



A JURIDICAL REVIEW OF THE LIMITS ON TESTAMENTARY FREEDOM: PROTECTION OF ABSOLUTE RIGHTS (LEGITIME PORTIE) FROM THE PERSPECTIVE OF DISTRIBUTIVE JUSTICE

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Abstract

Civil inheritance law in Indonesia, which is historically rooted in the Burgerlijk Wetboek (BW), possesses unique juridical characteristics that emphasize the protection of heirs' civil rights through the concept of Legitime Portie. This principle establishes an absolute share that cannot be infringed upon by any party, including the testator's own free will. However, within contemporary social dynamics and legal practices, tensions frequently arise between the individual sovereignty of the testator in drafting a will (testament) and the protection of forced heirship rights guaranteed by law. This conflict-of-interest sparks debate regarding the limits of personal autonomy in allocating wealth post-mortem. This article aims to analyze in depth the effectiveness of legal protection for forced heirs (legitimarum) and to dissect the patterns of inheritance dispute resolution through the lens of distributive justice. In this context, distributive justice is employed to evaluate whether the distribution of assets based on the rigid figures within the Legitime Portie fulfills a sense of proportional justice for heirs, while considering moral and humanitarian aspects. The research method used in this study is normative juridical, focusing on in-depth literature review. The research approaches include the statute approach and the conceptual approach. Through this analysis, it is found that although the Legitime Portie provides strong legal certainty, flexibility in judicial interpretation is required to accommodate a sense of justice for heirs who factually demonstrate greater devotion to the testator. Thus, inheritance law should not merely function as a rigid administrative regulation but rather as an instrument of substantive justice.

Keywords: Civil Inheritance Law, Legitime Portie, Will (Testament), Distributive Justice, Legal Protection.

INTRODUCTION

Inheritance law occupies a crucial and sensitive position within the national legal framework. As a component of property law, it governs the transfer of asset ownership and civil rights from a deceased legal subject (erflater) to their successors (erfgenaam). However, the complexity of inheritance law lies not merely in the administrative distribution of assets or mathematical calculations of inheritance shares. Inheritance represents an intersection between rigid legal norms and highly subjective elements involving emotions, morality, family values, and social relationships. Consequently, inheritance is not simply a matter of transferring property but also concerns the continuity of family welfare, dignity, and economic security following an individual's death. The socio-legal dimension of inheritance is particularly important because the distribution of an estate may affect family relationships and generate disputes when the interests of heirs are perceived to be unequally accommodated (Barasa et al., 2023a; Nisa & Fitri, 2024).

In Indonesia, inheritance law is further complicated by legal pluralism, which historically developed through the coexistence of several inheritance systems, including Western Civil Inheritance Law as contained in the Burgerlijk Wetboek (BW), Islamic Inheritance Law, and Customary (Adat) Inheritance Law. The coexistence of these systems creates challenges in achieving legal certainty and determining the applicable principles in inheritance disputes. Within the civil inheritance system based on the BW, inheritance is fundamentally connected to blood relationships (bloedverwantschap) and the legal status of heirs. The estate of a deceased person is not only an economic asset but also has a socio-economic function because its distribution may provide protection and continuity

of welfare for members of the immediate family. The plurality of inheritance systems also creates different approaches to determining the rights and portions of heirs, including the protection afforded through the concept of Legitime Portie in civil inheritance law (Israfil et al., 2023; Prasetya, 2024). Falahiyati (2018b) further demonstrates the importance of legal status in determining inheritance rights under the KUHPerdata through her analysis of the inheritance rights of children born outside marriage. This indicates that the determination of her status is an important preliminary issue in establishing the scope of legal protection afforded to heirs under the civil inheritance system. In practice, however, inheritance distribution may generate disputes when formal legal rules do not fully correspond with the parties' perceptions of justice and family harmony. Barasa et al. (2023b) demonstrate that inheritance distribution may involve considerations of justice, social relationships, family interests, and local values, indicating that inheritance disputes cannot always be understood solely through a formal legal approach. Similarly, studies concerning inheritance distribution in Indonesian communities demonstrate that differences in the timing, mechanism, and basis of inheritance distribution can create legal and social tensions among family members (Nisa & Fitri, 2024).

A further dimension of inheritance disputes concerns the legal instruments used by a testator to determine the distribution of assets. The use of wills and lifetime gifts may influence the legal position of heirs and subsequently become a source of dispute. Muthiah (2019b) demonstrates the importance of the legal validity of wills in determining whether testamentary wishes can be implemented, while Almunazar et al. (2019) show that gifts may also become the subject of legal disputes concerning their validity and cancellation. These issues are particularly relevant when testamentary dispositions or lifetime transfers potentially reduce the property available to legally protected heirs. In this context, Hadi (2016) emphasizes that limitations on testamentary freedom can be understood as an instrument of legal justice because unrestricted testamentary freedom may adversely affect family members and create disharmony within the family.

The concept of Legitime Portie consequently becomes important in examining the relationship between testamentary freedom and the protection of heirs. Under the civil inheritance system, the Legitime Portie functions as a legally protected portion for certain heirs in the direct line. Its existence demonstrates that the freedom to dispose of property through a will is not unlimited. The legal system seeks to establish a balance between the autonomy of the testator and the protection of family members whose inheritance rights are recognized by law. This balancing function is particularly relevant in inheritance disputes where a testamentary disposition or lifetime gift potentially disadvantages other heirs (Barasa et al., 2023a; Prasetya, 2024). The issue of protected inheritance rights is also reflected in Falahiyati's (2018a) analysis of the inheritance rights of children born outside marriage under the KUHPerdata in relation to Constitutional Court Decision Number 46/PUU-VIII/2010, which illustrates that changes in the legal recognition of family relationships may have direct implications for the determination and protection of inheritance rights.

A fundamental legal issue arises when the principle of individual autonomy or testamentary freedom (testeer vrijheid) conflicts with statutory provisions designed to protect certain heirs. On the one hand, the BW recognizes an individual's freedom to determine the disposition of property after death through a will as an expression of property autonomy. On the other hand, such freedom is not unlimited because the law establishes mandatory provisions designed to protect the inheritance rights of certain family members. This tension is particularly significant where a testator attempts to transfer all or a substantial portion of their property to a third party or to a particular heir in a manner that disadvantages other legally protected heirs.

The validity, form, and evidentiary aspects of a will are also important in this context. A testamentary disposition must operate within the legal framework governing wills, because deficiencies in the formation or implementation of a will may subsequently generate disputes among heirs (Muthiah, 2019b). Thus, testamentary freedom should not be understood as an unlimited power of the testator to determine the entire distribution of the estate. Rather, it represents a legally recognized autonomy that operates within boundaries established by mandatory inheritance law.

The limitation of testamentary freedom is closely related to the principle of legal justice. Hadi (2016) emphasizes that restrictions on testamentary dispositions can function as an instrument of legal justice because unrestricted testamentary freedom may adversely affect the rights of family members and potentially generate disputes and disharmony within the family. The problem becomes more complex when the testator uses an inter vivos gift (schenking) or a testament to transfer substantial assets before or after death. Issues concerning the validity and cancellation of gifts may influence the determination of the estate available for distribution and may subsequently affect the inheritance rights of other heirs (Almunazar et al., 2019). Such circumstances directly relate to the doctrine of Legitime Portie (LP), namely the legally protected minimum portion of the estate belonging to heirs in the direct

line. The LP constitutes a mandatory legal protection that limits the extent to which a testator can freely dispose of their property. Consequently, a testamentary disposition that infringes the protected share of a legitimaris cannot simply be assessed from the perspective of the testator's personal wishes. It must also be examined from the perspective of the legal rights of the heirs protected by the BW. Contemporary studies similarly identify the Legitime Portie as an important mechanism for balancing testamentary freedom and the protection of heirs under Indonesian civil inheritance law (Firdausy, 2022; Palit, 2022). A violation of the Legitime Portie is therefore not merely a technical problem concerning the numerical allocation of inheritance. It represents a potential conflict between individual property autonomy and the state's obligation to protect the legally recognized interests of surviving family members. Ahyani et al. (2021) emphasize the importance of legal protection in inheritance matters, while more recent studies confirm that the Legitime Portie functions as a legal limitation on the freedom of the testator to distribute property and as an instrument for protecting certain heirs (Indrapradja, 2025; Yusuf et al., 2025).

The problem becomes particularly important when viewed from the perspective of distributive justice. Distributive justice concerns the fair allocation of rights, benefits, burdens, and resources among members of society. In inheritance law, this principle requires an examination of whether the distribution of an estate disproportionately disadvantages heirs whose rights are expressly protected by law. Therefore, the limitation of testamentary freedom should not automatically be viewed as an excessive restriction of individual autonomy. Instead, it can be understood as an attempt to achieve equilibrium between the legitimate autonomy of the testator and the legally protected interests of family members. Disputes concerning the Legitime Portie further demonstrate the tension between formal legal certainty and substantive justice. A will may formally express the final wishes of a testator, but its implementation may produce substantive injustice when the legally protected portion of a legitimaris is reduced or eliminated. For this reason, the resolution of inheritance disputes requires not only an examination of the validity of testamentary documents but also an assessment of the legal mechanisms available to restore the rights of heirs. Recent legal scholarship confirms that the Legitime Portie is closely connected with the protection of heirs, the validity of wills, and the resolution of inheritance disputes (Tamba & Esther, 2024; Zulkarnain & Riyanto, 2025).

Inheritance disputes also have a social dimension. The distribution of property may affect family relationships long after the death of the testator. Barasa et al. (2023a) demonstrate that inheritance distribution can generate tension and conflict within families when perceptions of fairness differ among heirs. Accordingly, inheritance law must provide not only certainty concerning entitlement but also mechanisms capable of promoting family stability and preventing prolonged disputes. The legal protection of the Legitime Portie can therefore be interpreted as part of a broader effort to maintain a fair relationship between property autonomy, family protection, and social justice. Another important issue concerns the identification and valuation of the estate itself. Before the Legitime Portie can be calculated, it is necessary to determine which assets constitute the deceased's estate and which assets belong to the surviving spouse as part of joint marital property. This distinction becomes particularly important where the deceased had transferred assets during their lifetime through gifts. The legal treatment of such transfers may influence the calculation of the estate and the extent to which the rights of legitimaris can be protected. Consequently, inheritance disputes often involve not only the interpretation of wills but also questions concerning ownership, gifts, debts, and evidence of prior transfers.

The complexity of these issues demonstrates that the protection of Legitime Portie requires a multidimensional legal analysis. Such analysis must integrate statutory provisions of the BW, principles governing testamentary freedom, legal doctrines concerning forced heirship, mechanisms for reducing excessive testamentary dispositions, and the broader principle of distributive justice. The issue is therefore not simply whether a testator has the freedom to make a will, but to what extent that freedom can legitimately operate when it conflicts with mandatory rights belonging to protected heirs. This study therefore examines the juridical limitations of testamentary freedom in the protection of the Legitime Portie under Indonesian civil inheritance law. The analysis focuses on the legal basis of the Legitime Portie, the relationship between testamentary freedom and mandatory inheritance provisions, the mechanisms available to legitimaris when their rights are infringed, and the relevance of distributive justice in resolving conflicts between the wishes of the testator and the rights of heirs. By examining these dimensions simultaneously, the study seeks to demonstrate that the limitation of testamentary freedom is not merely a restriction of individual property rights, but an essential legal mechanism for achieving proportionality, family protection, legal certainty, and distributive justice in inheritance distribution.

LITERATURE REVIEW

A. Basic Principles of Inheritance under the BW: The Dialectic Between Law and Will

Within the civil law framework derived from the Burgerlijk Wetboek (BW), the transfer of property rights from a deceased person is not merely a mechanical process of asset relocation. It represents a legal relationship between statutory rules, family relationships, and individual autonomy. The BW inheritance system recognizes both inheritance by operation of law (*ab intestato*) and testamentary succession. These two mechanisms have different philosophical foundations but may intersect in practice and generate legal disputes. The existence of Legitime Portie demonstrates that the BW does not adopt absolute testamentary freedom. Contemporary research on Indonesian civil inheritance law confirms that the Legitime Portie is specifically designed to ensure that certain heirs retain a legally protected minimum share even when the deceased has made a will (Firdausy, 2022; Palit, 2022). This structure creates a legal balance between the autonomy of the testator and the protection of legitimaris.

1. Inheritance by Operation of Law (*Ab Intestato*)

Ab intestato inheritance refers to the transfer of the deceased person's estate according to the law when there is no valid testamentary disposition governing the relevant assets. The system is primarily structured around legally recognized family relationships and the order of heirs.

a) Philosophical Rationale

The philosophical rationale of *ab intestato* succession is closely related to the principle of family protection. The law establishes a presumed distribution based on legally recognized family relationships, particularly the relationship between the deceased and their closest relatives. In this context, inheritance performs a socio-economic function because the estate may serve as a source of continuity and protection for the deceased's immediate family.

b) Principle of Blood Proximity

The principle of blood proximity (*bloedverwantschap*) establishes a hierarchy among heirs. The closer relationship generally receives priority under the statutory system. This principle reflects the assumption that persons with the closest legal and familial relationship to the deceased possess the strongest claim to the estate.

c) Socio-Economic Function

Inheritance law also serves a socio-economic function by preventing the arbitrary disappearance of family wealth and by providing economic continuity to family members. From the perspective of distributive justice, this function is important because inheritance distribution determines how economic resources accumulated by one generation are transferred to the next.

2. Testamentary Succession

Testamentary succession represents the legal recognition of individual freedom and property sovereignty. Through a will, a testator may determine the disposition of property after death and may provide benefits to persons or institutions outside the immediate family. This reflects the principle of autonomy of the will (*autonomie van de wil* or *testeer vrijheid*) (Palit, 2022).

a) Individual Sovereignty

The testator is granted the legal capacity to determine the disposition of assets after death through a testament. Such freedom may be used to recognize individuals who have provided assistance or services during the testator's lifetime, support social institutions, or make arrangements that differ from ordinary intestate succession. However, individual sovereignty over property does not operate in isolation from mandatory legal rules. Muthiah (2019a) demonstrates that the validity and implementation of a will remain subject to legal requirements, and disputes may arise where testamentary arrangements affect the rights of other interested parties.

b) Juridical Characteristics

A will is characterized as a unilateral and personal legal act. Under the BW, the testator retains significant authority over the testamentary disposition during their lifetime, including the possibility of modifying or revoking it in accordance with applicable legal requirements. This characteristic demonstrates the importance of individual autonomy in testamentary law.

c) Limits on Freedom

Despite recognizing testamentary freedom, the BW establishes legal limitations to prevent the exercise of that freedom from eliminating the rights of protected heirs. The Legitime Portie constitutes the principal mechanism through which this limitation operates. Recent scholarship describes the doctrine as an instrument that balances the freedom of the testator with the legal and moral interests of certain heirs (Yusuf et al., 2025; Zulkarnain & Riyanto, 2025).

The interaction between *ab intestato* succession and testamentary succession therefore produces a fundamental legal tension. *Ab intestato* succession emphasizes statutory certainty and family protection, whereas testamentary

succession emphasizes individual freedom and property autonomy. The doctrine of Legitime Portie functions as a legal bridge between these competing principles.

From the perspective of distributive justice, this balancing function is essential. The objective of inheritance law should not be reduced to maximizing either individual autonomy or family entitlement. Rather, the legal system must establish a proportionate relationship between the two so that the exercise of individual property rights does not produce disproportionate harm to protected heirs.

B. Protection of the Absolute Right (Legitime Portie)

The Legitime Portie or statutory forced share serves as a corrective and protective instrument against excessive testamentary freedom. Under Article 913 of the BW, the Legitime Portie is a portion of the inheritance that must be allocated to heirs in the direct line of descent or ascent according to the statutory requirements.

The doctrine reflects the social function of inheritance law because an individual's wealth may have implications for the welfare of immediate family members. Accordingly, the law places limitations on the testator's ability to dispose of the entire estate freely.

1. The Essence of the Absolute Right: Statutory Supremacy over Wills

Article 913 of the BW establishes the legal basis of the Legitime Portie. The right belongs to heirs in the direct line and represents a protected minimum portion of the estate. (Palit, 2022) confirms that the provisions governing Legitime Portie are contained principally in Articles 913–916 of the BW and are connected with broader provisions governing heirs, inheritance distribution, gifts, and testamentary gifts.

a) Characteristic of Dwingend Recht (Mandatory Law)

The Legitime Portie possesses the character of mandatory law (*dwingend recht*). Therefore, testamentary freedom cannot be exercised in such a manner as to eliminate the protected share of legitimaris. A will may regulate the distribution of the available portion, but the testator's freedom is restricted when the disposition encroaches upon the statutory portion belonging to protected heirs.

This principle demonstrates that testamentary freedom is a qualified rather than absolute right. The law recognizes the testator's autonomy while simultaneously protecting the legal interests of family members.

b) Status of the Legitimaris Heir

An heir possessing the protected share is known as a legitimaris. The legal position of the legitimaris is significant because the existence of a testament does not automatically eliminate their statutory protection.

Consequently, the testator's intention to give property to another person cannot, by itself, be treated as sufficient justification for disregarding the Legitime Portie. The protection is intended to prevent arbitrary deprivation of legally recognized inheritance rights.

2. The Inkorting (Reduction) Mechanism: A Remedy for Rights Restoration

Where a testamentary disposition violates the Legitime Portie, the legal system provides a mechanism for reducing excessive dispositions. This mechanism is generally known as inkorting. It is intended to restore the protected share of the legitimaris rather than simply invalidate every testamentary provision.

Recent research confirms that disputes involving Legitime Portie may require judicial examination of whether a testamentary disposition or transfer of property has infringed the legally protected share of heirs (Indrapradja, 2025).

a) Calculation of the Beschikbaar Deel

The estate can conceptually be divided into the portion protected for legitimaris and the portion that remains freely disposable by the testator (*beschikbaar deel*). The principal legal problem occurs when testamentary gifts or lifetime transfers exceed the disposable portion and encroach upon the Legitime Portie.

The distinction is particularly important where the testator has made gifts during their lifetime. Almunazar et al. (2019)(2019) show that legal disputes concerning gifts may involve questions of validity and cancellation. Such transfers can become relevant when determining the actual composition of the estate and the legal interests of heirs.

b) Legal Procedure for Inkorting

Through inkorting, the affected legitimaris may seek reduction of excessive gifts or testamentary dispositions to the extent necessary to restore the protected share. The purpose is therefore not necessarily to destroy testamentary freedom but to limit it to the portion that the law permits. This approach demonstrates the proportional character of the Legitime Portie: the testator retains freedom over the disposable portion, while the protected portion remains subject to mandatory legal protection.

c) Socio-Legal Objective

The socio-legal objective of inkorting is to establish a balance between individual property autonomy and family protection. It prevents the exercise of testamentary freedom from causing disproportionate economic disadvantage to protected heirs. From the perspective of distributive justice, inkorting can therefore be understood

as a corrective mechanism. It does not simply enforce formal legal rules but seeks to restore a legally determined proportion of economic resources to those whom the law considers entitled to special protection.

3. Calculation and Proportionality of the Legitime Portie

The magnitude of the Legitime Portie is determined according to the statutory provisions and the circumstances of the surviving heirs. Ningsih and Marniati (2023) explain that the calculation of the protected share is related to the number and position of heirs. The proportional structure demonstrates that the law does not necessarily provide identical protection in every inheritance configuration. Instead, the extent of the protected portion depends upon the statutory position of the heirs. From the perspective of distributive justice, proportionality is fundamental. Justice in inheritance does not necessarily mean that every party receives an identical amount. Rather, distributive justice requires that differences in legal status, family relationship, and statutory entitlement be recognized through a rational and legally justifiable allocation.

C. Case Analysis and Dispute Complexity in Practice

In judicial practice, disputes involving Legitime Portie are rarely limited to mathematical calculations. Although the BW establishes the legal basis for determining the protected portion, courts may encounter complex factual circumstances involving ownership, marital property, gifts, debts, testamentary documents, and evidence. Emphasizes that inheritance disputes may involve complex factual and legal circumstances that make the application of statutory provisions difficult in practice.

1. Blurring of the Inheritance Object and Joint Marital Property

One important issue concerns the distinction between the deceased's personal property and joint marital property (*huwelijksgoederengemeenschap*). Before the Legitime Portie can be calculated, it is necessary to determine which portion of the property actually belongs to the deceased.

a) Asset Clarification (*Boedel Scheiding*)

The clarification of the estate is necessary because the surviving spouse may possess an independent legal interest in joint marital property. Only the portion legally belonging to the deceased can subsequently be treated as the inheritance estate. Failure to distinguish these assets may produce an incorrect calculation of the Legitime Portie and may ultimately affect the rights of legitimaris.

b) Issues of Debt and Receivables

The calculation of the estate must also take into account debts and other liabilities. The net value of the estate is important because the amount available for distribution may differ substantially from the gross value of the assets. Faiz (2020) emphasizes the relevance of debts and receivables in inheritance disputes because uncertainty regarding outstanding obligations may complicate the determination of the estate available to heirs.

2. Lack of Asset Transparency and the Phenomenon of Hidden Assets

Accurate protection of the Legitime Portie depends on transparency concerning all assets belonging to the deceased. The problem becomes more complicated where assets were transferred before death or where information concerning ownership is not disclosed. Highlights the importance of asset transparency in determining the inheritance estate and the rights of heirs.

a) Collation and Reintegration

Under Article 921 of the BW, certain lifetime gifts may become relevant in calculating the inheritance mass for purposes of determining the Legitime Portie. Consequently, previous transfers cannot always be ignored when determining whether the protected share of legitimaris has been infringed. This issue is particularly important because lifetime gifts may be used, intentionally or unintentionally, to alter the economic composition of the estate. Almunazar et al. (2019) demonstrate that gifts can themselves become the subject of legal disputes, particularly regarding their validity and cancellation.

b) Evidentiary Obstacles

The absence of complete information regarding property ownership, previous transfers, and financial obligations may create substantial evidentiary difficulties. Without comprehensive asset data, the calculation of the Legitime Portie may become inaccurate. From the perspective of distributive justice, lack of transparency can produce substantive inequality because an heir may formally possess a protected right but be unable to realize that right due to incomplete information concerning the estate.

3. Clash Between Moral Values and Legal Formalities

The conflict between moral expectations and legal formalities represents another important dimension of Legitime Portie disputes. Civil inheritance law operates through formal legal categories, while family relationships are often shaped by emotional experiences and moral judgments. Kususiana (2021) explains the formalistic

characteristics of civil inheritance law. Consequently, the legal status of an heir may remain protected even where the family's subjective perception of that heir differs significantly from the legal position established by the BW.

a) The Dilemma of the "Estranged" Child

One recurring problem concerns an heir who has become estranged from the testator. From a moral perspective, family members may consider it unfair if an estranged child continues to claim an inheritance share despite having provided little or no assistance to the deceased. However, legal entitlement cannot simply be determined by subjective perceptions of moral deservingness. Unless the heir falls within a legally recognized category that removes their entitlement, the statutory protection of the Legitime Portie remains relevant. This illustrates the distinction between moral justice and legal justice. The law seeks objective criteria for determining inheritance rights, whereas family members may assess fairness through personal experiences and relationships.

b) Rechtsvinding (Legal Discovery) by the Judge

The role of judges becomes important when formal legal rules encounter complex factual and social circumstances. Judges must interpret and apply mandatory legal provisions while also considering the broader objectives of justice and dispute resolution. Izzah (2023) emphasizes the importance of judicial consideration in inheritance disputes, including the use of mediation to achieve solutions that are legally acceptable and socially sustainable. In this context, distributive justice provides a useful analytical perspective. The legitimacy of inheritance outcomes should not be evaluated solely according to whether the mathematical distribution follows a formal rule. It is also important to examine whether the distribution appropriately protects legally recognized interests and avoids disproportionate economic disadvantage. Barasa et al. (2023a) reinforce this dimension by showing that inheritance distribution may affect family relationships and social harmony. Therefore, a legal resolution that protects the Legitime Portie should ideally be accompanied by mechanisms that reduce hostility and facilitate family reconciliation.

D. Testamentary Freedom and the Principle of Distributive Justice

The principle of distributive justice provides an important theoretical framework for evaluating the limitations imposed on testamentary freedom. Testamentary freedom represents individual autonomy over property, while Legitime Portie represents the state's intervention to protect the interests of legally recognized heirs. The two principles should not necessarily be understood as mutually exclusive. Instead, the legal framework attempts to establish proportional boundaries between them. The testator retains freedom over the disposable portion of the estate, but that freedom is limited where its exercise would infringe upon the legally protected portion of legitimaris. From the perspective of distributive justice, this limitation is justified because inheritance represents the allocation of economic resources among individuals who possess different legal relationships with the deceased. The law therefore establishes a framework to ensure that certain heirs are not disproportionately disadvantaged by the unilateral decisions of the testator. Recent studies similarly characterize the Legitime Portie as an instrument for balancing testamentary freedom and the protection of heirs. Research concerning the legal position of Legitime Portie emphasizes that the doctrine serves to protect certain heirs while maintaining a legally permissible space for testamentary autonomy. Research on the relationship between Legitime Portie and wills further demonstrates that the doctrine may influence the legal validity and enforceability of testamentary dispositions when protected inheritance rights are infringed (Zulkarnain & Riyanto, 2025). Therefore, distributive justice in inheritance law does not require absolute equality of outcome. Instead, it requires a legally and morally defensible allocation of resources that recognizes both individual autonomy and the legitimate interests of family members.

E. The Relationship Between Legal Certainty, Substantive Justice, and Family Protection

The protection of Legitime Portie also illustrates the relationship between legal certainty and substantive justice. Legal certainty requires clear rules regarding who is entitled to inherit, the amount of the protected portion, and the legal consequences of testamentary dispositions that exceed the disposable portion. Substantive justice, however, requires consideration of whether the application of those rules actually protects the interests that the law intends to protect. A formally valid will may still produce a substantive conflict if its implementation deprives legitimaris of the portion protected by law.

The role of legal remedies such as inkorting is therefore significant because they connect formal legal rules with substantive rights. They allow the legal system to preserve testamentary autonomy within lawful limits while simultaneously restoring the rights of protected heirs. The importance of peaceful dispute resolution should also be recognized. Inheritance disputes often involve family members who must maintain relationships after the litigation ends. Barasa et al. (2023b) indicate that inheritance distribution may have significant implications for family harmony. Similarly, research concerning settlement mechanisms in Legitime Portie disputes highlights the potential role of peaceful resolution and agreements in preventing prolonged family conflict (Tamba & Esther, 2024).

Accordingly, an ideal inheritance law framework should not merely answer the question of who receives what portion of an estate. It should also provide a mechanism through which competing interests can be balanced, rights can be protected, and family relationships can be preserved.

F. Conceptual Synthesis

Based on the foregoing discussion, testamentary freedom and Legitime Portie can be conceptualized as two interconnected components of civil inheritance law. Testamentary freedom reflects individual autonomy and property sovereignty, whereas Legitime Portie reflects mandatory legal protection for certain heirs. The legal tension between these principles arises when the testator exercises testamentary freedom beyond the limits established by law. At this point, Legitime Portie functions as a corrective mechanism. The law does not necessarily eliminate testamentary freedom; rather, it restricts its exercise to the portion that can legally be disposed of without infringing upon protected inheritance rights.

The relationship can therefore be summarized as follows:

Testamentary Freedom → Legal Limitation → Protection of Legitime Portie → Restoration of Heir's Rights → Distributive Justice → Family Protection and Legal Certainty.

This conceptual relationship demonstrates that the Legitime Portie should be viewed not merely as a technical provision concerning inheritance calculation but as a legal instrument for distributing economic resources fairly among parties with legally protected interests. Consequently, the limitation of testamentary freedom constitutes an important mechanism for achieving equilibrium between individual autonomy, family protection, substantive justice, and legal certainty.

METHOD

To dissect the complex dynamics between the Legitime Portie (forced share) and distributive justice within civil inheritance law, this study employs the following research design (Siregar & Handoko, 2022):

Research Type: This study is a form of normative legal research. It does not focus on social behavior in the field but rather on the analysis of legal norms, legal principles, and the synchronization of statutory regulations governing the absolute rights of heirs under the Burgerlijk Wetboek (BW/Civil Code) (Ilhami et al., 2022).

Research Approach: To analyze the issues, the researcher employs several approaches, including:

1. **Statute Approach:** Conducted by examining all regulations related to civil inheritance, specifically the articles in the BW governing wills (testamenten), grants (schenkingen), and the Legitime Portie (Articles 913 through 929 of the BW).
2. **Conceptual Approach:** This approach draws upon views and doctrines developed within legal science, particularly Aristotle's concept of distributive justice and the theory of legal protection for heirs entitled to a forced share (legitimaris).

Sources of Legal Material: This study relies on legal materials classified as follows:

1. **Primary Legal Materials:** Consisting of the Civil Code (Burgerlijk Wetboek or BW) and court rulings related to Legitime Portie disputes.
2. **Secondary Legal Materials:** Comprising legal literature (books), scholarly journals, findings from previous research, and expert legal opinions relevant to the discourse on inheritance and justice.
3. **Tertiary Legal Materials:** Legal dictionaries and encyclopedias used to clarify technical terminology.

Data Collection and Analysis Techniques: Data collection was conducted through document study (library research). Once the data was collected, the legal materials were analyzed using a descriptive-analytical method employing deductive reasoning. This means the researcher proceeded from general propositions regarding theories of justice and the general rules of inheritance under the Civil Code (BW) to draw more specific conclusions concerning the resolution of inheritance disputes in a manner that reflects justice for the heirs (Zulkarnain & Riyanto, 2025).

RESULTS AND DISCUSSION

Fundamental Principles and the Dialectics of Inheritance in the Burgerlijk Wetboek

Within the civil law framework derived from the Burgerlijk Wetboek (BW), the transfer of property rights from a deceased person is not merely a mechanical process of asset relocation; rather, it is a manifestation of the dialectic between state regulation and individual sovereignty. BW inheritance law divides the mechanisms of inheritance into two primary pillars that, while philosophically distinct, intersect with one another. The first pillar—statutory inheritance (ab intestato)—prioritizes blood ties (bloedverwantschap) as its fundamental rationale. Grounded in the principle of het naaste bloed erf de goederen (the nearest blood relative inherits the assets), the law establishes a hierarchy of heirs aimed at retaining wealth within the nuclear family, thereby serving as a form of economic security

or a social safety net. Conversely, the second pillar—testamentary inheritance—honors the principle of autonomy of will (*testeer vrijheid*). Through a unilateral and personal will, the testator is granted the prerogative to determine the disposition of their estate, including the ability to bestow assets upon parties outside the direct bloodline. However, the interplay between collective family stability and individual freedom often gives rise to legal tension when a testator's personal wishes are perceived as disregarding the fundamental rights of surviving family members.

Legitime Portie as a Mandatory Limit on Testator Autonomy

To mediate this tension, the doctrine of Legitime Portie (LP)—or the "legitimate portion"—emerged as a corrective instrument against unfettered testamentary freedom. Pursuant to Article 913 of the BW, the LP is defined as a specific share of the estate definitively prescribed by law for heirs in the direct line of descent. A defining characteristic of this absolute right is its nature as *dwingend recht* (mandatory law); consequently, a testator lacks the legal capacity to eliminate this portion, whether through *inter vivos* gifts or a testamentary disposition. In the event of a violation, the law provides a mechanism known as *inkorting* (or a claim for reduction) to restore the statutory share (*legitime portie*) of protected heirs. Through a proportional calculation—whereby the size of the statutory share increases with the number of children—the state firmly prioritizes family economic stability. This mechanism establishes a socio-legal balance: respecting the testator's charitable intent while simultaneously protecting immediate family members from the risk of economic injustice arising from the unrestrained distribution of assets (Zesa Azis et al., 2025).

Dispute Complexity and Challenges in Judicial Practice. However, in the realm of judicial practice, the application of the rigid figures associated with the Legitime Portie (forced share) often confronts a labyrinth of complex and non-linear facts. The complexity of such disputes is typically driven by the lack of a clear distinction between the testator's personal assets and the marital community property (*huwelijksgoederengemeenschap*). Before a judge can calculate the Legitime Portie, a meticulous process of asset separation (*boedel scheiding*) is required to determine the testator's net estate, including the verification of outstanding debts. Another challenge arises from the phenomenon of concealed assets; an accurate calculation of the forced share is impossible without transparency regarding past *inter vivos* gifts that must undergo the process of collation—or reintegration—into the inheritance mass. A lack of disclosure by the party controlling the assets often hinders the evidentiary process and undermines distributive justice. Finally, judges frequently face a clash of moral values when heirs who had *de facto* abandoned the testator still formally assert their absolute rights. In such circumstances, judges are challenged to engage in judicial discovery (*rechtsvinding*)—moving beyond the role of a mere "mouthpiece of the law"—to deliver substantive justice that harmonizes civil legal certainty with humanity and familial propriety.

CONCLUSION

Based on the analysis presented, it can be concluded that civil inheritance law in Indonesia—as structured within the *Burgerlijk Wetboek* (Civil Code)—prioritizes the protection of blood-related heirs through the instrument of the Legitime Portie (forced share). This principle demonstrates that inheritance law is not merely a matter of transferring asset ownership but serves as a mandatory mechanism (*dwingend recht*) for safeguarding family welfare.

Although the civil law system respects the principle of individual autonomy through testamentary freedom (*testeer vrijheid*), such freedom is not absolute. The State intervenes via legislation to ensure that a testator's final wishes do not result in the impoverishment of, or injustice toward, immediate family members. Thus, the Legitime Portie acts as a legal safeguard, balancing the testator's individual right to distribute their estate against the heirs' constitutional right to economic protection within the family unit.

In practice, however, the effectiveness of this protection often encounters technical and procedural obstacles, such as the obfuscation of asset origins and resistance to asset transparency. The author argues that to achieve true distributive justice, the enforcement of this absolute right must not be limited to rigid mathematical calculations on paper. When adjudicating inheritance disputes, judges should seek to uphold substantive justice; the resulting rulings should not only provide legal certainty through *inkorting*(reduction) calculations but also restore family harmony fractured by disputes over the estate.

Ultimately, the future evolution of civil inheritance law requires better synchronization between the protection of absolute rights and social realities, ensuring the law remains a fair instrument for testators wishing to bestow assets and for heirs entitled to protection.

REFERENCES

Ahyani, H., Muharir, & Mahfud, M. (2021). Sharia's Economic Law Perspective About Cash Waqf in the Era of the Industrial Revolution Four Points Zero. *Al-Mawarid Jurnal Syariah Dan Hukum*, 3(1).

- <https://doi.org/10.20885/mawarid.vol3.iss1.art2>
- Almuntazar, M. A., Manfarisyah, & Hamdani. (2019). Analisis Yuridis Pemberian dan Pembatalan Akta Hibah Tanah Nomor 590.4/23/2007 Menurut Hukum Perdata dan Kompilasi Hukum Islam. *Suloh: Jurnal Fakultas Hukum Universitas Malikussaleh*, 7(2), 14–34. <https://doi.org/10.29103/sjp.v7i2.2032>
- Barasa, R., Asmuni, A., Jamil, M., Syafaruddin, S., & Fronzoni, V. (2023a). Local Wisdom of Urban Muslims in Inheritance Distribution. *Akademika: Jurnal Pemikiran Islam*, 28(2), 205. <https://doi.org/10.32332/akademika.v28i2.7745>
- Barasa, R., Asmuni, Jamil, M., Syafaruddin, & Fronzoni, V. (2023b). Local Wisdom of Urban Muslims in Inheritance Distribution. *Akademika: Jurnal Pemikiran Islam*, 28(2), 205–218. <https://doi.org/10.32332/akademika.v28i2.7745>
- Faiz, F. (2020). Filsafat Keadilan Dalam Hukum Waris Islam. *HAKAM: Jurnal Kajian Hukum Islam Dan Hukum Ekonomi Islam*, 4(2). <https://doi.org/10.33650/jhi.v4i2.2156>
- Falahiyati, N. (2018b). Hak waris anak luar kawin berdasarkan KUHPperdata dikaitkan dengan Keputusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010. *Prosiding Seminar Nasional Hasil Penelitian 2018*, 85–95.
- Firdausy, V. (2022). Legitime Portie dalam Pewarisan Menurut Kitab Undang Undang Hukum Perdata dan Kompilasi Hukum Islam. *UNISKA LAW REVIEW*, 3(1), 73–87. <https://doi.org/10.32503/ulr.v3i1.2508>
- Hadi, S. (2016). Pembatasan Wasiat Sebagai Bentuk Keadilan Hukum Islam. *Al-Ahwal: Jurnal Hukum Keluarga Islam*, 9(2), 169–184. <https://doi.org/10.14421/ahwal.2016.09203>
- Ilhami, R., Rahayu, D., & Maryati, S. (2022). PENGARUH PENDIDIKAN KESEHATAN DENGAN MEDIA VIDEO ANIMASI TENTANG KESEHATAN REPRODUKSI TERHADAP TINGKAT PENGETAHUAN. In *Jurnal Kesehatan Budi Luhur: Jurnal Ilmu-Ilmu Kesehatan Masyarakat, Keperawatan, dan Kebidanan*. <https://doi.org/10.62817/jkbl.v15i2.151>
- Indrapradja, I. S. (2025). Kedudukan Hukum Legitime Portie (Bagian Mutlak) dalam Pembagian Waris Menurut Kitab Undang-Undang Hukum Perdata dalam Putusan Pengadilan. *Cessie: Jurnal Ilmiah Hukum*, 4(2). <https://doi.org/10.55904/cessie.v4i2.1852>
- Israfil, Salad, A. R., & Aminullah. (2023). Legitime Portie dan Zhawil Furudh Menurut Hukum Kewarisan KUHPperdata dan Hukum Kewarisan Islam. *Jurnal Ilmiah Ikatan Masyarakat Madani Indonesia*.
- Kususiana, A. (2021). Keadilan Gender dalam Kewarisan Islam Kajian Sosiologis Historis. *Jurnal Perbandingan Hukum*.
- Muthiah, A. (2019a). Keabsahan Wasiat Yang Dibuat Dengan Lisan Oleh Pewaris Ditinjau Dari Hukum Perdata Dan Hukum Islam. *De Lega Lata: Jurnal Ilmu Hukum*, 4(2), 240–254. <https://doi.org/10.30596/dll.v4i2.3178>
- Muthiah, A. (2019b). Keabsahan Wasiat Yang Dibuat Dengan Lisan Oleh Pewaris Pada Kajian Hukum Perdata Dan Hukum Islam. *DE LEGA LATA: Jurnal Ilmu Hukum*, 4(1), 240–254. <https://doi.org/10.30596/dll.v4i2.3178>
- Nisa, K., & Fitri, N. (2024). Inheritance Distribution Before Death: A Study in Teluk Kasai, Indonesia. *Andalas Law Journal*, 9(1), 39–48. <https://doi.org/10.25077/alj.v9i1.75>
- Palit, B. (2022). Pengaturan Legitime Portie Ahli Waris Dalam Pewarisan Menurut KUHPperdata Di Indonesia (Studi Kasus Putusan MA No. 211/PK/Pdt/2017). *Lex Privatum*, 10(6).
- Prasetya. (2024). Pengaturan Legitime Portie terhadap Kewarisan Anak Luar Nikah Menurut KUHPperdata dan Kompilasi Hukum Islam.
- Sari, D. W., Alimuddin, & Izzah, I. (2023). Mediasi Dalam Penyelesaian Sengketa Kewarisan di Pengadilan Agama Makassar Kelas I A. *Qadauna: Jurnal Ilmiah Mahasiswa Hukum Keluarga Islam*, 4(2), 530–542. <https://doi.org/10.24252/qadauna.v4i2.32428>
- Siregar, G. H. P., & Handoko, W. (2022). Kajian Studi Kasus Hukum Waris Putusan Mahkamah Agung Nomor 784 K/Pdt/2014 Terhadap Ketentuan Hukum Waris Barat. *Notarius*, 15(2), 607–615. <https://doi.org/10.14710/nts.v15i2.36976>
- Tamba, D. C. O., & Esther, J. (2024). Legitime Portie dan Akta Perdamaian: Analisis Peran dan Konsekuensinya dalam Pembagian Waris. *Jurnal Review Pendidikan Dan Pengajaran*, 7(4), 17021–17027. <https://doi.org/10.31004/jrpp.v7i4.38156>
- Yusuf, M., Nurhaedah, & Alam, S. (2025). Analisis Hukum Hak Legitime Portie Dalam Sistem Hukum Waris Perdata Indonesia. *Legal Dialogica*, 1(1).
- Zulkarnain, T. F., & Riyanto, T. F. (2025). Pengaruh Ligetime Portie terhadap Keabsahan Akta Wasiat. *Sang Pencerah: Jurnal Ilmiah Universitas Muhammadiyah Buton*, 11(2), 498–508. <https://doi.org/10.35326/pencerah.v11i2.7127>