panel of Judges ruled that the marriage between MS and the late FH was legally valid. Even though the marriage had not been officially registered in the military records and had not been formally recorded by the *TNI*, the Judges held that the religious marriage, performed according to the Christian faith of the Plaintiff and the deceased, was valid. Additionally, the marriage had been officially registered in the Civil Registry, in accordance with the provisions of Article 2 paragraph (1) of Law 1/1974, which states that "A marriage is valid if performed according to the laws of their respective religions and beliefs," and Article 2 (2) of the same law, which stipulates that "Every marriage shall be registered according to applicable laws and regulations." The Judges opined that the *TNI*'s formal registration of marriage was merely an administrative requirement, and the lack of parental consent or a church endorsement did not invalidate the marriage.

However, in the author's view, if the Judges were convinced that FH was a *TNI* personnel, they should have also referred to the legal basis in Article 63 of Law 34/2004, which is part of the regulations referred to in Article 2 of Law 1/1974. As stated in Article 63 paragraph (1) of Law 34/2004, "Marriage, divorce, and reconciliation for every soldier shall be carried out based on regulations." Furthermore, Article 63 paragraph (2) specifies that "The implementation as referred to in paragraph (1) is regulated by a decree from the Commander of *TNI*." To implement this mandate, the *TNI* Commander issued Regulation No. 50 of 2014 on the Procedures for Marriage, Divorce, and Reconciliation for *TNI* Soldiers. Article 6 (1) of this regulation states that "Every soldier intending to marry must first submit a written request for permission to the authorized Commander/Supervisor of their unit." Article 6 (2) further stipulates that "The prospective husband/wife must meet with the Commander/Supervisor and the religious officer in their unit to receive guidance on the upcoming marriage."

The legal basis for the execution of marriage so that it can be recognized by the state must be in accordance with Law 1/1974, which means that all Indonesian citizens must comply with the legal requirements for marriage.³⁴ Additionally, as part of the civil service, military personnel's marriages are also regulated under government regulations as part of the implementing provisions of the marriage law. These regulations are outlined in Government Regulation No. 9 of 1975 on the Implementation of Law No. 1 of 1974 on

³⁴ Wiratni Ahmadi, "Hak dan Kewajiban Wanita dalam Keluarga menurut Undang-Undang No. 1 Tahun 1974 tentang Perkawinan", *Jurnal Hukum Pro, Justitia*, Oktober 2008, Volume 26 No 4.

Marriage, Perpang/50/XII/2014, and the Decree of the Chief of Staff of the Indonesian Army (*Kasad*) No. Kep/496/2015 on the Procedures for Marriage, Divorce, and Reconciliation for Indonesian Army Personnel. These regulations are designed as implementing measures for marriage procedures for military personnel, and therefore, the execution, requirements, and procedures for military marriages must adhere to these provisions.

Based on Article 19 of the Decree of the Chief of Staff of the Indonesian Army No. Kep/496/2015, the procedure for obtaining marriage approval for Catholic/Christian military personnel requires fulfilling the necessary requirements to obtain a Marriage Permit from the designated official with the authority to issue such permits after fulfilling the procedural requirements submitted in a hierarchical manner within the unit, along with the supporting evidence of *SPPA* according to the military personnel's assigned duty station. Therefore, to proceed with a military personnel's marriage, a written application must be submitted to the commanding officer in the unit, seeking approval for the issuance of a Marriage Permit with the administrative requirements that must be met. According to Article 6, paragraph (2), letter g, of Government Regulation No. 9 of 1975, the conditions for marriage that must be fulfilled include: "written permission from the official appointed by the Minister of Defense/Commander of the Armed Forces, if one or both of the prospective spouses are members of the Armed Forces," as is the case in the *a quo* case, where the late Serka FH was a member of the Indonesian Army (*TNI Angkatan Darat*), as referred to in the definition of Armed Forces members in this law. Furthermore, Government Regulation No. 9 of 1975, Article 7, paragraph (1) stipulates, "The result of the investigation as referred to in Article 6, shall be written by the Registrar Officer in a register designated for that purpose," and paragraph (2) states, "If the investigation reveals any obstacles to the marriage as referred to in the law, or if the requirements stipulated in Article 6, paragraph (2) of this Government Regulation have not been fulfilled, such circumstances shall be immediately notified to the prospective spouses or their parents or representatives." This is in accordance with the provisions of Article 6, paragraph (2), letter g, as well as the provisions of the TNI Commander's Regulation No. Perpang/50/XII/2014 and the Chief of Staff of the Indonesian Army's Decree No. Kep/496/2015 concerning the procedures and regulations for the issuance of a Marriage Permit, also referred to in this law as "written permission from the official appointed by the Minister of Defense/Commander of the Armed Forces."

Therefore, the author agrees with the Panel of Judges in the ruling of Case No. 22/Pdt.G/2022/PN Sbg, concluding that the marriage was still valid because, materially, the marriage did occur, even though administratively it

was only recorded incorrectly as a civilian marriage. According to Article 2 (2) of Law No. 1 of 1974 on Marriage, "Every marriage shall be registered according to the applicable laws and regulations." This provision does not determine the validity of the marriage itself but provides a mechanism for proving that the marriage indeed occurred. Consequently, the registration is merely an administrative act. The purpose of registering a marriage is to ensure the clarity of the marital event, both for the individuals involved and for third parties. This is because the registration is documented in an official record that is included in a special registry for such matters, making it accessible to interested parties and usable as authentic evidence. This document can confirm or prevent other actions related to the marriage.³⁵

3.3 Inheritance Law in Indonesia

Inheritance law regulates the transfer of assets (rights and obligations) from the deceased to one or more heirs. Another definition of inheritance law encompasses all regulations that govern the wealth of the deceased, specifically regarding the transfer of such wealth, its consequences for the heirs, and the relationships between them and third parties.³⁶ In Indonesia, inheritance law is based on the Civil Code, Islamic Law, and customary law. The inheritance system under the Civil Code follows an individual-bilateral model. This means that each heir is entitled to claim a share of the inheritance and receive their rightful portion, whether from the father's or the mother's estate. The fact that heirs have the right to claim their inheritance shows that the inheritance system regulated by the Civil Code is "individual absolute."

On the other hand, the inheritance system under customary law is individual-collective, whereas the system under Islamic law is individual-bilateral. Islamic inheritance law does not recognize an absolute right to the distribution of inheritance or allow inheritance to remain undivided. Instead, it follows a process of mutual consultation. The inheritance system in the Civil Code applies to Europeans and those regarded as equivalent to Europeans, the Chinese and other foreign Eastern groups, as well as native Indonesians who subject themselves to it.³⁷ According to the Civil Code, the individuals who are entitled to inherit are classified into four categories of heirs:³⁸

- (1) First Group of Heirs (*Golongan I*) = Consists of the surviving spouse and children (and their descendants) (Article 852 of the Civil Code);
- (2) Second Group of Heirs (*Golongan II*) = Includes parents (both father and mother), siblings, and their descendants (Article 854, paragraph 1 of the Civil Code);

³⁵ K. Wantjik Saleh, *Hukum Perkawinan Indonesia*, (Jakarta : Ghalia Indonesia, 1982), hlm. 14-15.

³⁶ Meliala, Djaja S. "Hukum Waris Menurut Kitab Undang-Undang Hukum Perdata." (2018), Pg. 4-5.

³⁷ *Ibid*, Pg. 2-3.

³⁸ R Subekti, *Pokok Pokok Hukum Perdata*, cet. XXVI, (Jakarta Intermasa 1985) Pg. 17.

- (3) Third Group of Heirs (*Golongan III*) = Consists of the family members in the upward line beyond the parents (Article 853 of the Civil Code); and
- (4) Fourth Group of Heirs (*Golongan IV*) = Consists of family members in lateral lines, up to the sixth degree (Article 858 of the Civil Code) There are

It is regulated under Article 42 of Law 1/1974 that a legitimate child is a child born within or as a result of a valid marriage. Furthermore, Article 250 of the Civil Code stipulates that every child born or conceived during the marriage shall be recognized as the husband's child. From these provisions, it could be concluded that the legitimacy or illegitimacy of a child's status is highly dependent on the validity of the parents' marriage.³⁹ The fundamental principle of inheritance under Article 832 of the Civil Code is that there must be a blood relationship between the deceased and the heirs, except for a spouse who is still legally married to the deceased at the time of death.⁴⁰ This means inheritance rights for the spouse, children, or other heirs are contingent on being legally bound in marriage at the time of death.

3.4 The Inheritance Rights of Children from the Marriage of TNI Personnel (Case Study: Decision of the Sibolga District Court Number 22/Pdt.G/2022/PN Sbg)

In the Decision Number 22/Pdt.G/2022/PN Sbg, it was stipulated that MS was in a legally valid marriage, or outside of marriage according to the law. Because, only individuals with a blood relationship to the deceased are entitled to inherit, whether directly as descendants or as parents, siblings, grandparents, or their descendants. According to four categories of heirs as elaborated in the previous subchapter, the heirs in The First Group of Heirs are given priority based on the law. This means that heirs in The Second Group of Heirs cannot receive inheritance if heirs in The First Group of Heirs are still alive. Conversely, The Second Group heirs can inherit if there are no heirs in The First Group of Heirs.

However, as the judges concluded in the Decision Number 22/Pdt.G/2022/PN Sbg, the marriage between MS and the late FH was legally valid, as it had been conducted according to Christian religious union and was officially recorded with the state. According to inheritance law under Article 830 of the Civil Code, inheritance rights open (become inheritable) upon the death of the deceased. Article 832 of the Civil Code stipulates that a blood relationship shall exist between the deceased and the heirs, except for a surviving spouse who is still legally married at the time of the deceased's death. If the marriage had

³⁹ Abdul Hamid Dunggio, Zulkarnain Suleman dan Dedi Sumanto, "Status Hukum Anak Diluar Nikah Dalam Perspektif Fikih Islam Dan Hukum Positif Indonesia", *As-Syams: Journal Hukum Islam* Vol. 2, No. 1. Februari 2021, Pg 15.

⁴⁰ Ahmad Harashta Hasya dan Endang Suparsetyani, "Analisis Yuridis Terhadap Pembagian Harta Warisan Almarhum Iwan Rusli Kepada Ahli Waris Menurut Ketentuan Kitab Undang-Undang Hukum Perdata (Studi Putusan Pengadilan Negeri Bekasi Nomor 153/PDT.G/2014/PN.BKS)", *Jurnal Reformasi Hukum Trisakti* Vol. 2 No. 2 (2020): Reformasi Hukum Trisakti, Pg. 4.

been dissolved before the death of the deceased, the spouse would not be considered as an heir. Therefore, individuals who are outside the marriage relationship are not considered heirs.

The marriage in question refers to a marriage that is legally recognized under Law 1/1974, where the implementation of this law must follow the provisions of other relevant legislation. Therefore, the claims of the plaintiff to be an heir of The First Group of Heirs must be supported by proof that the plaintiff was indeed in a legally binding marriage in accordance with the law. In the Sibolga District Court decision, MS and RNH, as heirs of The First Group of Heirs, are entitled to inherit from the late FH as legally recognized heirs. They are entitled to inherit the following assets from the deceased:

- a. A plot of land located on G.K Street, measuring approximately 120 m².
- b. Cash amounting to IDR 72,406,000.00 (Seventy-two million four hundred six thousand Rupiah);
- c. One (1) unit of Honda Spacy automatic motorcycle, black color, 2012 model, registered under the name NF;
- d. A savings account book from Bank BRI registered in the name of the late FH; and
- e. Two (2) Android smartphones, one OPPO white color and one Samsung white color.

However, there is ambiguity regarding one of the inherited assets, namely the land on S Street/T Street. This land is still registered in the name of CH. According to witness statements, it was concluded that this land had already been allocated to the late FH through a lottery system. The judges held that such a method was inappropriate for inheritance distribution. They ruled that the distribution of inheritance should consider the legitimate portion of all heirs. Therefore, the court declared that this land belonged to the inheritance of the parents of the plaintiffs (I, II, and III), the reconventional defendants (I, II, and III), and the late FH, namely the late CH and the late IS. The issue in this ruling is that when the deceased leaves behind The First Group of Heirs, heirs in The Second, Third, and Fourth Group of Heirs are excluded from the inheritance and do not receive any portion.

4. Conclusion

The marriage procedure for *TNI* is indeed different from that of civilians. However, the legal basis for marriage involving *TNI* personnel still refers to Law 1/1974 and Government Regulation No. 9 of 1975 on the Implementation of Law No. 1 of 1974 on Marriage. The difference in the marriage procedure for *TNI* personnel lies in the specific requirements regulated under Perpang/50/XII/2014. These additional requirements include: First, *TNI*

personnel wishing to marry must obtain written permission from the authorized Commander/Superior, which will only be granted if the marriage does not violate the religion adhered to, as evidenced by the *SPPA*. In principle, marriage approval will be given to a soldier if it demonstrates the prospect of happiness and well-being for the prospective husband/wife and will not have a negative impact on the military service. Second, the marriage must be officially registered at the *KUA* for Muslims, and at the Civil Registry Office for Christians, Catholics, Hindus, Buddhists, and Confucians. Third, the Marriage Permission Letter is only valid for six months. If the marriage does not take place within this period, the soldier must promptly report the cancellation to the superior who granted the permission, along with a written explanation. Additionally, if the marriage is not conducted within the six months, the soldier must submit a new request. For personnel administration and financial purposes, copies of the marriage certificate from the competent authority and the marriage permit must be submitted to the Personnel Officer at their unit.

Regarding inheritance rights of children from the marriage of *TNI* personnel, as stated in the Sibolga District Court Decision No. 22/Pdt.G/2022/PN Sbg, there is an inconsistency. The panel of judges in Decision Number 22/Pdt.G/2022/PN Sbg made an error in determining the inheritance for RNH, as the initial issue of the case concerns the validity of the marriage. However, this issue impacts RNH, who is considered the legitimate child of the late FH and MS. The judges ruled that the marriage was valid. According to inheritance law under the Civil Code, the First Group of Heirs would be the rightful heirs. However, in the Decision's verdict of case No. 22/Pdt.G/2022/PN Sbg, the panel stated that the land on Jalan S/Jalan T was inherited from the parents of the plaintiffs (Plaintiff I, Plaintiff II, Plaintiff III, Counterclaim Defendant I, Defendant II, Defendant III, etc.), and the late FH, namely the late CH and the late IS. However, the judges did not further elaborate that this inherited property should be considered as the rightful inheritance of MS and RNH, as the heirs of the late FH. Therefore, if the verdict is only written as above, it would lead to legal uncertainty, as, in principle, if there are heirs in The First Group of Heirs, heirs in The Second, Third, and Fourth Group of Heirs are excluded from the inheritance and do not receive any portion.

References

Abdul Hamid Dunggio, Zulkarnain Suleman dan Dedi Sumanto, "Status Hukum Anak Diluar Nikah Dalam Perspektif Fikih Islam Dan Hukum Positif Indonesia", As-Syams: *Journal Hukum Islam* Vol. 2, No. 1. Februari 2021, Pg. 12-24.

- Abdulkadir Muhamad, "*Hukum Perdata Indonesia*" (Bandung: PT. Citra Aditya Bakti, 2000).
- Agung Prama Sarno , Asni, Siti Nurul Fatimah, "Perspektif Hukum Islam Terhadap Perkawinan Siri Bagi Prajurit Tni Terhadap Istri Kedua", *QaḍāuNā* Volume 3 Nomor 2 Bulan April Tahun 2022, Pg. 378-391.
- Ahmad Harashta Hasya dan Endang Suparsetyani, "Analisis Yuridis Terhadap Pembagian Harta Warisan Almarhum Iwan Rusli Kepada Ahli Waris Menurut Ketentuan Kitab Undang-Undang Hukum Perdata (Studi Putusan Pengadilan Negeri Bekasi Nomor 153/PDT.G/2014/PN.BKS)", *Jurnal Reformasi Hukum Trisakti* Vol. 2 No. 2 (2020): Reformasi Hukum Trisakti, Pg. 1-22.
- Akhmad Munawar, "Sahnya Perkawinan Menurut Hukum Positif Yang Berlaku di Indonesia", *Al' Adl Journal*, Vol. 7 No. 13, 2015, Pg. 21-31.
- Barzah Latupono, "Penyelesaian Perkawinan Yang Tidak Memenuhi Syarat Perkawinan Melalui Istbath Nikah", *Jurnal Hukum dan Pembangunan*, Vol. 49 No.4, 2019, Pg. 959-967.
- Dendi Suryadi, "Penanggulangan Tindakan Poligami yang Bertentangan Dengan Ketentuan Administratif TNI di Lingkungan Kodam VI Mulawarman", *Risalah HUKUM Fakultas Hukum Unmul*, Juni 2012, Hal.33-43 Vol. 8, No. 1, Pg. 33-43.
- Eka Martiana Wulansari, "Hukum Disiplin Prajurit Tentara Nasional Indonesia (TNI) Paska Reformasi", *Jurnal RechtsVinding Online*, volume 8, No.1, Pg. 1-7.
- Eman Suparman, "*Hukum Waris Indonesia dalam Prespektif Islam, Adat dan BW*", (Bandung; PT Refika Aditama, 2005)
- Frans Simangunsong, "Perkawinan dan Perceraian Anggota TNI menurut Keputusan Menhankam No. KEP/01/I/1980, Ratu Adil, *Jurnal Hukum dan Kebijakan Sosial Volume 3 Nomor 1*, Pg. 1-7.
- Halimatus, Sa'adah, "Upaya Bintaldam V/Brawijaya Dalam Pencegahan Perceraian Anggota Tentara Nasional Indonesia (TNI) Angkatan Darat (Studi Kasus di Komando Distrik Militer (Kodim 0833 Kota Malang)". *Sakina: Journal of Family Studies*, Vol.3 Issue 4, 2019, Pg. 1-13.

Idris Ramulyo, *"Perbandingan Hukum Kewarisan Islam dengan Kewarisan Kitab Undang-Undang Hukum Perdata"*, (Jakarta; Sinar Grafika, 2004)

K. Wantjik Saleh, *"Hukum Perkawinan Indonesia"*, (Jakarta : Ghalia Indonesia, 1982)

Kadarudin, *"Penelitian di bidang ilmu hukum (sebuah pemahaman awal)"*, (Semarang : Formaci, 2021)

Meliala, Djaja S. *"Hukum Waris Menurut Kitab Undang-Undang Hukum Perdata."* (2018)

Mumtazinur dan Elvina Amanda, "Problematisasi Perceraian tanpa Izin Atasan bagi Anggota TNI (Analisis Putusan Mahkamah Syar'iyah Banda Aceh Nomor 295/Pdt.G/2019/MS-Bna), *el-Ussrah, Jurnal Hukum Keluarga*, Vol 3, No, 1 (2020), Pg. 36-52.

Peraturan Panglima Tentara Nasional Indonesia tentang Tata Cara Pernikahan, Perceraian dan Rujuk bagi Prajurit, Perpang Nomor 50 Tahun 2014, hereinafter referred to as Perpang/50/XII/2014.

Putusan Nomor 22/Pdt.G/2022/PN Sbg, (2022) MS Melawan EH, EH, BMH

R Subekti, *"Pokok Pokok Hukum Perdata, cet. XXVI"*, (Jakarta: Intermasa, 1985)

Rizky Perdana, "Rukun dan Syarat Perkawinan Menurut Hukum Islam di Indonesia", *Lex Privatum*, Vol. 6 No. 6, 2018, Pg. 122-129.

Santoso, "Hakekat Perkawinan Menurut Undang-Undang Perkawinan, Hukum Islam Dan Hukum Adat", *Jurnal Yudisia*, Vol 7, No 2, Desember 2016

Sudarsono, *"Hukum Waris dan Sistem Bilateral"*, (Jakarta; Rineka Cipta, 1994)

Suprima, Wardani Rizkianti, Khoirur Rizal Lutfi, "Implikasi Hukum Penunjukan Ahli Waris Berdasarkan Klausul Asuransi Dalam Perspektif Hukum Waris Perdata, *Jurnal ESENSI HUKUM*, Vol. 1 No. 1, 2019

Taurat Afiati, Ani Wafiroh, Muhamad Saleh Sofyan, "Upaya Pasangan Suami Istri Tidak Memiliki Keturunan Dalam Mempertahankan Keharmonisan Rumah Tangga (Studi Kasus di Desa Siru Kabupaten Manggarai Barat NTT)" *Al-Ihkam: Jurnal Hukum Keluarga Jurusan Ahwal al-Syakhshiyah Fakultas Syariah IAIN Mataram* Des 2022. Vol. 14, No. 2, Pg. 161-184.

Wiratni Ahmadi, “Hak dan Kewajiban Wanita dalam Keluarga menurut Undang-Undang No. 1 Tahun 1974 tentang Perkawinan”, *Jurnal Hukum Pro, Justitia*, Oktober 2008, Volume 26 No 4.