

Legal Certainty of the Forced Share (Legitime Portie) of Legitimaries in Relation to Testamentary Grants that Violate the Forced Share

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ABSTRACT

Inheritance arises upon a person's death and is governed by civil inheritance law. Although Article 874 of the Indonesian Civil Code allows inheritance distribution through a will, such freedom is limited by the compulsory portion (*legitime portie*) protected under Article 913. In practice, testamentary grants that infringe upon the compulsory portion frequently occur, resulting in disputes among heirs, challenges to testamentary deeds, and inconsistencies in judicial decisions. This study examines the legal consequences of testamentary grants that violate the compulsory portion and analyzes the legal certainty afforded to legitime heirs. The research applies Soeroso's theory of legal consequences to assess changes in legal relationships resulting from the annulment of testamentary grants and Jan Michiel Otto's theory of legal certainty to evaluate the consistency of legal norms and judicial reasoning. Using a normative juridical method, the study relies on primary, secondary, and tertiary legal materials through statutory, case, conceptual, and analytical approaches. The findings reveal that testamentary grants violating the compulsory portion may be partially or wholly annulled, depending on the extent of the infringement. Such annulment serves as a legal sanction for violating mandatory inheritance provisions and affects the legal position of beneficiaries by reducing or eliminating rights obtained under the will. Legal certainty is reflected in the recognition of legitime heirs' protected rights and the consistent application of inheritance norms by courts. The study recommends greater diligence by notaries in drafting wills and the development of jurisprudential guidelines to promote consistency in court decisions concerning *legitime portie* and inheritance disputes.

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1. INTRODUCTION

Indonesia, as a state based on the rule of law as affirmed in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, is obligated to guarantee legal certainty, justice, and legal protection in every aspect of society, including in the field of civil

law. One form of legal protection is reflected in regulations governing property rights and inheritance. In the context of Indonesian civil law, inheritance law plays a crucial role in ensuring the orderly transfer of a deceased person's rights and obligations to his or her heirs while safeguarding the interests of those

legally entitled to inherit. Such protection is particularly important because inheritance distribution frequently gives rise to disputes among heirs, especially when questions emerge regarding the validity of wills, the allocation of inheritance shares, or the infringement of compulsory inheritance rights. Therefore, inheritance law serves not only as a mechanism for transferring assets but also as a legal instrument for protecting heirs and maintaining legal certainty in the settlement of inheritance disputes [1], [2], [3].

The regulation of inheritance within the Indonesian legal system, particularly those derived from the Indonesian Civil Code (Kitab Undang-Undang Hukum Perdata/KUHPerdata), is contained in Book II of the Civil Code. Inheritance may be distributed either according to statutory provisions or through a will made by the deceased. However, the freedom to dispose of property by will is limited by the compulsory portion (*legitime portie*) guaranteed to certain heirs under the Indonesian Civil Code. Legal problems arise when testamentary grants infringe upon these protected shares, often resulting in inheritance disputes, challenges to the validity of testamentary dispositions, and uncertainty regarding the rights of legitimate heirs. This issue highlights the need to examine the legal consequences of such violations and the extent of legal certainty available to affected heirs [4], [5], [6], [7].

Although a testator is generally free to determine the distribution of his or her estate through a will, such freedom is limited by the doctrine of *legitime portie*. The compulsory portion constitutes a mandatory (*dwingendrecht*) norm of inheritance law designed to safeguard the minimum rights of legitimate heirs. Accordingly, the provisions governing *legitime portie* are binding and cannot be derogated from by the unilateral wishes of the testator. Any testamentary grant that diminishes or eliminates the compulsory share of protected heirs therefore conflicts with mandatory legal norms and may be subject to judicial intervention to restore the rights guaranteed by law [8], [9], [10].

This provision is regulated in Article 913 of the Indonesian Civil Code, which states

that the legitimate portion constitutes a portion of the estate that must be granted to heirs in the direct line according to the law, and the testator is not permitted to reduce such portion through gifts or wills.

In practice, testamentary grants that violate the provisions concerning the legitimate portion are still frequently found, thereby reducing the rights of legitimate heirs. Such conditions give rise to legal disputes because heirs holding compulsory rights consider themselves disadvantaged by the contents of the testamentary grant made by the testator. Violations of the compulsory portion ultimately raise issues concerning legal protection and legal certainty for legitimate heirs [4], [11].

These issues are reflected in several court decisions that have obtained permanent legal force. In Supreme Court Decision Number 2665 K/Pdt/2019 in conjunction with Banjarmasin High Court Decision Number 3/Pdt/2017/PT.Bjm and Banjarmasin District Court Decision Number 16/Pdt.G/2016/PN.Bjm, the panel of judges annulled a testamentary grant because it was deemed to violate the legitimate portion of the heirs. Judicial Review Decision Number 554 PK/Pdt/2024 reflects a consistent judicial approach in cases involving violations of the compulsory portion (*legitime portie*). The court emphasized that testamentary dispositions cannot override the mandatory inheritance rights of legitimate heirs. Accordingly, a testamentary grant that diminishes the protected share of compulsory heirs may be annulled as a consequence of violating mandatory legal provisions. This reasoning reinforces the principle that testamentary freedom must operate within the limits established by inheritance law to ensure legal protection and certainty for legitimate heirs. Furthermore, Supreme Court Decision Number 2660 K/Pdt/2016 in conjunction with Bandung High Court Decision Number 425/Pdt/2015/PT.Bdg and Bandung District Court Decision Number 108/Pdt.G/2014/PN.Bdg also emphasized the protection of legitimate heirs' rights through the annulment of testamentary grants violating the legitimate portion.

Previous studies regarding testamentary grants and legitime portie have been conducted by several researchers. Rebecca Sarah Sitepu (2020) discussed the legal consequences of wills violating the legitime portie [12]. Israviza Notaria (2020) examined the annulment of grant deeds concerning undivided inheritance exceeding the legitime portie [13]. Abdul Khalid Purnaputra (2013) researched the reduction (*inkorting*) of wills to fulfill the legitime portie of heirs [14]. Furthermore, Alfina Tarnisa Putri (2022) discussed notarial liability concerning testamentary grant deeds violating the legitime portie [15], while Farah Meutia (2022) examined the annulment of testamentary grant deeds based on Supreme Court Decision Number 2665 K/PDT/2019 [16]. Unlike previous studies, which generally discuss testamentary succession and inheritance disputes in broad terms, this research focuses specifically on the legal certainty surrounding the implementation of *legitime portie* in cases where testamentary grants violate the compulsory portion of legitime heirs. The study examines both the legal consequences of such violations and the extent to which statutory provisions and judicial decisions provide consistent protection for the rights of compulsory heirs.

2. LITERATURE REVIEW

Research concerning testamentary grants (*hibah wasiat*) and the protection of legitimary heirs has received considerable attention in Indonesian civil inheritance law. Previous studies generally agree that testamentary freedom is not absolute and must comply with the compulsory portion (*legitime portie*) guaranteed to certain heirs under the Indonesian Civil Code. Studies by Rebecca Sarah Sitepu (2020), Israviza Notaria (2020), Abdul Khalid Purnaputra (2013), and Farah Meutia (2022) primarily focus on the legal consequences of testamentary grants that infringe upon the compulsory portion, including the annulment of testamentary dispositions and the application of *inkorting* as a mechanism to restore the rights of legitimary heirs [12], [13], [14], [16]. These

studies consistently emphasize the importance of protecting heirs against testamentary acts that reduce or eliminate their legally protected shares.

In addition, other studies have examined specific legal issues arising from violations of *legitime portie*. For example, Alfina Tarnisa Putri (2022) focuses on notarial responsibility in drafting testamentary grant deeds that conflict with compulsory portion provisions, highlighting the need for prudence in the preparation of testamentary instruments [15]. Collectively, the existing literature has contributed significantly to understanding the legal consequences of testamentary grants, the operation of *inkorting*, the annulment of inheritance-related legal acts, and the accountability of legal professionals involved in testamentary arrangements [17].

However, despite these contributions, relatively little attention has been devoted to the issue of legal certainty in the implementation and enforcement of *legitime portie*. Most previous studies concentrate on legal consequences after a violation has occurred, whereas the consistency of legal norms and judicial reasoning in protecting the compulsory portion of legitimary heirs remains insufficiently explored. Accordingly, this research differs from prior studies by specifically examining legal certainty concerning *legitime portie* in cases of testamentary grants that violate compulsory inheritance rights. It focuses on how statutory provisions and judicial decisions collectively provide protection for legitimary heirs and ensure the consistent application of inheritance law principles.

3. METHODS

This research constitutes normative juridical legal research, namely research conducted by examining library materials or secondary data as the primary source. Normative legal research aims to analyze legal norms governing testamentary grants and the protection of the legitime portie of legitime heirs [18], [19], [20].

This research employs several approaches, namely the statutory approach, case approach, analytical approach, and conceptual approach. The statutory approach is carried out by examining legal provisions related to inheritance and testamentary grants. The case approach is used to analyze court decisions concerning disputes over the legitime portie. The analytical approach is applied to understand the meaning of legal concepts contained in statutory regulations and their implementation in practice. Meanwhile, the conceptual approach is used to examine legal concepts related to legal certainty and the protection of the rights of legitime heirs [20], [21].

The sources of legal materials in this research consist of primary, secondary, and tertiary legal materials. Primary legal materials include the 1945 Constitution of the Republic of Indonesia, the Indonesian Civil Code, Law Number 48 of 2009 concerning Judicial Power, and Law Number 1 of 1974 concerning Marriage along with its amendments. Secondary legal materials are obtained from books, scientific journals, theses, and research findings relevant to the research topic. Tertiary legal materials consist of legal dictionaries, encyclopedias, and legal indexes that support the understanding of primary and secondary legal materials.

The technique for collecting legal materials was conducted through library research by identifying, inventorying, and examining various legal sources related to the research. Furthermore, the collected legal materials were analyzed using methods of legal interpretation and legal construction. Legal interpretation was carried out through grammatical and systematic interpretation to accurately understand the meaning of legal norms. Meanwhile, legal construction was conducted through the methods of analogy and legal refinement (*rechtsverfijning*) in order to determine legal solutions to the issues examined in this research [22], [23], [24].

4. RESULTS AND DISCUSSION

4.1 *Legal Consequences of Testamentary Grants that Violate the Compulsory Portion of Legitime Heirs*

A testamentary grant is a form of expression of the testator's intention set forth in a will to transfer part of his or her property to a particular person. In the Indonesian civil inheritance law system, testamentary grants are recognized as valid legal acts insofar as they fulfill the formal and material requirements stipulated in the Indonesian Civil Code (*Kitab Undang-Undang Hukum Perdata / KUHPerdata*). Nevertheless, the freedom of a testator in determining the distribution of property through a testamentary grant is not unlimited, because the law provides protection for certain heirs through the provisions concerning the compulsory portion or legitime portie [1], [25].

The provisions regarding the legitime portie are affirmed in Article 913 of the Indonesian Civil Code, which states that the compulsory portion constitutes a certain part of the estate that must be granted to heirs in the direct line according to the law. Such rights cannot be abolished or reduced through gifts or wills. Therefore, any testamentary grant that contradicts these provisions gives rise to legal consequences because it violates mandatory legal norms (*dwingend recht*).

The results of this research indicate that the legal consequence of a testamentary grant violating the compulsory portion of legitime heirs is that such testamentary grant may be annulled through a court decision. The annulment is carried out because the contents of the testamentary grant are considered contrary to civil inheritance law provisions and detrimental to the rights of legitime heirs, which are normatively protected by law. Thus, even though a testamentary grant has been made in the form of an authentic deed, its validity must still be examined from a material perspective, particularly

regarding the protection of the compulsory portion of heirs.

In inheritance law practice, a testamentary grant is not merely understood as the unilateral intention of the testator, but also as a legal act creating legal relations among the testator, the beneficiary of the testamentary grant, and the legitimate heirs. Such legal relations only produce legal consequences after the death of the testator. At that moment, the beneficiary acquires rights over the inherited object, but such rights remain limited by the provisions concerning the legitimate portion.

According to the researcher's view, a testamentary grant is a legal act that from the outset contains juridical consequences. However, its implementation must still take into account the protection of legitimate heirs. Therefore, a testamentary grant cannot be used as a means to eliminate or reduce the rights of heirs guaranteed by law.

If a testamentary grant is found to violate the compulsory portion of legitimate heirs, a legal imbalance arises between the rights of the beneficiary and the rights of the legitimate heirs. Under such circumstances, legitimate heirs possess the right to file claims for reduction or annulment of the testamentary grant as regulated in Article 920 of the Indonesian Civil Code.

When associated with Soeroso's theory of legal consequences, a testamentary grant violating the compulsory portion of legitimate heirs gives rise to several legal consequences. First, the emergence, alteration, or termination of a legal condition. A testamentary grant initially considered valid may lose its legal force if proven to contradict the provisions regarding the legitimate portion. Following a court decision, the testamentary grant is deemed no longer legally binding [26].

Second, the emergence or alteration of legal relations among the parties. A testamentary grant creates legal relations among the donor, beneficiary,

and legitimate heirs. However, when legitimate heirs file an annulment claim, those legal relations change because the beneficiary's rights can no longer be fully exercised.

Third, the imposition of legal sanctions resulting from violations of mandatory legal norms. In this context, the legal sanction takes the form of annulment of the testamentary grant by the court. Such annulment constitutes a form of law enforcement against legal acts contrary to civil inheritance law provisions.

This research found that in judicial practice, judges consistently provide protection to legitimate heirs by annulling testamentary grants that violate the compulsory portion. This is reflected in several court decisions that have obtained permanent legal force.

In Supreme Court Decision Number 2665 K/Pdt/2019 in conjunction with Banjarmasin High Court Decision Number 3/Pdt/2017/PT.Bjm and Banjarmasin District Court Decision Number 16/Pdt.G/2016/PN.Bjm, the panel of judges declared the testamentary grant null and void because it was proven to reduce the rights of legitimate heirs. The judges emphasized that the freedom of the testator in determining the contents of a testamentary grant remains limited by the obligation to respect the compulsory rights of heirs.

A similar position can also be seen in Judicial Review Decision Number 554 PK/Pdt/2024 in conjunction with Supreme Court Decision Number 3155 K/Pdt/2022, Jakarta High Court Decision Number 392/PDT/2021/PT DKI, and Central Jakarta District Court Decision Number 151/Pdt.G/2020/PN Jkt Pst. In that case, the court annulled the testamentary grant because its substance was proven to violate the compulsory portion of legitimate heirs. The decision demonstrates that protection of legitimate heirs constitutes a fundamental principle in civil inheritance law.

Furthermore, Supreme Court Decision Number 2660 K/Pdt/2016 in conjunction with Bandung High Court Decision Number 425/Pdt/2015/PT.Bdg and Bandung District Court Decision Number 108/Pdt.G/2014/PN.Bdg also demonstrates the judges' consistent stance in protecting legitime heirs through the annulment of testamentary grants detrimental to heirs' rights.

Based on these decisions, it can be understood that the annulment of testamentary grants functions as a legal instrument to restore the balance of heirs' rights. The legal consequence of such annulment is that the object of the testamentary grant is returned to the inheritance estate (*boedel waris*) to subsequently be distributed among the heirs in accordance with applicable inheritance law provisions.

According to the researcher, the annulment of testamentary grants is not only intended to enforce legal rules but also to maintain a sense of justice within family relations. Civil inheritance law does not grant absolute freedom to the testator, but instead places protection of legitime heirs as a principle that must be respected.

Thus, the legal consequences of testamentary grants violating the compulsory portion of legitime heirs demonstrate that the Indonesian civil inheritance law system provides strong protection for the rights of legitime heirs. The wishes of the testator are still respected insofar as they do not contradict legal provisions protecting the compulsory rights of heirs.

4.2 Legal Certainty of the Compulsory Portion of Legitime Heirs in Relation to Testamentary Grants that Violate the Compulsory Portion

Legal certainty constitutes one of the primary objectives of the legal system because it relates to the protection of rights, order, and justice within society. In the field of civil inheritance law, legal certainty is necessary to ensure that heirs' rights are clearly protected and can be

enforced through applicable legal mechanisms [27], [28], [29], [30].

Legal certainty regarding the compulsory portion of legitime heirs is reflected in the provisions of the Indonesian Civil Code, which explicitly limit the freedom of the testator in making testamentary grants. The provisions concerning the legitime portie guarantee that certain heirs continue to receive a minimum share of the estate, even if the testator has arranged the distribution through a will.

Based on Jan Michiel Otto's theory of legal certainty, legal certainty can be realized when there are clear and consistent legal rules that are effectively implemented by law enforcement institutions. In this research, the theory is used to analyze legal protection for legitime heirs in disputes concerning testamentary grants [31], [32].

First, legal certainty is reflected in the existence of clear regulations regarding the compulsory portion of legitime heirs within the Indonesian Civil Code. Article 913 of the Indonesian Civil Code affirms that the compulsory portion may not be reduced through gifts or wills. In addition, Articles 914 and 915 regulate the amount of the compulsory portion to which legitime heirs are entitled based on their position within the family.

Second, legal certainty is reflected in the consistency of law enforcement by the courts. In judicial practice, judges consistently provide protection to legitime heirs by annulling testamentary grants that violate the legitime portie. Such an attitude demonstrates that protection of legitime heirs is genuinely implemented in legal practice.

Third, legal certainty requires every legal subject to adjust their behavior in accordance with applicable laws. Although the testator has the freedom to regulate the distribution of property through a will, such freedom must still take into account the rights of legitime heirs. Therefore, beneficiaries of testamentary grants must also

understand that the rights they receive may not reduce the compulsory portion of heirs.

Fourth, legal certainty is realized through the role of judges as independent executors of judicial power. In examining disputes over testamentary grants, judges not only assess the formal aspects of wills but also examine their substance to determine whether they contradict the provisions concerning the compulsory portion of legitime heirs [22], [32].

Fifth, legal certainty is truly achieved only when court decisions are effectively implemented. In the context of testamentary grants, the implementation of annulment decisions aims to restore the rights of legitime heirs through the return of the testamentary grant object to the inheritance estate.

The results of this research demonstrate that legal certainty for legitime heirs is clearly reflected in the court decisions analyzed in this study. The three decisions examined show judicial consistency in upholding protection of the rights of legitime heirs.

In Supreme Court Decision Number 2665 K/Pdt/2019, the panel of judges emphasized that a testamentary grant reducing the compulsory portion of legitime heirs could not be legally maintained because it contradicted the provisions of the Indonesian Civil Code. The decision provides legal certainty that the rights of legitime heirs remain protected even when the testator has made a testamentary grant.

The same principle is also reflected in Judicial Review Decision Number 554 PK/Pdt/2024 and Supreme Court Decision Number 2660 K/Pdt/2016, in which judges consistently annulled testamentary grants proven to be detrimental to legitime heirs. These decisions demonstrate that protection of legitime heirs is not merely theoretical but is genuinely implemented in judicial practice.

According to the researcher, legal certainty regarding the compulsory

portion of legitime heirs serves an important function in maintaining a balance between the freedom of the testator and the protection of heirs' rights. Civil inheritance law does not grant absolute freedom to the testator because the rights of certain heirs must still be respected and protected [27], [28].

Furthermore, the existence of the legitime portie also aims to prevent injustice in inheritance distribution. Without such limitations, a testator could potentially transfer all property to a particular party, thereby causing losses to heirs who legally possess inheritance rights [25].

When associated with Soeroso's theory of legal consequences, the annulment of testamentary grants constitutes a legal consequence arising from violations of mandatory legal norms. Meanwhile, according to Jan Michiel Otto's theory of legal certainty, such annulment represents a consistent application of the law aimed at protecting the rights of legitime heirs.

Thus, legal certainty regarding the compulsory portion of legitime heirs in testamentary grants that violate the compulsory portion is reflected through the existence of clear legal rules, consistent law enforcement by the courts, and tangible protection of legitime heirs through mechanisms for annulment of testamentary grants. This demonstrates that Indonesian civil inheritance law not only respects the wishes of the testator but also guarantees protection and justice for heirs whose rights are safeguarded by law.

5. CONCLUSION

This study concludes that testamentary grants violating the compulsory portion (*legitime portie*) of legitime heirs do not automatically become null and void by operation of law; instead, the primary legal mechanism applied is *inkorting*, namely the reduction of the excessive testamentary portion to restore the heirs' compulsory

rights. Nevertheless, courts may annul a testamentary grant, either partially or wholly, when the violation significantly harms the rights of legitime heirs. The research also finds that legal certainty regarding *legitime portie* is grounded in the mandatory provisions of

Article 913 of the Indonesian Civil Code and their consistent application in judicial practice, which ensures legal protection for legitime heirs while maintaining a balance between testamentary freedom and the protection of compulsory inheritance rights

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