

The Jurisdiction of the Successor in Law and Jurisprudence Iran

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ABSTRACT

Objective: This study was an investigation of the authorities and duties of the Executor of a testator's will in Iranian law and jurisprudence. Law has given the executor the right to assign in his testament some person(s) to manage some affairs or bring about changes. The affairs may generally be related to the estate of the deceased or raising the testator's minor children and managing their properties. **Methodology:** Article 1188 in this regard stipulates that, "either the father or grandfather, after the other's death, can assign an executor for his children who are under his guardianship, to take care of them after his death and manage their properties". The executor, assigned by the guardian, will have all the authorities as the guardian. Executorship for managing the minor's possessions may be limited to a particular issue in which case the executor will behave within the boundaries of the executorship. **Results:** If the executorship is "absolute", the executor is bound to not carry out anything that would involve mischief that causes harms to persons under guardianship including leasing or renting the properties, paying off the debts or collecting the claims. **Conclusion:** The executor can sell the properties of people under guardianship, even the unmovable ones, if it means no harm or loss to the people, and there is no need for the prosecutor's permission for doing so, as the executor represents the forcible guardian, and the guardian does not need the prosecutor's permission for his deeds.

1. Introduction

Death is always between a man and reserves, which are throws and maintain power, he is captured or increase it. Hence everyone wants reserve material or spiritual, and after the death of her possessions have Your actions or maintain it, the will needs (Anderson, 1965).

Sometimes life is not so goes the affairs of their choice, the choice to be someone else or law. The man took his own life after life can decide to take the decisions will be taken in the form.

Means the executor advice, wills, the order picker and come. In terms of jurisprudence, who agrees order after his death no one will interfere in the affairs of his property seized, connects say. In other words, the executor of the will of the people say that after death, by Wills, the manipulation of the deceased's property. But will have a variety (An-Na'im, 2006). One of wills, determining who is to run the affairs after the death of his will. For example, will a person that person after his death, the children hold. In other words, we can define a successor to the death for children and all the powers that we ourselves leave a legacy for him to. This will be very useful though it is, compared with Possessory will be on the property, is unknown.

and not managing their property. Therefore, education and child care tasks that the executor is heavy and important task.

This paper examines the executor of jurisprudence and civil law jurisdictions Iran. Legal aspects can be said that everyone at the time of his life, his property owner and can include any possession of the transporter and transporter make it. "Clamping Msltn Ali Amvalhm" Article 30 of the Civil Code, which refers to the principle that states that: "Every owner has the right to own property and profit capture all Kone, except in cases where the law has exceptions". Their minor children to another train and maintain their property and leave the other. Thus, seizing a person's property after death and in accordance with the will of two kinds: the first possession of the second purchase and possession of covenant (Badr, 1997).

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Everyone is death, his heirs will be transferred to the ownership inevitably be taken away from him but allowed him the legislator, but the testament to their property in excess of one-third will stick, is subject to ratification heirs. Article 843 of the Civil Code is poetry: "Will the excesses of the third estate is not valid unless with the permission of the heirs and if some of the heirs allowed just goes to his contributions." This will make the Possessory will have called.

he second category capture a person at the time of his death at the hands of the executor will be done after the administration of occupied property Minor and their education. Answer.

1.1 Will define

Our legislator in Article 825 of the Civil Code without defining the nature of the will, it has started to split. Said: "Will is twofold: purchase and covenant" As you know, split to define the method is wrong, especially the very definition of what will later not. Because of this, many disputes about wills can be seen on our rights. Will know what all this is about your human rights if it wants to impose after his death, the discussion will be (Billoo, 2006).

Will lawyers have offered different definitions. Such as:

- Will is a legal act whereby a person, directly or as a result Tslyt others, or their rights to property after the death of his capture. This simple plan will define and important examples of it in the mind draws and lays it on thick behavior lifetime. The scholars also called "incontrovertible" the latter said. Will the consistory suspended all its divisions.

- Will the Tslyt on the occupation after the death whether by ownership or otherwise. Vlkn for immunity from entering any bugs should also jaw mortgages added to it.

The jurists also will have a different definition. Such as:

-Vsyt The order for the death of three types. Or Acquisition is like a testament to what his wand for Zaid. And a will to dominate on the right, is joined to Acquisition.

- Will the same ownership or interest or jaw or the right to occupy the property and given to another after death.

The acquisition is defined as sex and other possessions leads to ownership, such as sales, donations, donation also included. The concept of interest includes interest priests, temporary and absolute.

and will also benefit from the outside and the law, because the law on seizing control of another in life.

Most Sunni religious scholars, will have to be defined:

Will the same ownership or interests that bound to donations after death, to persons caused.

1.2 Types of wills

he is good, he needs to either estimate. Is accountable for his beliefs, his character in the eyes of individuals and acquaintances screen and finally to relieve his conscience. and in the shadow of appeal relations, various forms of His Will has emerged.

As stated in Article 825 of the Civil Code, will be divided into two kinds: purchase and covenant. Dichotomy of Article 825 of the Civil Code, not the other annulment should be used and should not be in vain insisted will and testament and other artificially joined to Possessory will be or covenant (Cammack, 1999).

2. Materials and methods

2.1 Possessory will

Article 826 of the Civil Code will define acquisition, "says Possessory will is that the same person or their property to benefit from the acquisition freely to another time after his death ..." and in the third paragraph of Article above those in Possessory will play a major role are named and says: "... the will of the testator, who is in his favor Possessory will legatee under the will is called the testator to ...".

Possessory will mean acquiring personal property after death is to be divided into two parts:

A) specific Possessory will: Wills that the testator are at stake.

B) Possessory will generally means that the testator it is a general testamentary or intestate direction, such as wills or testaments to students of Tehran University mosque.

Defined in Article 826 of the Civil Code mentioned Possessory will, religious books and identity cards Feki Hilli adapted as one of the most famous definitions in the law will be Asnaashari. In its definition of Possessory will come into operation in this matter, by using the word "freely", Possessory will issue gratuitous contracts, such as sale and lease distinctive and also with the use of the phrase "for the time after death", will Actions who owned the incontrovertible fact during the lifetime of the testator (such as gift), is distinguished.

Possessory will define Iran of Iranian lawyers in civil law was incomplete and should be amended. Because this definition exclusively on the free possession "same or interest" to another time after the death of the testator is assigned, while - as described in section 2.4 Possessory will there became some of the "legacies", but the same is not one of the rights or interests of the testator (Ghamari-Tabrizi, 2013).

The definition of the Iranian Civil Code (Article 826) also found that elements of Possessory will include:

1. loss of property to another.
2. The transfer of ownership after the death of the testator, will be realized.
3. Will the testator should not over your property to other property.
4. assignment and is free possession.

Some lawyers, freewill (toll free) of the testament, the requirement applies (and not its essence requirements) and hence will validate and correct, will be considered. Some lawyers "being free will" to mean "non-commutative" and hence it seems this group if the "testator" in the will, have provided the financial obligations of the "legacies" and the legatee's, a will to be valid and argue that "implicit obligation stipulated in his will, but not" the obligations of the contract, but merely leads to the nullity of the contract is caused. As a gift, no contract is underway and despite the fact that "being free" gift there in the nature of the contract (Article 759 of the Civil Code), but this would contradict the authenticity of the marriage "gratuitous gift" not (Article 801 of the Civil Code), and if not action, but not void the contract of donation will be entitled Donor (Hadavi et al., 2007).

Others rely on the fact that "the nature of free will is inherently", conclude that if the financial obligations of the "residuary" was, is contrary to the requirements of the contract and will result in nullity.

2.2 Will covenant

Will the second paragraph of Article 826 of the Civil Code defines the covenant, saying: "Will personal covenant is that one or more persons to do or what the officer or other possessions are ..." In fact, the covenant will behalf of the testator is for after the death of the heir to his actions that he will be able to do. Such as layoffs or pay debts and rights of others or custody of a child and his insane testator who has custody of them. Covenant will "administer" as they say. Agent administration after the death of the testator and his death will be achieved.

Will the covenant that the correct name, it is a testament to the province in which the testator to the executor testamentary guardianship (trusteeship) shows up in the juvenile or his property or on the third prevailed, the administration of legacies, about the signified will pay. Provincial grants (or the trustee) will clear element and the other kinds Will and Testament covenant of other types in this case and with an accurate interpretation, will have been called to the property. The Caliphate will have also called covenant will and testament testator is the executor, but in truth and know that it is specifically called executor.

Will the covenant as Possessory will, the testator's death is pending. This means that the viability of the testator, the executor banned from any legal or material possessions against the testator is on the third or Molly. After the death of the testator is the executor of actions starts (Hooker, 1983).

that the acquisition will have four pillars (the testator, testator, the heir, legatee), but it should be noted that the elements involved in the realization of the administration, but administration action relies solely on the three elements (the testator, testator, the executor) is a person who, under his will to accept or reject the covenant, financial and property legacies will be his role in the realization does not administrate, although it would be involved in the transfer of the property to him. In other words, a testament to the acquisition, made two wills, one owned and one covenant. Testator relationship with someone who is supposed to be acquiring the property to him, is owned and testator relationship with someone who is supposed to act on behalf of the testator to do, wills covenant.

Administration is twofold, administrate the people, administer the property.

A) administer the parties: the person delegating administration but to others after his death mole on the train and maintain and handle his property.

B) administer the property: the testator can nominate someone to administer that after his death he is or what he is about to do. It is the burial and equipment after death, paying dues and donations, collection of receivables, loan rejection of the testator's property to their owners, the expulsion of third, Wand divided between heirs, one third of the revenue collection department or sale and consumption of its price, or purchase other property, dedicated to the third and so on.

2.3 Will the nature of jurisprudence

Determination of divided Shiite jurists and groups will make it to the cadence of its contract and that others are speaking. It seems that this difference is primarily due to differing interpretations of the nature of "acceptable" (by the legatee) and its effect on the will to customary practice, and secondly, non-sequence "Created intestate" and "I" the legatee (usually after the death of the testator and sometimes several years after the composition will take place) have also been involved in both the differences and similarities Possessory will Thirdly, the "gift" and will promise to "legal" basis and impact the results of the exercise of these rights, on the topic "testament" of discussions among scholars, is quite evident.

However, as mentioned, some Shi'ite jurists, will the "contract" and accepted as integral components of this legal act legatee know. And others will take "unilateral obligations" and the role of "acceptable" There is also no credit or basically not paid for it and believe that "legacies," such as his inheritance to pass inevitably or believes are that after the death of the testator, transmission has been shaken to announce the establishment of its definitive acceptance of the "residuary" it depends, if rejected, will be invalidated and "legacies" will be transferred to the heirs of the testator.

Sunni religious scholars mostly agree that the will to call for "testator" and accept "residuary" is implemented (unless residuary non-enclosed or public interest that does not recognize) and will therefore consider acquisition contract. Some of the Hanafi scholars in the non-enclosed or public interest will also need to accept believes that the ruling will be announced (Mir-Hosseini, 2010).

But Shafei believes that "Possessory will" and similar inheritance is implemented by the testator requires legatee does not have to accept the "administrated" the guardian accepts the condition is true. In other words Shafei "will," and Rhythmic knows with the explanation that the "Possessory will" reject the testator to prevent transmission of the testator to the legatee, and the "will of the covenant" health condition is acceptable.

A group of Islamic schools of jurisprudence (Hanafi, Hanbali and Maliki) that the contract will understand, believe that the contract will be unnecessary and the testator at any time (before his death) can accept all or part of it and with no right to require the testator to the legatee is not constant because the verdict will be postponed after the death of the testator. Shafi'i school of jurisprudence (which will consider the unilateral obligations), the will, the testator died Rhythmic that its accuracy is suspended or terminated will accept and so on are shared with other jurists.

2.4 Will the nature of the lawyers

Article 827 of the Civil Code states that: "The acquisition will not be achieved except by accepting legatee after the death of the testator".

The Iranian lawyers in the contract or unilateral obligations will differ seen the text of Article 827 in recognition of the testament of the contract or unilateral obligations, are inadequate and ambiguous. In particular, Article 834 of the Civil Code also says: "The covenant will not accept bets ..." the validity of the covenant will need to accept the other side is called an executor, unknowingly, so no doubt and disputes between lawyers Rhythmic the covenant will be in there (Powers, 1982).

However, pursuant to Article 834, trustee during the lifetime of the testator has the right to reject this rule will also prevent the implementation will be based on Article 183 of the Civil Code, but Iran, the operations can be called at the conclusion of its creation, consensual, is a key factor, but the will of the covenant, just the pleasure of the testator, the will to create and administrate rejected only if it is during the lifetime of the testator, the will be hindered. But as stated in the contract or will be owned Rhythmic there.

2.5 The definition of successor

USG officials that the disposition applies only last for ensuring the implementation of his will after his death can be determined. The rule is that the heirs, who are his closest relatives and a greater respect for the aspirations did not leave him, implementation and refinement of legacy suggestions were to take over. Disposition applies only to also be a variety of means to induce them to carry out their will. So, for this purpose are trying to perform acts which require significant time or cost, if possible refrain, and sometimes the will to hide destroyed (Powers, 1993).

Ensure that stipulated in the will to carry out his will, only if the effect of that will, be made public and be available to interested parties. But with the desire to hide it are the heirs of the work to be had. Furthermore, many of the suggestions were not for material gain and that is why he remains without implementation. These difficulties resulted in the disposition applies only to the law, for after his death, faithful friend and lawyer, trustee and that suggestions were given to him and his orders to execute.

Pursuant under Article 826 of the Civil Code: "A person who by virtue of the covenant will, but on the third or placed on the minor successor is named." The executor is the person who determines the disposition applies only to do something or affairs after his death. As of the second paragraph of Article 826 of the Civil Code it is determined exclusively executor of the will executor covenant and Possessory will not be determined because Possessory will transfer the property after the death of legacies, is legatee and legatee other than play a role does not.

2.6 USG Policy

As previously mentioned in the discussion of the definition will, in "Testament covenant" or executor appointed to carry on the affairs or possessions is the disposition applies only to property. Basically, as well as the Iranian civil law, activities are limited executor or guardian and managed to capture on the part of the property disposition applies only to the minor children. The executor is entitled as any other man should have the ability and capability of seizing the property of minors as well as leading her to be seen.

3. Discussion and results

The absence of civil law can be deduced as follows:

A) capacity: in none of the Civil Code, the necessity of having a capacity of executor is not otherwise specified. However, this silence should not be considered proof of the legislator that the executor can be incapable. Capture wand and supervision of obsolescence, handling actions that it needs to complete its growth. After his properties do not have the competence or Guardian he deposited another, and another child is not competent to rule on the property. In particular, the performance of the duties of executor is closely related to public interest law should pay more attention to the skill and competence to be executor.

The silence of the law of evidence and a clear direction has been the subject of so many of the provisions that the provisions necessary capacity seems to USG.

First, guardian, executor is, in fact, granting the province through legacies and their disposition applies only to so as to capture the enjoyment of rights and your property is in need of capacity USG will also have the capacity to be used.

Secondly, Article 1185 of the Civil Code provides that: "If the natural guardian (father and grandfather) the child becomes incapacitated, the public prosecutor is obliged, in accordance with the provisions relating to the determination of guardian, a curator is appointed for the child."

Thirdly, Article 1182 of the Civil Code also led to a fall legal guardianship of the child's father or grandfather is known. So how is the stumbling stone origination legal guardianship know father or grandfather. But the rejection of the province doubts disposition applies only become incapacitated?

The executor must also intelligent, grown-up to have the legal ability to accept the title and the guardian.

B) Islam: Article 1192 of the Civil Code is such lyrics as: "But Islam cannot be against the mole, trustee determines that a non-Muslim." As the provisions of this article implies, the condition of Muslims against Muslims successor to lead the molar affairs and property is essential. However, it is just a kind of testament of the supervision and administration of the juvenile related notes and the other matters, are silenced.

In other words, If the testator to manage their property and third or doing something else (other than the mole against), non-Muslim executor determine whether such a testament is enforced? The answer is yes. This article is inspired by the provisions of Islamic law and the Koran has been developed exceptional aspect and should be interpreted in a restrictive manner. So, certainly can executor to administer your third or implementation of non-Muslim commandments determine. The non-Muslim Iranians have full authority to determine the executor.

B) justice and faithfulness in most cases, determine the executor is done to protect children and incapacitated. But the law gives broad powers to delegate appropriate that this person be chosen from among those who have moral virtuous habits credible community.

and the child's education, and public powers have the right to address the moral authority successor. In the third guardian of the department since strengthened, because that is his own judgment and not be bound to comply with the good.

However, if the queen lack of justice in the implementation of unworthiness last guardian and his disposition applies only to fail to reach the invalidity guardian useless due to be strengthened. Also, if the provisions of the will, explicitly or implicitly suggest that implementation of the guardian is bound to exist, however, should decline due to deprivation executor of justice count. Moreover, the natural guardian in all their decisions, including the appointment of his successor should do and the expediency of choosing his successor is deemed improper.

Iranian Civil Code is not explicitly predicted in such condition, but the rules governing the rights of the Iranian legal system, such a condition can be inferred. For every person who determined direction, it must comply with its duties and powers of the regulatory framework and that the legislator has determined, to do their duty. Therefore, in Articles 858 and 859 of the Civil Code regarding the property where the executor is guaranteed and sanction violations of approximately guardian, executor, such predictions are:

Article 858: executor of the property, according to his will, is in iodine, Amin's rule and the guarantor, unless in case of abuse or negligence.

Article 859: USG subject to the Will disposition applies only to behave otherwise is a sponsor of House.

will that integrity and respect for disposition applies only to certain of the conditions for taking up this responsibility and to end of the eldest, this attribute must be available on the USG.

C) the ability executor: the inability executor of doing things that he has given no thought to her independence cannot be implemented kills and testament he asked. But what is disputed is whether the governor should be a person appointed to assist him, or wills are invalid due to lack of optimal benefit?

To confirm the latter view may be argued that the provisions of a will executor is obliged to act with disposition applies only to death and his will to respect the limits of the law. Therefore, given that the start of the successor guardian is unable to act, willing disposition applies only to non-profit and cancellations, and such action should not be legally valid. This argument since NATO's successor could devise thinks that the disposition applies only in the implementation of the ideals of effective, well-known authors have not accepted. Article 1184 of the Civil Code latter view is confirmed criteria. Pursuant to this Article: "If the natural guardian does not have the competence to manage property against the mole, or misappropriated property he committed, the public prosecutor at the request relative child or to demand proof of unreliability or treason after he mole property capacity in court against the prosecutor, the governor of a trustworthy person, but attached to it. the same applies to ongoing but, due to old age or disease, or the like is not able to manage the property against the mole. "Therefore, whenever a successor guardian is unable to perform because there is no good reason to invalidity of the will, at the request of the prosecutor or relatives, the court should attach faithful to him.

Amin, who is determined to assist the USG, as a lawyer is powerless and cannot be prevented from doing by his (derived from materials 118 and 123 of non-litigious law) is not attached to the trustee and the trustee fails to share to administrate act. Amin task of assisting in the fails and he can interfere in the affairs guardian, and if the dispute is to be found faithful are obliged to observe the executor office.

However, in the case of disability on quality of execution testament executor is desirable manner, wisdom unable to determine the successor trustee to eliminate interference. For example, if the child is entrusted to a man not competent or corrupt and addicted, so that implementation could be at risk guardian, trustee attached to the suspension means he should their clients or master executor and the trustee is unable to count. So, should the material and physical disability and disability spiritual and moral difference between affect and the second type of disability, physical and spiritual and moral guardian suspended the difference will be in the second category guardian to suspend the removal of the obstacle. Even if the prospects are not the obstacle is removed, guardian, strong opinion is invalid. As unworthy and traitorous father cannot be taken away. This prohibition is as much the province bears and attached Amin alleviate or eliminate its social harms. About executor of the will, but it is the source, custom and morality and as such does not imply a continuation of useless guardian canceled and you'll have ignored.

3.1 USG accept credit time

Testament covenant Possessory will be suspended as well as the disposition applies only to death and successor after his death must perform their duties. On the other hand, Khotbehā implementation may take a long time. Therefore, recognizing the fact that the conditions for successor should be considered very important at what time. Civil law and the special nature of the guardian is not about philosophical writers on this subject have fueled the controversy. Given the silence of civil law in this case, the general legal principles must pay to extract the correct solution in this case it is necessary to study the history of our rights:

Some argue that the executor of the will be eligible during the following reasons:

(A) if, prior to conditional clauses So there is no executor Bsrif going to be willing disposition applies only to one successor.

B wills, contracts and conditions before signing the contract must be achieved even for a moment.

Most scholars believe that the marriage covenant is testament Criticism-.

(C) mystics must be willing Testament covenant in a way that immediately after the death of the will of each moment, legacies, to realize successor is ready to perform his constitutional duties, this goal is not achieved by testament to underage or insane proof of proving the stronger view opinion of the majority.

(D) so that is a testament covenant unilateral contracts (Article 834 of the Civil Code) must express the intention of the testator at the same time that its intention is that work is work for the successor to the province, though the disposition applies only to the development of the province, pending the disposition applies only been on death and created the conditions for the province's capacity and no capacity executor cannot find any province must executor under a will during inventory disposition applies only to Muslims, therefore, cannot be other than Muslims will, in hopes of possible and probable during the executor disposition applies only to death, becomes a Muslim.

So, based on this premise conditions that are necessary in order to have competency in executing a will executor is not its conclusion. Therefore, guardian comparison with other contracts that require mutual consent, pillar and should contact its composition and competence when it should be rejected.

On the other hand, the implementation of guardian since the death of disposition applies only to the delegate. In other words, the disposition applies only begins with the death guardian and executor of the time the agreement is necessary. Accordingly, as the great guardian of the minor is allowed to take place.

So, the deterioration of the condition of barrier that eliminates the executor of executive authority and return it as the obstacle is removed and the guardian returns again. However, despite the acceptance of this theory, we must acknowledge that at least one of the conditions outlined for successor, is outside the scope of this theory. Article 1192 of the Civil Code Iran appears to it that such a certificate: "But Islam cannot be against the mole, trustee determines that a non-Muslim."

The arrangement of this matter, but obviously indicative of the fact that forbids non-Muslim and thus determining the successor executor shall be a condition of being Muslim at the time of composition of testament is fixed and certain.

Powers and duties of executor

USG should disposition applies only to behave according to His Will and in this respect, except in some limited cases, however, the powers and duties disposition applies only to orders execution is executor. The extent of these options is subject to the will and disposition applies only to general property may include the protection of children and their supervisors, the administration of third-treatment Wand, formalities related to the funeral and burial of the deceased, buying and selling property disposition applies only to, among other things such is.

i) The option to administrate

Will covenant, without the need to accept successor is achieved (Article 834 of the Civil Code).

However, until the disposition applies only alive, guardian, executor can reject and accept even guardian, the right to not destroy. However, if the executor, the lack of awareness or lack of the will to reject the law during the lifetime of the disposition applies only to express this position does not, after the death of his will not have the right to refuse and are required to carry out tasks with which he is assigned.

Will be announced in the effect of which is denied by the external face find. Because your will rule out legal action will be with a real will (cadence) and this will shall be declared. In many cases, may order the executor of Article 834 and stripping reject and accept advice, socially beneficial. Successor to endure this hard to accept. Article 834 of the Civil Code should be interpreted so broadly as possible in favor of USG courts located and to be interpreted: Article 834 of the Civil Code disposition applies only to respect the will and interests of children and create a sense of social cooperation, executor of the deceased's forced to obey. This obligation assumed in the feasibility of implementing the will power to his successor and there. Because no one outside of your stamina will not find a job. If the guardian without losses and unbearable hardship fails to fulfill its duty, no rationale for the preferred disposition applies only to compensate for the loss of his children on the need to prevent the caused losses to the executor does not exist. Especially as, in this case, the legislative intent is never good so do not assume and is not worthy successor to the failed service expected. Therefore, in the case of hardship, if freedom is not subject to natural successor to reject the guardian of law first and, undoubtedly it is a secondary sentence and judicial procedures must take steps to Tydl binding successor in this way. In fact, it should be said that rejected successor guardian does not have the normal. However, waiting for sacrifice and suffering of his rights, and to his right to save himself from.

ii) maintain and administer the estate

USG, worthy to hold property for minors or the administration of the estate office designated third or should the measures necessary to maintain the property in his possession been. Refusing to carry out that task, which is a prerequisite for trust and on behalf of the fault liability is for him. In addition to his legal situation may change, yet trust him. In this case, not only is the successor traitors and sinners and among the rapist is: namely, that the Times is not responsible for any injury or defect, although external event or action from another.

Generally, to clean should be noted that the rules governing the status of vice and faithful executor and trustee of the Trust's judgments about he runs, guardian, unless there is a specific sentence. USG has the right to provide suggestions were implementing and maintaining Wand, the public authorities action necessary to maintain the heritage asks:

A) seal the estate: in accordance with Article 167 of the non-litigious matters, trustee to protect the wand and prevent squandered it, seal it asks the Court location of the estate. where the heritage is there because of the seal and sealed and a brief description of objects that have not been brought to causes condensation.

Also, in accordance with the provisions of Article 194 of the same law executor may, if necessary, fix the seal of the court's demand. Nothing in the law on non-litigious matters, demand seals for compulsory executor is not known. But because the executor of the estate agent's disposition applies only to protect against the heirs of Amin's rule, if the seal is necessary and executor in demand shorten the least responsible for the damage to the children under their guardianship, which he could not keep his rights except through rebellion, will be.

Two) writing legacy: the purpose of writing Wand, wand and determining the amount of the deceased's debts (Article 206 of the Law on non-litigious). Tremolo is very useful legacy for the heirs and other interested parties. First of all, it is necessary that the executor of the estate and the amount of debts and receivables to be aware of. Non-litigious legal affairs, according to the requirements of Article 207 provides that: "written request to administer the estate of the heirs or their legal representative and executor property is accepted."

The written request of heritage, such as the demand seals, the executor is not mandatory and the law recognize the necessity of the executor to put it. However, in accordance with the provisions of Articles 208 and 209 of non-litigious law, if the executor for the care and custody of children and property disposition applies only to those designated must immediately ask the court wrote wand. Also, if the inheritor, settlement of the estate, and executor had not obtained agreement that the non-litigious matters in accordance with chapter V of the Act, treatment wand ask the court executor of legacy must be submitted in writing (Articles 264 and 266).

Three) division of the estate: it does not have anything to do with the refinement of legacy. Finds the estate is divided in two:

A division of the estate may explicitly about the disposition applies only be testament to the disposition applies only to have the estate is divided.

(B) may not be such a testament executor, but against Salah mole (or about one-third interest) in the partition of joint contributions recognize that in this case can be partitioned on the basis of Article 201 of non-litigious law of the Court of Article 304 of the divided question a.

iii) lawsuit

USG can be used for debt collection if necessary, disposition applies only in their jurisdiction committed on the deceased's lawsuit or a will to enforce the court or other claims raised in the third-party to be entered.

- Claim liabilities: USG officer for the collection alcohol can claim on the debtor is deceased: Article 268 of the law on non-litigious matters. We read that: "... the bailiff to collect the deceased's demands". Article 264 of the same law provides: "If the executor to administer the property is deceased, the executor shall be allocated to the treatment." So, in this case his successor is Tsyh director of "debt collection" sometimes requires that the debtor shall be designed, it must be admitted that he was right on the debtor and committed to the testator's lawsuit.

USG prudent that, as the introduction and refinement of legacy whom he called "administrator" on the debtor sue. But it seems that he has accepted before the battle, which requires administrative duties and he has options.

Also, trustee the right to take their children from the debts of the testator's lawsuit. USG representatives of children who are in their custody and the like, but they must pay to the tax authorities. USG to claim the estate debts must be limited in the number of administrators.

- Will defend and enforce question: in the case concerning the validity or authenticity of a testament executor has the right to intervene on his side, whether as claimant or defendant.

In case that the authenticity of the testament and he talks about, but the influence will, in part, through which there should be governed doubt he can ask the court to enforce his will:

USG officials to assume that the local hospital has determined that the disposition applies only in his will but make the place more than one-third of the remaining assets of the deceased. In this case, if it can be carried executor of the will, in which more than a third of the survivors disposition applies only reinforced. So as the obligatory introduction should ask the court to enforce his will.

Another example: a testament of the deceased obtained a document likely to see conflict or executor of the will be considered used. Implementing and see the action of the will, trustee stakeholders.

- Other claims: claims related to the implementation of the suggestions were executor can be entered as the third or after the verdict on the object.

For example, if the executor is deceased officers could perform debts in dispute between the heirs and the creditors as a third party to enter into or through Tari or after the judgment of the protest against (speech are of the rule of 237 233 of non-litigious). On the contrary, trustee has no right to claim ownership between the heirs and third parties with respect to some of the twig is underway intervene.

Log in dispute or protest the sentence, the executor duties is not that wide discretion within its jurisdiction and to implement it. In cases where intervention is the executor, if an injunction is issued against him, be sentenced to pay legal fees and costs should be wand. However, if the claim is rejected due to lack of interest or conviction in the implementation of the suggestions were in vain, he was issued due to negligence or intervention, liability for damages to the heirs is their fault.

v) substitution

That person should not assume stewardship for the implementation successor guardian is necessary for the performance of guardian, executor can choose to counsel.

Compared attorney or guardian, executor may be thought that, like lawyer cannot, without the explicit or implicit client gives to other agency. But the rule is that each one will be doing things in his hands to another's behalf. As it concerns the prohibition of Article 672 Warrants is due to the executor behalf. USG representative and not vice disposition applies only to his chosen but decided to originality. So, stripping the executor substituent on the other, particularly with regard to the compulsory nature of the guardian, it does not make sense, jurists and writers have rejected this restriction.

However, if stewardship is mentioned in the will, or can be inferred from the circumstances of the case that the executor was intended disposition applies only to the person involved, another delegate is not correct. Civil Law ruling in this regard. But the criteria of Article 83 of the Civil Code shall be sufficient to prove this.

vi) The right Aysa'

The executor in determining the disposition applies only to the executor will no longer function. So, if you have such a right, it can be used after his death the deceased person chooses to continue his way to fulfill His Will. Conversely, if the executor is deprived of the right Aysa' no doubt that he will not have influence in this regard. But all the talk is that if not explicitly expressed will of legacies, whether the executor or deprived of the right to benefit Aysa'?

Civil law has no clear answer. But more recent thinkers guardian, only concerning the implementation of self-determination Will not see it. It must be admitted to, because the disposition applies only in the implementation of plans and implementation eldest successor to the person's last wishes his passes and is willing to delegate it to others (Tamadonfar, 2001).

4. Conclusion

Will jurisprudence that has long existed in human societies, especially between Muslims and Islam has emphasized on carrying it. Human concerns about wealth and children Sghyrsh, after his death, the motivation that empowers it to regulate human action and will then Amin's personal agent to perform tasks is after his death. So, who is the executor of his will according to his last wishes and the wishes of the testator are met. Therefore, as can be inferred from Article 859 of the Civil Code, Ali al-Qaida within the powers and duties of the executor of the testator is determined and cannot do more than what the testator appointed actions of the executor expected.

However, if the testator's silence in respect of the successor especially on non-financial matters, Minor, civil law does not offer a solution. Among jurists and lawyers of some of the powers and duties of the executor, such as those passed in the previous chapter, there is and it seems appropriate that the

legislator from various viewpoints, especially in the discussion of marriage and the right of retribution Minor, it would have been more stronger view on the bit.

4.1 Suggestions

Jurisprudence as the main source of civil law, the Bob Wills also, despite differences in religious views, very rich and rules as it is expressed in religious books. However, the legislator seems to be due to difference in opinions of scholars, many of the core issues related to wills refused and caused the spread dissension among lawyers. Therefore, it is proposed to revise the civil law, the views of the famous jurist and other materials will be joined.

During this study, we encountered cases where the law is silent in that regard include:

- Two one-defined legal nature Wills
- Will permit three- or four-time research necessary conditions executor
- Five provinces in marriage successor executor in the province retaliation for six- Minor

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