American Journal of Open Research, 1(1), October, 2022, 33-50
E-ISSN: xxxx-xxxx
P-ISSN: xxxx-xxxx

INHERITANCE BASED ON A WILL THAT EXCEEDS PORTIE'S LEGITIEME IN A CIVIL LAW PERSPECTIVE

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Abstract: Any human behavior that is always wrapped in regulations without exception in inheritance law which is a branch of the field of the law of things and also correlates with the dimensions of family law. The issue of inheritance can be seen in the 1945 Constitution which provides for the protection of the right to control his property and from disputes that are likely to arise due to inheritance problems, namely Article 28G paragraph (1). This research focuses on the analysis of inheritance law based on the Civil Code. There is a conflict of norms between Article 916a of the Civil Code and Article 913 of the Civil Code. Section 916a of the aforesaid Penal Code actually favors the heirs of the testamentair because this Article allows for the existence of heirs outside the Act whether the intended aris is granted during life or by will. And this can be considered as not providing protection to legitimaris (heirs according to law) so that what is the purpose of Article 913 of the Civil Code is not achieved where this article provides full protection to the heirs of legitimaris by not allowing the heir to rule out anything either between the living and the will. This research is a type of normative juridical research with a problem approach using a Statute Approach and Conceptual Approach. The formulation of the issue raised is Whether inheritance under a will can diminish Portie's Legitieme And How the legal standing of the heirs in the division of Legitieme Portie. So the conclusion is that inheritance under a will can reduce Portie's Legitieme and The legal position of the heirs in the division of Portie's Legitieme is to have binding legal force.

Keywords: Inheritance; Legitime Portie; Will

DOI:
https://opsearch.us/index.php/us

INTRODUCTION

Indonesia as a country that has the steadfastness to apply all forms of policies in the law to daily life indicates that Indonesia as a country that is consistent with the realization of legal goals, namely justice, expediency, and legal certainty. Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia contains a provision that the Indonesian state is a state of law. This provision is the constitutional basis for Indonesia to become a country of law. Such a state is characterized by the existence of several principles, one of which is that in all aspects of the life of society, nation and state, law is the only rule of the game. Therefore, the conduct of any individual or group, person or government, or anything related to the conduct of that person shall be subject to the provisions of the applicable laws and regulations.

Any human behavior that is always wrapped in regulations without exception in inheritance law which is a branch of the field of the law of things and also correlates with the dimensions of family law. The issue of inheritance can be seen in the 1945 Constitution which regulates the protection of the right to control its property and from disputes that are likely to arise due to inheritance problems, namely Article 28G paragraph (1) which confirms as follows:

> "Everyone has the right to the protection of personal self, family, honor, dignity and property under his control, as well as the right to a sense of security and protection from the threat of fear of doing or not doing something that is a human right".

Civil inheritance law in the Civil Code, including in the field or field of civil law. All branches of law that belong to the field of civil law that have a common nature of the basic nature, among others, are regulatory in nature and there is no element of coercion. However, for civil inheritance law, although it is located in the field of civil law, it turns out that there is an element of coercion in it.

"The coercive element in civil inheritance law, for example the provision of granting absolute rights (Legitieme Portie) to certain heirs over a certain amount of inherited property or provisions prohibiting the heir from making provisions such as granting a certain part of his estate, then the grantee has the obligation to return the property that has been granted to him into the estate in order to fulfill the absolute part (Legitieme Portie) of the heir who has such absolute rights taking into account Article 1086 of the Civil Code, concerning grants that are mandatory inbreng (income). (Mandate & Law, 2001) The inheritance system provided for in civil inheritance law is a system individually.

> "Inheritance is one part of civil law as a whole and is the smallest part of family law. The law of inheritance is closely related to the scope of human life, that every human being will experience an event that is a law commonly referred to as death. If there is a legal event, namely the death of a person as well as causing legal consequences, namely how about the management and continuation of the rights and obligations of a person who dies." (Mandate & Law, 2001)

Inheritance Law in Indonesia has two different system rules between conventional civil law, Islamic law, and customary law. Besides the differences, the law has also stipulated that this inheritance law is an absolute competence. This means that Muslims are required to divide the inheritance under Islamic law, and if there is a problem, it will be resolved in the Religious Court. Likewise, for Indonesians outside of the Muslim faith, the Civil Law contained in Book II of the Civil Code applies and if there is a dispute, it will be resolved in the district court. For this reason, in the discussion of inheritance law, it will be separated between the inheritance law contained in the Civil Code and the Islamic inheritance law in Islamic Law.

Regarding the positive rules governing the inheritance of the Indonesian state, it does not yet have a national inheritance law. So that there is a pluralistic inheritance law in Indonesia, which includes three legal methods that regulate inheritance, namely Customary law, Islamic law, Western Civil Law. This research focuses on the analysis of inheritance law based on the Civil Code. Conventional inheritance law arrangements provided for in Article 584 of the Civil Code state that "Property rights to an object cannot be obtained by other means, but rather ownership, due to attachment, because it expires, due to inheritance, both by statute and according to a will".

Two things that can make a person an heir are bequeathing under the Act (Ab intestato) and bequeathing based on a will (Testamentair). In the Civil Code, the rules regarding the absolute share for Legitimaris or for the heirs of Ab intestato are regulated in Article 913 of the Civil Code which cannot be violated at all its part which contains the following:

> "The absolute part or Legitieme Portie, is something part of the estate that must be given to the heir, in a straight line according to the law, against which the deceased is not allowed to establish something, either as a gift between the living, or as a will" (Pangemanan, 2016)

Thus, bequeathing under a will can remain exercised as long as the absolute right of the legitimaris heirs i.e. his Legitieme Portie is not taken part in the will. The heir in giving his property as stated in the will to a certain person is his right and authority that can be exercised while still alive against his property. Such authority is not allowed by law to go beyond the limits. If it exceeds, there will be legal consequences caused after death, namely that the inheritance property received by the heirs under the will must be returned as the absolute right (Legitieme Portie) of the beneficiary of the inheritance under the law. The civil inheritance law does not apply to all groups of residents, but the civil inheritance law only applies to:

1. For the class of Europeans and those who were equated with it;
2. For the Chinese Foreign Eastern faction;
3. Other Foreign Eastern Factions and indigenous peoples who subdue yourself.

Certain parts that are not contained in the estate and are absolute are referred to as Legitieme Portie, while the owners of legitieme Portie are referred to as legitimaris heirs, who have absolute rights to the unavailable part of the estate. Arrangements regarding the transfer of wealth (inheritance) left by the dead and the consequences of this transfer for the persons who obtained it. Whether in the relationship between them and third parties under western inheritance law is regulated in the Burgerlijk Wetboek (BW) or the Civil Code. (Rudito, 2015)

In principle, inheritance occurs preceded by death, then the deceased person leaves an inheritance that will be distributed to his heirs. It is stated in Article 830 of Chapter XII of the Civil Code which contains that inheritance only lasts due to death.

Article 833 of the Civil Code states that all heirs by themselves legally acquire the right of inheritance of goods, all rights, and all receivables from the heir. Relating to such rights any heir may demand that the estate that has not been distributed be immediately distributed, even if there is an agreement to the contrary therewith. (Hilman, 2003) Problems regarding inheritance are commonly encountered in everyday life. One of the problems that usually arises is the problem of inheritance caused by the existence of an heir based on a will or testament. This often triggers heir disputes because the heirs of ab intestato assume the presence of Testamentair heirs can interfere and tend to diminish his rights as a legitimarian heir.

This is as contained in Article 913 of the Civil Code which states that Legitieme Portie is an absolute right for the heirs under the law where the heir also cannot or is prohibited from granting such absolute rights to any other person designated as heir under a will. However, this article has a conflict of norms (Conflict Norm) where Article 916a of the Civil Code which reads as follows:

> "In the case of calculating the legitieme of the portie, it must be noted that the heirs who became heirs by death but not legitimaris (heirs according to the law), then if to other persons than the intended heirs it is granted, either by deed during life or by will, an amount greater than the share which may be subject to injunction if such heirs are absent, the grants in question shall be deducted to the extent equal to the amount allowed and demands for it shall be made by and for the benefit of the legitimarians and their heirs or their successors."

The aforesaid article is in favor of the heirs of the testamentair because this Article allows for the existence of heirs outside the Act whether the intended aris is granted during life or by will. And this can be considered as not providing protection to legitimaris (heirs according to law) so that what is the purpose of Article 913 of the Civil Code is not achieved where this article provides full protection to the heirs of legitimaris by not allowing the heir to rule out anything either between the living and the will.

The Civil Code provides for the right to the heirs of legitimacy with respect to the existence of an absolute share. The right granted by the Act is the right to make a claim for deduction or return given to such third party against the property of which it is an absolute part (Legitieme Portie). The heirs of legitimaris are entitled to make claims to fulfill their Legitieme Portie through incorting/subtraction, by way of comparison between the heirs granted. If in Article 913 of the Civil Code and Article 916a of the Civil Code there is a conflict of norms therein, then, the existence of an inheritance based on a will that gives birth to a testamentair heir will give rise to a new legal polemic where these two Articles have a tendency towards one of the parties, and corner the other party, in this case the position of the testamentair heirs.

Based on the above background, the author takes the title Inheritance Based on Wills That Exceeds Portie's Legitieme In The Perspective Of Civil Law. The study aims to analyze whether inheritance by will can reduce Portie's Legitieme and analyze the legal position of the heirs in the division of Legitieme Portie. The expected benefits of this research are certainly for the world of education, especially law in the area of development of civil law inheritance. It relates to the legal position of the heirs in the division of Legitieme Portie as well as inheritance by will which may reduce Legitieme Portie.

MATERIALS AND METHODS

The type of research in this study is ormative37 law research, which is research that examines applicable positive legal norms, which are in the form of laws and regulations related to the legal position of the heirs of testamentair in the division of Portie's Legitieme and inheritance based on wills that can reduce Portie's Legitieme. The main point of study is the law which is conceptualized as a norm or rule that applies in society and becomes a reference for everyone's behavior. So that37 ormative legal research focuses on the inventory of positive law, legal principles and doctrines, legal discovery in cases in concreto, legal systematics, degree of synchronization, comparison of laws and legal history. (Muhammad, Okamoto, & Lee, 2015)

There is a conflict of norms between Article 916a of the Civil Code and Article 913 of the Civil Code. Section 916a of the aforesaid Penal Code actually favors the heirs of the testamentair because this Article allows for the existence of heirs outside the Act whether the intended aris is granted during life or by will. And this can be considered as not providing protection to legitimaris (heirs according to law) so that what is the purpose of Article 913 of the Civil Code is not achieved where this article provides full protection to the heirs of legitimaris by not allowing the heir to rule out anything either between the living and the will.

There are two approaches used in this study, namely the statute approach and *the conceptual approach*. The primary legal materials used by the author in this thesis research are the 1945 Constitution (1945 Constitution), the Civil Code (Civil Code), Law Number 1 of 1 of 974 concerning Marriage andLaw Number 50 of 2009 concerning the Second Amendment to Law Number 7 of 1989 concerning Religious Justice.

The collection of legal materials as material for this legal research, namely by using sources of legal materials that can be trusted for their truth. There are four legal material processing techniques used, namely description, systematization, analysis and interpretation. After the data is collected, the next stage is data analysis. To analyze the data obtained, normative methods of analysis will be used

RESULTS AND DISCUSSION

1. Legal Standing of the Heirs of Testamentair

   The regulation of inheritance law based on the civil code in its implementation of the civil inheritance law prioritizes the interests of part of the heirs based on the will so that with this, the priority is the heir based on the will. This provision remains mindful of the exception where the exception is if the division in the will made by the testator is not contrary to law.

A will or testament is a deed that contains a person's statement of what he wants to happen after he dies, and which he can revoke (Pasa1875 of the Civil Code). All property left by a deceased person is in principle the property of the heirs according to the law merely in that case with a will not have been taken a valid provision (Article 874 of the Civil Code). Thus, inheritance law according to the Civil Code is regulatory in nature even though there are some provisions that are coercive in nature. If it turns out that there is no barrier factor, it means that the testament can be fulfilled.

Article 857 of the Civil Code gives the following definition of a will: " A will or testament is a deed containing a person's statement of what will happen after he dies, and by which it can be withdrawn". Thus, a testament is a deed, a statement made as proof with the intervention of an official official. Furthermore, Article 897 of the Civil Code states: "The maker of the testament must have his mind, that is to say that he cannot make a testament is a person who is sick and a person whose illness is so severe, that he cannot think regularly".

Similarly, as has been explained above, in the division of inheritance according to the way of testament there is the term Legitieme Portie, which is an absolute part for legitimaris heirs. An absolute share is a part of the estate that must be given to the heirs who are in a straight line (vertical) according to the law. The heir is not allowed to establish something, either as a gift between the living and as a will (Article 913 of the Civil Code). Thus, legitimacy must be heirs according to the law in a straight line up or down, for example: grandmother, grandfather, father, mother, children and grandchildren. In addition, there are also heirs according to the law who are not legitimacy, for example husbands or wives or relatives.

The part of the inheritor's estate that can be used to fulfill the testament is limited to the available part only. Thus, the percentage of the inheritor's estate for the fulfillment of the testament does not depend on the sound of the testament, but largely depends on the amount of the inheritor's estate that by law or statute is available to the testator. (Saebani, Falah, & Djaliel, 2011) About wills in the Civil Code contained in Article 874 of the Civil Code to Article 1002 of the Civil Code whose content is as follows: General provisions of its regulation (regulated by Article 874 of the Civil Code to Article 894 of the Civil Code) : the essence of which, regulates all the property left by a person who dies, is the property of the heirs (Article 874 of the Civil Code). A will or testament is a deed containing a person's statement of what he wants to happen after he dies, which can be revoked by him (article 875 of the Civil Code).

Provisions with a will on property can also be made in general, it can also be with general rights, and it can also be with special rights (article 876 of the Civil Code). Provisions with wills for the benefit of the closest blood families, or the blood of the nearest and the testator, are made for the benefit of the experts. In fact, the will of bequeathing takes precedence (merely against that with a will has not been taken a valid decree).

A will contains provisions regarding inherited property and may also contain matters not directly related to the estate, for example: a will may contain an order or obligation to do something or prohibition against performing a particular act, a will may also contain

the revocation of an earlier testament, and a will contain the appointment of a guardian or executor of a will.

The division of inherited property that is handed over entirely to the heir for the division of his property which is not contrary to the law is not causing the interests of the legitimaris to be neglected. The legal consideration is because the will is the last will of the testator so that with this provision the existence of the last will is to give the heir the discretion to give or distribute his estate to the desired one provided that it shall not harm the heirs under the law or the heirs of Ab intestato.

Although in civil law does not recognize the nature of coercion and only knows the nature of regulating. However, civil inheritance law even though it is located in the field of civil law, there is an element of coercion in it, namely that it is not allowed to take part or the absolute right of the rights of legitimaris heirs which is said to be an absolute right or Legitieme Portie.

So that if so then the grantee or the beneficiary of the inheritance under a will or testamentair is obliged to return the property that has been given to him in order to fulfill the share of absolute rights or Legitieme Portie of the legitimaris heirs who have such absolute rights where by taking into account section 1086 of the Civil Code on grants that are inbreng or income.

The arrangement of the absolute part or Legitieme Portie of legitimaris is regulated in article 913 of the Civil Code where the article provides complete protection to the absolute rights of the legitimaris heirs or heirs established under the law. As long as the granting of an inheritance by testament or testamentair does not cause the absolute share of the heirs of legitimaris to be neglected then the will can still be exercised. If the absolute share of the heirs of legitimacy is deemed to be detrimental to the heirs of Ab intestato then the heirs under the law may collect for the return and reduction of the estate to which the heirs are entitled absolutely. Therefore, it must be returned to the legitimarian heirs in accordance with the part they should have obtained under article 913 of the Civil Code.

The form of an oral will is not known in the Civil Code, since the elements of a will under Article 875 of the Civil Code require that a will be made in the form of a musical instrument. The will was not made before the notarization was made, but the will was fulfilled. A will with documents in hand is actually also known in the Civil Code. An olography testament and a secret testament are actually testaments in the form of a deed under the hand written by the Heir himself (for secret testaments, they can also be written by others). However, the Civil Code requires an autographic testament written by the Testator himself and a secret testament written by the Heir or someone else himself to be handed over to the Notary and a deed is made regarding the submission of the testament by the Notary. With the submission of the olgraphical testament and the secret testament which was originally a deed under the hand to the Notary, its power is considered to be the same as that of the will made by the general deed.

A will in the form of a notarial deed has several advantages over the form of an oral will or a will with a deed under the hand. The main advantage is regarding the power of proof because a notarial deed is an authentic deed that has perfect evidentiary power. Another advantage of a will with a notarial deed is that it is safer from the risk of loss

because the will is kept by the Notary among the minuta of the deed. Whereas if the will is made orally by being witnessed by two witnesses, then there may be an event where one or both witnesses who witnessed the giving of the will actually died first from the Heir so that after the Heir died, no one knew about the Heir's will during his lifetime. Or if the Heir makes a will with a deed under the hand which is then entrusted to one of his heirs, but his heirs do not deliberately omit the will deed. This suggests that a will of an oral and cunning nature is much more susceptible to the risk of loss compared to a notarized will.

The heir who can exercise his right to the part protected by the law is called "Legitimaris" while his part protected by the Act is called "Legitieme Portie". So the inner estate where there is legitimaris is divided into two, namely "Legitieme Portie" (absolute part) and "beschikbaar" (available part). The available part is the part that the heir can master, he can give it while he is alive or pass it on. Almost in the legislation of all countries are known legitieme portie institutions.

The absolute part in the Civil Code is provided for in Article 913 of the Civil Code : "The absolute part or Legitieme Portie, is something part of the estate that must be given to the heir, in a straight line according to the law, against which the deceased is not allowed to establish something, either as a gift between the living, or as a will".

After the testator dies, all new inheritances can take effect and can be divided either by law (Ab intestato) or by will (Testamentair). Although in principle the person who has the right to bequeath his property in this case is the testator has complete freedom to regulate everything that happens with his property, but this provision must still not contradict what has been the right of the testator under the law or Ab intestato. An heir has the freedom to deprive him of the right of inheritance from his heirs even though there is a provision in the law that specifies who will inherit his estate and how many parts of each of them will be but the provisions on the division can be legal and not coercive law.

The statutory heir (abintestato), that is, because of his own statutory position, by law is guaranteed to appear as an heir, while the heir according to the will (Testamentair), that is, the heir who appears because of the "last will" of the heir, which is then recorded in the will (testament). The heirs who appear according to the will, or testamentair erfrecht, can be through two ways namely Erfstelling, which means the appointment of one/several persons to be heirs to obtain part or all of the estate, while the designated person is called testamentair erfgenaam, which is then recorded in the will, the second way which is Legaat (will grant), is the granting of rights to a person on the basis of a special testament/will, the person who receives the legat is called a legataris. The grant in the will can only be carried out, after the grantor of the will (heir) has passed away. (Hanun, Sjarif, & Sjarif, 2022)

There is a part protected by law that is the absolute part of the heirs of Ab intestato. Where inheritance under Ab intestato is unnecessary or without a will and this is a protected part by law because they are closely related to the heir by virtue of kinship. So the law considers that it is appropriate to have legal protection so that people do not easily override their rights especially those who have inheritance rights under a will so as not to interfere with Portie's Legitieme rights of legitimaris.

If the absolute part that has been destined for the legitimaris heir is not taken or refused (viewerp) or improperly bequeathed (onwaardig) then the absolute part becomes unable to be mastered (werd niet beschikbaar) so that this part will automatically become part of the other legitimaris and not directly become part of the outside of the legitimaris heir. If the first legitimaris heir does not want that part then that absolute share will still be reserved for other legitimaris heirs i.e. for those whose legitimaris want that absolute right by way of claiming it and if that legitimaris does not make any claim to his rights then the heir still has a beschking recht over all his property. Then the heir still has the widest decision on the property he has if the legitimaris heir refuses or is not entitled and does not deserve to bequeath.

Furthermore, it relates to the legal position of the heirs who by virtue of a will (Testamentair) who takes precedence &precedence is the heirs of Testamentair. In the exercise of the civil inheritance law, the heirs according to the will take precedence, with the exception that as long as the content and division in the will do not contradict the law. The basis for consideration is because the will is the "last will" of the heir to his property. Certainly, provided that it is prohibited to harm the part to which the heirs of ab intestato are entitled, because the heirs by law have an absolute share (legitieme Portie), which is provided for in Article 913 of the Civil Code which absolutely cannot be violated its share.

2. Civil Inheritance System Based On Testament in Portie Legitime Division

In principle, a person has the freedom to regulate what will happen to his wealth after he dies. An heir has the freedom to deprive him of the right of inheritance from his heirs, because although there are provisions in the law that specify who will bequeath his estate and how many parts of each, but the provisions on the division are legal and not coercive law. However, for the heirs of ab intestato (without a will) by the Act there is a certain part which must be accepted by them, a part protected by law, because they are so close to the familial relationship with the testator that the makers of the Act consider it inappropriate if they receive nothing at all. In order for people to not easily set them aside, the Act prohibits a person during his lifetime from giving or supervising his property to others in violation of the rights of the heirs of the ab intestato.

The discussion in the previous chapter has also been suggested that the death of a person has legal consequences, namely the transfer of all rights and obligations at that moment to his heirs. This is expressly mentioned in Article 833 paragraph (1) of the Civil Code, namely " The heirs, by themselves by law, have the right to all goods, all rights and all receivables of the deceased" The transfer of rights and obligations from the deceased to his heirs is called saisine. As for what saisine inherits, the heir obtains all the rights and obligations of the deceased without requiring a certain action, similarly, if the heir does not yet know about the existence of the inheritance.

The Civil heir system does not recognize the term "estate or gono-gini property" or property acquired jointly in marriage, because the estate in the Civil Law from any person is also a "unit" that will unanimously and intact in its entirety pass from the hands of the inheritor/heir to his heirs. That is, in the Civil Inheritance there is no known difference in arrangement on the basis of the kind or origin of the goods left by the testator. As affirmed

in Article 849 of the Civil Code, namely "The law does not look at the nature or origin of the goods in a relic, in order to regulate the inheritance against it."

According to Article 913 of the Civil Code, the legitimate is the share of property given to the heirs, a straight line according to the law, and the heir is a gift or will among those who make a living. Therefore, the heir can make a will or give a grant to a person. Nevertheless, the donation must not violate the absolute rights (belonging to) the legal heirs (ab intestato). "The heir as the owner of the property, is to have the absolute right to regulate whatever is desired over his property. This is a consequence of the law of inheritance as a governing law." (Afandi, 1983) Article 926 of the Civil Code, that the deduction of what is supervised, shall be made without distinguishing between the appointment of the heir and the granting of the will, unless the testator has expressly stipulated that it shall take precedence over the execution of the appointment of this heir or the granting of that will; in that case, such a will shall not be reduced, except when the other wills are not sufficient to satisfy portie legitieme.

Therefore, if in the division of inheritance it occurs that a certain party is harmed, namely the heir to the legitimaris whose Legitieme Portie is influenced by the position of the heir based on a will or testament. Then the state in this case is an Act governing in the field of inheritance law is required to intervene to crack down on adverse parties and thus restore the balance or equality of the two parties who are disturbed by the existence of the violation. The state in this case is an Act required to restore the relationship damaged by the violation of the rights of a particular party i.e. the heir to legitimaris whose Legitieme Portie is influenced by the position of the heir.

Basically the process of transferring one's property to one's heirs, called inheritance, occurs only by death. Therefore, inheritance will only occur if three conditions are met, namely: 1. there is a person who has died; 2. there is a person who is still alive as an heir who will obtain an inheritance at the time the heir dies; 3. there are a number of possessions left by the heir.

Basically, everyone has the freedom to regulate what will happen to their wealth after death. An heir also has the freedom to give his property to whomever he wants. However, for some heirs of ab intestato under the law there is a certain share which must be accepted by those whose part is protected by law. This heir is called legitimaris, while his part is called legitime portie. Legitime portie is all parts of the estate which must be given to the heirs in a straight line according to the Law, against which the deceased person is not allowed to establish something, either as a living division or as a will. Heirs who have an absolute share are heirs in a straight line down and a straight line up.

Furthermore, in order to become an heir, it must meet several requirements, namely: 1. There must be a person who has died.; 2. The heir must be present at the time the heir dies while keeping in mind article 2 of the Civil Code which states that the child who is still in the womb of a mother, is considered to have been born whenever the interests of the child desire, and if this child is born dead then he is presumed to have never existed.; 3. An heir must be capable as well as entitled to inherit in the sense that it is not declared by law to be a person who is unfit to inherit due to death, or is regarded as incapable of becoming an heir.

Regarding the criteria for heirs who are declared unfit to be heirs according to J. Satrio, are :

1. Those who have been convicted have taken the blame for killing or tried to kill the heir.
2. Those who by the judge's ruling have been blamed for slander have filed that the heir has committed a crime that carries a penalty of imprisonment of 5 years or more.
3. Those who by force or deed have prevented the testator from making a will.
4. Those who have embezzled, damaged or forged the will of the testator. (Satrio, 1992)

If a grammatical or linguistic interpretation is made in view of article 916 of the Civil Code here it is very clear that the article strongly shows that the position of the ali heirs of Testamentair has increased legal force so that in this case the article does not dispute if the testator gives a grant or a will but in this case it must be deducted to the extent equal to the amount allowed and the demand for it shall be made by and for the benefit of the again in marisa and their heirs or their successors.

The conflict of norms in Article 916 of the Civil Code with Article 913 of the Civil Code shows that the legal position for the heirs of Testamentair in the legitieme portie is to have binding legal force. But the problem here is that if a legitimaris does not prosecute the deduction and also the return of the absolute part then the absolute part will automatically not be divided. Therefore, it is absolutely necessary to do so by way of prosecution of portie legitieme.

Then in article 920 of the Civil Code states that the granting of a will between the living and with a will in which the letter can be detrimental to legitimacy can be reduced at the time of the opening of the inheritance meaning at the time when the testator has passed away. But this can only be done on the demands of the legitimaris legally article 920 of the Civil Code states expressly the absolute part or legitieme of the portie may be enjoyed by way of a claim against such absolute right for the heirs or their successors but the legitimaris shall not enjoy anything and deduction thereof for the loss of those owed to the testator.

So from this, a way can be found in determining the amount of legitieme portie of the property left by the heir is by summing up all the property that existed at the time the heir had died and then sumned up by the gift or goods that had been granted during life so that the value would produce a divisible final result. Surely this must be deducted from the debts of the whole estate and it is calculated how much the whole estate they can claim is proportional to the degree of legitimaris and also from those parts what they received and that they left behind and if it is released and also recalculated.

The inheritance system in civil law based on the will (*testament*) of its position gives priority to the heirs of testamentair when compared to the heirs of ab intestato. Because this is the last will of the heir as the owner of the inheritance. However, this circumstance becomes unenforceable if the contents of the will do not prejudice the interests of the heirs of ab intestato based on the Act. Therefore, its nature is that it can be cancelled (*vernietigbaareid*) not null and void (*nietigheid*).

The condition that results in an absolute share of legitimacy being divided or even diminishable due to the existence of a testamentair heir is the will of the heir. The contents of the will which diminish the legitimacy of the portie must be returned by the owner of

the heir in this case is the heir of the testamentair and a prosecution may be made against the legitiem of the portie.

The inheritance law is one of the teachings used by law enforcement to solve the same problem, namely inheritance disputes or the problem of the division of inheritance property. For the emergence of this certainty, law officers must also look at the rules that have been made so as not to sideline the normative rules. The existence of civil law in the regulation of inheritance law is considered to have no legal certainty if an analysis of Article 913 of the Civil Code contains the following:

> "The absolute part or Legitieme Portie, is something part of the estate that must be given to the heir, in a straight line according to the law, against which the deceased is not allowed to establish something, either as a gift between the living, or as a will" (Onibala, 2019)

where in this Article it is contrary (Conflict Norm) with Article 916a of the Civil Code which reads as follows :

> "In the case of calculating the legitieme of the portie, it must be noted that the heirs who became heirs by death but not legitimaris (heirs according to the law), then if to other persons than the intended heirs it is granted, either by deed during life or by will, an amount greater than the share which may be subject to injunction if such heirs are absent, the grants in question shall be deducted to the extent equal to the amount allowed and demands for it shall be made by and for the benefit of the legitimarians and their heirs or their successors."

Section 916a of the aforesaid Civil Code actually favors the heirs of testamentair because this Article allows for the existence of heirs outside the Act whether the intended aris is granted during life or by will. And this can be considered as not providing protection to legitimaris (heirs according to law) so that what is the purpose of Article 913 of the Civil Code is not achieved where this article provides full protection to the heirs of legitimaris by not allowing the heir to preside over anything either a gift between the living and as a will.

The Civil Code provides for the right to the heirs of legitimacy with respect to the existence of an absolute share. The right granted by the Act is the right to make a claim for deduction or return given to such third party against the property of which it is an absolute part (Legitieme Portie). The heirs of legitimaris are entitled to make claims to fulfill their Legitieme Portie through incorting/subtraction, by way of comparison between the heirs granted. If in Article 913 of the Civil Code and Article 916a of the Civil Code there is a conflict of norms therein, then, the existence of an inheritance based on a will that gives birth to a testamentair heir will give rise to a new legal polemic where these two Articles have a tendency towards one of the parties, and corner the other party, in this case the position of the testamentair heirs.

This conflict of norms shows that inheritance law in Indonesia, especially in this case, is that civil inheritance does not have legal certainty. Because on the one hand Article 913 of the Civil Code tends to favor the heirs of ab intestato who have a legietime portie shown in the phrase "the one who is left (the heir) is not allowed to establish something either as a living gift (grant) or as a will. Furthermore, Article 916a of the Civil Code tends to be against the heirs of testamentair which can be seen in the phrase "If to other persons than the intended heirs it is granted either by deed during life or by will then an amount greater than the share he gets is subject to determination if such heirs do not arrive the grant in question must be deducted up to the amount allowed".

According to Kelsen, the law is a System of Norms. Norms are statements that emphasize the "should" aspect or das sollen, by including some regulations on what to do. Norms are deliberative human products and actions. Laws that contain rules of a general nature become guidelines for individuals to behave in society, both in relationships with fellow individuals and in relation to society. Those rules become a limitation for society in burdening or taking action against individuals. The existence of that rule and the implementation of the rule gives rise to legal certainty . According to Soerjono Soekanto, the function of law is to regulate the relationship between the state or society and its citizens, and the relationship between fellow citizens of the community, so that life in society runs in an orderly and smooth manner. This results in that it is the duty of law to achieve legal certainty (for the sake of order) and justice in society. Legal certainty requires the creation of general rules or general rules that are generally accepted. In order to create a safe and peaceful atmosphere in society, the rules must be enforced and implemented firmly (Utama & Rizana, 2017).

From this it appears that this article greatly gives the testator freedom in conducting a will or grant. And it is contrary to Article 913 of the Civil Code which disputes if the testator makes another determination, namely making a determination through a will or giving of goods while he is still alive. So it can be concluded that normative legal certainty is when a rule is made and promulgated definitively because it regulates clearly and logically, so as not to cause doubt (multi-interpretation), logical and has predictability.

The rule of law, whether written or unwritten, contains rules of a general nature that guide individuals to behave in society and become a limitation for society in burdening or taking action against individuals which in this inheritance is carried out in a testamentary manner. The existence of such a rule and the implementation of such a rule give rise to legal certainty. Legal certainty is a state in which human behavior, whether individuals, groups, or organizations, is bound and within the corridors outlined by the rule of law.

In the position of the norm that has been conflicted, namely in Article 913 of the Civil Code with Article 916a of the Civil Code, it creates a new condition, namely legal uncertainty. Legal Certainty means that in the existence of law everyone knows which and how much his rights and obligations are and the theory of "legal expediency", that is, the creation of order and tranquility in the life of society, due to the existence of orderly law (rechtsorde). The theory of legal certainty contains 2 (two) understandings, namely firstly the existence of rules that are general in nature to make individuals know what actions can or cannot be done, and secondly in the form of legal security for individuals from the

authority of the government because with the existence of general legal rules that individuals can know what can be sacrificed or done by the State to individuals.

Those rules become a limitation for society in burdening or taking action against individuals. The existence of this rule and the implementation of the rule raise legal certainty (Marzuki & SH, 2021). Legal certainty is embodied by law with its nature that only makes a rule of law of a general nature. The general nature of the rules of law proves that the law does not aim to bring about justice or expediency, but rather solely for certainty (Ali, 2002).

Legal certainty is not only in the form of articles in the law but also consistency in the decisions of judges between the decisions of one judge and the decisions of other judges for similar cases that have been decided. However, in this condition, it can be seen from the conflict of norms in Article 913 of the Civil Code with Article 916a of the Civil Code. The theory of legal certainty affirms that the duty of law guarantees legal certainty in human relations, acts carried out by legal subjects that are designed in such a way and regulated in the Law but in the civil realm that are indeed devoted to private interests that give freedom to each legal subject to determine for themselves. There is certainty achieved "by law". In that task, two other duties are concluded, namely the law must ensure justice and the law must remain useful.

According to Kelsen, the law is a system of norms. A norm is a statement that emphasizes the "supposed" aspect or das sollen, by including some regulations on what to do. Norms are deliberative human products and actions. Laws that contain rules of a general nature become guidelines for individuals to behave in society, both in relationships with fellow individuals and in relation to society.

Furthermore, Legal certainty is a definite matter (circumstance), provision or provision. The law must in essence be certain and fair. It must be a guideline for behavior and fairness because the guidelines for behavior must support an order that is considered reasonable. Only because it is fair and implemented with certainty can the law carry out its functions. Legal certainty is a question that can only be answered normatively, not sociology (Rato, 2010).

Gustav Radbruch put forward 4 (four) fundamental things related to using the meaning of certainty of rules, namely : - First, that rules are positive, is that positive rules are legislation. - Second, that the rule is based in coverage, it is based in reality. - Third, that the coverage must be formulated using obvious means as a result of avoiding errors in meaning, in addition to being easy to implement. - Fourth, positive rules should not be easy to change. Gustav Radbruch's opinion was based on his view that the certainty of the rules is the certainty of the rules themselves. Rule certainty is a product according to the rules or more specifically according to the legislation. Based on his opinion earlier, then from Gustav Radbruch, positive rules governing the interests of people in citizens must always be obeyed even though positive rules are not fair.

The correlation of legal certainty referred to herein with the existence of inheritance problems that caused the problem of division of portie legiteme including the existence of heirs outside the Act i.e. testamentair heirs is the existence of testamentair heirs whose position is considered to be able to reduce the portie legiteme of legitimaris heirs. When

viewed based on grammatical interpretation and also authentic interpretation, where the grammatical interpretation is based on laws in everyday grammar. This is done when there is a term that is less bright or less clear can be interpreted according to colloquial grammar.

This grammatical interpretation can be said to be a simple method of interpretation when compared to other methods of interpretation. For to know the meaning of a provision of a law, it is interpreted or explained by deciphering it according to the language used daily in general. Such an interpretation is also called the objective interpretation method. With regard to the relevance of language in law, it can be understood that law requires language. Language is an important legal tool. Indonesian law contained in the law is prepared in a logical and systematic language. Included in the Civil Code. The enactment of civil law in Indonesia is inseparable from the many influences of liberal political forces in the Netherlands who tried to make fundamental changes in the colonial legal system, this policy is known as de bewiste rechtspolitiek Based on the principle of concordance, the codification of Dutch civil law is an example for the codification of European civil law in Indonesia.

Thus, the Civil Code as the main source of law in the classification of civil law, especially the issue of western inheritance or civil inheritance which is sourced as a whole from the Civil Code. In addition, in the Civil Code there are also other rules that are spread outside the Civil Code, and arrangements are scattered in many places, not to mention regulations, can cause inconsistencies in the implementation of the law. This is not regulated in detail and needs to be regulated its implementing rules. This includes this inheritance problem, which until now there is still no implementing regulation.

Therefore, the focus of this study found that there is a conflict norm where Article 916a of the Civil Code article mentioned above does not provide protection to legitimaris (heirs according to law) so that what is the purpose of Article 913 of the Civil Code where this article provides full protection to legitimalist heirs. The Civil Code provides for the right to the heirs of legitimacy with respect to the existence of an absolute share. The right granted by the Act is the right to bring a claim for a reduction or return granted to such third party against the property of which it is an absolute part (Legitieme Portie).

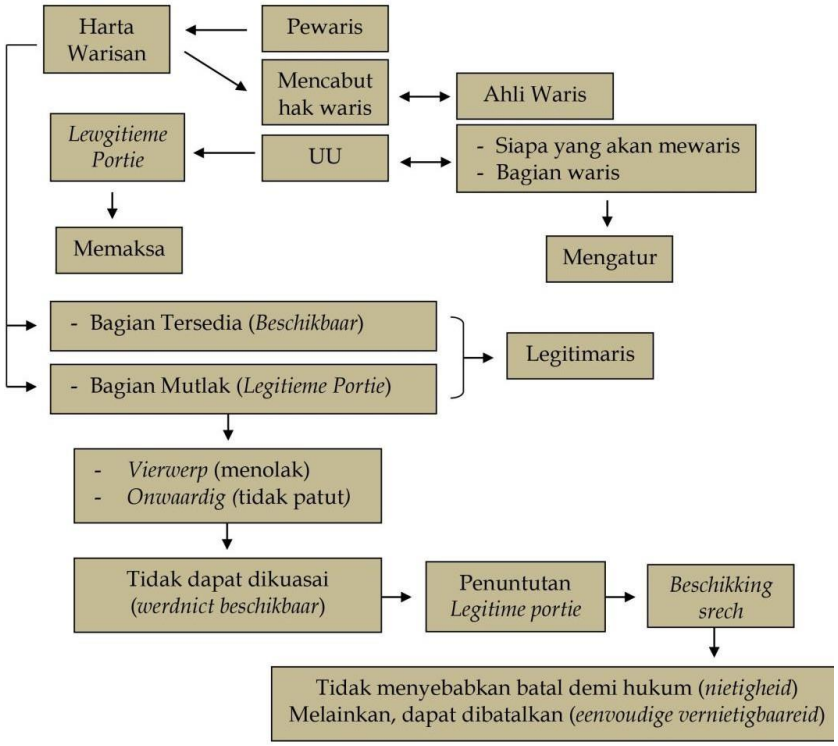
Interpretation is carried out using grammatical interpretation. This interpretation is as contained in Article 913 of the Civil Code which states that Legitieme Portie is an absolute right for the heirs under the law where the heir shall also not or is prohibited from granting such absolute right to another person designated as an heir under a will and can also be considered as not providing protection to the legitimaris (heirs according to the law) so that what is the purpose of Article 913 of the Civil Code is not it is achieved that this article gives full protection to the heirs of legitimacy by not allowing the testator to preside over anything either between the living and the will. In the grammatical interpretation, the provisions contained in the laws and regulations are interpreted with reference to the meaning of words according to grammar or according to custom.

Furthermore, on the authentic interpretation in Article 913 of the Civil Code. Authentic interpretation or official interpretation is a legal interpretation that officially the intention of the provisions of a legal regulation is contained in the regulation of the law itself because the interpretation originally comes from the shaper of the law itself. These

conflicting norms are considered to be a trigger in the occurrence of problems in inheritance. Especially if there are heirs. The appointment of the heir in the will must still refer to the Civil Code where there is a provision that before the determination of the heir in his will the heir must give an absolute share (Ligitieme Portie) to the legitimaris (the heir who has a blood relationship with the heir in a vertical line).

Furthermore, Section 916a of the Civil Code tends to be against the heirs of testamentair which can be seen in the phrase "then if to any other person than the heirs of the termasud it is granted, either by deed during life or by will, an amount greater than the share which may be subject to injunction if such heirs are absent, the grants in question shall be deducted to the extent equal to the amount allowed". This determination of the heir is affirmed by the part being cut to the extent equal to that amount.

The following is a chart of the flow of thinking in this Thesis research:



Seeing also in the division of the right of heir to the heirs in testamentair is the disbursement by way of a Will, whereby before death the heir makes a will and stipulates in his will who he wants to be the heir. The phrase in Article 913 of the Civil Code "Legitieme portie or part of the inheritance according to the law is the share and property that must be given to the heirs in a straight line according to the law, against which the deceased person shall not establish anything, either as a grant between the living persons, or as a will." is affirmed as a tendency in favor of the heirs of the ab intestato who has a legietime portie where the deceased is (the testator) is not allowed to designate anything either as a living grant (grant) or as a will. Because the heir as the owner of the property has the absolute right to regulate whatever is desired of his property and this is a consequence of the law of inheritance as a governing law.

Although in the civil inheritance law system there is an element of coercion, the position of civil inheritance law as one of the branches of civil law that is regulatory has no effect. The legal consequence of civil inheritance law as one of the branches of civil law that is regulatory in nature is that any act committed by the testator against his property while still alive is a full authority that absolutely cannot be taken over by anyone, however, if the exercise of that authority exceeds the limits specified in the Law, then there must be legal consequences that will later occur on the estate after the heir dies.

CONCLUSION

Inheritance performed by way of Testamentaires based on analysis using grammatical interpretation (language) and teleological interpretation (sociology) can reduce Portie's Legitieme. It is hereby found that the existence of an heir to the testamentair indicates an inheritance that exceeds that absolute share. The reason is that in the division of Legitieme Portie the heir is not allowed to specify anything either a grant or a will that should be given to the legitimaris.

The legal standing of the heirs in the division of Legitieme Portie is that it has binding legal force. When the Heir has established the name of the appointment of the heir, as well as by the name of the grant of the will then the heir of the testamentair has legally had the right of inheritance. Thus in the division of Legitieme Portie, legitimaris cannot fully claim the right of inheritance that the heirs have because Legitieme Portie is only limited to that part.

REFERENCES

Afandi, Ali (2000). Inheritance Law, Family Law, Evidentiary Law, Rineke Cipta, Jakarta, p.2

Ali, Achmad (2002). Uncovering the Veil of Law (A Philosophical and Sociological Study), Publisher Toko Gunung Agung, Jakarta, p.82

Ali, Zainuddin. (2008) "The Implementation of Indonesian Inheritance Law", Jakarta, Sinar Grafika, p.8

Amanat, A. (2001). Dividing Inheritance Based on Articles of Civil Law BW, Raja Grafindo Persada, Jakarta, p.1.

Hadikusuma, Hilman. (2003). Customary Inheritance Law, Bandung, PT. Image of Sditya Bakti, p. 33

Kadir, A. (2004). Legal Law and Research, Bandung, PT. Image of Aditya Bakti, p. 52

Eunuch, Nur Moh. (2014). Islamic Law And Contemporary Problems, Yogyakarta, Interpena, p. 69

Marzuki, Peter Mahmud (2008). Introduction to Law, Kencana, Jakarta, p.158

Article 913 KHU Civil

Rudito, S. (2015). Application of Legitime Fortie (Absolute Part) In The Division Of Inheritance According To The Civil Code, Journal Of Legal Law Issue 3, Volume 3, Year

Saebani, B. A. , Shamsul Falah, (2011). Islamic Civil Law in Indonesia, CV.Pustaka Setia, Bandung, p. 174

Sjarif, Surani Ahlan. (1982). The Essence of Inheritance Law According to Bergerlijk Wetboek, Ghalia Indoneisa, Jakarta, p. 14.

Satrio, J., (1992). Law of Inheritance, Alumni Publishers, Bandung, p.47

Soekanto, Soerjono. (1999). Law Enforcement, Binacipta, Bandung, p. 15

Rato, Dominikus (2010). Philosophy of Law Seeking: Understanding and Understanding Law, Laksbang Pressindo, Yogyakarta, p.59