

JURIDICAL ANALYSIS OF REJECTION OF INKORTING BY TESTAMENTER HEIRS

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Abstract

The inheritance system that is enforced in Indonesia, among other things, is by using an inheritance system based on the Civil Code. This provision allows the deceased to bequeath his assets to ab intestato heirs or even to a third party by making a will or testament. Making a will allows the deceased to give some, a part, even all of their assets to other people, which opens the possibility of the absolute portion or Legitieme Portie being violated by the legitimatary heirs. In the event that the legal heirs object to the violation of the absolute portion, it is possible to reduce or inkorting the assets obtained by the testamentary heirs. This article aims to determine the position of a testament in an inheritance and whether or not a testamentary heir can rejected in the event of being decided to do inkorting using research using normative juridical methods. The conclusion obtained is that the position of the testament is considered higher because it is the final wish of the testator, but its application is still limited by Article 913 of the Civil Code. Meanwhile, incorruption cannot be rejected by the testamentary heirs, because the arrangements regarding the fulfillment of the legitieme portion are coercive. The conclusion obtained is that the position of the testament is considered higher because it is the final wish of the testator, but its application is still limited by Article 913 of the Civil Code. Meanwhile, incorruption cannot be rejected by the testamentary heirs, because the arrangements regarding the fulfillment of the legitieme portion are coercive. The conclusion obtained is that the position of the testament is considered higher because it is the final wish of the testator, but its application is still limited by Article 913 of the Civil Code. Meanwhile, incorruption cannot be rejected by the testamentary heirs, because the arrangements regarding the fulfillment of the legitieme portion are coercive.

Keywords: inheritance, Civil Code, Legitieme Portie, Inkorting

INTRODUCTION

All humans will die eventually, when someone dies there are many things that must be taken care of by their family members. One of them concerns the management of the assets owned by the deceased during his lifetime, both debt fulfillment and distribution of assets to heirs and other parties. It can be distribution to heirs, in the form of family members in a straight line down and up and even to the side, a spouse left behind, or other parties that the deceased person wanted while he was still alive. Arrangements regarding the transfer of assets left behind are not always an issue, but are usually a sensitive matter when it is to be distributed. To avoid problems with the distribution of wealth, and to fulfill the last wish of the deceased, a system of inheritance is used.

Arrangements regarding inheritance law in Indonesia are governed by several legal systems, namely based on Islamic Law, Customary Law, and inheritance law based on the Civil Code or *Burgelijk Wetboek*. Inheritance law itself can be interpreted as a provision governing the transfer of assets including the rights and obligations of someone who has died to one person or more (Meliala, 2018; Suwarni, Budiarta, & Arini, 2020). A person or more who receive the intended inheritance has a relationship with the deceased, be it blood relations, marriage relations, and it can also be someone who has no relationship at all or a third party. This Civil Code not applied for all citizen or resident in Indonesia, it was only applied to three groups, which is European and people that equated with it; for the Foreign East of Chinese; and for Other Foreign Eastern Groups and other indigenous people who subdue themselves (Rudito, 2015), that makes the inheritance law of the Civil Code only used for a certain group of people, mostly Chinese people in Indonesia.

In the inheritance law of the Civil Code, heirs who have close blood relations with someone who dies, especially those who are in a straight line both downward and upward have an absolute share of the inheritance that must be received. The Civil Code also provides an opportunity for a person to give his assets to a third party in accordance with their last wish set forth in a will or testament. Sometimes the contents of the testament can be detrimental to the heirs based on blood relations, and the heirs of the testament are required to carry out *inkorting* or reduction to fulfill the absolute portion that was violated. So that when a result arises from the violation of the absolute portion, in the form of a reduction in the part that should be received by the heirs of the testament.

Previous articles focused on *legitieme portie* and *inkorting* separately, while others conducted research discussing the application of *legitieme portie* and *inkorting* in inheritance. In some of these studies, while no one has discussed the rejection of *inkorting* by testamentary heirs. It is hoped that this article will provide more explanation regarding the position of the testament in inheritance under the Civil Code, and whether or not testamentary heirs can refuse a court decision to incorrect their inheritance. It is also hoped that this article will make it easier for parties who need a source of discussion regarding the *inkorting* of wills due to the violation of the *legitieme* portion of inheritance.

Based on this background, it becomes the main issue to see how the position of the testament is as the final wish of the deceased compared to legitimate heir and what if an unexpected situation occurs where the testamentary heir objects to the *inkorting*.

RESEARCH METHOD

The research was carried out using an approach with normative juridical methods, where what is meant by method is defined in the Indonesian Dictionary as a systemic way of working to facilitate the implementation of an activity in order to achieve a certain goal. In the context of research, the method is defined as a way to understand the object used to facilitate more understanding of the object for knowledge. While the approach is defined as a way, process, or deed to approach something, if it is interpreted in the research concept, namely an approach to objects in an orderly or systemic way and process. In a study, the word normative juridical is defined as something with special or distinctive characteristics,

From all these understandings, it is concluded that the approach with normative juridical research methods is defined as a way or process in research in the field of law which is carried out with library materials referring to written sources in the form of legal theories, laws and regulations, studies previous research and other written sources, which are then analyzed in order to get answers from the formulation of the problem with deductive thinking methods and coherent truth criteria.

The specification of the research used is analytical descriptive, namely by providing descriptions and descriptions that are carried out systematically regarding the facts, characteristics, and relation between the phenomena studied while being analyzed. Furthermore, the type of data used is secondary qualitative data with reference to literature studies in the form of previous studies, books, documentation, and other documents related to the issues discussed. Qualitative data by

looking at the characteristics and characteristics along with the quality and quality of something which is then expressed in a form that is not a number.

So that in this study, where normative juridical research will be used by looking at statutory regulations, namely the *Burgelijk Wetboek* as a reference in research, also looking at legal theories related to *legitieme portie* and *inkorting* in inheritance to be further analyzed by deductive thinking method. Will also look into inheritance cases that involving *legitieme portie* and in need of *inkorting* and analyze the case, and what happened to all the testamentary heir's rejection of *inkorting*.

RESULTS AND DISCUSSION

Main Heading of the Analysis or Results

The law of inheritance itself can be interpreted as a provision that regulates the transfer of property including the rights and obligations of a deceased person to someone or more. Inheritance law arrangements in Indonesia are still regulated in several legal systems, namely based on Islamic Law, Customary Law, and inheritance law based on the Civil Code or Civil Code (Andriyani, 2021). The enactment of these legal systems is adapted to the wishes and circumstances of the heir and his heirs. Islamic inheritance law is applied to heirs and heirs who want to divide the inheritance based on the arrangements of Islamic Law (Abdul Khalid Purnaputra, Anwar Borahima, 2013; Sagala, 2018). The enforcement of customary inheritance is carried out based on the provisions in a customary territory, which has been adopted and regulated in an indigenous community. Meanwhile, the inheritance law based on the Civil Code was enacted since the Dutch colonial era which is a classification of the Code Napoleon and the Code Civil de Francais, which was imposed by the Dutch in Indonesia during the colonial period and is known as the Civil Code or *Burgelijk Wetboek*.

The Civil Code does not applied for all citizen or resident in Indonesia, it was only applied to three groups according to the Civil Code itself, which is European and people that equated with it; for the Foreign East of Chinese; and for Other Foreign Eastern Groups and other indigenous people who subdue themselves (Rudito, 2015), that makes the inheritance law of the Civil Code only used for a certain group of people, mostly Chinese people in Indonesia.

Inheritance Law System of the Civil Code

Inheritance law in the Civil Code or Civil Code is regulated in Book II concerning objects. This happens because the Civil Code views a person's right to inherit as a material right to the assets of someone who has died. Inheritance law itself is defined as all legal regulations governing the assets of someone who has died, namely regarding the transfer of wealth which can cause an effect in the form of obtaining, both in relations between family and third parties (Anisya Fitri Suhartono, Diana; Azizah, Naysha Nur; Sirikiet Wibisono, 2022; Meliala, 2015). From this definition, it is obtained that the elements that must exist in the inheritance process, namely someone who dies or the deceased, the assets of the heir, and other parties who receive the assets from the deceased are called heirs. The entire process of transferring assets is known as inheritance.

In inheritance, a 'death' must happened first for it to be called inheritance. Then there must be an assets that was left behind by the deceased person, then the assets was given to the heirs of the deceased, whether it was by blood relations, marriage relation, or even by a will written by the deceased (Suryadini, 2020) (Anastassia Tamara Tandey, 2020). The distribution of the deceased's assets was regulated by the Civil Code into two system.

Inheritance itself can be divided into two systems of inheritance, namely the *ab intestato* inheritance system as referred to in Article 832 of the Civil Code which states that those who are entitled to become heirs according to law are blood relatives, both legal and illegitimate families and the spouse who has lived the longest. The second system of inheritance is called testamentary inheritance as referred to in Article 875 of the Civil Code which states that a testament or will is a deed that contains a statement from a person about what he wants after he dies. So that in this testamentary inheritance it is not limited to blood relatives, but can be given to other people as the heir wishes (Wurabulaeng Temponbuka, 2022).

Ab Intestato Heir and Testamenter Heir

Heirs of the *ab intestato* inheritance system or heirs based on the law can be divided into two, namely non-legitimate *ab intestato* heirs and legitimacy *ab intestato* heirs. *Ab intestato* non-legitimate heirs are heirs who by law are entitled to receive inheritance, but do not have what is called an absolute share. An example of an *ab intestato* non-legitimate heir is the spouse who has lived the longest, namely the husband or wife of the deceased who is the heir as determined by law, but does not have an absolute share (Nugraheni, 2019).

Ab intestato legitimacy heirs or legitimate heirs, as referred to in Article 913 of the Civil Code, namely in a straight line both up and down have an absolute share of the inheritance which is called *legitieme portie*. *Ab intestato* inheritance refers to the legal process of distributing the assets of a deceased individual who did not leave behind a valid will. In such cases, the distribution of the estate is based on the laws of intestacy, which vary from jurisdiction to jurisdiction. Typically, the estate is distributed to the deceased's spouse, children, parents, siblings, or other close relatives. The distribution may also be influenced by factors such as the state of the deceased's debts and the value of the estate. It is advisable for individuals to have a valid will to ensure their assets are distributed according to their wishes. Some examples of *ab intestato* legitimacy heirs, namely in a straight line up include parents and in a straight line down are children and their descendants. The calculation of *legitieme portie* is regulated in Article 914 of the Civil Code, namely if there is only one legitimate child, then the portion received is $\frac{1}{2}$ (half) of the $\frac{2}{3}$ that should be received. If there are two legitimate children, then the *legitieme portie* is (two-thirds) of what should be received. If there are three or more legitimate children, then the portion is (three-quarters) of all that should be received by the heirs. A legitimate heir is an *ab intestato* heir, but *ab intestato* heir not likely a legitimate heir (Anastassia Tamara Tandey, 2020). For example, a widow left behind by the deceased was an *ab intestato* heir but not a legitimate or legitimary heir, so in case a testament was made and the *legitieme portie* of the deceased's children was violated, the widow's portion was the first to be taken to fulfill the children (*legitimate heirs*) portion.

A testamentary heir is someone who inherits based on a will or testament made by the deceased during his lifetime. There are two terms for the heirs of the testamentary inheritance system, (Sanjaya, 2018) namely testamentary and legal heirs. Based on Article 876 of the Civil Code, the contents of a will can be granted based on two rights, namely general rights and special rights. The basis of general rights or *erfstelling* is based on a legal event. Article 954 of the Civil Code provides an understanding that the recipient of an *erfstelling* is referred to as a testamentary heir, where a person who bequeaths his property to one or more persons as a testamentary heir if the person dies. This testamentary heir receives a 'certain share', for example, gets $\frac{1}{2}$ part, $\frac{1}{4}$ part and others based on the contents of the will or testament. The deceased can even also bequeath the entire of his property and inheritance to testamentary heirs. With the regards to the basis of special rights, it is called a legacy or testamentary grant. In the case of a testamentary grant, the deceased gives a 'certain item' as stipulated in Article 957 of the Civil Code, that the 'certain item' includes movable property, immovable property or gives usufructuary rights over all or part of the inheritance.

Inheritance with an *ab intestato* system and inheritance with a testamental system as stated in the provisions of the Civil Code, based on Articles 834 and 835 of the Civil Code that the two inheritance systems have the same rights and obligations (Daniel Angkow, 2016). This means that testamentary heirs also have *hereditatis petitio* rights or the right to file a lawsuit to fight for their inheritance rights against all those who are good on the same basis, either without any basis for any right to control all or part of the inheritance. Regarding the position between *ab intestato* heirs and testamentary heirs, based on Article 874 of the Civil Code which states that all the inheritance of a person who dies belongs to his heirs according to law as long as there is no legal stipulation in the form of a will from the deceased. This article, if simplified, means that the inheritance of the deceased belongs to the heir according to law or *ab intestato* heirs, as long as the deceased does not make a will or testament. This also means that the position of the testamentary heirs takes precedence over the *ab intestato* heirs, that the portion of the testamentary heirs may not be reduced, unless the absolute portion of the legitimate heirs is violated which is then filed a lawsuit against that absolute portion to the court. So that there are still a few restrictions for testamentary heirs, which are related to the *legitieme portie*.

When the deceased person still alive, they have an available portion of their assets they control and can be given to anyone they wished, while there's also a part of their assets that was an absolute part of their legitimate heirs that they can't control and can't be given freely to the third parties who will inherit based on a will (Sibarani, 2015). This absolute portion was also known as *Legitieme Portie*, as regulated by law, this absolute portion is a 'must be fulfilled' according to the Civil Code in Indonesia.

Legitieme Portie and Inkorting

The absolute portion or *legitieme portie* as referred to in Article 913 of the Civil Code is known as a part of the inheritance determined by law to the heirs in a straight line both up and down, where the absolute portion may not be determined otherwise by the deceased either legally grant or in the form of a will (Thong Kie, 2011). Legitimate heirs who are entitled to an absolute share of an

inheritance may request an annulment of a testament that violates their right to such an absolute share, may also demand that a reduction or inkorting be made to all forms of inheritance that reduce these rights. Seeing the provisions regarding legitime portie regulated in the Civil Code in Book Two Part 3 Articles 913 – 929, many experts view that the regulation regarding legitime portie is a limitation for someone in making a will (Subekti, 2003). This is because the heir whose absolute portion is violated can and must first submit an objection to the testament or will made by the deceased, so that the making of a will by the deceased must be done carefully and with full consideration. The legal basis for regulating legitime Portie as written above is regulated in Book Two Part 3 Articles 913 – 929 of the Indonesian Civil Code, which reads:

Article 913 of the Civil Code

"The absolute portion or legitime portie, is a part of the inheritance that must be given to the heirs in a straight line according to law, on which part the deceased is not allowed to determine anything, either as a gift between the living, or as a testament."

Article 919 of the Civil Code

"Part of a person's assets, which he is allowed to use freely, may he give or donate it to another person, either in whole or in part, either by civil action between those who are still alive, or by will, either to people not heirs, nor to their children or to those who are entitled to receive an inheritance, but all of this without prejudice to the obligations of all the recipients of the gift or gift, to include back in the inheritance, everything that has been given or donated to them, in cases matter if it is connected with the provisions in the seventeenth chapter of this book, the income is obligatory upon them."

Article 920 of the Civil Code

"For all gifts or grants, both between those who are still alive, and with a will that results in the reduction of an absolute share in an inheritance, it is permissible to do a reduction later, when the inheritance falls out, but only on the demands of the absolute heirs and heirs or their substitutes. However, the heirs are absolutely not allowed to enjoy even the slightest reduction in the losses of the debtors of the deceased."

Article 926 of the Civil Code

"Reduction of all that has been bequeathed, must be carried out without making a difference between those who are appointed as heirs and those who receive grants, unless the person who wills, expressly stipulates that the appointment of this heir or the granting of that grant must be special carried out, in which case such will may not be reduced, except in cases where it turns out, that the other wills are not sufficient to produce an absolute share in the inheritance."

If a problem occurred regarding the inheritance problems involving the legitime portie (Sari, 2020), according to Eggens, the solution of inheritance problems if the share of absolute portion or legitime portie is violated because of the existence of the testament, the testament was implemented as follows:

- a. Execute the will and check whether there is any remaining inheritance;
- b. Dividing the remaining inheritance, if there's any, to *ab intestato* heirs;
- c. Checking whether the legitime portie get their legitime portie, if the legitime portie was not violated, then the two things above does not change;
- d. In case the legitime portie got violated, and the legitimate heirs file a law suit to the court, the court can order the testament heir to do an inkorting or reduction.

Reduction or Inkorting is the reduction or subtraction of the part of testamentary heirs and beneficiaries of testamentary grants in order to fulfill the absolute portion that has been violated by the legitimacy of the heirs. Inkorting refers to the reduction or adjustment of a person's lawful share of inheritance due to certain circumstances, such as prior gifts or advancements made by the deceased to that person during their lifetime. The purpose of inkorting is to ensure that the distribution of the deceased's assets is fair and equitable among all heirs. In the event that the deceased gives a number of inheritance assets to the heirs through a will which in the distribution may violate the absolute share of the legitimate heirs, then as a form of effort to fulfill the absolute share it is carried out by reducing the part of the contents of the testament in order to fulfill the deficiency of the absolute

share of the legitimacy heirs. The form of inkorting can be divided into two types, namely pseudo-inkorting and actual inkorting. What is meant by pseudo-inkorting is if the demand for fulfillment of legitime portie by inkorting is carried out when the inheritance has not been divided (Dedy Pramono, 2016). While actual inkorting or *eigenlijk inkorting* is if the demand for legitime portie fulfillment is carried out when the inheritance already been divided, and the testamentary heirs already accepted their shares, and obligated to do inkorting to fulfill the rights of legitimate heirs or legal heirs.

Inkorting is carried out if the absolute portion of the legal heir in an inheritance is violated due to a testament or will that violate this absolute portion. As stated by Prof. J. Eggens's opinion as quoted in Tan Thong Kie's book, that the settlement that is generally carried out when the legitime portie of the heir is violated due to a grant, appointment of heirs or a will by the deceased is resolved in four steps (Thong Kie, 2011), namely:

- 1) carry out the will and then examine whether there is any remainder of the inheritance;
- 2) distribute the remaining inheritance -if any- according to law to ab intestato heirs;
- 3) check whether the legitimaries receive the Legitime Portie in accordance with what they should receive;
- 4) make reductions or inkortings at the request of the legitimaries if the Legitime Portie is violated.

Reduction or inkorting is carried out in order to fulfill the absolute legitimacy part based on the provisions of Article 924 and Article 926 of the Civil Code, which reads:

Article 924 of the Civil Code

"All gifts between the living, may not be reduced, except if it turns out that all the items that have been bequeathed, are not sufficient to guarantee an absolute share in an inheritance. If, despite this, it still has to be reduced to the grants of those who are still alive, then this reduction must be made starting with the later grant, then from this one to the older grant and so on."

Article 926 of the Civil Code

"Reduction of all that has been bequeathed, must be carried out without making a difference between those who are appointed as heirs and those who receive grants, unless the person who wills, expressly stipulates that the appointment of this heir or the granting of that grant must be special carried out, in which case such will may not be reduced, except in cases where it turns out, that the other wills are not sufficient to produce an absolute share in the inheritance."

The provision for incorruption to fulfill the absolute portion is coercive, and therefore it must be fulfilled by the testamentary heirs, if the testament based on a court decision is proven to violate the absolute portion of the legitimacy of the heirs.

Several Legitime Portie Decisions and Inkortings in Supreme Court Decisions

Inheritance cases in Indonesia have become a problem that exists every year, look at the Directory of Decisions of the Supreme Court of the Republic of Indonesia. Several decisions indicate that inheritance decisions that violate legitime portie will be null and void based on a judge's decision (Suryadini, 2020), but it needs to be reminded again that legitime portie must first be objected to by the legitimate heirs. If the heirs do not raise objections based on the legitime portie, then the testament will still be carried out according to the wishes of the heir. The following are several Supreme Court decisions that annul the will due to objections from the legitimate heirs due to the violation of the absolute portion.

- a. Verdict of the Supreme Court of the Republic of Indonesia No.148/PK/Pdt/1982 which provides a rule that reads "declaring inheritance provisions that violate the Legitime Portie rules are null and void"
- b. Verdict of the Supreme Court of the Republic of Indonesia No. 841K/Pdt/2003 dated 24 February 2005 stated that "Valid by Law and/or has no legal force Deeds of Grants that violate Legitime Portie"
- c. Verdict of the Supreme Court of the Republic of Indonesia No.698K/Pdt/2005 dated 26 June 2008 which reads "declares the heir who violates the Legitime Portie is null and void so that it has no legal force"
- d. Verdict of the Supreme Court of the Republic of Indonesia No.517PK/Pdt/2010 dated 26 April 2011 it was decided that inheritance grants made by violating the absolute rights (legitime portie) of legitimate heirs are legally invalid and null and void by law.
- e. Verdict of the Supreme Court of the Republic of Indonesia No. 1847 K/Pdt/2011

It was decided by the Supreme Court that provisions in the granting of inheritance, both in the case of a will or testament as well as in the case of grants violating the Legitieme Portie of legitimate heirs, can be requested for cancellation (Helrina, 2017) so that the will or testament is null and void and therefore has no legal force. So that the inkorting cannot be refused by the testamentary heirs, because the arrangements regarding the fulfillment of the Legitieme Portie are coercive, and therefore the arrangements must be fulfilled, so that if the testamentary heirs are asked to carry out inkorting based on a court decision, the order must be carried out.

CONCLUSION

Based on Article 874 of the Civil Code it is stated that the distribution of inheritance from the deceased is carried out based on the provisions in the law with *ab intestato* heirs, but this is only if the deceased does not make a will or testament. In the event that the deceased makes a testament that appoints another party to receive some, parts or even all of the assets, then the will of the deceased takes precedence with the existence of a restriction. From this it can be seen that the position of the testamentary heir is higher because it takes precedence as the testament which is the last wish of the deceased, but still with the absolute share of the legitimacy of the heirs to take count and to be reconsider.

In the case of testamentary inheritance, sometimes problems arise in the form of violation of the rights of the *ab intestato* heirs, especially the rights of the legitimate heirs who have an absolute share in the inheritance. If the will or testament from the deceased does not violate the legitieme portie of the legitimate heirs, then the legitimate heirs cannot object to the contents of the will on the basis of a violation of the absolute portion, and maybe if it is indeed violate the legitieme portie of the legitimate heirs but they didn't mind then it will not be a problem. However, in terms of the contents of a will made based on the wishes of the deceased, it is carried out by giving all or part of the inheritance to the testamentary heirs, which in turn can reduce or even completely erase the absolute share of the legitimacy of the heirs. Legitimate heirs whose legitieme portie is violated should file a lawsuit on court based on the violation of the said absolute portion to receive their absolute share rights of the inheritance, even to ask for the cancellation of the testament. If so, the testamentary heir must incur or reduce the inheritance that has been bequeathed to him in accordance with statutory provisions. The testamentary heir can't refuse to do inkorting, because the regulation regarding inkorting was mandatory and that's why it could be force to be fulfilled by the court. In case the testamentary heir didn't accept the decision of the court, then they can appeal to the high court or next stage.

Therefore it is strongly recommended that in making a will by the deceased it must be done carefully and with full consideration, taking into account the risks that may arise in the future. It is recommended for testamentary heirs to work together to carry out inkorting if it is decided by the court that the absolute portion of legitimate heirs is not met, and fulfill the absolute portion of the legitimacy of heirs.

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