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Juridical Review of Wills That Do Not Meet Portie Legitieme in Civil Inheritance Law (Study of High Court Ruling Number 86/PDT/2017/PT PAL)

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Abstract: The purpose of this research was to find out how the law views whether a will is valid or not which reduces the share of the inheritance (legitieme portie) of the rightful heirs and to find out the judge's considerations in determining the distribution of inheritance in the Palu High Court decision number 86/PDT/2017/ PT PAL. This research uses a normative-empirical juridical research method with a statutory approach, uses secondary data types with data collection techniques, namely interviews, document studies, and case studies, and uses legal analysis data collection techniques. A person can obtain his inheritance through 2 (two) ways according to civil inheritance law, namely according to the provisions of the law and a will. A will is a statement about what is desired to happen after the person dies and can be revoked by it. If during their lifetime the testator has made a will, then before calculating their respective inheritance shares, they must also pay attention to the existence of the legitimate portie or absolute share of the heir.

Keyword: Heirship, Will, Legitieme Portie, Heir, KUHPer.

INTRODUCTION

In human life, it is definitely related to wealth in order to survive. These assets can be in the form of cash, land, property, investments, businesses, and other valuable objects. When someone dies, rights are transferred from the heir to the heirs so that the assets can then continue to be managed. To obtain an inheritance according to civil inheritance law, there are 2 (two) kinds of ways, namely by :

- (1) the provisions of the law or wettelijk Erfrecht or Ab intestato, namely heirs who have been regulated in the law to get a share of the inheritance because of kinship or relationship blood with the deceased;
- (2) Will or testament, namely the heir who gets a share of the inheritance because he was appointed or stipulated in a will left by the deceased.

Inheritance Law is the law that regulates the transfer of assets left behind by someone who dies and the consequences for their heirs. Indonesia has an inheritance law system that regulates the

distribution of inheritance, namely Customary Inheritance Law, Islamic Inheritance Law, and Civil Inheritance Law. In this research, we will discuss more about Civil Inheritance Law. The Civil Code as a written rule that has been codified in Indonesia contains rules regarding inheritance in Book II, namely regarding material things, and some are also regulated in part in Book III, namely regarding engagements. The Civil Code explains that inheritance only takes place because of death. In the Civil Code, restrictions regarding testamentary gifts refer to assets that will be distributed to heirs because there are absolute rights (*legitieme portie*) that have been determined by law. Legally, if a will violates the *legitieme portie* then it will be null and void, but there is a rule made by the Supreme Court that if there is a violation of the *legitieme portie*, the heir feels that they have not been harmed then its nature can be canceled, contained in article 913 of the Civil Code in question. *legitieme portie* is that part of the heir's inheritance after death must be given to the heirs, the heirs in question are straight-line heirs according to law.

METHOD

This research is a type of normative-empirical juridical legal research. The normative-empirical research method is a combination of a normative legal approach with the addition of various empirical elements. This research method is about the implementation of normative legal provisions in action at each specific legal event that occurs in a society.

The type of research used in this thesis is a judicial case study approach. Judicial case study is an approach to studying legal cases because of conflict so it will involve intervention with the court to provide a resolution decision (jurisprudence). Preparing thesis research requires a method so that the discussion is focused and can be understood clearly.

The data and data sources used in this research are primary and secondary data sources. Primary data is a data source by obtaining the data directly from the first source or place where the research object is carried out, namely by interviewing. Interviews are conducted to obtain in-depth qualitative information about respondents' viewpoints, experiences, attitudes, knowledge, or perceptions related to the research subject. Interviews are carried out by preparing a list of questions that have been prepared previously, where interaction is freer and responses from respondents are more widely explored, while Secondary Data is data that comes from library research, namely data that comes from data that has been documented in the form of legal materials, meaning that the source of research data obtained and collected by researchers is not directly but other parties. Secondary data usually comes from third parties in the form of documents or archives and expert opinions. According to Wardiyant (Sugiarto, 2017), Secondary Data is information obtained not directly from sources but from third parties. Secondary data used are books, theses, articles, journals, opinions from legal experts, and other references.

The data collection techniques used for this research report are interviews and document studies to examine various types of documents that are useful as material for analysis and the data analysis technique used is legal analysis. Legal analysis techniques focus on describing or illustrating several things related to the analysis of problems related to applicable laws and regulations..

RESULTS AND DISCUSSION

Legal View Regarding the Validity Or Not of a Will that Reduces the Legitieme Portie of the Rightful Heirs.

Will often occur in the realm of life, where the meaning of a will, according to Subekti, is a statement from a person about what he wants after he dies. Basically, such a statement comes from one party only and can be withdrawn at any time by the person who made it. Of course, it is understandable that not everything a person wishes, as stated in his will, is permitted or

can be implemented. In general, according to Article 875 of the Civil Code, the definition of a will is:

"What is called a will or testament is a deed that contains a person's statement about what he wants to happen after he dies, and which can be revoked again."

So the heir can make a will or give a testamentary gift to someone, however, this gift must not violate the absolute rights of the heirs who are entitled to receive the inheritance based on statutory provisions.

In general, a will is made in the form of an authentic deed. An authentic deed is a deed made by an authorized public official that contains or describes authentically the actions performed or a situation seen or witnessed by the public official who made the deed. The public office referred to in this case is a notary public. The necessity of making a will deed in front of/by a notary is because an authentic deed has the power to be a shred of perfect and strong evidence and has the power of execution.

A will can be revoked or changed by the testator at any time. All of the heir's assets cannot be inherited by other people because part of the inherited assets must be distributed to the legal heirs. If the heirs feel they have been harmed as a result of the will, the heirs have the right to sue the court.

The distribution of the absolute rights (*legitieme portie*) for *legitimar*is in a straight line downwards is regulated in Article 914 of the Civil Code as follows :

- (1) If there is only one legitimate child, then the absolute share is 1/2 (half) of the share that he or she should receive as an heir according to law;
- (2) If there are 2 (two) legitimate children, then the absolute share is 2/3 (two-thirds) of the share that they should receive as heirs according to law;
- (3) If there are 3 (three) legitimate children or more, then the absolute share becomes 3/4 (three-quarters) of the share that they should receive together as heirs according to the law.

Furthermore, for heirs in a straight line upwards, such as parents or grandparents, their absolute share is 1/2 (half) of the share they should receive as heirs according to law (Personal Code, article 915). The absolute share of an illegitimate child that is recognized is half of the share that he or she should receive as an heir according to law (Personal Code, Article 916).

With this provision, the legitimate right is guaranteed to receive a certain minimum share, in accordance with applicable regulations. This provision is a limitation that cannot be contested by the heir or third parties to determine a gift or bequest that could be detrimental to the legal absolute heirs.

A will made by someone who reduces the *legitieme portie* portion of the heir is actually legally still considered valid and does not conflict with the law because the will is the contents of his wishes or last will so that it can be carried out when he dies. as it turns out in Article 875 of the Civil Code: "Legitieme Portie or part of inheritance according to law is part and property that must be given to heirs in a straight line according to law, in respect of which the person who dies may not assign anything, either as a gift between living people or as a will."

In connection with this, he has broad freedom regarding the property he owns. However, it must also be noted that there is an absolute share (*legitimate portie*) of the heirs, if the will reduces the absolute portion (*legitime portie*) of the legitimate heirs, then the legitimate heirs have the right to claim the absolute portion (*legitime portie*) to the court as a result of the will cannot be carried out according to the wishes of the heir.

Judge's Considerations in Determining the Distribution of Inheritance in High Court Decision Number 86/Pdt/2017/PT PAL.

This case occurred between a brother and sister regarding inheritance after their mother died. VEN, VED, and VER, as Plaintiffs with VIL and FES, as Defendants. The case started when

the biological mother left a will. Deed of will made on December 30 2015 Number 122 made before Notary RR, SH. MH (Co-Defendant II).

HS is the biological father of the Plaintiff and Defendant who during his lifetime was married to SG. HS died on November 15 2015, leaving 6 (six) heirs with a 50% distribution given to SG and 10% each to VEN, VIL, VED, VER, and FES. The plaintiffs argued that HS's inheritance contained movable assets (such as cars, savings, etc.) and immovable assets, respectively:

1. A plot of freehold land number 1034/Simpung, covering an area of 3,528 M2 (three thousand five hundred and twenty eight square meters) is located in Simpung Village, Luwuk District, Banggai Regency, Central Sulawesi Province, as described in the situation picture dated 1 November 1994 number: 2802 /1994 according to a certificate issued by the Banggai Regency Land Office dated 1 November 1994, whose land ownership was recorded in the name of SG.

2. A plot of land with Freehold Rights Number 1055/Simpung, covering an area of 511 M2 (five hundred and eleven square meters) located in Simpung Village, Luwuk District, Banggai Regency, Central Sulawesi Province, as described in the situation picture dated 26 April 1995 number: 376/1995 according to a certificate issued by the Banggai Regency Land Office dated 26 April 1995, the land ownership was recorded in the name of SG.

3. A plot of freehold land number 1056/Simpung, covering an area of 516 M2 (five hundred and sixteen square meters) located in Simpung Village, Luwuk District, Banggai Regency, Central Sulawesi Province, as described in the situation picture dated 26 April 1995 number: 377/ 1995 according to a certificate issued by the Banggai Regency Land Office dated 26 April 1995, whose land ownership was recorded in the name of SG.

4. A plot of land with Freehold Rights Number 1057/Simpung, covering an area of 1,443 M2 (one thousand four hundred and forty three square meters) located in Simpung Village, Luwuk District, Banggai Regency, Central Sulawesi Province, as described in the situation picture dated 26 April 1995 number: 378/1995 according to a certificate issued by the Banggai Regency Land Office dated 26 April 1995, whose land ownership was recorded in the name of SG.

5. A plot of land with Freehold Rights Number 1058/Simpung, covering an area of 1,087 M2 (one thousand eighty-seven square meters) located in Simpung Village, Luwuk District, Banggai Regency, Central Sulawesi Province, as described in the situation picture dated 26 April 1995 number: 379/ 1995 according to a certificate issued by the Banggai Regency Land Office dated 26 April 1995, whose land ownership was recorded in the name of SG.

The five plots of land are all located side by side/bordering one another and form one plot of land with a total area of 7,085 M2 (seven thousand eighty-five square meters).

Above it is the "Tourist Beach Hotel" building which is currently called "Grand Hadser Hotel" located at Jl. RE. Martadinata No. 21, Karaton Village, Luwuk District, Banggai Regency;

6. A plot of uncertified land, covering an area of ± 90,000 M2 (Ninety thousand square meters) or approximately 9 hectares, which was purchased by HS around 2003 from JM and the land is located in Baya village, East Luwuk District, Banggai Regency;

7. A plot of uncertified land, measuring ± 5,000 M2 (five thousand square meters) or approximately ½ hectare, which was purchased by HS from HL and the land is located in the village of Bunga Tua (Maniala) now called Bunga Village, Luwuk District, Regency Bogor. The Plaintiffs stated that when HS died, all of HS' inheritance was controlled by SG and the inheritance had never been distributed to the legal heirs according to law. Then SG died on August 25, 2016. It is known that SG had made a will that contained 50% of her inheritance from the proceeds of her husband's inheritance, 25% was given to FES, 20% was given to VIL and 5% was given to VER, while VEN and VED does not get a share of the inheritance.

So VER, VEN and VED took this matter to court asking the authorities to order Deed of Will Number 122 dated 30 December 2015 which was made by SG in the presence of RR, SH. MH (Co-Defendant II) was annulled because the deed was legally flawed so that it had no legal force to be implemented on the grounds that the plots of land that were the contents of the will were inherited assets that had never been distributed to the legal heirs. The Plaintiffs also argued that the will made by SG had exceeded the limits of his rights (*legitime portie*) determined by law as expressly stated in Article 852 letter a paragraph (1) of the Civil Code (hereinafter referred to as the Civil Code), Article 913 of the Civil Code and the provisions in Article 914 paragraph (3) of the Civil Code. The Plaintiffs want the inheritance from HS and SG for each of the Plaintiffs and Defendants to be divided by each heir into 1/5 (one-fifth) shares.

The Panel of Judges at the Luwuk District Court considered that although SG's position in making Will Deed Number 122 dated 30 December 2015 before Notary RR, SH. MH (Co-Defendant II) is the heir of HS, but because of the evidence submitted by the Defendant that during his lifetime HS had given his consent to SG to carry out a will regarding 5 (five) plots of land to 5 (five) legitimate children of HS and S.G. Based on this agreement, the Panel of Judges at the Luwuk District Court considered that Deed of Will Number 122 dated 30 December 2015 made by SG before Notary RR, SH. MH (Co-Defendant II) is legal insofar as the 5 (five) parcels of land that have been certified are concerned. The Panel of Judges stated that the deaths of HS and SG made VEN, VIL, VED, VER, and FES the heirs. Apart from that, the Panel of Judges also declared Deed of Will (Testament) Number 122 dated 30 December 2015 made by SG before Notary RR, SH. MH (Co-Defendant II), as far as the five plots of land are concerned, are not in conflict with the law, while the rest are in conflict with the law and therefore have no binding force. Lastly, the Panel of Judges at the Luwuk District Court determined and declared the distribution of the inheritance left by the late HS and the late SG as previously mentioned to their heirs named VEN, VIL, VED, VER and FES with the distribution for each heir getting 1/5 (one fifth) parts.

Furthermore, Appellant I/Original Respondent Convention I, II/Reconvention I, II Defendant filed an appeal against the decision of the Luwuk District Court Number: 9/Pdt.G/2017/PN.Lwk submitted his objection that the Luwuk District Court was wrong and erroneous in carrying out the division of assets based on the Deed of Will Number 122 dated 30 December 2015 into 1/5 (one-fifth) for each Convention Plaintiff and Convention Defendant as legal heirs.

The decision of the Panel of Judges at the Palu High Court was Deed of Will (Testament) Number 122 dated 30 December 2015 which was made by SG before Notary RR, SH. MH (Co-Defendant II) regarding 1/2 (one-half) of the five plots of land which are the rights of SG's share, is not contrary to the law and is legally valid. The decision of the Panel of Judges at the Palu High Court also states that VEN, VIL, VED, VER, and FES are the legal heirs with the distribution of each heir getting 1/5 (one-fifth) of the 1/2 (one-half) share. plot of land/building which is the remainder of the distribution as stated in the will deed made by SG.

Based on the author's analysis, the Deed of Will Number 122 dated 30 December 2015 made by SG before Notary RR, SH. MH, this does not conflict with the law because a will contains a person's last will which he made while he was alive as stated in Article 875 of the Civil Code. In connection with this, he has broad freedom regarding the property he owns.

According to the author, the Panel of Judges at the Palu High Court was correct in considering that SG was one of the legal heirs of her husband HS because when HS died, SG was still alive so he appeared as an *ab-intestato* heir but he did not receive his share as an *ab-intestato* heir. *intestato*. The panel of judges should have given more consideration to the distribution of inheritance from HS' inheritance. SG is a party who is also included as an heir to HS so he also gets the same *ab-intestato* share as his five other biological children, namely getting 1/6 (one-

sixth) of HS' inheritance. In its considerations, the Panel of Judges thought that the SG could indeed provide legal as intended in the deed of will he made, however, the Panel of Judges stated that the legal could only be carried out by the SG for 1/6 (one-sixth) of his share. This is of course a mistake because in the marriage between HS and SG it was stated that they never made a marriage agreement to divide the assets obtained jointly, which caused a mix of assets between the two. This has the effect that if the marriage ends, either due to death or divorce, each partner will receive 1/2 (one-half) of their joint or mixed assets. Thus, the author thinks that considering granting a testamentary gift which can be carried out by SG is wrong because SG can give a testamentary gift not only to the ab-intestato portion which he received as HS's heir but also including 1/2 (one-half) which is his wealth.

Furthermore, the Plaintiffs argued that the emergence of Deed of Will Number 122 dated 30 December 2015 had violated their absolute obligations. As stated in Article 913 of the Civil Code, blood relatives in a straight line up and down have an absolute share (legitime portie) which must be given to the legitimate heirs. Both the Panel of Judges at the Luwuk District Court and the Palu High Court did not consider the absolute share (legitime portie) which is the right of the legal heirs of the heirs, both the legitimate heirs of HS and SG. The testamentary deed which is the object of the lawsuit, if implemented, would cause a violation of the absolute share (legitime portie) of SG's legitimate heirs. So the author thinks that they, the legitimate heirs, can demand fulfillment of their absolute share (legitimacy portie) based on the provisions of Article 913 of the Civil Code. Legitimate heirs who feel their rights have been violated can take legal action by filing a civil lawsuit in court under the provisions of Article 834 of the Civil Code.

The author believes that the legal heirs of HS and their shares should be determined as follows:

- (1) HS ab-intestato heirs are SG, VEN, VIL, VED, VER and FES each receiving 1/6 (one-sixth) share;
- (2) The ab-intestato heirs of SG are VEN, VIL, VED, VER and FES each receiving 1/5 (one-fifth) share.

Fulfillment of the absolute share (legitime portie) of the legitimate heir can be done by first determining how large the absolute share is. The Criminal Code, Article 921 determines that the amount of legitime portie can be calculated in the following way :

- (1) Calculate all gifts given by the testator during his lifetime, including those given to legitimate heirs;
- (2) The amount of the gift is added to the inheritance belonging to the testator;
- (3) Then deduct the heir's debts;
- (4) From the results of the addition and subtraction, then calculate the absolute share of the absolute heir who claims his share. The size of the absolute portion obtained is the amount that the absolute heir actually receives.

According to the author, to determine the amount of legitime portie heirs, the executor of the will in Deed of Will Number 122 dated 30 December 2015 has an obligation to sell the object of the lawsuit with supervision from the Inheritance Property Office. The proceeds from the sale of the object of the lawsuit are reduced by the heir's debts such as employee severance pay and others. From the results of the deduction, 1/5 (one-fifth) is then divided to each heir and that is the amount actually received by the heirs. The main duties and functions of the Inheritance Hall are guided by the Decree of the Minister of Justice Number M.01.PR.07.01-80 of 1980 concerning the Organization and Work Procedures of the Inheritance Hall (Ministry of Justice Decree M.01/1980), as follows :

- (1) Carry out resolution of issues regarding guardianship, forgiveness, absence and inheritance over which there is no power of attorney and other issues regulated in the Legislative Regulations;
- (2) Carry out Bookkeeping and Registration of Wills in accordance with statutory

regulations;

(3) Carry out resolution of Bankruptcy problems in accordance with statutory regulations. From the provisions contained in articles 2 and 3 of the Decree of the Minister of Justice of the Republic of Indonesia dated 19 June 1980 Number M.01.PR.07.01-80 of 1980 concerning the Organization and Work Procedures of the Inheritance Hall, it can be seen that the Inheritance Hall has the role of supervising and temporary guardian in guardianship. So, when selling and distributing the object of the lawsuit, it must be shown or witnessed by the Inheritance Hall.

CONCLUSION

Based on the description in the discussion above, it can be concluded that legally, a will is valid in the eyes of the law and does not conflict with the law because the will contains a statement of a person's last wish or will to be carried out when he dies. However, if the legitimate heirs feel disadvantaged because the will reduces their absolute share (*legitime portie*), then they have the right to demand their absolute share (*legitime portie*) in court which will result in the will not being able to be carried out according to the testator's wishes.

The panel of judges in the Hammer High Court decision number 86/PDT/2017/PT PAL considered the absolute share (*legitime portie*) of the heirs which made the five children heirs (one-fifth) of the share and the panel of judges also determined SG as one of the heirs what is legitimate from her husband HS is correct. However, the distribution of the inheritance was considered wrong because there was no *ab intestato* portion received by SG. After all, SG not only received 1/2 (one half) which was his mutual property but also the *ab intestato* portion which he received as HS's heir. The legal heirs of HS should be determined as follows:

- (1) The *ab intestato* HS heirs are SG, VEN, VIL, VED, VER and FES each receiving 1/6 (one-sixth) share;
- (2) The *ab intestato* heirs of SG are VEN, VIL, VED, VER, and FES each receiving 1/5 (one-fifth) share.

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