

## LEGITIME PORTIE IN THE PERSPECTIVE OF CIVIL LAW ON THE DIVISION OF INHERITANCE

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### ABSTRACT

This research examines who is prioritized and whether they are prioritized by lawful heirs or heirs according to a will. The research method used is descriptive analysis; A method is a normative-juridical approach, namely library research conducted on secondary data. The results of the study concluded in the Civil Code that it is the arrangement of heirs with a will that must be prioritized with exceptions if the contents and distribution in the will do not conflict with the law. The legal considerations are that the will is the final will of the heir but still does not violate the absolute portion of the legitimacy of the heirs. If the will of the heir violates the absolute portion of the legitimacy of the heirs, they may request cancellation, correction, or reduction of the testament.

**Keywords:** Legitime Fortie; Civil Law; Inheritance

### Introduction

One day people must die and generally leave an inheritance, so that there is no conflict between the heirs left behind, a rule or legal regulation is needed to regulate it, one of the legal instruments that regulate it is the Civil Code. According to this Code, the process of transferring property from the testator to his heirs must be based on marital relations and blood-family relationships with the characteristic being that from the death of the testator immediately the heirs can request division or separation of inheritance.

The Civil Code views the right to inherit as a material right to the property of the deceased person (Article 528 of the Civil Code), and the right to inherit as one way to obtain property rights (Meliala, 2018). The relationship between civil inheritance law and family law is very close, therefore in studying inheritance law, it is also necessary to study related inheritance law systems, such as the family system, inheritance system, inheritance methods, and others. The kinship system in Civil inheritance law is a bilateral or parental family system, in this system descendants are traced both from the husband and wife (Suwarni et al., 2020). The inheritance system regulated in Civil inheritance is individual, heirs inherit individually or individually, and heirs are not differentiated both male and female inheritance rights are equal.

When a person dies, the legal relationship does not necessarily disappear, because the party left behind by the departed person is not only a person or thing, but the life and death of the deceased person directly affect the interests of various other members of society and the interests of family members, a person's life needs to be maintained and settled (Superman, 2022). In principle, only legal rights, and obligations in the field of property or property can be inherited.

Inheritance in Indonesian law adheres to the individual system, inheritance must be distributed immediately, and each heir can control or own the estate according to their respective shares. In civil inheritance law, the principle applies that if a person (heir) dies, his rights and obligations immediately transfer to his heirs according to law, if these rights and obligations are contained in the field of property law or other fields. The characteristic of the civil inheritance law system that is different from other inheritance law systems is that the estate of the heirs must be distributed to those entitled to the property as soon as possible (Labetubun & Fataruba, 2016). Even if the heir's estate is to be left undivided, it must be approved by all heirs, as for the difference between inheritance and inheritance is that the inheritance has not been deducted from debts and other costs, while the inheritance has been reduced by debt and is ready to be divided (Afandi, 1986).

The law designates as heirs blood relatives of the surviving spouse. Transfer of inheritance to the legal blood relationship of the deceased husband/wife, it is determined that the share of property that must be given is to the heirs in a straight line. The heir as the owner of the property has the absolute right to regulate whatever is desired for his property (PNH Simanjuntak, 2017). The legal system provides guarantees and protection against arbitrary acts against the wealth of people who have died and determines who is entitled to the property. This is a consequence of inheritance law as a governing law. Heirs who have absolute rights to an unavailable share of the estate are called heirs of the Legitimar. While the unavailable part of the estate, the part which may not be otherwise assigned by the testator, the inheritance to which the heirs of the Legitimar are entitled is called the Legitimate Portie (Tandey et al., 2020).

So, the right of the Legitimate Portie is the right of the heirs of the Legitimar to the unavailable part of the estate called the heirs of the Legitimar. In Civil inheritance law there are two ways to obtain inheritance, namely: Provisions of the Act or *Wettelijk Erfrecht* or *Ab intestato*, namely heirs who have been regulated in the Law to get a share of the inheritance, because of family relations or blood relations with the deceased and Testament or Testamentary *Erfrecht*, namely heirs, because appointed or stipulated in a will left by the deceased (Palit, 2022).

Heirs according to the Act (*Ab Intestato*) i.e., because of their position according to the Act, for the sake of law are guaranteed to appear as heirs, while heirs according to the will (*Ad Testament*), that is, heirs who appear because of the "last will" of the testator, which is then recorded in the testament. Heirs who appear according to a will or testamentary *erfrecht* can go through two ways, namely *Erfstelling* which means the

appointment of one/several people to be heirs to get part or all of the inheritance property, while the designated person is called testamentary erfgenam (Maripigi, 2021), which is then recorded in the will, the second way is Legaat (testamentary grant) is the granting of rights to someone based on a special testament/will, the person who receives the legat is called the Legatarist (Adisiswanto & Maghfuroh, 2022)

The provision of the will can only be carried out after the grantor (heir) dies. Which takes precedence and precedence over heirs according to law or heirs according to wills? In the implementation of the Civil inheritance law the heirs according to the will take precedence, with exceptions if the contents and divisions in the will do not contradict the Act (Wowor, 2020). The legal consideration is because the will is the "last will" of the testator to his estate, provided that it must not harm the heir's share according to the Act, because the heirs according to the Law have an absolute share (Legitime Portie), which is stipulated in Article 913 of the Civil Code which cannot be violated at all, and if the will or grant from the testator violates the provisions of the absolute share of the heir's Aris legitimates can then be done importing or subtraction.

An heir who has an absolute share is also called Legitimaribus, meaning that if the heirs whose share is stipulated in the will not harm the absolute share of the heirs of the Legitimaribus, the will can be executed even if the absolute share of the heirs of the legitimacy is harmed by the heirs of the testamentary, it must be returned to the heirs of the legitimate according to the share they should get.

Based on this description, the formulation of the problem in this study is how Legitime Portie from the perspective of the Civil Code on the distribution of inheritance, the purpose of this study is to analyze how the distribution of inheritance with the provision of absolute rights in the Civil Code.

Based on the results of a search of various literature and previous research related to the title Legitime Portie in the Perspective of the Civil Code on the Division of Inheritance, several studies were found that had similarities with the title studied, but different in the focus of the problem with this study. The paper is used as a reference in the research of this article.

First, Research by Anastasia Tamara Tandery et al entitled Implementation of Absolute Rights of Heirs to Wills/Testaments That Deviate from the Provisions of the Legitime Portie Burgelijk Wetboek (BW), in 2020. This research was conducted by focusing on the discussion of wills/testaments as implementing provisions of the testator's will. In this case where the testator is fully entitled to his estate, therefore also the testator has the right to divide his property among the heirs according to his will which is reviewed according to the Law of Inheritance BW

The second study by Niluh Gede Suwarni et al entitled Division of Inheritance in Review of the Civil Code in 2020. This study focuses on how to distribute inheritance properly based on the Criminal Code, and how to solve the problem of inheritance distribution to

heirs outside the court or non-litigation. The difference between this study and the two previous studies is that there is a study that focuses more on examining how the distribution of inheritance to the absolute rights of heirs whose parts have been determined by the Civil Code even though the will determines otherwise, while in the previous research at the beginning, namely the will made by the testator, there were deviations from existing laws and regulations deviation are intended to give a share to another person who is not an heir who is entitled to receive the inheritance as regulated by law (heirs ab intestato) and this can be done importing by heirs who by law are given absolute rights. In the next research, namely a division of inheritance, the transfer of rights and obligations of heirs are determined by 3 ways in making wills and resolving inheritance disputes through non-litigation channels.

### Research Method

This research is a type of normative legal research. Normative legal research is a method based on steps to find a principle, norm, principle, or legal doctrine to answer legal issues that are being faced related to the legitime portals in the perspective of civil law books on the distribution of inheritance. This research model is used to find answers, truth values, and the best solution to problems that occur while still observing the principles of legal justice.

This research uses two approaches, namely the legislative approach, namely by examining all laws and regulations related to the legal problems faced by the so-called and conceptual approaches, starting from the perspective of viewpoints and doctrines that develop in the field of legal science. By studying doctrines in legal science, you will find ideas related to principles, norms, principles, or legal doctrines related to the problems faced in compiling legal arguments to solve problems related to the legitime portal in the perspective of civil law laws on the division of inheritance (Luhukay, 2021).

The legal materials to be used in this study are data obtained based on literature studies, with techniques for collecting legal materials used in normative legal research carried out by reviewing and collecting the three legal materials, namely primary legal materials, secondary legal materials, and tertiary legal materials. Data processing or analysis in literature research in this study is carried out qualitatively.

### Result And Discussion

That the Law of Inheritance in Civil Law is a certain part of Civil Law as a whole and is part of the law of property and therefore only rights and obligations in the form and form of property which is an inheritance to be inherited by the testator, rights and obligations in Public Law and rights and obligations arising in decency, Modesty and rights and obligations arising from family relationships cannot be inherited.

The Civil Code views the right to inherit as property or property of a deceased person, the right to inherit to obtain property rights, inheritance law is a provision that regulates whether and how various rights and obligations regarding a person's wealth at the time of death will transfer to a living person (Luhukay, 2021). The fair distribution of

inheritance is a legal rule that applies the main thing in the inheritance process (Haries, 2013). The Civil Code can be interpreted as a legal rule that regulates the fate of a person's wealth after death and determines who can receive it (Parinussa et al., 2021).

The element of coercion contained in the civil inheritance law is about the provision of granting absolute rights to certain heirs over a certain amount of inheritance (Wongkar, 2021), for the heirs of Abintestato (without a will) by the Act held a certain part that must be received by them, a part protected by law, because they are so close to the heir that the legislators consider it inappropriate if they do not receive anything at the same very (Sibarani, 2015). To the extent to which the framers of the law determine whether something is regulatory or coercive, it has been considered that the reasons concerning family law are connected among others with the will or last will of the deceased.

By law, all the estate of the testator (the deceased) falls into the hands of his heirs. The estate must be distributed to the heirs according to their respective classes and shares according to law. The laws and regulations themselves divide the class of heirs into 4 groups and they are the ones who are entitled to receive inheritance property, namely: Group I i.e. Legal children, husband and wife who live the longest, including the second wife.....and so on (Article 854 to Article 852a of the Civil Code), Group II parents and siblings, father or mother (Article 854 to Article 857 of the Civil Code), Group III is a blood family in a straight line up both in the paternal and maternal lines, briefly it can be said to be paternal grandparents and maternal grandparents (Article 853 of the Civil Code), and group IV is a blood family sideways up to the 6th degree (six), namely paternal and maternal cousins (Article 858 of the Civil Code) (Munarif & Tantu, 2022).

When a person dies, he leaves a lot of property, then the estate goes to the heirs (Prawira, 2022). In this case, the law provides completely and clearly that if the first class of heirs does not exist, then the second-class heirs are entitled to receive the inheritance. If the second-class heir does not exist, then the right of inheritance falls to the third-group heir. And if the heirs of the third class do not exist, then the right of inheritance falls to the heirs of the fourth group

However, the above provision applies generally, in the sense that if the testator has not made a valid provision, this provision excludes the basic principle of legitime portie that if the testator has made a valid decree then the determination may deviate from the provisions of the law that must take precedence, a valid provision which means that the testator during his life has determined certain conditions for his estate to be inherited later. The provision is contained in the will, so with the testator making a will containing the provision of his estate, the will must come first.

However, the amount of distribution of inheritance based on a predetermined will has a limitation, namely the testator cannot testify to all his assets where there is a legitime portie part, which is an absolute share that must be given to the heir by the provisions of the law that governs it, this is by Article 913 of the Civil Code Legitime portie or part of inheritance according to law is the part and property that must be given to heirs in

line straight according to the law, against which the deceased may not establish anything either as a grant between living persons or as a will (Pitlo, 2021).

An heir must have absolute conditions and general conditions so that the property can be passed from the heirs to the heirs. The general requirements are the presence of a person who has died (Article 830 of the Civil Code), the existence of heirs left behind, and the number of assets left behind (Patma et al., 2021). People have the freedom to control what will happen to their wealth after death. An heir has the freedom to deprive his heirs of his inheritance rights, because although there are provisions in the Law that determine who will inherit his estate and how much each share, the provisions on division are governing law and not coercive law.

The question will inevitably arise because of doubts when, for example (Sari, 2018), someone makes a will but its contents are considered unfair by other heirs, such thinking arises because in general will deviate from the provisions of inheritance legally as mentioned above, inheritance is an act of replacing or continuing the position of the deceased person that has something to do or has to do with the property right. Is all a person's wealth part of the deceased's estate? The answer, not all, which does not include a share in a person's estate, includes the right to use/use and inhabit / placement (gebruik en becoming), the right to use the proceeds/benefits from and as long as the right is owned by the heir during his life, who according to law his rights and obligations regarding this void / terminate by death (Articles 1612, 1646, 1651, 1664, 1813 Civil Code), the rights and obligations of a person who has agreed do not always pass to his heirs.

Heirs according to civil inheritance law have the right to demand the division of heritage property, this is based on Article 1066 of the Civil Code after the heir dies, the inheritance property is open to be divided based on the agreement made by the heirs and the law determines the agreement not to divide the inheritance is a period of 5 years and after the expiration of that period the heirs can make a new agreement.

The heirs who can exercise their rights to the protected part of the Act are called legitimate while the part protected by the Act is called legitime portie. So the estate in which it is legitimate is divided into two, namely legitime portie (absolute part) and Beschikbaar (available part). The available portion is the part that can be controlled by the testator, he may grant it while he is alive or testify to it. For people not to easily exclude them, the Law prohibits a person during his lifetime from granting or requesting his property to others by violating the rights of Abintestato's heirs, the grantee must return the property that has been granted to him in the estate to fulfill the absolute share of the heirs (Article 1088 of the Civil Code).

The conditions for being able to claim an absolute part (legitimeportie) are; People must be blood relatives in a straight line, in which case the position of gada (husband/wife) is different from that of children. Although after 1923 Article 852 of the Civil Code

equates husbands/wives with the legal children they give birth to, husbands/wives are not in a straight line down, they include a sideways line. Therefore, the husband/wife does not have a legitime portie or is called non-legitimate. People must be Abintestato's heirs. Seeing these conditions, not all blood families in a straight line have the right to an absolute share. The only ones who own it are those who are also Abintestato's heirs. These people, even without regard to the testator's will, are Intestate's heirs.

According to Article 833 of the Civil Code, a person by himself due to legal provisions acquires property (Sagala, 2018), all rights and receivables from the testator, but a person can accept, refuse or consider for the receipt of an inheritance, therefore, all consequences of the sound of this article then all obligations of the heir are the responsibility of the heir, the right to receive an inheritance by requesting registration of the rights and obligations of debts and receivables from the testator. and the right to sue a person, heir, or another heir who controls part or all the estate to which he is entitled (Article 834 of the Civil Code) (Sagala, 2018)

The rule of law in one country is not the same as the rule of law in another country, especially regarding who is entitled to it and who legitimates who is entitled to what. An absolute share, reserved for the share of the legitimate jointly, if a legitimate refuses (viewers) or is not fit to inherit (rewarding) to obtain something from that inheritance so that his share becomes uncontrollable (werd niet beschikbaar), then that part will be accepted by other legitimate. So, if there are other legitimate then the absolute share is still reserved for these people, only if the legitimists demand it, this means that if there is a legitimate as long as they do not demand it, then the heir still beschikkingsrecht" over all his property.

In the Civil Code the legitime is carried out almost consequently, in various places expressions can be put forward, expressions such as remembering (beholden) the rules written for legitime. Those who are entitled to become heirs are related by blood to the heir and the heir's wife/husband who is still alive when the heir dies. The heir can only deprive the heir of his rights by doing deeds of ownership of property in such a way as not to leave the property to be divided as an inheritance.

In the opinion that legitime is taboo and cannot be mentioned at all, also legal acts that benefit legitimates are invalid, for example, the heir leaves to his daughter who marries in the joint marital property all property provided that his inheritance must not fall into the joint property of his child's marital property. Although the provisions regarding legitime are coercive law, they are not in the public interest. The provision exists in the interests of legitimists and not the public interest. Legitimaribus can therefore allow their rights to be violated, which is closely related to the opinion that legitime violations do not result in "neighed" (nullity and law) but can only be asked for their simple cancellation

Heirs by will are persons called by a will to receive the entire will or comparable share thereof, between the position of heirs by death and heirs by will there are several points of difference (Article 959 of the Civil Code), inheritance by death there has never been a change (except in the case mentioned in Article 1022 of the Civil Code). The absolute share is given by law to each heir in a straight line and not to all legitimists jointly, thus each holder of absolute rights is freely entitled to waive that right or claim it.

Although the testator does not make an assignment of the absolute parts nor may he establish the conditions for governing them, a testamentary determination in violation of the absolute part is not null and void of the statute of the determination shall remain in effect. Every clause in a will concerned with an absolute share is not allowed but remains valid as long as the legitimists do not protest against the establishment. The whole nature of legitime is contained in 2 rules, namely that a legitimist can demand the annulment of the acts of the heir that are detrimental to the Legitime Portie and the heir may not, however, decide regarding the absolute part.

The Act does use the words (part of the inheritance according to the Act) and often uses the words (heir) when legitimacy is meant. Therefore, it can be concluded that the legitimacy is the heir, and from this, it can be further concluded that if the legitimate accepts a violation of his legitimacy rights then he still does not lose his position as heir. His position as heir can only be lost in the manner referred to in Article 1057 of the Civil Code, which is "overweening" (rejection) of the estate which must be done expressly before the clerk of the District Court.

The existence of an absolute share according to the law is an element that equalizes, because it causes the spread of wealth, if a rich man leaves 10 children and is allowed to only give all his wealth to only one child, then one child will live a luxurious life while the other 9 children will live destitutely. The law implements the principle of legitimacy almost without exception with all its consequences. The legitimist has the right to a share of the wealth that the heir will leave if during his lifetime he does not give something in a *c uma-c* to someone else.

Legitamaris is the heir by death, For heirs in the bottom line, if the heir leaves only 1 legal child according to Article 914 of the Civil Code is  $\frac{1}{2}$  (one-half) of his share according to the Law, if leaving 2 legitimate children then the absolute share is  $\frac{2}{3}$  (two-thirds) of the share according to the Law of the two legal children, whereas if leaving 3 or more legitimate children, then the absolute share is  $\frac{3}{4}$  (three-quarters) of the share of the heirs according to the Act is the share of the heirs to their estate if no grant or testament can be carried out.

For heirs in the above line, the amount of the absolute share according to the provisions of Article 915 of the Civil Code is  $\frac{1}{2}$  (one-half) of the share according to the Law. While the absolute share of extramarital children that have been recognized (article 916 of the Civil Code) is forever  $\frac{1}{2}$  (one-half) of the share of extramarital children according to the



provisions of the Law. Heirs who do not have an absolute share or legitime portie are the first husband/wife who lives the longest. The two brothers of the testator. They are not entitled (nonlegitimarum) because they are in a sideways line. Whether or not the calculation based on the legitime portie is used depends largely on the presence or absence of grants or statements that can be implemented. The absolute share (wettelijkeerdeel) is calculated not only from what the heir had at the time of his death but also from what should or should have existed if the heir had not donated anything during his life.

Is the legitimist an heir or not? This is widely questioned and debated by legal experts. This has to do with Article 920 of the Civil Code which among other things states that the claim for reduction can only occur if the legitimates (or their heirs/assignees) demand it. If the heir does not spend the property because he has bequest it or will it, then the remainder, or the existing one, is divided among Abintestato's heirs which also includes the legitimate.

In that position, of course, legitimists have a part (Article 833 of the Civil Code). But what happens when the heir has alienated all his wealth? If the beschikbaardeel (the part available for grants and wills) is voluntary, then Article 921 of the Civil Code must also be considered, similarly the absolute part (wettelijkeerdeel) must also be counted even if there is no violation. To determine how large the absolute share (wettelijkeerdeel), according to Article 921 of the Civil Code, must first be recorded all the goods that were still in existence at the time of the death of the giver or testator.

The way BW guaranteed a share of the legitimate ways to give legitime parties individually to each heir. Not to the heirs as a whole or a share together. The result here is that the free part is not certain in magnitude. It depends on many children. This method of legitime portie arrangement is called the positive system, with the consequence that if there is an heir of the legitime who rejects or turns out to be onward against the inheritance of the heir, then the share of the legitimate concerned falls into the free share of the inheritance, not the right of the other part of the legitimate inheritance.

The rejection or incompetence of one or more legitimate heirs, does not change the legitime portie fraction. With the rejection or impropriety of one or several heirs, the free share becomes even greater. In case there are no legitimate heirs, then the free share includes the entire inheritance, or in other words in case there are no legitimate heirs, the heir is free to take provision over the entire inheritance.

Grants made by the testator during his lifetime, shall not be diminished, except when it turns out that all the property that has been bequeathed is insufficient to warrant the legitime portie. However, if grants during the life of the testator must also be reduced, the deduction must begin with the last grant given to previous grants. The return of the fixed property, which shall be made in respect of the preceding Article, shall take place

in its form, notwithstanding any provision to the contrary. But if the deduction is to be applied to a plot of the yard that cannot be divided as desired, the grantee, even if he is not the heir, shall be entitled to make a cash reimbursement to be left to the legitimist.

The reduction of what is testified shall be made without distinction between the appointment of heirs and the granting of wills, unless the testator has expressly determined which shall take precedence between the execution of the appointment of heirs or the granting of wills, in which case, such wills shall not be diminished, except where other wills are sufficient to satisfy the legitime portie. A person can bequeath part or all his property by will, then the rest is the share of heirs under the law, so the grant of a prospective heir based on a will does not have the intention to abolish the right to inherit ab intestato.

If we look at the various articles in the Civil Code, Articles 874, 913, and 929, legitimates are heirs or have the position of heirs. The legitimacy is only an heir if he asserts his right to his absolute share. What he enjoys because of his "importing" (deduction) acquired by the right of heirs (Article 920 of the Civil Code), the purpose of the claim for reduction or withholding is that the gifts made by grant or will be reduced, so void insofar as it is necessary to give to the legitimist what is rightfully entitled to him as heir. Such a line of thinking can be found in Article 929 of the Civil Code.

### Conclusion

Everyone has the freedom to control what will happen to his wealth after death. The Civil Code regulates heirs with wills that must take precedence with exceptions as long as the content and division in the will do not contradict the Law, and legal considerations because the will is the last will of the testator to his estate. If the provisions contained in the will, regarding the estate, then the will must come first. However, the amount of distribution of inheritance based on a will has been determined as a limitation, namely the heir cannot testify all of his wealth which is a legitime portie, which is an absolute share that must be given to the heir by the provisions of the law that governs it, this is by Article 913 of the Civil Code. A statutory legitime portie is a share and property that must pass to heirs in a straight line according to law, against which the deceased person may not establish anything either as a grant between living persons or as a will.

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