

**The Legitimate Portion (Legitime Portie) of Legitimate Children in Inheritance Distribution: A Perspective of Legal Justice Theory in Indonesian Civil Law**

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**Abstract**

The existence of legitime portie in civil law is determined that the absolute share of a biological child has been determined to be greater than the heirs of groups 2, 3 and 4, if there are adopted children, stepchildren or heirs based on the will, it will be prevented by the existence of legitime portie, but in reality there are cases that occur that are conveyed by advocates, But in reality, there is a case that occurred which was conveyed by an advocate at PBH Peradi related to a biological child who actually did not get an absolute share because the inheritance of both parents was controlled by the stepmother or the father's second wife who was the biological father of the child, this happened because there was no will left before the biological parents died and the property of the father and mother was controlled beforehand by the stepmother or the father's second wife. This research aims to examine how civil law provides protection for the rights of legitimate children as heirs, as well as comparing the implementation of inheritance distribution in the perspective of legal justice theory. The method used is empirical juridical approach with empirical observation through interviews with District Court judges. The results showed that legitime portie is an absolute right protected by law, and any deviation from legal provisions can lead to disputes. The court plays an important role in upholding legal certainty and justice in the distribution of inheritance so that it is necessary to emphasize the importance of applying the principle of justice in the distribution of inheritance to protect the rights of heirs, especially legitimate children, as well as the need for strong legal certainty in the practice of inheritance distribution in society.

**Keywords:** inheritance law, legal justice, legitime portie

**Abstrak**

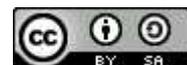
*Adanya legitime portie dalam hukum perdata ditentukan bahwa bagian mutlak seorang anak kandung telah ditetapkan lebih besar dari ahli waris golongan 2,3 dan 4, jika ada anak angkat, tiri ataupun ahli waris berdasarkan wasiat maka akan dihalangi dengan adanya legitime portie, tetapi dalam kenyataan, ada kasus yang terjadi yang disampaikan oleh advokat di PBH Peradi terkait seorang anak kandung yang justru tidak mendapatkan bagian mutlak karena harta peninggalan dari kedua orang tua dikuasai oleh ibu tiri atau isteri kedua si ayah yang merupakan ayah kandung dari anak tersebut, hal ini terjadi dikarenakan tidak adanya wasiat yang ditinggalkan sebelum kedua orang*

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*tua kandung meninggal dan harta ayah dan ibu dikuasai sebelumnya oleh ibu tiri atau isteri kedua ayah. Penelitian ini bertujuan untuk mengkaji bagaimana hukum perdata memberikan perlindungan terhadap hak anak sah sebagai ahli waris, serta membandingkan pelaksanaan pembagian waris dalam perspektif teori keadilan hukum. Metode yang digunakan adalah pendekatan yuridis empiris dengan bservasi empiris melalui wawancara dengan hakim Pengadilan Negeri. Hasil penelitian menunjukkan bahwa legitime portie merupakan hak mutlak yang dilindungi oleh hukum, dan setiap penyimpangan dari ketentuan hukum dapat menimbulkan sengketa. Pengadilan berperan penting dalam menegakkan kepastian hukum dan keadilan dalam pembagian warisan sehingga perlu ditegaskan pentingnya penerapan prinsip keadilan dalam pembagian harta warisan untuk melindungi hak-hak ahli waris, terutama anak sah, serta perlunya kepastian hukum yang kuat dalam praktik pembagian warisan di masyarakat.*

**Kata kunci:** hukum waris, keadilan hukum, legitime portie

## 1. INTRODUCTION

The provisions concerning civil inheritance law, as regulated in the Indonesian Civil Code (KUHPerdata), exhibit several inherent characteristics: they are coercive, regulatory, and voluntary. The coercive and regulatory nature is particularly evident in the testator's authority over inheritance distribution, where such authority is granted without coercion. The voluntary aspect lies in the principle that heirs are not obliged to accept an inheritance, especially if the estate includes the deceased's debts; heirs have the right to refuse.

The distribution of an estate and the determination of rightful heirs frequently give rise to disputes in practice. When an individual passes away leaving an estate, the question inevitably arises as to how the matter should be resolved and which body of inheritance law should be applied. Inheritance may be defined as the transfer of property rights from a deceased person (the testator) to surviving persons entitled to receive them.<sup>1</sup> Article 830 of the Civil Code stipulates that an estate may only be transferred upon the death of the testator.<sup>2</sup> Three essential elements must be present: (1) the testator, or the deceased; (2) the heirs, who are entitled to and possess rights over the estate; and (3) the estate itself, which comprises the entirety of the assets owned by the testator, whether in the form of money or other valuable property.

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<sup>1</sup> A. Rofiq, *Fiqh Mawaris* (Jakarta: PT Raja Grafindo Persada., 2002).

<sup>2</sup> R Prawirohamodjojo, *Hukum Waris Kodifikasi* (Surabaya: Airlangga University Press, 2011).

Islamic inheritance law is a system governing the distribution of the estate of a deceased person to rightful heirs, derived from the Qur'an and Hadith. This system is universal in nature, applying to all Muslims worldwide. Its principal aim is to ensure fairness and certainty in the distribution of inheritance so as to prevent conflicts and disputes among heirs.

According to customary law, the inheritance process does not necessarily occur only after the death of the testator. Soerojo Wignjodipoero explains that the transfer of ownership of property may commence while the property owner is still alive. This process unfolds gradually, with each descendant receiving a portion of the property and establishing an independent household. It continues over generations, enabling each generation to pass on property to their descendants. Thus, in customary law, inheritance is not a singular event occurring upon death, but a dynamic and ongoing process involving the gradual transfer of property ownership from generation to generation.<sup>3</sup>

Civil inheritance law is regulatory in nature, meaning it establishes clear rules governing the division of the estate and identifies those entitled to receive it. Furthermore, civil inheritance law is not coercive for heirs; they are under no obligation to accept the inheritance, particularly if it includes debts. One of the defining characteristics of civil inheritance law is the principle of immediate division of the estate. The estate refers to property free from all burdens and obligations, ready to be distributed among the heirs.<sup>4</sup> Heirs retain the right to refuse such inheritance.

The principles underlying civil inheritance law include:

1. The Principle of Property Rights – only property can be inherited, and the object of inheritance must have a market value or be measurable in monetary terms.
2. The Principle of Personal Rights – personal rights and obligations, such as those related to family relationships, cannot be inherited.
3. The Principle of Transfer of Rights and Obligations – rights and obligations of the testator transfer to the heirs upon death, as reinforced by Article 834 of the

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<sup>3</sup> S. Wignjodipoero, *Pengantar Dan Pembuktian* (Jakarta: Rineka Cipta, 1997).

<sup>4</sup> A. Ali, *Hukum Waris Hukum Keluarga Hukum Pembuktian* (Jakarta: Rineka Cipta, 2000).

Civil Code, which states that heirs have the right to claim inherited property and to demand restitution from any party unlawfully possessing such property.

There are two ways to inherit under civil law:<sup>5</sup>

1. By operation of law (intestate succession) – heirs are determined by family or blood relations.
2. By testamentary disposition (testate succession) – heirs receive inheritance pursuant to a will left by the testator.

Civil inheritance law also contains coercive elements, such as the allocation of the absolute share (*legitime portie*) for certain heirs. There are four classes of heirs in civil inheritance law:

1. First Class – direct descendants (children) of the testator, along with the surviving spouse; this category also allows for substitution as provided under Article 847 of the Civil Code.
2. Second Class – the testator’s parents (ascendants) and siblings.
3. Third Class – grandparents on both paternal and maternal sides.
4. Fourth Class – collateral relatives, such as the testator’s aunts and uncles.

The principle of *legitime portie* ensures that heirs receive a minimum portion of the estate that cannot be diminished or invalidated, even by the presence of a will. Although the Civil Code explicitly provides for the *legitime portie*, violations of this provision are common in practice. For example, a legitimate child whose parents have both died may be deprived of their rightful share because the estate is controlled by the stepmother on the grounds that she managed the property. Such situations harm the legitimate child and undermine justice.<sup>6</sup> This underscores the necessity for strong legal certainty in inheritance distribution to protect the absolute rights of rightful heirs. This study addresses how civil law ensures legal certainty for the *legitime portie* of legitimate children, examines its application from the perspective of legal justice theory, and compares civil inheritance law with Islamic inheritance law.

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<sup>5</sup> H. H. Kusuma, *Hukum Waris Adat* (Bandung: Alumi, 1983).

<sup>6</sup> Yeni Salma Barlinti, “Inheritance Legal System In Indonesia: A Legal Justice For People,” *Indonesia Law Review* 3, no. 1 (April 30, 2013), <https://doi.org/10.15742/ilrev.v3n1.28>.

## **2. RESEARCH METHODS**

The research method employed is the empirical or socio-legal approach. The socio-legal or empirical method uses primary legal materials derived from interviews with key informants, namely five district court judges, two religious court judges, and five advocates handling inheritance disputes in the Regency and City of Magelang. This study focuses on exploring individual perspectives regarding behaviors or actions as manifestations of existing norms or regulations. The findings from these individual dimensions are then analyzed using secondary legal materials, consisting of norms or principles that form the formal sources of law such as legislation, treaties, doctrines, general principles, jurisprudence, and academic commentaries which are juxtaposed and examined through a qualitative research approach.

The socio-legal method does not rely solely on the principles of law or positive legal norms in Indonesia but also explores the views of individuals involved in the social context and social interactions as responses to the applicable legal norms, through direct interviews with judges and advocates. The data analysis technique employed is qualitative analysis with a statutory approach, referring to Book II of the Indonesian Civil Code (KUHPerdata) on property, and a conceptual approach comparing civil inheritance law with Islamic inheritance law. The qualitative analysis aims to obtain the true meaning of the data obtained through direct field research as well as through the study of legal norms and principles.<sup>7</sup>

## **3. RESULTS AND DISCUSSION**

### **3.1. Legal Certainty of Legitime Portie in the Distribution of Inheritance to Legitimate Children in Civil Law**

The civil inheritance law system in Indonesia, based on the *Burgerlijk Wetboek* (BW), applies the principle of direct transfer of rights and obligations to the heirs. This means that when a person dies, all their rights and obligations automatically pass to their heirs at that very moment. Civil law provides strong protection for the inheritance rights of legitimate children. A legitimate child has an absolute right (*legitime portie*) to a

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<sup>7</sup> Z. Abdussamad, *Metode Penelitian Kualitatif* (Makassar: CV Syakir Media Press, 2021).

portion of the estate left by their parents. The absolute portion is the part of the inheritance guaranteed by law for heirs in the direct line of descent (both ascendants and descendants). The testator cannot reduce or eliminate this absolute portion, whether through gifts during their lifetime, testamentary legacies (*legaat*), or testamentary dispositions (*erfstelling*).<sup>8</sup>

According to Pitlo, the *legitime portie*, or the portion guaranteed by statute, is a privilege for those holding primary status in inheritance matters only relatives in the direct bloodline who are heirs *ab intestato* (without a will) are entitled to this share. Thus, only children, parents, and their descendants have an inalienable right to the portion guaranteed by law, which the testator cannot revoke through a will.<sup>9</sup> The estate in cases involving legitimaries is divided into two parts:<sup>10</sup>

1. *Legitime Portie* – the portion guaranteed by law for legitimaries.
2. *Beschikbaar* – the portion available for the testator's discretion.

The testator may not infringe upon the *legitime portie*, whether through gifts during their lifetime or by testamentary provisions.

Civil inheritance law, as an integral part of private law, possesses distinctive features, one of which is the inherent coercive element. The concept of *legitime portie* reflects this coercive nature, where the state, through legislation, guarantees a minimum portion for certain heirs. This also places restrictions on the testator's freedom to dispose of their estate by will, contrasting with the general principle of freedom of contract in civil law. If the testator's actions such as lifetime gifts reduce the absolute portion of a legitimate heir, the recipient of the gift must return the property to the estate to fulfill the rightful share of the legitimate heir. This obligation is regulated under Article 1086 of the Civil Code on *inbreng* (mandatory collation), ensuring that gifts that reduce the *legitime portie* are brought back into the estate.

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<sup>8</sup> A. P. Senoadji, "Penerapan *Lebitieme Portie* (Bagian Mutlak) Dalam Pembagian Waris Menurut Kitab Undang-Undang Hukum Perdata Studi Putusan MA Reg No 148/PK/Perd/1082" (Undip, 2007).

<sup>9</sup> K. Andhasasmitha, *Notaris III, Hukum, Harta Perkawinan Dan Waris Menurut KUHPperdata* (Jawa Barat: Ikatan Notaris Indonesia, 1987).

<sup>10</sup> H. Soerjopratikno, *Hukum Waris Testamenter* (Yogyakarta: Seksi notariat FH UGM, 1984).

The Civil Code explicitly places biological relationships at the forefront of determining heirs. Legitimate children, by virtue of direct blood ties, are automatically recognized as heirs. This principle is rooted in the protection of family and descendants. Any act that violates or deprives a legitimate child's inheritance rights may be challenged in court. While the testator may create a will, such authority is not absolute and is limited by the protection of the legitime portie under Article 913 of the Civil Code, which states that the absolute portion "must" be granted to legitimate children (direct descendants).

Furthermore, Article 832 of the Civil Code provides for equality between legitimate sons and daughters in inheritance rights, and Article 914 sets out detailed provisions for the calculation of shares. The more children there are, the smaller the portion for each, but the principle of equality remains intact. However, Article 838 outlines circumstances where an heir may lose their inheritance rights, such as committing murder or attempted murder of the testator, serious defamation, obstructing the testator's freedom to make or revoke a will, or concealing, destroying, or falsifying the will. This demonstrates that moral considerations also play a role in inheritance law.<sup>11</sup>

### **3.2. Implementation of Legitime Portie for Legitimate Children from the Perspective of Legal Justice Theory**

Justice in the distribution of inheritance in the Civil Code refers to Aristotle's theory of justice, which distinguishes between commutative justice and distributive justice.

- 1) Commutative justice demands equal treatment regardless of an individual's contributions, meaning each person should receive their rightful share equally.
- 2) Distributive justice considers the contributions and merits of each person, allocating shares proportionally.

In the context of inheritance distribution, commutative justice is applied when heirs receive equal shares regardless of gender, birth order, or contributions, while distributive justice recognizes the special role or contributions of certain parties, such as parents, who

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<sup>11</sup> Agung Prasetya et al., "Pengaturan Legitime Portie Terhadap Kewarisan Anak Luar Nikah Menurut Kuhperdata Dan Kompilasi Hukum Islam," *Al-Syakhshiyah Jurnal Hukum Keluarga Islam Dan Kemanusiaan* 6, no. 2 (December 1, 2024): 214–29, <https://doi.org/10.30863/as-hki.v6i2.7382>.

should receive no less than one-fourth of the estate in recognition of their efforts in raising their children.

The legitime portie aims to safeguard the economic interests of heirs in the direct line, especially children who still require support and education. In disputes—such as when a stepmother controls the estate, the principle of legal justice becomes critical. Although the stepmother may have managed the assets, the legitime portie of a legitimate child remains a non-negotiable legal right.<sup>12</sup>

The Civil Code strictly regulates inheritance shares, and deviations may result in the annulment of any distribution agreement, restoring the estate to its original legal status (*status quo juridicus*). While subjective notions of fairness cannot override statutory provisions, the courts have the authority to annul agreements that violate inheritance laws. When viewed through John Rawls' theory of justice as fairness, inheritance distribution should ensure equitable opportunities for all, avoiding the concentration of wealth in certain hands, and maintaining inclusivity in line with the principles of distributive justice.<sup>13</sup>

### **3.3. Comparison between Civil and Islamic Inheritance Law Regarding the Distribution of Inheritance to Legitimate Children**

In Islamic law, inheritance (*al-irṭh* or *al-mirāṭh*) is part of family law (*al-aḥwāl al-shakhṣiyyah*). Pursuant to Article 171(a) of the Compilation of Islamic Law (*Kompilasi Hukum Islam / KHI*), inheritance is defined as the legal provisions governing the transfer of ownership of the deceased's estate (*tirkah*), determining who is entitled to be heirs and the portion each is entitled to receive.

Under Islamic inheritance law, a person may become an heir in two ways:

1. By blood relationship (*nasab*) – which includes legitimate children.

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<sup>12</sup> Shintiya Dwi Puspita and Fabian Fadhly, "Legitime Portie Dalam Hukum Waris Islam di Indonesia," *Veritas et Justitia* 1, no. 2 (December 21, 2015), <https://doi.org/10.25123/vej.1692>.

<sup>13</sup> Siti Rahmah, Hamdan Khairul Mubarak, and Muhammad Al Mansur, "Bagian Mutlak (Legitime Portie) Ahli Waris Berbagai Golongan Menurut Hukum Perdata Dan Kompilasi Hukum Islam," *Doktrin: Jurnal Dunia Ilmu Hukum Dan Politik* 1, no. 3 (July 4, 2023): 51–69, <https://doi.org/10.59581/doktrin.v1i3.794>.

2. By *sababiyah* – which arises from a lawful marriage, the act of freeing a slave, or a mutual assistance agreement.

In the Civil Code (KUHPerdata), inheritance can be obtained in two ways: by operation of law or by will.

The Qur'an, in Surah An-Nisā' (4:11), specifies six fractional shares: one-half ( $\frac{1}{2}$ ), one-quarter ( $\frac{1}{4}$ ), one-eighth ( $\frac{1}{8}$ ), two-thirds ( $\frac{2}{3}$ ), one-third ( $\frac{1}{3}$ ), and one-sixth ( $\frac{1}{6}$ ). These shares are assigned to specific heirs (*ashhābul furūd*), such as the husband, daughter, granddaughter through a son, full sister, and consanguine sister.<sup>14</sup> Article 832 of the Civil Code states that a legitimate child has an undeniable right to inherit due to blood relations. If there is only one child, they are entitled to one-half ( $\frac{1}{2}$ ) of the estate; if there are two children, they are entitled to two-thirds ( $\frac{2}{3}$ ); and if there are three or more children, the absolute portion for all legitimate children collectively is three-fourths ( $\frac{3}{4}$ ) of the estate (Article 914 KUHPerdata).<sup>15</sup>

In Islamic inheritance law, the share ratio between male and female children is 2:1.<sup>16</sup> This reflects the principle that men bear financial responsibilities, such as paying the *mahr* (dowry) and providing for their families, while women are not obligated to spend from their inheritance. Qur'anic exegesis, such as in *Adwā' al-Bayān*, supports this rationale, highlighting men's role as providers and protectors (*al-qawwāmūn*).<sup>17</sup>

In contrast, civil inheritance law provides equal shares for sons and daughters (1:1), as stipulated in Article 852 of the Civil Code, which states that all legitimate children are equal in position regardless of gender or birth order. In both legal systems, the concept of an absolute portion exists:

- 1) In Islamic law, *zawā al-furūd* heirs have fixed shares as ordained in the Qur'an.
- 2) In civil law, the *legitime portie* guarantees a statutory minimum portion for *legitimaris* (legitimate heirs), which cannot be reduced by gifts or wills.

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<sup>14</sup> M. Ash Shabuni, *Pembagian Waris Menurut Islam* (Jakarta: Gema Insani, 1995).

<sup>15</sup> Rizka Syafriana Mhd. Rizky Fauzi, "Perlindungan Hukum Terhadap Hak Mutlak Ahli Waris," *Buletin Konstitusi*, October 20, 2024, <https://doi.org/10.30596/konstitusi.v5i2.22775>.

<sup>16</sup> M. Nasikhul Umam Al-Mabruri, "Keadilan Pembagian Harta Warisan Perspektif Hukum Islam Dan Burgerlijk Wetboek," *Al-Mazaahib: Jurnal Perbandingan Hukum* 5, no. 1 (June 1, 2017): 88, <https://doi.org/10.14421/al-mazaahib.v5i1.1394>.

<sup>17</sup> M. A. Syinqithi, *Adhwa' Al Bayan Fi-Idhah Alquran Bi Alquran* (Beirut: Alam Al Kutub, 1983).

However, in civil law, while the legitime portie is guaranteed, it must be claimed through legal proceedings if disputed.

## **CONCLUSION AND SUGGESTION**

Civil inheritance law in Indonesia provides strong protection for the rights of legitimate children as heirs, as enshrined in the Burgerlijk Wetboek through the legitime portie. This concept constitutes an absolute right that cannot be disregarded. Legal certainty regarding the legitime portie of legitimate children is guaranteed, and such rights remain protected even if the testator disposes of their property before death through gifts or wills. In implementing the distribution of the legitime portie for legitimate children, it is essential to balance the principles of commutative and distributive justice to ensure that the rights of all heirs are respected and that distribution is carried out fairly. The courts play a central role in ensuring legal certainty and fairness in accordance with John Rawls' theory of justice as fairness, which emphasizes inclusivity and fairness. Judges have the authority to annul inheritance distribution agreements that contravene statutory provisions. Although civil and Islamic inheritance laws differ in approach particularly regarding the share ratio between male and female heirs both recognize the rights of legitimate children as heirs.

Future research should focus more on the role of the judiciary in providing legal certainty, fairness, and utility in inheritance disputes, to prevent harm to heirs. Strengthening the oversight of court rulings and case examinations in inheritance matters will enhance legal certainty, fairness, and utility for justice seekers, particularly in inheritance disputes.

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