

The Implementation of Restrictions on Testamentary Grant in the Distribution of Inheritance Assets

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Abstract

The testamentary is a form of property transferred by one person to another, which takes effect after the testator's death. In the practice of distributing inheritances, testamentary grants frequently give way to legal issues if the transfer exceeds the limits set by law and reduces the rights of the heirs. Therefore, there is necessary to pay attention to the limitations on testamentary gifts to ensure legal protection of the heirs' rights and to ensure the fairness of the distribution of the inheritance. The purpose of this study is to examine how the limitations on testamentary gifts are implemented in the distribution of inherited assets. The results of this study showed that restrictions on testamentary gifts in the distribution of an inheritance are enforced by reducing (inkorting) the value of the legacy, so that all heirs can receive their statutory share (legitime portie).

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1. INTRODUCTION

The law of inheritance is an important part of the civil law system, which governs the transfer of a person's assets when they passed away to their heirs. The law of inheritance is also closely related to social life, because every person will inevitably experience the legal event of passing away. The legal consequences arising from this include issues related to the administration and transfer of the rights and obligations of a person who has passed away to their heirs. In practice, inheritance law is not only concerned with material aspects such as the distribution of assets, but also embodies philosophical values regarding individual rights, justice, and social responsibility.

Under the national laws, Indonesia guarantees freedom and protection of individual rights as stipulated in Article 28H, paragraph (4) of the 1945 Constitution, which states that "Every person has the right to private property, and such property may not be arbitrarily taken away by anyone". This provision shows that private property rights are constitutionally recognized, including the right to determine the transfer of property after passing away—or, in other words, to grant one's property to another person. This principle is also consistent with Article 570 of the Civil Code, which affirms that the right to property grants the owner full authority to freely use, enjoy, and control their property, provided that such actions do not conflict with the law or the rights of others.

In general, everyone is free to do as they wish with property that they own. Therefore, the owner of an item is free to perform legal acts regarding their property, such as selling it, exchanging it for another item, donating it, or leaving it in a will—either in part or in full—to another person. As a legal entity, a person has the right to perform legal acts

regarding the property they own. One of the legal acts that a person often performs during their lifetime in relation to their assets is drafting a will as an expression of their final wishes.

Article 874 of the Civil Code states that all assets left by a departed person belong to their heirs by law if the departed person did not make a valid disposition through a will during their lifetime. This provision serves as the basis for a person to be able to bequeath their assets to another party through a will. According to Article 875 of the Civil Code, a will is a document containing a person's declaration of what they wish to happen after their death, which they may revoke. From this definition, it can be seen that the characteristics of a will are:

- a) It is set forth in a deed, so it must be in writing
- b) It is a matter of unilateral action
- c) It contains the testator's final wishes
- d) It can be revoked.

The preparation of a Will or testament is a legal act performed by a person before that person's passing. The contents of a will typically consist of a document containing a person's final dispositions made before their death. A Will is a message given to another person to be carried out after the person who gave the message has passed away. A Will is not only a message but may also consist of assets entrusted to be used in accordance with the instructions written in the Will. The terms of the Will are binding and cannot be arbitrarily altered by anyone who is not a beneficiary of the Will. The responsibility for the instructions in the will must be accepted and upheld by the beneficiary or the person authorized to execute the will, and cannot be assumed by anyone who is not named or granted such authority in the will.

Under the Civil Code, a Will can be divided into two types: the appointment of heirs (*erfstelling*), which involves designating heirs, and a testamentary gift (*legaat*). With a Will, the inheritance process may be carried out in a manner that deviates from the provisions set forth in the law. Therefore, the testator may appoint one or more heirs and may also bequeath assets to one or more persons from the estate to be left behind. However, there are limitations on bequeathing assets to others through a will. This is to protect the rights of the heirs, as the testator's will might be directed toward individuals who are not relatives or blood relatives of the testator.

In the Civil Code, the restrictions on wills pertain to the "*legitime portie*" (mandatory share)—that is, a specific portion of the inherited property that must be granted to certain heirs and cannot be reduced. As stipulated in Articles 913–916 of the Civil Code, this is a specific portion of the estate that cannot be reduced and must be granted to certain heirs, such as children, parents, grandparents, and recognized children born out of wedlock.

There is essentially no limit to the amount of property that can be gifted, as it depends on the will and wishes of the donor; in fact, the donor may even gift all of their property. Based on the above discussion, the research question is formulated as follows: How are restrictions on testamentary gifts implemented in the distribution of an estate?

2. METHOD

The type of research used is normative legal research, which includes research on legal principles, legal systematics, the degree of legal harmonization, legal history, and comparative law. Normative legal research is legal research conducted by examining library materials or secondary data. Secondary data consists of primary legal materials and secondary legal materials. Primary legal materials are derived from the 1945 Constitution of the Republic of Indonesia and the Civil Code. Secondary legal materials are obtained from books and scholarly journals related to the research topic. The analysis of the research results is systematic, qualitative, and comprehensive, describing valid facts related to

applicable law. Finally, the discussion is concluded rationally with conclusions that progress from the general to the specific, so that the presentation of these research results is easy to understand.

3. RESULTS AND DISCUSSION

The Implementation of Restrictions on Testamentary Gifts in the Distribution of an Inheritance

The Civil Code's inheritance law, as stipulated in the Code, classifies heirs into two categories, namely:

- a) The heirs by law (*ab intestaat erfrecht*) are the lineal heirs, who are divided into four classes. The first class includes the surviving partner and their children and descendants; the second class includes the parents and siblings of the decedent, along with their descendants; the third class consists of the grandparents on both sides and their ancestors; and the fourth class includes uncles and aunts on both sides, along with their descendants, as well as the siblings of the grandparents and their descendants, up to the sixth degree of kinship from the decedent;
- b) The Heirs under a will (testamentary succession), that is, heirs who receive an inheritance based on a designation (*erfstelling*) by the decedent or testator while he or she was still alive.

Based on the provisions of Article 954 of the Civil Code, which grants the owner of property (the testator) the authority to dispose of their property—either in part or in its entirety—through a will designating heirs, in which the testator may appoint anyone to be their heir. Because of this right, issues often arise in the form of a sense of injustice felt by family members. Therefore, the Civil Code's inheritance law recognizes two important elements: the individual element—meaning that, in principle, an owner of property has broad freedom as an individual to do whatever they wish with their property, including their assets, according to their will; and the social element, namely that actions taken by the owner of assets may result in harm to the heirs, so the law imposes limitations on the testator's freedom in the interest of the other heirs.

In the Civil Code, restrictions on testamentary gifts apply to the assets to be distributed to heirs because there is a right known as the “legitimate portion” (*legitime portie*), the amount of which is determined by law. This provision is contained in Article 913 of the Civil Code, which states that the “*legitime portie*” is a portion of the estate that, by law, must be allocated to heirs in the direct line of descent. In other words, the testator may not distribute his or her entire inheritance during his or her lifetime or through a will, or grant any gift of his or her property to anyone in a manner that would harm the heirs.

According to the law, if a testamentary gift violates the legitimate portion, it may be deemed invalid. However, the Supreme Court has established a principle stating that if there is a violation of the legitimate portion but the heir does not feel aggrieved, the gift becomes voidable—in other words, it is not automatically invalid. A violation of the legitimate portion shows that inheritance disputes generally stem from the testator's actions in distributing assets, making a will, or granting a gift in an unbalanced manner among the heirs, which then results in the heirs not receiving the amount they are entitled to. Issues regarding the legitimate portion focus on the failure to fulfill the rights that heirs are entitled to, leading heirs to file a claim after being notified of the will's contents and when a certain party feels aggrieved.

A will represents the testator's final wishes regarding their estate, subject to the provision that it must not infringe upon the heirs' statutory shares, as heirs possess an absolute share (*legitime portie*) governed by Article 913 of the Civil Code, which cannot be

violated under any circumstances. Several provisions in the Civil Code that form the basis for restrictions on testamentary gifts can be outlined as follows:

- a) Article 913 of the Civil Code, which establishes the existence of a legitimate portion (*legitime portie*)—that is, the portion of the estate that, by law, must be received by lineal heirs and may not be reduced by any gifts from the decedent that would prejudice them;
- b) Articles 914 through 916 of the Civil Code, which govern the amount of the reserved share to be received by certain heirs, such as the testator's legitimate children—the number of whom depends on the total number of children—the reserved share for the testator's parents or ancestors if the testator has no descendants, and further provisions regarding the parties entitled to such reserved shares;
- c) Article 920 of the Civil Code, which provides that any gift or will that violate's the legitimate portion (*legitime portie*) may be reduced;
- d) Article 921 of the Civil Code, which sets forth the procedures for reducing a gift or bequest when the gift exceeds the portion that the decedent is permitted to dispose of.

From these provisions, it is clear that civil law ensures that legitimate heirs do not lose their rights simply because of an excessive testamentary gift. With the provision regarding the "*legitime portie*" (mandatory share), the rights to be received will be fair as they should be. Regarding the calculation of the "*legitime portie*," the calculation must take into account the heirs in question. If the portion for that heir is insufficient, the testamentary gift must be reduced, as such a gift must still comply with the legitimate portion and may not be violated.

The testamentary gift can be divided into two parts: the portion that remains within the limits of the legitimate portion and the portion that exceeds it. Appropriate testamentary gifts may be executed in accordance with the terms of the testamentary gift itself, whereas for the portion that exceeds the legitimate share, the heirs have the right to file a claim for reduction (*inkorting*) of the gift, so that their rights remain fulfilled as prescribed by law.

This is different from Islamic inheritance law; in the civil law system governed by the Civil Code, differences in religion do not constitute a barrier to inheritance. The Civil Code does not treat differences in religion as a barrier to becoming an heir. Therefore, children—whether from a previous marriage or not—retain their status as heirs as long as they have a valid blood relationship. However, the freedom to make testamentary gifts remains limited by the provisions regarding the "*legitime portie*" as set forth in Article 913 of the Civil Code, as well as the provisions regarding the reduction of gifts or bequests in Articles 920 and 921 of the Civil Code if such gifts or bequests violate that mandatory share. In other words, under the Civil Code, non-Muslim children may still inherit directly without the need for a mandatory bequest, but they remain protected by the provisions on the legitimate portion (*legitime portie*), which limit the testator's freedom to make testamentary gifts.

As an application of the restrictions on wills, there is a case example set forth in Decision No. 16/Pdt.G/2016/PN.Bjm in conjunction with Decision No. 3/PDT/2017/PT.BJM and Decision No. 2665 K/Pdt/2019. This case went through three levels of the court system. The presentation of the case is organized chronologically, beginning with the legal events that formed the background, the grounds for the complaint at the first instance, and continuing through the decisions at the appellate and cassation levels, to illustrate how the assessment of the validity of the testamentary gift evolved from one level to the next.

This case started with the death of the late Mr. Marulam on February 21, 2013. During his lifetime, the late Mr. Marulam was married twice. His first marriage was to Mrs. SH, with whom he had four biological children: BIM, EM, FEM, and BMM. The late Mr.

Marulam's marriage to Mrs. SH ended in 1997, and he subsequently married Mrs. RR in 1998, following the execution of a prenuptial agreement No. 30 dated May 13, 1998. From this second marriage, the late Mr. Marulam and Mrs. RR had one child, namely BPM.

In 2007, the late Mr. Marulam executed a will before Notary LK, as set forth in Deed of Will No. 5 dated January 4, 2007, in which he bequeathed seven parcels of land to BPM, namely: SHGB No. 538/Sungai Baru, SHM No. 481/Sungai Dua, SHM No. 639/Alalak Utara, SHM No. 644/Alalak Utara, SHM No. 645/Alalak Utara, SHM No. 652/Alalak Utara, and SHM No. 653/Alalak Utara. In addition to the testamentary bequest to BPM, which comprises nearly the entirety of the estate of the late Mr. Marulam, the four children from his previous marriage did not receive any share of the estate of the late Mr. Marulam, because in the will dated May 23, 2007, the late Mr. Marulam stated that he had transferred a number of parcels of land following his divorce from Mrs. SH; these, as evidenced by Settlement Deed Reg. No. 44/Pdt.G/2004/PN.Bjm, constituted a division of the joint property of the late Mr. Marulam and Mrs. SH, not a portion of the inheritance.

The property left by the late Mr. Marulam consists not only of the seven parcels of land mentioned in the Will, but also includes other assets such as shares in a corporation, several parcels of land with freehold title certificates in various locations, motor vehicles, and a number of savings accounts at several banks. The majority of these assets, according to the Plaintiffs' argument, are in the possession of Defendant I. The Plaintiffs maintain that, in accordance with Article 833 of the Civil Code, all heirs automatically acquire the legal right to jointly control all assets left by the decedent, so that unilateral control over these assets is considered detrimental to their rights.

BIM, EM, FEM, and BMM subsequently filed a lawsuit with the Banjarmasin District Court under case number 16/Pdt.G/2016/PN.Bjm, arguing that the testamentary gift to BPM had violated their right to a statutory portion of the inheritance. In their complaint, the Plaintiffs explicitly referred to Article 913 of the Civil Code, which states that the legitimate share—or statutory inheritance portion—is that portion of the estate that must be allocated to heirs in the direct line of descent, over which the decedent may not make any disposition, whether in the form of a lifetime gift or a testamentary provision. The Plaintiffs also explained that those entitled to the absolute share (legitimaries) are those in the direct line of descent as per Article 914 of the Civil Code, those in the direct line of ascent as per Article 915 of the Civil Code, and legitimate children born out of wedlock as per Article 916 of the Civil Code; and that a claim against a gift that reduces the statutory share may be brought after the estate is opened, as provided in Article 920 of the Civil Code. Based on these provisions, the Plaintiffs argue that the testamentary gift set forth in Notarial Deed No. 5 dated January 4, 2007, has clearly violated the provisions regarding the statutory share.

The claims of the four heirs in the main case include, among other things:

- a) Declare BIM, EM, FEM, BMM, Mrs. RR, and BPM to be the heirs of the late Mr. Marulam;
- b) Declare that the personal property of the late Mr. Marulam belongs to BIM, EM, FEM, BMM, and BPM, and that the joint property belongs to BIM, EM, FEM, BMM, Mrs. RR, and BPM;
- c) Declaring the marriage agreement No. 30 dated May 13, 1998, between the late Mr. Marulam and Mrs. RR null and void and/or invalid; and
- d) Declaring the testamentary gift No. 5 dated January 4, 2007, null and void and/or legally void.

The defendants filed a response to the complaint. At the first-instance hearing, through a decision dated October 6, 2016, the Panel of Judges of the Banjarmasin District Court accepted the exceptions raised by Defendant I and Defendant II, rejected the Plaintiffs' motion for provisional relief, and declared the lawsuit filed by the four heirs

inadmissible (*niet ontvankelijke verklaard*) on the grounds that they lacked legal standing or *legitima persona standi in judicio*. The panel of judges found that the four heirs no longer had inheritance rights, and deemed the designation of BPM as Defendant II to be inappropriate because BPM is a legal entity incapable of performing legal acts due to being a minor. The Plaintiffs were also ordered to pay the court costs.

Following that decision, several subsequent legal proceedings were initiated by BIM, EM, FEM, and BMM. At the appellate level, the Banjarmasin High Court, through Decision No. 3/PDT/2017/PT.BJM dated April 3, 2017, granted the appeal filed by the Plaintiffs/Appellants and overturned the decision of the Banjarmasin District Court. In its own ruling, the High Court denied the motion for provisional relief, dismissed the exceptions raised by Defendants I and II, and granted the Plaintiffs' claims in part. The High Court declared that the heirs of the late Mr. Marulam are BIM, EM, FEM, BMM, Mrs. RR, and BPM, and ruled that the undivided estate of the late Mr. Marulam be divided among the heirs in equal shares, with each receiving 1/6 of 2/3 of the late Mr. Marulam's estate. This distribution includes various assets, ranging from shares in a corporation to a number of plots of land with freehold title certificates, the details of which are specified in the operative part of the appellate decision.

The Plaintiffs further filed a petition for cassation in 2019. In its reasoning, the Supreme Court held that the grounds for cassation essentially concerned the assessment of the evidence—which is a matter of weighing the facts—and such matters cannot be considered at the cassation level, as a cassation review pertains solely to whether there was an error in the application of the law or a violation of applicable law. The Supreme Court held that the decision of the Banjarmasin High Court did not conflict with the law and/or legislation. Therefore, through Decision No. 2665 K/Pdt/2019 dated October 4, 2019, the Supreme Court dismissed the petition for cassation, but amended the operative part of the Banjarmasin High Court's decision. Following the amendment, the full operative part of the decision essentially states that the lawsuit filed by the four heirs was granted in part, and the testamentary gift set forth in Notarial Deed No. 5 dated January 4, 2007, was declared invalid, except for an amount equal to 1/3 (one-third) of the estate of the late Mr. Marulam. With regard to the inherited assets that cannot be divided in kind, it was ruled that they may be sold, with the proceeds distributed to the heirs in accordance with their respective predetermined shares, and the Petitioners for Cassation were ordered to pay the court costs at all levels of the judiciary.

In the case of Judgment No. 16/Pdt.G/2016/PN.Bjm in conjunction with Judgment No. 3/PDT/2017/PT. BJM in conjunction with Judgment No. 2665 K/Pdt/2019 cited above, the dispute did not center on the heirs' differing religions, but rather on the decedent's act of granting a testamentary grant in an amount deemed to prejudice the rights of the other heirs. Courts at every level of review assess the case based on the provisions of the Civil Code, particularly regarding the protection of the "*legitime portie*" as an absolute portion that must be received by the heirs. Therefore, although the decedent has the freedom to arrange the distribution of their property through testamentary gifts, that freedom is not absolute and remains limited by the heirs' absolute rights protected by law. This decision shows that heirs are protected against wills that violate the legitimate share, allowing for a reduction (*inkorting*) of testamentary gifts that infringe upon the heirs' absolute share. Thus, the rights of children as heirs remain protected regardless of religious differences, provided they have a valid blood relationship with the decedent and meet the requirements to be heirs under the Civil Code.

Regarding the protection of the absolute rights of heirs in Decision No. 2665 K/Pdt/2019, the Supreme Court essentially affirmed that a testamentary gift made by the decedent may not reduce or eliminate the rights of the heirs protected by the provisions on

the legitimate portion. Although the decedent has the right to determine the extent of the transfer of their assets through a testamentary gift, that right must be exercised while taking into account the statutory share that is already the right of the legitimate heirs. Therefore, when a testamentary gift is found to exceed permissible limits and to the detriment of other heirs, the court has the authority to reduce the amount of the testamentary gift, as was the case with the testamentary gift in Notarial Deed No. 5 dated January 4, 2007, which was declared invalid except for an amount equal to one-third of the decedent's estate.

The judge's ruling on the limitation of testamentary gifts under the Civil Code in this case should have been based on the provisions regarding the legitimate share under the Civil Code, not on the provisions limiting gifts and bequests under Islamic Inheritance Law, which stipulate that gifts or legacies may not exceed one-third of the decedent's estate.

In the case of the late Mr. Marulam, there are five children who qualify as heirs in the direct line of descent: four children from his first marriage and one child from his second marriage. Pursuant to Article 914 of the Civil Code, the greater the number of children who are legitimate heirs, the larger the proportion of the estate reserved as an absolute share, and the smaller the discretionary share that may be bequeathed. The testamentary gift set forth in Notarial Deed No. 5 dated January 4, 2007—which granted seven parcels of land to one child and encompassed nearly the entire estate—automatically precluded the reserved portion of the other four children. This constitutes a violation of the reserved portion.

The enforcement of the restriction in this case takes the form of a reduction (*inkorting*). The testamentary gift is not declared entirely void, but is upheld only to the extent that it can be accommodated within the free share—that is, one-third—while the remainder is reduced in order to restore the heirs' statutory shares. This approach reflects the principle in civil law that a violation of the legitimate share does not, in principle, automatically result in nullity as a matter of law, but rather gives rise to the heirs' right to seek reduction. As long as no claim for reduction has been filed or the heirs do not feel aggrieved, the testamentary gift remains valid; however, once a claim is filed and a violation is proven, the court has the authority to adjust the gift to the permitted limit. This is evident in the judgment's ruling, which states that the testamentary gift is valid only up to one-third of the inheritance.

From the perspective of legal protection, this case demonstrates that the concept of the "*legitime portie*" provides an objective guarantee to lineal heirs. This guarantee does not depend on religion, gender, order of birth, or the number of marriages from which a child was born, but solely on a legitimate blood relationship with the decedent. Children from the first marriage and children from the second marriage have equal standing as legitimate heirs.

Based on the discussion above, limitations on wills are enforced using the concept of the "*legitime portie*" to protect the minimum rights of heirs. In Decision No. 2665 K/Pdt/2019, the limitation was upheld by declaring that a testamentary gift is invalid except for an amount not exceeding one-third of the estate, as a reduction intended to protect the "*legitime portie*."

4. CONCLUSION

Based on the results of the research and discussion, it can be concluded that the enforcement of restrictions on testamentary gifts in the distribution of an estate is carried out by a judge ruling that testamentary gifts are invalid except for an amount not exceeding one-third of the decedent's estate. From this ruling, it can be interpreted that there is a mechanism for reducing (*inkorting*) bequests that have already been granted, so that all heirs can receive their statutory share (*legitieme portie*). However, the basis for this reduction is not the provisions on the *legitieme portie* under the Civil Code, but rather the provisions of Islamic Inheritance Law, which stipulate that gifts and bequests may not exceed one-third.

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