

## DIVISION OF INHERITANCE BASED ON WILLS WITH THE PRINCIPLE OF LEGITIEME PORTIE

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### ABSTRACT

*The Civil Code provides rights for legitimate heirs with regard to the existence of an absolute share. The right granted by law is the right to file a claim for a reduction or return given by the third party to the property that is an absolute part (Legitieme Portie). There are two ways to obtain inheritance, inheriting by law and inheriting by will. If there is a will that exceeds the provisions of the legitimacy portie and is detrimental to the legitimacy, then a claim can be made to fulfill their legitimacy portie through incoring/reduction of the will. The limitation of the will, namely the legitimacy of the portie itself, in other words, cannot exceed part of the inheritance. The law protects legitimacy with the right to file a lawsuit in a court that has its rights in a will. In filing a lawsuit, the position of the legitimate heirs must be considered in the presence of a will.*

Keywords: Inheritance, Will, Legitieme Portie

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### INTRODUCTION

In Indonesia, there are many types of law, one part of civil law is family law, family law is the law that regulates relationships that arise from family relationships. The so-called family in general are those who have a family relationship either by blood or by marriage. This is also included in inheritance as regulated in Article 830 of the Civil Code, where in that article it is clear that everything has rules and that inheritance occurs because of marriage. With the existence of marriage, it is hoped that the purpose of marriage can be achieved which aims to form a happy and peaceful family (household) so that divorce does not occur as stated in Article 39 of the Marriage Law which essentially makes divorce difficult. Marriage law (marriage) is the law that regulates the relationship between humans and each other concerning the distribution of biological needs between types, and the rights and obligations related to the consequences of the marriage. Marriage is a natural law of the world, marriage is carried out by humans, animals, even plants, therefore according to natural scientists, everything consists of two pairs. for example the water we drink (consisting of Oxygen and Hydrogen).

Marriage property arises as a result of the marriage bond between a man and a woman. It must be admitted that the role of property is very important to realize the purpose of marriage, namely to form a happy and prosperous family. Regulations regarding marriage have existed since a simple society maintained by community members and religious leaders. This regulation has developed in accordance with developments in society, including being influenced by knowledge, beliefs and religions adopted in the community concerned.

Inheritance law in Indonesian law refers to the provisions stipulated in the Civil Code. In the regulation of inheritance law, there are many inequalities and knowledge in society in distributing inheritance. This happens because of the customary habits inherent in every community, which is still commonly found in the distribution of inheritance in the community, only using traditional customs that have been passed down from generation to generation and are inherent in the community. This causes some inequalities in the distribution of inheritance. As is the case with the distribution of inheritance carried out by the Batak indigenous people, which usually does not pay much attention to the figure of a woman in the distribution of inheritance.

This can lead to injustice in the distribution of inheritance. The lack of public knowledge of the inheritance law in the distribution of inheritance is what causes people in general to carry out inheritance in a way that has been carried out for generations or commonly called the distribution of inheritance according to the customs adopted by every Indonesian society. Due to the large number of indigenous tribes in Indonesia, this causes a variety of ways to distribute inheritance. However, over time it has become a habit in the wider community. Because in principle it is a habit of something that is done repeatedly until it becomes a tradition or custom. The space for the operation of customary law is called customary law community or customary law alliance. Laws that apply to small communities.

Inheritance is property left by the dead that has no relationship with other people. The inheritance is everything left by the deceased which includes all assets or dependents related to other people's rights, maintenance costs, debt repayments, the remaining willed and passed on to the heirs.

The heir as the owner of the property has the absolute right to regulate what he wants on his property. This is a consequence of inheritance law as a regulatory law. Legitieme portie must always be demanded, if it is not demanded then it is not obtained legitimacy portie. If there is more than one legitimacy, then they are not mutually binding. Every legitimacy has the right to demand or even be able to release the legitimacy portie without being together with other legitimaries. If there are four legitimaries, but only one person demands the legitimacy portie, then only the one who demands the legitimacy will get the legitimacy portie. If only one or several of them release their legitieme portie, the others still have the right to demand their portie legitieme. If the heir appoints an heir with a will for all of his inheritance, then there is a legitimacy who does not claim his absolute share, then the legitimatic part that does not demand it remains the part of the heir appointed according to the will.

## LITERATURE REVIEW

### Definition of Inheritance Law

Inheritance law is the laws or regulations that regulate whether and how various rights and obligations regarding a person's wealth at the time of his death are transferred to other people who are still alive. For the understanding of inheritance law, until now, both Indonesian legal experts and in the Indonesian legal literature, there is no uniformity. In general, it can be said that inheritance law is a law that regulates the position of a person's assets and wealth after death and regulates the ways in which such assets are transferred to other people.

Inheritance law is one part of civil law as a whole and is the smallest part of family law. Inheritance law is basically closely related to the scope of human life, because every human being on this earth will certainly experience a legal event called death.

As for inheritance, it is regulated in the second book in Article 830 of the Civil Code, namely, inheritance only takes place due to death. It is clear that according to this article the definition of inheritance law covers such a broad problem. This definition states that if a person dies, all of his rights and obligations are transferred to his heirs.

### CONDITIONS OF INSTRUCTION

There are three conditions for inheritance, namely:

1. Someone died
2. There are people who are still living as heirs who will receive an inheritance when the testator dies (heirs).
3. There are a number of assets left by the testator (inheritance)

According to Article 830 of the Civil Code, inheritance only takes place due to death. In this case it is sometimes very important to determine carefully, the time of death which is commonly used as a benchmark, namely the cessation of the heartbeat, or the traditional expression is called the last breath. Both the cessation of the heartbeat and the non-functioning of the respiratory organs are signs of imminence. However, in this case the certainty seems insufficient, so it is necessary to establish the existence of brain death. For example, when dealing with a patient who is in a coma and is being assisted with a breathing apparatus and body organs, it is necessary for the purpose of transplantation (moving the device). The imposition of this law causes a person to lose his position as a subject of civil law, so that assets as inheritance are open.

Based on the Civil Code, there are two types of inheritance that are applied in Indonesia, while the two types of inheritance are as follows:

- a. Ab-intestato inheritance, namely inheritance is carried out according to the provisions of the law where blood relations are the determining factor in the inheritance relationship between the heir and heirs.
- b. Testamentary inheritance, namely inheritance occurs because it is appointed or stipulated in a will or testament left by the testator.

Article 874 of the Civil Code confirms that all assets that leave a person due to his death become the property of his heirs according to the law, as long as there is no legal determination with a will. This means that inheritance by abintestato fully follows the provisions of the Civil Code and is used if the testator does not make other provisions in the will. It is different if the heir makes a will, then the will of the heir takes precedence so that testamentary inheritance occurs. Things contained in a will can certainly deviate from the provisions contained in the law, but there are certain heirs, namely heirs in a straight line (both up and down) who cannot be excluded. To minimize the consequences of a distorted will, then it is guaranteed by the provisions of Article 913 of the Civil Code, namely the provisions of the absolute part or Legitieme Portie. Making a will cannot be carried out by just anyone. Based on Article 895 of the Civil Code that people who can make a will are people who have the ability to reason. What is meant by having the ability to reason is someone who is considered an adult based on the legislation. Meanwhile, children under the age of 18 based on Article 897 of the Civil Code are not allowed to make a will. The Civil Code does not contain the maximum age limit for a person in making a will. Based on this, the age limit for a person to make a will is at least 18 years old. Making a person's will cannot be made arbitrarily and must meet the conditions. There is an important provision in the will, namely the will must also pay attention to the absolute part (legitieme portie) of the heirs. The heirs who have an absolute share (legitieme portie) are called legitimaries. The will may not violate the absolute share of the legitimaries.

### PORTIE LEGITIEME GENERAL PROVISIONS

Legitieme Portie is a part of the inheritance that must be given to the heirs, in a straight line according to the law, against which the deceased is not allowed to determine something, either as a gift between the living, or as a will. Basically, people have the freedom to regulate what will happen to their wealth after he dies. An heir has the freedom to revoke the inheritance rights of his heirs, because even though there are provisions in the law that determine who will inherit his inheritance and how much of each, the provisions regarding the distribution are legal in nature. and not a coercive law. However, for heirs ab intestato (without a will) by law there is a certain part that must be accepted by them, a part that is protected by law, because they are so close to the family relationship with the heir that the legislators consider it inappropriate if they do not receive nothing at all. So that people do not easily override them, the law prohibits a person during his lifetime from donating or willing his wealth to others by violating the rights of the heirs ab intestato. The heirs who can exercise their rights to the part protected by law are called legitimaries. While the part that is protected by law is called legitieme portie. So the inheritance in which there is legitimacy is divided into two, namely the legitieme portie (absolute part) and the available part. The available part is the part that can be controlled by the testator, he may donate it while he is still alive or inherit it. Regulations in one country are not the same as regulations in other countries, especially regarding who is entitled to it and who is legitimately entitled to what.

Legitieme portie is considered as rights that are recognized by law or by law and other statutory rights that arise then other statutory rights provide protection to spouses and children. They would receive at least a certain minimum amount of

inheritance. These rights serve as a safety net. Legislators want certain individuals to be well protected and protected, even if these people are not entitled or are only entitled to inherit a small amount of property under a will. The heir does not bequeath it, then the rest or what is there, is divided among the heirs ab intestato which also includes the legitimaries. In that position, of course, it is legitimate to have a sailor, but what happens if the heir has alienated all his wealth. Legislation and regulations use the words "wettelijk erfdeel" (part of inheritance according to the law). And also, the words *erfgenamen* (heir) are often used if what is meant is legitimacy. Therefore, it can be concluded that legitimaries are heirs and if legitimacy is If he accepts a violation of his legitimacy rights, he still does not lose his position as an heir. His position as an heir can only be lost in the manner as stated in Article 1057 of the Civil Code, namely *Verwerping* (rejection) of inheritance which must be carried out explicitly with a statement issued must be carried out strictly before the clerk of the district court.

## THE RIGHTS TO THE LEGITIEME OF PORTIE AND ITS PARTS

The law only states that a person has the right to claim an absolute share regardless of whether the heir is directly or is an heir as a result of the rejection of the inheritance. The condition for being able to claim an absolute share is that people must be blood relatives in a straight line, in this case the position of husband and wife is different from that of children. Even though after 1923 Article 852a of the Civil Code equated husband/wife with children, husband/wife were not in a straight line down, they included a sideways line. Therefore, the wife/husband does not have a legitimacy portie or is called non legitimacy, one must be an heir ab intestato. Seeing these conditions, not all blood families in a straight line have the right to an absolute share. Those who have only those who also inherit ab intestato. They, even without regard to the testator's will, are heirs ab intestato.

If legitimacy reduces a grant of immovable property, then this property is not transferred from the grantee to the legitimacy, but the grant is void and is considered to have never occurred, the person who dies has never lost the property and is considered to have always been in his or her budget, it turns out that after the reduction is transferred because of the inheritance from the heir to the legitimation, so he does not get the position as an heir by law, but he becomes an heir because he states the cancellation of the provisions that violate his legitimacy. Material conditions relating to the contents of the will. Material conditions relating to the contents of the will. There are provisions in the articles below:

- a. Article 879 of the Civil Code regulates the prohibition of wills with *fidei commis* (appointment of inheritance or giving of grants by jumping hands)
- b. Article 885 of the Civil Code regulates that the implementation of a will may not store the contents and intentions of the words contained in the will.
- c. Article 904 of the Civil Code regulates the prohibition of making a will by a child who is not yet an adult, even though he is 18 years old, to make a will for the benefit of the guardian.

Based on the things above, the provisions regarding the implementation of absolute rights or legitimacy porties in Indonesia are contained in the Civil Code, namely Article 913 regarding the definition of absolute rights or Legitieme Portie. Article 914 concerning the share of absolute rights or Legitieme portie in the downward line and Article 915 concerning the share of absolute rights or legitieme portie in the upward line. The existence of provisions regarding absolute rights or legitimacy portie realizes one of the legal objectives, namely legal certainty.

Heirs who do not have an absolute share or legitime portie, namely the husband/wife who has lived the longest. The two brothers of the heir. They are not entitled (non-legitimized) because they are in a line to the side. Whether or not a calculation based on the legitime portie is used depends on the presence or absence of a grant for a testament that can be implemented. Legitimacy is only an heir if he expresses his right to his absolute share. What he enjoys because of the "incorting" (reduction) he gets the right of the heir, the purpose of the claim for reduction or withholding is so that the gift made with a grant or testament is reduced, so it is void as long as it is necessary to give the legitimate heir what he is entitled to as an heir. . If the legitimacy reduces a grant of immovable property, then this property is not transferred from the beneficiary to the legitimacy, but the grant is void and is considered to have never happened, the person who dies has never lost anything and is considered to have always been in his or her budget, it turns out that after the reduction is transferred due to inheritance from the heir to the legitimacy, then he does not get the position as an heir by law, but he becomes an heir because he declares the cancellation of the provisions that violate his legitimacy.

## CONCLUSION

The Civil Code provides rights for legitimate heirs with regard to the existence of an absolute share. The right granted by the law is the right to file a claim for a reduction or return given to the third party against the property that is an absolute part (legitime portie). Legitimate heirs have the right to submit claims to fulfill their legitime portie through incorting/reduction, by way of comparison between the given heirs. After the results of the comparison are found, the absolute share of the legitimate heirs is calculated in a way, the portion given is reduced by the result of the comparison multiplied by the total lack of the absolute share. So important is the absolute right of legitimate heirs that the Civil Code provides protection by limiting the freedom of the testator in making a will and giving the right to file a claim for a reduction if the will actually and truly violates the legitime portie, with the aim that the legitimate heir must get what is their absolute right to the inheritance of the testator.

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