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Consequences of Rejecting the Principle of Portie Legitieme on Wills and Deeds of Grants

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ABSTRACT

Inheritance law in the BW is regulatory and there is no element of coercion. The heir has the right to do anything with his property as long as he is still alive. However, the treatment of his assets must not violate the legitimacy of the portie or the absolute rights of the legal heirs. If the right of legitieme portie is violated, all the actions of the heirs are null and void as long as the demands of the heirs are valid. The purpose of this research is to find out the legal consequences of annulment of wills and awarding of deed for violating the legitieme portie. The method of analysis was carried out using a case study of the Supreme Court Decision. The results of the analysis of the case filed a lawsuit for Budijono Hartono's inheritance between Budijono Hartono's legitimate child as the legal heir and Budijono Hartono's wife, the Court judge decided to cancel the Will and Grant Deed for violating the legitieme portie, as a consequence of not fulfilling the provisions in the laws and regulations on the seduction of legitimaries. Deeds of wills and deed of grants are declared to have no legal force so that all assets listed in the deed of wills and grants are included in the boedel to be divided among all the heirs.

Keywords: *legitieme portie; legitimaris; deed cancellation;*

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INTRODUCTION

Inheritance, (Andreetta, 2020; Reichelt et al., 2019; Salifu, 2021) it will always be remembered to imagine the existence of someone who dies or dies or dies by leaving heirs and property or property called inheritance or serind is also called inheritance property, which in the BW is successively called *erflater, erfgenaam* and *nalenschap*. The law of inheritance regulates with or without changes in the transfer and generation of legal relations as a result of the death of a person. (Chen & Silver, 2022; Pelfrey, 2020) The placement of inheritance law in the second book of *Burgerlijke Wetboek* (hereinafter referred to as BW), among the property rights is related to the thought of antiquity / time ago as can be seen from the sound of article 528 on the law or rights relating to heirs. Article 584 of the BW states that property rights to an object can only be obtained due to ownership, due to attachment, due to expiration, due to inheritance either by law

(*abintestato*) or by will (*testamenteir*) or delivery based on a civil event to transfer property rights. The law of testamentary inheritance arose later after the law of inheritance according to statutory provisions. This is due to some facts in society such as:

a. That in the middle of the century there was a thought that everyone can act freely on his property, so, naturally, his property is given to others in whole or in part;
b. Sometimes a testator has a will during his lifetime to give all of his property or only part of it to someone he wants. This is because the testator feels that he has a close relationship with the other person, both those who have blood relations and those who do not have blood relations.

The wishes of the inheritance sometimes deviate from the inheritance law because they consider that the distribution of the inheritance law is not following their wishes. (Pelfrey, 2020) The law of inheritance allows the testator to determine how to distribute the inheritance that deviates from the Law of inheritance. This is a natural thing considering that in essence, an owner of a property has the full right to treat his property to fulfill his wishes according to his own will. For this reason, the heir deserves honor and the last. (Wongkar et al., 2021) In Indonesia, until now there are still three types of inheritance law that apply. One of them is the Law of inheritance regulated according to the BW. While the other two are customary inheritance law and Islamic inheritance law. The existence of three types of inheritance law is due to the fact that until now there has been no nationally enacted inheritance law that can be used by all Indonesian people. (Abubakar, 2011) Therefore, in applying the Law of inheritance to Indonesian residents, we must see which choice of inheritance law is adopted by each Indonesian resident and what legal basis applies. (Khayati, 2018) People born in Indonesia / Indonesian occupation that does not apply western civil law can submit themselves voluntarily to western civil law based on Staatblad 1917 number 12.

Testament in the formal sense is a letter or deed, which letter contains information made as evidence, and is generally made with the participation of an official. The official who participates in the making of the testament is generally a Notary, however, there are also times that the official in question is another official, as is the case with the making of a testament in an emergency. The testament can also be made without the participation of an official, which is known as a *Codicil.* (Dinaryanti, 2013; Islami, 2017)

The main thing to note in making a testament is that it is a very personal act. This means that the testament cannot and should not be made with the help of a statutory representative, a contractual representative, or another person who declares himself to be a representative. (Kuncoro, 2015) In the normal function a testament is an attempt for the testator (the person who makes the testament) to organize his inheritance as desired, so for a will to be valid according to the provisions of the law then according to its content is a statement of will, and the form is in the form of a deed. Because of this nature, Article 930 of the BW stipulates that in a single deed, two

or more persons are not allowed to declare their wills, up for the benefit of any third party for the mutual benefit of each other. For example, there are two husbands and wife, namely A and B, then A as the husband wants to give a will to C, then A goes to the Notary asking to make a will for C. The action is certainly beneficial to C. If A wants to revoke his will to C, then of course A cannot revoke it without the consent of A. With this will, it is clear that it cannot be revoked at any time, because there are two parties, namely A and C, whereas the nature of the will is an act that is done unilaterally, and it can be revoked at any time by the maker.

If there is such a will, then this will be invalid, Article 930 of BW is held to maintain the nature of the will stipulated in Article 870 of BW. So, the last will is a unilateral statement of will and a legal act containing an act of transfer of property rights regarding the property of the testator as outlined in a special written form, which can be revoked at any time and only takes effect with the death of the testator and does not need to be notified to the person concerned***. A*** so-called will or testament is a deed containing a person's statement about what he wants to happen after he dies, which can be revoked by him. (Marthianus, 2019)

The will is made before the testator dies, and is executed after the testator dies. Usually, the inheritance is given to the heirs or other people who deviate from the provisions of the Law or division according to the Law. Either without reason or with any reason, the testator can revoke the will that he has made. This is because a will is a one-sided will or statement so that at any time the will can be withdrawn by the maker. Article 875 defines the notion of a last will and testament. This expression has two meanings which are meteril and formil, in the material sense the word last will is a gift at the time of death. (Talib et al., 2022) In the material sense of the word last will is a gift at the time of death. In the formal sense of the word: a deed fulfills the form required in Articles 930 onwards (to the extent not specified by law).

Basically, or generally, the testator is authorized to stipulate something in his will that deviates from the provisions of the law on inheritance due to death (*ab intestato*). However, for certain people, the testator is limited in the determination of his last will. The restriction in question applies to heirs in the straight line (such as children and/or their descendants, and parents or other ancestors). They should not be excluded as heirs at all. The law guarantees that straight-line heirs, both upwards and downwards, will receive a certain minimum share, which is called the *Legitieme portie*. The part that has been regulated by this law on Article 913 of BW, in many cases defeats both wills and grants made by the testator during his lifetime if it is violated or becomes less. Reduction or incorting of the heir than other heirs can only occur, if the absolute heirs (legitimaris) or his heirs or if they died earlier than the testator, his successors make a prosecution. (Helrina, 2017) The part protected by the law is called *Legitime Portie* and its absolute share according to the law must be received by the entitled in full and without being burdened by any conditions whatsoever, even though the conditions are as light as possible, while the heirs who can exercise their rights to the goods protected by the law are called Legitimaris or

heirs who have legitime portie, meaning that if as long as the heirs whose shares have been determined in the will do not harm the share that must be received by the legitimaris heirs, The will can be executed, even if the absolute share that must be given to the legitimary heirs is harmed by the testamenter's heirs, it must be returned to the legitimary heirs, according to the share they should get. (Kuncoro, 2015)

The heir as the owner of the property has the absolute right to regulate whatever he wants on his property, and this is a consequence of inheritance law as a regulatory law. The way that heirs can manage their assets is to bequeath their assets through a will or donate their assets either through a will or not. However, the will or grant may not violate the rights of the person who is an heir by law (ab intestato) because of their blood relationship with the testator. (Saji & Tedjosaputro, 2020) According to the BW, apart from heirs' ab intestato, there are heirs by testament (testamentair) who are heirs appointed by a will. (Sanjaya, 2018) The law stipulates that certain parts must be accepted by several heirs Ab intestato (without a will) because of the close blood relationship with the heir. The law forbids a person during his lifetime to donate or will his assets to others by violating the right of *legitieme portie*, namely the absolute or smallest part according to the law which must be accepted by the entitled in full and without being burdened with any conditions.

The heirs who can exercise their legitimate rights are called legitimaries, as long as the will determined by the testator does not violate and harm the legitimate part, the will can be implemented. If the will violates the absolute share, then it must be returned to the legitimate heirs, according to the share they should get. (Izzah et al., 2022; Yanti Purnawan, 2020) An example of a violation of the legitimate absolute part of *legitime portie* by the testator is the case of Budijono Hartono's will and grant. Budijono Hartono as heir has left a will with a Notary Deed. At the time of his death, Budijono Hartono left a wife from his second marriage named Vellisia Friska, and two legitimate children from the first marriage named Irwan Hartono and Wming Hartono, respectively. The Will Deed made by Budijono Hartono stipulates that his wife gets 1/3 of the total inheritance. In addition, Budijono Hartono gave a grant of two plots of land to his wife through the Deed of Grant. This violates the portie legitimacy of Budijono Hartono's two legitimate children. Therefore, the two children of the late Mr. Budijono Hartono filed a lawsuit for the cancellation of the will and the grant to the court. The Court of First Instance in its Decision Number: 206/Pdt.G/2019/PN.Jkt.Brt decided that the Deed of Will and Deed of Grant are valid and enforceable. The Court of Appeals in its Decision Number 246/PDT/2020/PT DKI decided otherwise by canceling the Will and Deed of grants and ordering all inherited assets to be included in the boedel to be divided. This decision was upheld by the Supreme Court at the cassation level with Decision Number 3683/K/Pdt/2020. The purpose of this study was to find out and analyze the legal consequences of canceling wills and grant deeds for violating the *legitieme portie* by conducting a case study on the Supreme Court's decision Number: 3683/K/Pdt/2020.

METHOD

The approach method used is normative juridical carried out with scientific research procedures to seek the truth based on the scientific logic of law from a normative side based on the provisions of the law. The main objective is an in-concrito case to test the normative postulates regarding the cancellation of the Deed of Will for Violating the Legitieme Portie (Study of Supreme Court Decision Number: 3683/K/Pdt/2020). For this reason, researchers must see the law as a closed system that is comprehensive, thorough, and systematic. In addition, in the statutory approach method, researchers need to understand the hierarchy and principles of statutory regulations. Thus, the laws and regulations in this study are the laws and regulations regarding the cancellation of wills because they violate the legitieme portie for the study of the Supreme Court Decision Number: 3683/K/Pdt/2020). Researchers carry out investigations by accessing all concrete facts in legal events according to the study, as well as conducting an inventory of positive legal norms that are relevant to concrete events so that they can determine the results of the analysis correctly. Searching for relevant facts contained in concrete legal events, as well as searching for abstract legal prescriptions is a technique for gathering information in this research, as well as an analytical technique using syllogistic logic. (Irwansyah, 2020)

ANALYSIS AND DISCUSSION

Inheritance by or through a will is mostly supplementary (*aanvullend*), in addition some are compelling (*dwingend*), and the last mentioned is for example about the part guaranteed by law or *legitieme portie* which is often also called the absolute part ex article 913 of BW. (Ankie, 2018) The extent to which the legislator determines whether a matter is regulating or compelling has been considered for reasons relating to family law connected, among others, with the will or last will of the deceased (heir). In the Law of Inheritance according to the BW, several principles can be summarized, including The principle that only rights and obligations in the field of property law can be inherited. The existence of Saisine for heirs, namely once heir by itself automatically because the Law obtains property rights to all goods. The principle of death, the Individual principle, and the bilateral principle.

The law recognizes two ways to get an inheritance, namely: Ab intestato (heirs by law), Testamentair. The conditions for an inheritance to obtain an inheritance must be met, namely terms related to the heir, the death of the heir, in this case, can be divided into (1) The death of the heir is known in fact, (2) Death by Law. People who have rights/heirs to the inheritance must already exist or still be alive at the time of the death of the testator. The life of the heir is possible in real life, and legally alive.

The existence of causes according to the law heirs are not appropriate or prohibited (*onwaardig*) to receive an inheritance from the testator. Article 838 of the BW states that those

who are considered inappropriate to be heirs and therefore excluded from inheritance are those who have been convicted of being blamed for killing or trying to kill the testator, those who by a judge's decision has been blamed for slanderously complaining to the testator, is a complaint of having committed a crime punishable by imprisonment of five years or more severe, by force or act have prevented the testator from making or revoking the will, and who have embezzled, damaged or falsified the testator's will. 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 that constitute inheritance will be inherited by the testator, rights, and obligations in public law, and rights and obligations arising in decency, decency and rights and obligations arising from family relationships cannot be inherited.

In the BW there are no specific articles that provide an understanding of what is meant by the Law of Inheritance. We can only understand as stated in Article 830 of the BW, which states that "inheritance only takes place due to death." Thus, based on Article 830 of the BW, the definition of inheritance law is that without a person who dies (heir), no person inherits (heir) and does not leave the property (inheritance), and there will be no legal event of the heir. Although the law in Article 832 of the BW has stated that those entitled to become heirs are blood relatives, the provision is still general, because it turns out that not all blood relatives appear together when the testator dies. The law regulates further, regarding who must appear first among the blood relatives, namely by dividing the blood relatives into 4 groups, which appear in turn. If there are still heirs of group I, then people/blood relatives from group II cannot appear to receive the inheritance, new group II appears after the heirs of group I are absent, and so on up to group IV.

A will testament is a letter containing stipulations of the will of the maker of the will or messages that will only take effect when the maker dies. Article 875 of the BW states: "As for the so-called will or testament is a deed containing a statement of a person about what he wants to happen after he dies, and which can be revoked by him. The last will is a unilateral statement of will and a legal act containing a *besschikkingshandeling* (an act of transferring property rights). So this is a deed, namely a statement made as evidence with the intervention of an official. Furthermore, because the testament is a unilateral statement, the testament must be revocable. The most important thing is that the last will as a statement of will is a legal act and therefore an act that aims to cause legal consequences. Types of will which contain "erfstelliing" or will of appointment of inheritance, and containing a bequest *legaat*.

In principle, people have the freedom to regulate what will happen to their property after they die. An heir has the freedom to revoke the inheritance rights of his heirs, because although there are provisions in the Act that determine who will inherit his estate and how much each share, the provisions of the distribution are regulatory law, thus resulting in the loss of the right of a share of an heir *Ab intestato*. However, for some heirs *Ab intestato* or without a will, by the Act held a certain share to be received by them, so it is a share that is protected by the law, because so

close their family relationship with the testator so that the legislator considers it inappropriate if they do not receive anything at all. So that people do not easily exclude them, the law prohibits a person during his lifetime to grant or bequeath his property to others in violation of the rights of the *Ab Intestato* heirs.

The provision on *legitieme portie* is not in the public interest but rather it exists for the benefit of the legitimary. Therefore, the legitimary can allow his rights to be violated, which is closely related to the opinion that the violation of the *legitieme portie* does not result in *nietigheid* or nullity for the sake of the law. *Legitieme portie* is an absolute part owned by blood heirs and cannot be reduced by anyone including the testator. Heirs in the line down, if the testator leaves only one legitimate child according to Article 914 of the BW is ½ of his share according to the law, if leaving two legitimate children, then the amount of the absolute share is 2/3 of the share according to the law and the statutory share of the two legitimate children, while if leaving three or more legitimate children, then the amount of the absolute share is ¾ of the share of the heirs according to the provisions of the law. They are not entitled (non legitimaris) because they are in the lateral line. Whether or not the calculation based on *legitieme portie* is used depends on whether or not there is a grant of testament that can be executed.

The case began when a deed of testament was made in front of a notary by the late Mr. Budijono Hartono where the contents of the deed of testament were that the testator gave too much of his inheritance to the heirs of Mrs. Vellisia Friska, the wife of the second marriage with the testator, namely as the first defendant. The deceased Mr. Budijono Hartono had two biological children from his previous marriage, namely Irwan Hartono and Wming Hartono as the plaintiffs. The testamentary deed made by the testator in front of a notary was argued by the plaintiffs that the testamentary deed was null and void insofar as it related to the civil partnership referred to by the testator. The plaintiffs claim that according to the deed of testament, there was a violation of the *legitieme portie* of the heirs because the testator gave all of his assets to the first respondent. Therefore, the plaintiffs demanded the annulment of the testament deed made by the testator in front of a notary.

In principle, those who are entitled to become heirs are people who have blood family relations, both legal under the law and outside of marriage, and the husband or wife who has lived the longest according to Article 832 of the BW. In this case, Budijono Hartono's legitimate children, namely Irwan Hartono and Wming Hartono, and Budijono Hartono's wife, Vellisia Friska, are the heirs. In the Civil Inheritance Law, a principle applies, namely if a person dies (heir), then by law and immediately his rights and obligations pass to his heirs, as long as these rights and obligations are included in property law or other words the rights and obligations liabilities that can be valued in money.

According to Article 833 of the BW, the heirs by law automatically get ownership rights over all goods, all rights, and all receivables of the deceased. Thus, Irwan Hartono, Wming

Hartono, and Vellisia Friska have the right to the inheritance of the late Budijono Hartono, wills are important because disputes between heirs regarding inheritance can be avoided with the last message. Based on Article 875 of the BW, a will is a deed containing a statement of a person about what he wants that will happen after he dies and by which it can be revoked. The making of the Deed of Will Number 2 dated December 3, 2015, caused problems because, in addition to withdrawing and revoking the previous will, Vellisia Friska was also appointed as a separate heir for 1/3 part of the entire estate of the late Budijono Hartono. The inheritance of 1/3 part is contrary to Article 852a of the BW where if the marriage of husband and wife is for the second or subsequent time, and from a previous marriage there were children or descendants of those children, the wife or new husband will not get a share. an inheritance that is greater than the smallest part of the inheritance that one of the children will receive. Based on the Deed of Will Number two dated December 3, 2015, by receiving 1/3 of the share, Vellisia Friska received the same share as the two legitimate children of the late Budijono Hartono as legitimate heirs and this is contrary to Article 852a of the BW. The judges of the High Court and the Supreme Court then decided that the Deed of Will No. 2 dated December 3, 2015, was null and void and had no legal force because it violated the *legitieme portie* of the legitimate heirs.

The proportion or share claimed by Vellisia Friska is getting bigger with the Deed of Grant Number 250/2016 and the Deed of Grant Number 251/2016 based on the Deed of Self-Bidding Agreement to Implement the Grant Number: 16 dated October 14, 2016, which transferred the rights to two parcels of land from above. Budijono Hartono's name became in the name of Vellisia Friska. These deeds were also declared null and void and had no legal force because, by receiving this grant, Vellisia Friska received a larger share of the legitimate heirs, thus violating the *legitieme portie* of the legitimate heirs. This is under Article 920 of the BW which stipulates that gifts or grants, both between those who are still alive and by will, which is detrimental to the part of the legitimation portie, may be reduced at the time the inheritance is opened, but only at the request of their legislators and heirs or their successors.

Based on these matters, the decision of the Judex Facti/High Court of DKI Jakarta which was upheld by the decision of the Supreme Court through Decision Number 3683/K/Pdt/2020 decided all disputed assets according to the Deed of Will Number 2 dated December 3, 2015, the Deed of Self-Binding Agreement to Implement Grant Number: 16 Dated October 14, 2016, Deed of Grant Number 250/2016 and Deed of Grant Number 251/2016, along with other assets that are recognized as personal property of Vellisia Friska but cannot be proven to be included in the inheritance certificate.

The author's analysis of the Supreme Court Decision Number: 3683/K/Pdt/2020. In this case, it began when a deed of testament was made in front of a notary by the late Mr. Budijono Hartono where the contents of the deed of testament were that the testator gave too much of his inheritance to the heirs of Mrs. Vellisia Friska, the wife of the second marriage with the testator,

namely as the first defendant. The deceased Mr. Budijono Hartono had two biological children from his previous marriage, namely Irwan Hartono and Wming Hartono as the plaintiffs. The testamentary deed made by the testator in front of a notary was argued by the plaintiffs that the testamentary deed was null and void insofar as it related to the civil partnership referred to by the testator. The plaintiffs claim that according to the deed of testament, there was a violation of the *legitieme portie* of the heirs because the testator gave all of his assets to the first respondent. Therefore, the plaintiffs demanded the annulment of the testament deed made by the testator in front of a notary.

The law of inheritance allows the heirs to determine how to distribute the inheritance that deviates from the Law of inheritance. This is a natural thing considering that in essence, a person who owns the property has the full right to treat his property according to his wishes, for that the heir deserves honor and to the last. This aims to avoid unwanted things, namely the occurrence of inheritance disputes between fellow heirs. The last will of the testator may want the distribution of inheritance that is not fair according to the feelings of the heirs or unfair according to the applicable law. For this reason, the Law of Inheritance regulates and limits so that the heirs are not harmed. The act of determining the last inheritance is called a testament or will.

Thus, the Will is made before the testator dies, which is executed after the testator dies. Usually, the inheritance is given to the heirs or other people who deviate from the provisions of the Law or distribution according to the Law. Either without reason or for any reason, the testator can revoke the will that he has made. This is because the will is a one-sided will or statement so that at any time the will can be withdrawn by the maker.

The heir based on the testament deed Number 2 dated December 3, 2015, namely Mrs. Vellisia Friska on October 14, 2016, came to a Notary named Mrs. Hj. Titiek Febriyanti Utami Marwan, Bachelor of Laws to make a Deed of Agreement to Bind Herself to Carry out the Granting of the entire inheritance of the Testator to her, namely Mrs. Vellisia Friska. Then on December 23, 2016, Grant Deed Number 250/2016 and Grant Deed Number 251/2016 were made before Mrs. Titiek Febriyanti Utami Marwan, Bachelor of Laws in her capacity as a Land Deed Official (PPAT) where the Grant Deed is in the name of Mrs. Vellisia Friska.

This is what causes the legitimate children of the testator, namely Mr. Irwan Hartono and Mr. Wming Untung Hartono who are legitimate descendants or straight-line descendants down according to the law from the testator, to be more entitled to all the testator's property. They then filed a lawsuit at the West Jakarta District Court against Mrs. Vellisia Friska as the defendant, Mrs. Hj Titiek Utami, Marwan, Bachelor of Laws, Notary and PPAT in Jakarta as the first defendant, Mrs. Merry Susanti Siaril, Bachelor of Laws, Notary in Jakarta as the second defendant, the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency of West Jakarta Administrative City Land Office as the third defendant and PT Agung Podomoro Land, Tbk, as the fourth defendant.

The Plaintiffs included letter evidence indicating that the plaintiffs, Mr. Irwan Hartono and Mr. Wming Untung Hartono, proved that they were the legitimate children of the testator. The legitimate children of the testator filed a lawsuit arguing that the testamentary deed made by the testator, namely the late Mr. Budijono Hartono with a testamentary deed Number 2 dated December 3, 2015, made before a notary named Mrs. Merry Susanti Siaril, Bachelor of Laws is null and void because it has violated the absolute rights of *legitieme portie* of the testator's legitimate children.

In this case, the BW protects the rights of the legitimate children of the testator or straight-line descendants according to law, against a will that has violated the rights of legitimary heirs to inherit, to get an absolute share *legitieme portie* because of the legitimary's close relationship with the testator so that legitimary rights need to be protected by law from the actions of the testator in making a will, (Royani, 2015) because based on the provisions in Article 913 of the BW, the absolute part or part of the inheritance according to the law is a part of the inheritance that must be given to legitimate children (straight line down) and biological parents (straight line up), (Israfil et al., 2023) so that the testator does not easily make or stipulate something according to his will, whether it is in the form of a grant that has been given to someone or more or in the form of a will.

With the absolute part by the BW Act, which is a rule that limits the testator to his last will against the testator's estate. As for legitimaries, the law has guaranteed them as heirs who are protected by their absolute hat to also get a share of the testator's estate, that the legitimary will receive a certain minimum share, namely the share that has been guaranteed by the law or the absolute share of *legitieme portie*. This absolute part defeats both wills and grants that have been or have been made by the testator which results in a lack of absolute part of *legitieme portie*. Since the testator made a testament before Mrs. Merry Susanti Siaril, Bachelor of Laws in her capacity as a Notary which contained all the assets of the inheritance given to Mrs. Vellisia Friska, where according to the will of the testator that the children of the testator since the making of the will are no longer heirs, but according to Civil Law Article 929 they are heirs in which case the legitimate children of the testator according to the law must file a lawsuit to get absolute rights? *legitieme portie* from the will that has been made by the testator.

The law gives the legitimate children of the testator the right to file a lawsuit against the will that has violated their rights as heirs. If the provisions in the will or testament violate the *legitieme portie* of legitimate children, then the will is not null and void, because although the provisions regarding the absolute rights of legitimaries are coercive law not in the public interest, therefore legitimaries can allow their rights to be violated. Violation of the absolute right of *legitieme portie*, resulting in the will can be requested to be canceled simply, in other words, cannot be executed. If the legitimary claims his rights in the will, and does not accept the violation contained in the will, then the provisions in the will that violate his absolute rights are unenforceable.

Legal Effects of Cancellation of Deed of Testament for Violating *Legitieme portie* is all the property of a person who has died belongs to all his heirs according to the law, so that only against it by a will he has not taken a valid provision. Starting from the sound of the article above, it appears that the person who dies must first be seen whether the person at the time of his life made a will. If it turns out that the testator during his lifetime did not make a will, then the inheritance is divided based on the Law of inheritance according to law or *Ab intesto*. Conversely, if the testator leaves a will, then the calculation certainly deviates from the calculation according to the Law of inheritance according to law or *Ab intesto*. To safeguard the efforts of the heirs not to be harmed by the existence of a will, the legislator established an institution called *legitieme portie* (absolute share). The absolute part of the law must be received by the full right and without being burdened by any conditions. People have the freedom to regulate what will happen to their property after they die. (Moechthar, 2017) A testator has the freedom to revoke the inheritance rights of his heirs, because although there are provisions in the law that determine who will inherit the inheritance and how much each part is, the provisions of the divisions are regulatory law and not imposing law, thus the loss of the right to part of an *Ab Intestato* heir. To keep the efforts of the heirs from being harmed by the existence of a will, the absolute part of the law must be received by the rightful full and unencumbered by any conditions.

The legal consequences of the determination of heirs who violate the provisions of the determination of the absolute part or *legitieme portie* have long been discussed/debated by legal experts, there are also several judicial decisions (Rechtsbank, Hof and/or H.R) Netherlands. Some assume that the clause is not written, some argue that it can be canceled by the judge and some are completely void (*van rechtswege nietig*). The Supreme Court of the Dutch East Indies in its decision dated November 5, 1936, 537, has ruled that "a testamentary provision, to the extent that it causes the violation of a person's absolute share, is by law void.

Supreme Court Decision Number 3683/K/Pdt/2020 is a decision regarding a testamentary deed made by the testator during his lifetime to the Defendant in this decision which disturbs part of the inheritance that must be given to the Plaintiff. The granting of the will made by the grantor of the inheritance is contrary to the applicable legislation. Because the granting of the inheritance has violated the absolute portion or *legitieme portie* of other inheritances. The absolute right of the plaintiff in this decision who is a legitimate heir is not fulfilled. (Anisah et al., 2019; Muzakir, 2022)

The inheritance made by the testator to the Defendant in Supreme Court Decision Number 3683/K/Pdt/2020 must not interfere with the part of the inheritance that must be given to the plaintiff. This is as contained in Article 920 of the *Burgelijke Wetboek* which states that gifts or grants, either between living persons or by will, which is detrimental to the *legitieme portie*, may be reduced at the time of the opening of the inheritance, but only at the request of the legitimaries

and their heirs or their successors. However, the legitimaries may not enjoy any benefit from the reduction to the detriment of those who are indebted to the testator.

CONCLUSION

Legitieme portie is the absolute right of the heirs' *ab intestato* to get property from the heirs which are not violated by other heirs. Thus, the other heirs are not allowed to get a larger share of the heirs' *ab intestato* even though it is through a will or a grant. If the will or grant causes a violation of the *legitieme portie*, then the Court will cancel the will or grant and include all assets in the boedel inheritance to be divided among the heirs under the provisions of the law. The inheritance made by the testator to the Defendant in Supreme Court Decision Number 3683/K/Pdt/2020 must not interfere with the part of the estate that must be given to the Plaintiff. This is as contained in Article 920 of the Burgelijke Wetboek (BW) which states that gifts or grants, either between living persons or by will, which is detrimental to the *legitieme portie*, may be reduced at the time of the opening of the inheritance, but only at the request of the legitimaries and their heirs or their successors. However, the legitimaries may not enjoy anything from the reduction to the detriment of those who owe the testator. The actions taken by the heir, namely the late Mr. Budijono Hartono, where the late Mr. Budijono Hartono had given all of his inheritance to the Defendant Mrs. Vellisia Friska without regard to the absolute rights or *legitieme portie* of the rights of other heirs, namely the Plaintiff Party who was the biological child of the late heir Budijono Hartono, and this is certainly contrary to the aspect of the contents of the will as stated in Article 913 of the BW, where the will may not interfere with or reduce the absolute share of the legitimary.

REFERENCE

Abubakar, F. (2011). Pembaruan Hukum Keluarga: Wasiat Untuk Ahli Waris (Studi Komparatif Tunisia, Syria, Mesir dan Indonesia). *HUNAFA: Jurnal Studia Islamika*, *8*(2), 237–267. https://doi.org/10.24239/JSI.V8I2.364.237-267

Andreetta, S. (2020). The Symbolic Power of the State: Inheritance Disputes and Litigants' Judicial Trajectories in Cotonou. *PoLAR: Political and Legal Anthropology Review*, *43*(1), 5–20. https://doi.org/10.1111/plar.12341

Anisah, A., Daulay, Z., & Benni, B. (2019). Legal Review Regarding the Cancellation of Authentic Deed Made By Public Official Due to Unlawful Action (Case Study of Court Decision Number: 57/Pdt.G/2012/PN.Pdg). *International Journal of Multicultural and Multireligious Understanding*, *6*(3), 443–455. https://doi.org/10.18415/IJMMU.V6I3.870

Ankie, R. (2018). *Pertanggungjawaban ahli waris yang menolak warisan terhadap hutang pewaris berdasarkan Kitab Undang-Undang Hukum Perdata* [Program Studi Ilmu Hukum Fakultas Hukum - UNPAR]. repository.unpar.ac.id/handle/123456789/7429

Chen, B., & Silver, N. (2022). Undue Influence and Will Substitutes: Vitiating Transactions that Blur the Boundaries between Life and Death. *The Modern Law Review*, *85*(2), 295–325. https://doi.org/10.1111/1468-2230.12677

Dinaryanti, A. R. (2013). Tinjauan Yuridis Legalisasi Akta Di Bawah Tangan Oleh Notaris. *Legal Opinion*, *1*(3).

Helrina, M. (2017). *Pembatalan Hibah Karena Melanggar Legitime Portie Ahli Waris Legitmaris (Studi pada Putusan Mahkamah Agung No. 841 K/PDT/2003)*. Universitas Sumatera Utara.

Irwansyah, I. (2020). *Penelitian Hukum: Pilihan Metode & Praktik Penulisan Artikel*. Mirra Buana Media.

Islami, I. (2017). Perkawinan Di Bawah Tangan (Kawin Sirri) Dan Akibat Hukumnya. *ADIL: Jurnal Hukum*, *8*(1), 69–90. https://doi.org/10.33476/AJL.V8I1.454

Israfil, I., Salad, M., & Aminullah, A. (2023). Legitime Portie dan Zhawil Furudh Meurut Hukum Kewarisan Kuhperdata dan Hukum Kewarisan Islam. *Jurnal Ilmiah IKIP Mataram*, *8*(1), 45–56. https://e-journal.undikma.ac.id/index.php/jiim/article/view/3903

Izzah, N. A., Saharuddin, S., & Tijjang, B. (2022). Legitime Portie dalam Pemberian Hibah Wasiat. *Jurnal Litigasi Amsir*, *9*(2), 146–157. http://journalstih.amsir.ac.id/index.php/julia/article/view/76

Khayati, S. (2018). Implementasi Penyelesaian Sengketa Warisan Di Luar Pengadilan. *Pleno Jure*, *7*(2), 1–15. https://doi.org/10.37541/plenojure.v7i2.346

Kuncoro, N. W. (2015). *Waris, Permasalaha dan Solusinya. Cara Halal dan Legal Membgi Warisan* (1st ed.). Raih Asa Sukses.

Marthianus, W. S. (2019). Kedudukan Legitieme Portie dalam Hal Pemberian Hibah Wasiat Berdasarkan Hukum Waris Burgerlijk Wetboek. *Notaire*, *2*(2), 269. https://doi.org/10.20473/ntr.v2i2.13438

Moechthar, O. (2017). Kedudukan Negara Sebagai Pengelola Warisan Atas Harta Peninggalan Tak Terurus Menurut Sistem Waris Burgerlijk Wetboek. *Yuridika*, *32*(2), 280. https://doi.org/10.20473/ydk.v32i2.4851

Muzakir, K. (2022). Legal Strength of Grant Deed for Adopted Children. *International Journal of Islamic Thought and Humanities*, *1*(1), 67–87. https://doi.org/10.54298/ijith.v1i1.18

Pelfrey, T. M. (2020). A Survey: Children's Rights Post Termination of Parental Rights and Pre-Adoption. *Juvenile and Family Court Journal*, *71*(1), 45–61. https://doi.org/10.1111/jfcj.12160

Reichelt, M., Collischon, M., & Eberl, A. (2019). School tracking and its role in social reproduction: reinforcing educational inheritance and the direct effects of social origin. *The British Journal of Sociology*, *70*(4), 1323–1348. https://doi.org/10.1111/1468-4446.12655

Royani, A. (2015). Kedudukan Anak Non Muslim Terhadap Harta Warisan Pewaris Islam Ditinjau Dari Kitab Undang-Undang Hukum Perdata. *Jurnal Independent*, *3*(1), 45–52.

https://doi.org/10.30736/ji.v3i1.34

Saji, S., & Tedjosaputro, L. (2020). Juridical Analysis Loss Of Ab Intestato Heirs Right As A Result Of Unregistered Marriage. *MAGISTRA Law Review*, *1*(01), 43–58. https://doi.org/10.35973/MALREV.V1I01.1409

Salifu, J. (2021). "You Have a Lot to Answer For": Human Rights, Matriliny, and the Mediation of Family Conflicts at the Department of Social Welfare in Ghana. *PoLAR: Political and Legal Anthropology Review*, *44*(1), 123–137. https://doi.org/10.1111/plar.12414

Sanjaya, U. H. (2018). Kedudukan Surat Wasiat Terhadap Harta Warisan Yang Belum Dibagikan Kepada Ahli Waris. *Jurnal Yuridis*, *5*(1), 67–97. https://doi.org/10.35586/.V5I1.317

Talib, H., Rahman, N. S. A., & Rahman, N. S. A. (2022). Akad Tabarru'dalam Sistem Takaful di Malaysia. *Integrating Values of Humanities and Social Sciences for Sustainable Future. International Conference on Humanities and Social Sciences, 14th ICHiSS 2022*.

Wongkar, B. W., Tangkere, C., & Setlight, M. M. M. (2021). Penyelesaian Hukum Penyerobotan Tanah Warisan Menurut Legitime Portie Dalam Hukum Waris Perdata. *Lex Administratum*, *9*(1), 31–40. https://ejournal.unsrat.ac.id/v3/index.php/administratum/article/view/32346/30690

Yanti Purnawan, N. M. E. (2020). Penjualan Harta Waris Berupa Tanah Tanpa Adanya Persetujuan Ahli Waris Lainnya. *Acta Comitas*, *5*(2), 309. https://doi.org/10.24843/ac.2020.v05.i02.p09