

# Due To the Law of The Court's Establishment Regarding the Status of Not Attendance with The Instruction

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**Abstract.** The state of absence does not eliminate a person's status as a legal subject, but someone who is not present continuously will have legal consequences. This is because it cannot be ascertained whether he has died or is still alive. A person who is not present cannot perform his obligations as a legal subject until the time he returns. This research was conducted using a qualitative method, collecting all information related to the process/procedure and the legal consequences of court decisions regarding the absence of inheritance for inheritance. The researcher will present the results of this research in an analytical descriptive manner by comparing the determination of the absence of attendance at the Tegal District Court with the relevant laws and regulations. The results showed that the process/procedure for determining the status of absenteeism at the Tegal District Court in practice was under the provisions of the existing laws and regulations. The difference lies only in the payment of witnesses. Supposedly, the cost of witnesses by the District Court, but in practice, the costs of witnesses are borne by the Petitioner.

**Keywords:** Not Attendance; nstruction; Regarding

## 1 Introduction

When a person is born, parents should care for, raise, and provide their children with love. On the other hand, children have obligations that they must fulfill when their parents can no longer provide for them. When a new child is born, the child is still in the throes of both parents until he is an adult (BW (Burgerlijk Wetboek) Civil Code Article 330 stipulates that the adult age limit is 21 years old or when the child gets married). When the child grows up, he will get married, and new tasks arise that must be carried out. He is obliged to work and support his family and manage property together.[1] When a person as a legal subject die, it means that the person loses the right to enjoy and loses their civil rights because there will automatically be a transfer of rights to property owned by the legal subject who has died to their family/parties who are entitled to leave by the testator, namely assets, debts and costs arising from the death of a person.[2]

The death of a person will bring legal effects and consequences to oneself, family, society, and the surrounding environment. In addition, death creates obligations for other people related to the management of the body. Legal consequences also arise automatically, namely the existence of legal knowledge concerning the rights of their families (heirs) to all their inheritance.[3]

Problems occur when someone is declared missing/unknown to exist in this modern era, many events can cause a person to be absent, such as disasters, natural disasters, ship sinking that occurs can cause a person to be unable to attend and lose contact with his family in a state of emergency—forcing natural disasters that allow a person to be separated from his family members.

Last month there was a natural disaster in Palu and Donggala which caused the victim's whereabouts to be unknown. This proves that natural disasters can cause someone to be declared absent. Transportation damage can also cause someone to have a state of absence from a plane crash such as Lion Air JT 610, which caused loss of contact between family members of the victim; only 37 people were found and 57 identities, two meaning it was possible that some of them could not be found.

In addition to the two things mentioned above, human physical disease (Alzheimer's amnesia) can also cause a person to be in an absent state; both of these diseases affect a person's memory which allows a person to leave if the person leaves the place without being known, there is a possibility of not returning.

Absence is a condition in which a person is not at his place of residence, and his whereabouts are not known. Not being in this place does not stop a person's rightful authority; that person still carries out the rights and obligations as an object of the law. By not knowing his whereabouts, there will be problems regarding the person's legal status. This relates to other people's interests, such as the legal status of other people, such as the family's legal status, and a legal aspect, among others, regarding that person's assets.

## **2 Research Methods**

In this study, the data used are primary data and secondary data. Primary data is data obtained from first-hand/ sources that others have never processed. Secondary data is data obtained by researchers who other people have previously processed. This secondary data was obtained from the materials. This approach is carried out by reviewing all laws and regulations related to the legal problems faced. This statutory approach, for example, is carried out by studying the consistency/compatibility between the Constitution and the law or between one law and another.

In this study, the data used are primary data and secondary data. Data collection techniques used in this research are literature study and field study. The literature study was carried out by collecting various laws and regulations, literature, previous research results from other researchers, and accessing the internet related to the problems in this study. The field study was conducted by interviewing parties related to this issue and the judge who determined someone was absent.

## **3 Results and Discussion**

### **3.1 Someone declared missing / not known whereabouts**

The Civil Code Law BW (Burgerlijk Wetboek) Article 330 stipulates that the adult age limit is 21 years old or when a child gets married). When the child grows up, he will get married, and new tasks arise that must be carried out.[4] He is obliged to work and support his family and manage property together. When a person as a legal subject dies, it means that the person loses the right to enjoy and loses their civil rights because there will automatically be a transfer of rights to property owned by the legal subject who has died to their family/parties who are

entitled to leave by the testator, namely assets, debts and costs arising from the death of a person.[5]

The death of a person will bring legal effects and consequences to oneself, family, society, and the surrounding environment; in addition, death creates obligations for other people related to the management of the body. Legal consequences also arise automatically, namely the existence of legal knowledge concerning the rights of their families (heirs) to all their inheritance.[6] Problems occur when someone is declared missing/unknown to exist in this modern era, many events can cause a person to be absent, such as disasters, natural disasters, ship sinking that occurs can cause a person to be unable to attend and lose contact with his family in a state of emergency. Forcing / natural disasters allow a person to be separated from his family members.

### **3.2 With the status of the state not present in inheritance**

Sometimes, someone leaves their place of residence for a specific time (long and so on) for a need/ interest or an event without authorizing someone to take care of their interests. One of them can influence so that it will cause difficulties for other parties who have a relationship with that person.

Systematics regarding missing persons or persons in the absence and their solutions. Regarding the background of western civil law, which the Civil Code guides, it is necessary to regulate the issue of afwezigheid because the legislators predict that in afwezigheid conditions, there will be legal uncertainty because, in essence, even though the person's whereabouts are not known, it does not mean that the rights of that person will be lost. Automatically.

As described by Satrio in his book, the 'state of absence' cannot be said to directly affect a person's legal position because of people who are not present. At the same time, they are still alive, have legal authority, and are capable of acting. If it turns out that there will be temporary management of his assets, then the management can be stopped. That person can take over all his property management or appoint another person to represent his interests. Indeed, indirectly there could be consequences. For example, the dissolution of a marriage due to the past. Satrio concluded that those who were absent were those who left their homes for a relatively long time without appointing another person to represent and manage their interests.

Therefore, the problem of the absence of someone in inheritance is not easy; for example, in the articles described as follows: a. Article 44 paragraph (4) of Law no. 23 of 2006 concerning Population Administration mentions one relevant condition, namely the phrase 'unclear where a person is due to missing.' It is stated as follows: "If a person's whereabouts are unclear because he is missing or dead, but his body is not found, the registration by the Civil Registration Officer will only be carried out after a court decision is made"; b. Article 45 paragraph (3) of the same law regulates Indonesian citizens who are missing outside the territory of Indonesia.

However, this law does not define what is meant by a person who is declared missing. In the definition of population events, there is no mention of 'lost.' Population events are events experienced by residents that must be reported because they have an impact on the issuance or change of Family Cards, Identity Cards, and other residence certificates, including moving in a change of address, and status of limited residence to permanent residence.

In-Law no. 12 of 2006 concerning Citizenship, also known as the phrase 'declared missing' even though in the context of losing Citizenship. So, in this case, it is not the person who is declared missing but his nationality.

Burgerlijk Wetboek (BW) or the Civil Code recognizes what is called afwezigheid, which translates as 'a state of absence'. This absence is known as non-appearance (Martin Basiang,

2009: 9). This condition is linked to Articles 463-465 BW. 'State of absence' is taken from Article 463, but it is not explained by 'state of absence.'

In everyday language, absence can be interpreted as a condition where people leave their homes or are not in place. However, civil expert J Satrio raises an interesting question: what is this definition meant by legislators? In his book, *Personal Law, Part I Person Natural* (1999), Satrio explains the meaning of *afwezigheid* by referring to Article 463 and Article 467 BW. These two articles contain more or less the same elements.

Article 463 BW states, "if it happens, a person has left his place of residence, by not giving power of attorney to a representative, to represent himself and manage his assets, even if he does not regulate the affairs and interests, or even if the granting of power to his representative does not if there is an urgent reason to take care of all or part of the assets or to appoint a representative for him.

### **3.3 The legal consequences of someone's absence**

In the BW conception, the legal consequences of absence include: taking temporary action; and being declared possibly dead (*vermoedelijk overlijden*). In the case of a temporary measure, those interested in it or the prosecutor's office are entitled to apply for a temporary measure. The statement that perhaps death is possible in Article 467 BW is after a person has left his place of residence for five years without appointing an attorney to take care of his interests. Meanwhile, Article 470 BW uses ten years, and 'the absentee' has appointed a proxy.

In addition to the above period, *Staatblad* 1922 No. 455 states that the statement of possible death for the crew or passengers of a ship or aircraft is one year from the latest news. If there is no news, it is calculated from the day of departure. In this context, perhaps the case of the missing Malaysian plane MH370 and all its passengers and crew can be used as an example. The exact time, one year, applies if the person is missing in a fatal event on a ship or airplane. Article 258 of Law no. 17 of 2008 concerning Shipping states that in a ship accident, the government is responsible for searching for people who have experienced disasters in Indonesian waters. The agency in charge of the search and rescue operational responsibility is carried out.

According to J Satrio, uncertainty about whether the player is still alive or not present plays a significant role. Suppose it turns out that from the results of technological examinations, such as in the case of KM Sinar Bangun on Lake Toba, it is certain that the victims have died. In that case, there are legal rules that regulate the legal consequences themselves. To ensure that a person has died, the heirs or other interested persons shall apply for the determination to the competent district court.

An example of the determination of someone being declared missing in the East Jakarta District Court Decree No. 392/Pdt.P/2014. The application was submitted by MP, the biological child of the person who was declared missing. MP applied determination by submitting proof of residence documents, accompanied by witnesses who explained that APP, MP's biological father, had been missing since July 18, 2012, and was never found until the application was submitted. MP also submitted evidence of a missing person report to the Pasar Rebo Police and made a search advertisement in Pos Kota, but to no avail. The examining judge finally decided to grant the petition and 'determined that the applicant's father named APP (abbreviated) had disappeared and his whereabouts were unknown since July 18, 2012, until this application was registered".

The court's decision to declare a person may have died is very important. Article 468 BW stipulates that if on a third summons a person who may be declared missing or his attorney does not appear before him, even though it has been advertised in the newspaper, then at the request

of the prosecutor, the court may state that there is a legal suspicion that a person has died since the day they are deemed to have died—left his residence or since the day of the last news about his still life, which day must be clearly stated in the decision.

#### **4 Conclusion**

Persons with the status of being absent in the inheritance That state of absence (*afwezig*) is a person who leaves his place of residence for a relatively long period without appointing another person to represent and manage his interests. Sometimes, someone leaves their place of residence for a particular time (long and so on) for a need/ interest or an event without authorizing someone to take care of their interests. One of them can influence so that it will cause difficulties for other parties who have a relationship with that person—the legal consequences of a court ruling regarding the status of the condition of being absent in inheritance.

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