



## Implementation of Prosecution for Grants of Absolute Rights (Legitime Portie) that Are Expired More than Three Years According to the Civil Code

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### **Abstract**

The law guarantees the absolute rights of heirs or what is usually called legitime portie. Legitime Portie itself is an absolute portion of the heir's inheritance, which cannot be abolished or reduced by the person who will leave the inheritance or cannot be reduced by gifts during the testator's lifetime or gifts by will. The formulation of the problem in this research is (1) Implementation of the Grant Legitime Portie (absolute rights) in Decision no. 560/Pdt.G/2015/PN.Sby (2) Judge's legal considerations in decision no. 560/Pdt.G/2015/PN.Sby. The method used in this research is descriptive qualitative. Data obtained from Laws, journals, books, internet, etc. The result of this research is that the implementation of the testamentary grant requires approval from the Plaintiff who is one of the heirs and also has absolute rights (legitime portie) even though the Plaintiff is a foreign citizen, namely a Dutch citizen and it is proven that the Plaintiff has given consent to the will was granted with a Letter of Approval dated 21 December 2010. Then, on the basis of this letter of approval, to carry out the will, a Deed of Grant of Will was drawn up, number 18/2011, dated 31 May 2011, and this was then followed up by registering the rights to the land object of the dispute with the issuance of a certificate. property rights Number 842 in the name of the rights holder Leo Alphons Sandhaka. the plaintiff's claim has expired because the right to claim legitimeportie regarding inheritance cannot expire 3 (three) years from the time the legitimaris declares that they have received the inheritance. Based on the provisions of Article 929 paragraph 4 of the Civil Code, the right to claim legitimeportie will expire after 3 (three) years have passed. The legitimaris begins to declare that he has received the inheritance, thus the plaintiff's right to claim his legitimeportie in the a quo case has expired (exceptio temporis).

**Keywords:** *Inheritance; Absolute Rights (Legitime Portie); Expired Lawsuit*

### **Introduction**

Inheritance law is an area of law that is difficult to separate from a person's life. This is due to the death of someone<sup>1</sup>, then there is a transfer of wealth from a person who has died to his heirs. The presence of this situation does not rule out the possibility that there will be disputes between the heirs during the

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<sup>1</sup> Rahman, A., Asyhadie, Z., Andriyani, S., & Mulada, DA (2020). Registration of Inherited Land that Has Not Been Divided by Inheritance. *Journal of Legal Compilation*, 5(1).

distribution of inheritance.<sup>2</sup> So inheritance law plays an important role in upholding justice if there is a dispute regarding the distribution of inheritance and is an area of law that is difficult to separate from a person's life.<sup>3</sup> *Burgelijk Wetboek* in Indonesian known as the Civil Code, historically it originated in the Netherlands and was enforced in Indonesia based on the principle of concordance. Even though it was initially applied to people of Dutch descent, after Indonesia became independent, Indonesian people continued to use *Burgelijk Wetboek* to solve civil problems.<sup>4</sup>

For Indonesian citizens of European (Dutch) and Eastern Chinese descent, BW Civil law is still the main source of law in resolving property issues left behind by one or more people who have died. Even though this law has been around for a long time and has been used for a long time in everyday life in Indonesia, the settlement of assets left behind by people who have died is often a problem and often the solution requires the intervention of state judicial institutions.<sup>5</sup>

Civil inheritance law is one of the legal regulations that is coercive in nature.<sup>6</sup> The element of coercion in civil inheritance law, for example provisions granting absolute rights (*legitime portie*) to certain heirs over a certain amount of inherited assets or provisions that prohibit heirs from making decisions such as giving away certain parts of their inherited assets, then the recipient of the gift has the obligation to return the assets has been given to him in the inheritance in order to fulfill the absolute portion (*legitime portie*) of the heir who has absolute rights<sup>7</sup>

The position of civil inheritance law is one of the laws that is coercive (*dwingend recht*) so that the heir is prohibited from doing anything with his inheritance that exceeds the limits of authority permitted by the Law, so there are legal consequences that will occur in the future for his inheritance after he dies if the heir exceeds the limits of his authority<sup>8</sup>

The law guarantees the absolute rights of heirs or what is usually called *legitimie portie*. *Legitimie Portie* itself is an absolute portion of the heir's inheritance, which cannot be removed or reduced by the person who will leave the inheritance or cannot be reduced by gifts during the testator's lifetime or gifts by will.<sup>9</sup> In principle, a person has the freedom to give or gift his property to anyone. However, the law guarantees the inheritance rights of every heir by prohibiting heirs from donating their assets to other people who violate the heirs' rights in accordance with the provisions of the law. Heirs who can exercise their rights to such a minimum amount are called heirs according to the law (*legitimaris*), the part that is guaranteed is called the inheritance part according to the law (*legitim portion*) or *Legitimie Portie*.<sup>10</sup>

In Civil Law, grants that violate the legitimacy of the *portie* are included in the category of unlawful acts. An unlawful act is an action or failure to do something that results in harm to another

<sup>2</sup> Eka Rahayu Purbenazir. Implementation of Islamic Inheritance Law in the Community of Kepahiang District, Kepahiang Regency. *Qiyas* Vol. 2, no. 1:72-82.

<sup>3</sup> Vanessa & Stanislaus Atalim. 2019. Application of Grant Provisions based on Article 920 of the Civil Code Seen from the Principle of *Legitime Portie* (Case Study: Decision of the Supreme Court of the Republic of Indonesia Number 2954K/PDT/2017). *Religious law journal* Volume 2 Number 2:1-25.

<sup>4</sup> Erie Hariyanto, 'Burgelijk Wetboek Tracing the History of Legal Implementation in Indonesia' (2009) IV *Al-Ihkâ*. [150].

<sup>5</sup> Mimiamanda, FA, & Budhisulistiyawati, A. (2018). Legal Consequences of Gifting Parental Assets to Children which Violates the Legitimate Rights of Other Children According to the Civil Code (Case Study Decision Number 433/Pdt.G/2011/PN.JKT.PST. *Journal of Private Law*, 6(2), 5.

<sup>6</sup> Cornelius Tangkere, Mercy MM Setligh. 2021. Legal Settlement of Inheritance Land Grabbing According to *Legitime Portie* in Civil Inheritance Law. *Lex Administratum*, Vol. IX/No. 1:31-40.

<sup>7</sup> Amanat, A. (2000). *Dividing Inheritance Based on BW Civil Law Articles*. King Grafindo.

<sup>8</sup> Rudito, S. (2015). Application of *Legitime Fortie* (Absolute Share) in the Distribution of Inheritance According to the Civil Code. *Journal of Legal Studies Legal Opinion*, 3(3), 10.

<sup>9</sup> Asri, B., & Asri, T. (1988). *Basics of Western Inheritance Law [A Theoretical and Practical Discussion]* (1st ed.). Tarsito.

<sup>10</sup> Pitlo, A. (1979). *Inheritance Law According to the Dutch Civil Code*. Intertime.

person without previously having a legal relationship, an obligation which is directed towards everyone in general and by not fulfilling this obligation, compensation can be requested.<sup>11</sup>

Unlawful acts are regulated in article 1365 of the Civil Code which states, "every act that violates the law and brings harm to another person, requires the person who caused the loss through his fault to compensate for the loss."<sup>12</sup>. The scope of what can be said to be an unlawful act is as follows:

1. Actions that conflict with other people's rights;
2. Actions that conflict with one's own legal obligations;
3. Actions that are contrary to morality;
4. Actions that are contrary to prudence or necessity in social interactions.

The problem regarding inheritance in this scientific work is regarding inheritance that occurs between younger siblings and older siblings, when their mother has died. The Plaintiff (Tjong Oen Djien) and the Defendant (Leo Alphons Sandhaka) are the heirs of the late Mrs. Emmy Maria Lezana who died on August 2 2009. The legal status of the Plaintiff (Tjong Oen Djien) is that of a foreign country, that is, he has been a citizen for a long time. Dutch. The origin of the object of dispute is the inheritance of the deceased (the late Emmy Maria Lezana) in this case in the form of: A plot of land with freehold rights number 842/North Petojo, located in the Special Capital Region of Greater Jakarta, Central Jakarta Region, Gambir District, North Petojo Village, covering an area of 559 m<sup>2</sup> (five hundred and fifty-nine square meters),

The land subject to dispute, which is the inheritance of the deceased heir (the late Emmy Maria Lezana), was gifted by the late Emmy Maria Lezana to the Defendant in accordance with Deed of Will Number 11 dated January 30 2006. That the main dispute is whether the Plaintiff, who is one of the heirs of the late Emmy Maria Lezana, still has the right to receive a share of the inheritance mentioned above based on the absolute right of heirs (*legitime portie*) on the basis of article 913 Jo. Article 914 Jo. Article 920 of the Civil Code, even though the inheritance has been gifted in accordance with Deed of Will Number 11 dated 30 January 2006 to the Defendant as one of the heirs as well

Whereas regarding the subject of the dispute, according to the Plaintiff, he still has the right to inherit the inheritance of the late Emmy Maria Lezana, because the Deed of Will has violated the absolute inheritance (*legitime portie*) for the Plaintiff as intended in Article 913 and Article 914 and Article 920 of the Code of Law. Civil Law (BW). Meanwhile, according to the Defendant, the Plaintiff is no longer entitled and has no basis to claim the inheritance because of this

1. Deed of Will number 11 dated 30 January 2006 has received the Plaintiff's approval with a letter of approval dated 21 December 2010, and as its implementation a Deed of Will Number 18/2011 dated 31 May 2011 was made.
2. Apart from that, based on Article 929 paragraph (4) of the Civil Code, the Plaintiff's claim is invalid because 3 years have passed or it has expired because the Plaintiff's claim was filed on June 29 2015 while the Plaintiff's Consent Letter was dated December 21 2010 which is the time The plaintiff has stated his attitude to accept the inheritance
3. Apart from that, the implementation of the will which was submitted with the approval of the Plaintiff, which was followed up with the deed of grant of will dated 31 May 2011, has exceeded the 1 (one) year time limit stipulated in Article 21 paragraph 3 of the UUPA, so the ownership rights to the land which was gifted by will have been invalidated by law. and the land is State land, so it is impossible for the Plaintiff to claim legal title to State land.

<sup>11</sup> Sibarani, S. (2015). Application of Legitime Portie (Absolute Part) in the Distribution of Inheritance According to the Civil Code (Case Study Decision Number 320/PDT/G/2013/PN.JKT.BAR). *Journal of Legal Studies*, 5(2), 18.

<sup>12</sup> Kunni Afifah. Responsibilities and Legal Protection for Notaries in Civil Procedure for the Deeds They Make. *Lex renaissance* no. 1 VOL. JANUARY 2, 2017: 147 – 161.

The plaintiff then, with his lawsuit letter dated June 26 2015, registered at the Registrar's Office of the Surabaya District Court in the Register with No. 560/Pdt.G/2015/PN.Sby., dated 29 June 2015. Where in the lawsuit he asked for a share of the legitime portie on 559 m<sup>2</sup> of land, this was of course 5 years after the execution of the testamentary grant. Based on Article 929 paragraph 4 of the Criminal Code, the right to claim legitime portie will expire after 3 years have passed from the opening of the will.

## **Discussion**

### **1. Implementation of the Legitime Portie Grant (Mutlah Rights) in Decision No. 560/Pdt.G/2015/PN.Sby**

In the implementation of civil inheritance law, heirs according to the will take precedence, but with exceptions as long as the contents and distribution in the will do not conflict with the law.<sup>13</sup>The legal consideration is because a will is the last will of the testator regarding his inheritance, with the provisions that it must not harm the share of the heirs according to the law, because the heirs according to the law have an absolute share), which is regulated in Article 913 of the Civil Code which is absolutely not part may be violated. Heirs who have an absolute share are also called legitimaris, meaning that as long as the heir's share is determined in the will, it does not harm the absolute share of the legitimate heir, the will is executed, if the absolute share of the legitimate heir is harmed by the testamentary heir.

Donating property is not prohibited by law, but there are rules and calculations in granting a will to the person who receives the gift so that it does not harm the heirs even if there is a will that states that the heir's entire assets are given to the recipient of the gift.<sup>14</sup>The legal consequences of the gift that has been made if it is detrimental to the heirs in a decision that has permanent legal force will apply retroactively to the disputed object, then the testamentary gift given will no longer belong to the recipient of the gift but will be in the same condition as before and it will be considered that the agreement never existed. In its implementation, the implementation of absolute rights or Legitime Portie in Indonesia causes problems.

Civil Observations based on several disputes studied found that until 2020 the number of decisions regarding Legitime Portie, the author found that there were 991 decisions in the Supreme Court. This means that problems regarding bequests that exceed Legitime Portie are widespread.<sup>15</sup>

The position of legitimate heir is a protection from the law for the actions of the heir in whole or in part who has gifted and bequeathed it to another person. Regarding the distribution, it is regulated in Article 914 of the Civil Code that the absolute share for 1 child is 1/2.<sup>16</sup>If there are 2 children then the share is 2/3, whereas if there are 3 or more children then the share is 3/4.<sup>17</sup>The 1/2 part which is intended to belong to the child when there is only one child and is his absolute right. When there are 2 children left behind, the application of the 2/3 share becomes their absolute right. Apart from that, when you have 3 children, a 3/4 share for each child must be applied.

These distributions are a form of absolute right and must be given accordingly. Apart from that, Article 916 states that children outside of marriage also get 1/2 share. In the Civil Code, it is stipulated that

<sup>13</sup> Muhammad Fadel Usman. 2018. Making a Will in Inheritance Planning According to the Civil Code. Lex Privatum Vol. VI/No. 5.

<sup>14</sup> Siti Misnar Abdul Jalil, & Guswan Hakim. (2023). Portie's Legitimate Position in Civil Inheritance Law. Lakidende Law Review, 2(2), 442–447.

<sup>15</sup> <http://bangunan3.mahkamahagung.go.id/search.html?q=p>.

<sup>16</sup> Siti Rahmah, Hamdan Khairul Mubarak, & Muhammad Al Mansur. (2023). Absolute Share (Legitime Portie) of Heirs of Various Groups According to Civil Law and Compilation of Islamic Law. Doctrine: World Journal of Legal and Political Sciences, 1(3), 51–69.

<sup>17</sup> See Civil Code.

when the intended children die, their descendants are the successors in the inheritance and obtain their rights. The rules regarding violations of testamentary gifts to the absolute share of straight-line heirs will be void. However, if the legitimate heirs do not feel disadvantaged or take action against them, then the gift of the will is valid. Regarding the distribution in the Legitime Portie line above, it is explained in the Civil Code that the share for the line above is half of that regulated by law.

The discussion of the distribution of absolute rights that must be obtained is also discussed in the next article. In article 915 of the Civil Code, the share for heirs and above is given at  $\frac{1}{2}$  share. This portion of the grant is granted when the grant is not implemented. For absolute heirs, the provisions in the Civil Code provide guarantees for their absolute share. This part must be fulfilled for the benefit of the legitimate heirs. These heirs include ab intestato heirs who are also in the direct line, as well as illegitimate children who have been legally recognized as stipulated in the law. The share obtained by illegitimate children is  $\frac{1}{2}$  share as regulated in law.

In the article that discusses distribution, children who are born out of wedlock but receive recognition will receive a share. With these provisions, absolute rights will be obtained as they are. Regarding the calculation of Legitime, Portie must pay attention to several things as intended in the Civil Code. To carry out calculations, you must pay attention to the heirs. If the heir's share is not sufficient, the testamentary gift given must be cut. Grants must still refer to Legitime Portie and must not violate it.

This is because the position of the Legitime Portie has more degrees than a testamentary gift when it does not match the parts that must be given. Calculations in Legitime Portie are carried out by taking into account several things as intended in the Civil Code. Regulations regarding Legitime Portie do not only refer to the contents of the will given when the testator dies. However, when a gift is given while the testator is still alive and is not in accordance with the stipulated portion, prosecution can be carried out. Withholding of the gift is done so that the intended portion can be fulfilled and is intended for the benefit of the heirs. The provision of testamentary gifts includes 2 parts, namely those that do not violate Legitime Portie and those that violate Legitime Portie.

To grant an appropriate testamentary gift, it can be done in accordance with the contents of the testamentary gift. Meanwhile, those who violate Legitime Portie will cause problems in the implementation of the testamentary gift. In the implementation of a gift, when there is no straight line up and down, the gift or testamentary gift given can cover the entire inheritance. This is in accordance with Article 917 of the Civil Code, that when there are no heirs either up, down or illegitimate children, this can be done for those who are still alive. Gifts are made by adding up all the inherited assets and carried out by making a will by the testator.<sup>18</sup> Furthermore, in determining a gift, if there is something that violates the Legitimacy Portie, there must be a demand from the aggrieved party as in Article 920 of the Civil Code that a reduction can only be made if there is a claim from the legitimate heir. Claims are made by the heirs when the gift is made either through a will at death or when the testator is still alive. Gifts that violate the Legitimacy Portie in the Act may change if prosecution is carried out by the legitimaries or other heirs. However, it is explained that the legitimate heirs must not take any benefits. Determining the absolute share is done by adding up the assets and then subtracting the existing debts. This is as stated in the Civil Code that all inherited assets are added up first, then added to the assets that have been donated by the testator and after that include the testamentary gifts later in the will. If the debts and all assets have been deducted then they are calculated as a whole

A testamentary gift is a gift or special provision given by someone, either in the form of goods or otherwise. The provision of a will is specific, with the will explaining what will be given. When the distribution of a testamentary gift does not comply with the provisions, prosecution is carried out in the form of a deduction. Claims against third parties follow procedures as for grant recipients. The claim begins with final transfer. However, under certain circumstances, prosecution may not be filed against

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<sup>18</sup> See Civil Code.

third parties. A situation where the goods do not meet the absolute share, cannot be collected and has become the property of a third party. Through these regulations, legitimate heirs can apply for cancellation of the gift when the above conditions are not met.

Legitimate heirs have the right to an absolute share of the testator's inheritance. In the Civil Code there is a principle that whether a right can be used or not depends on the owner of the right. So protection for legitimate heirs only applies if they prosecute to obtain these rights. Regarding this matter, the legitimate choice can be to object to the absolute part that has been violated or to accept it. The share for heirs according to the law is given a certain share<sup>19</sup>The purpose of the law is that there will be no violation of their will. The law means that those who are heirs without a will are close to the heir, so it is not good if they do not have a share in the inheritance.

The Legitime Portie problem focuses on the insufficient rights that must be owned by the heirs. Disputes often occur because of this, resulting in prosecutions by inheritance recipients. The prosecution was carried out after the contents of the will were notified and it turned out that there were parties who felt disadvantaged in the distribution.

In decision no. 560/Pdt.G/2015/PN.Sby is in accordance with applicable regulations. The Plaintiff is no longer entitled and has no basis to claim the inheritance because Deed of Will number 11 dated 30 January 2006 has received the Plaintiff's approval with a letter of approval dated 21 December 2010, and as its executor a Deed of Will Grant Number 18/2011 dated 31 May 2011 was drawn up. Apart from that, based on article 929 paragraph (4) of the Civil Code, the plaintiff's claim is invalid because 3 years have passed or have expired. because the Plaintiff's lawsuit was filed on 29 June 2015, while the Plaintiff's Consent Letter was dated 21 December 2010, which is when the Plaintiff expressed his attitude to accept the inheritance.

Testamentary grant given by the late Emmy Maria Lezana to Defendant Leo Alphons Sandhaka for a plot of land and building rights as stated in the Ownership Rights Certificate Number 842/Petojo. Therefore, the gift of the will only takes effect after the death of the grantor of the will, namely since the death of the late Emmy Maria Lezana on August 2 2009 (see Exhibit P-5 or T-1b). Furthermore, to carry out the grant of the will, there needs to be approval from the Plaintiff who is one of the heirs and also has absolute rights (legitime portie) even though the Plaintiff is a foreign citizen, namely a Dutch citizen and it is proven that the Plaintiff has given consent to the grant of the will. with a Letter of Approval dated 21 December 2010, Furthermore, on the basis of the letter of agreement to carry out the will, a Deed of Grant of Will number 18/2011, dated 31 May 2011, was made, and this was followed up by registering the rights to the disputed land object with the issuance of a certificate of ownership number 842 in the name of the right holder Leo Alphons Sandhaka. The formulation of the problem in this research is (1) Implementation of the Legitime Portie Grant (mutlah rights) in Decision No. 560/Pdt.G/2015/PN.Sby (2) Judge's legal considerations in decision no. 560/Pdt.G/2015/PN.Sby. The method used in this research is descriptive qualitative. Data obtained from Laws, journals. books, internet, etc. and then followed up by registering the rights to the disputed land object by issuing a certificate of ownership number 842 in the name of the right holder, Leo Alphons Sandhaka. The formulation of the problem in this research is (1) Implementation of the Legitime Portie Grant (mutlah rights) in Decision No. 560/Pdt.G/2015/PN.Sby (2) Judge's legal considerations in decision no. 560/Pdt.G/2015/PN.Sby. The method used in this research is descriptive qualitative. Data obtained from Laws, journals. books, internet, etc. and then followed up by registering the rights to the disputed land object by issuing a certificate of ownership number 842 in the name of the right holder, Leo Alphons Sandhaka. The formulation of the problem in this research is (1) Implementation of the Legitime Portie Grant (mutlah rights) in Decision No. 560/Pdt.G/2015/PN.Sby (2) Judge's legal considerations in decision no. 560/Pdt.G/2015/PN.Sby. The method used in this research is descriptive qualitative. Data obtained from Laws, journals. books, internet, etc. The method used in this

<sup>19</sup> Rudito, S. (2015). Application of Legitime Fortie (Absolute Part) in the Distribution of Inheritance According to the Civil Code (Doctoral dissertation, Tadulako University).

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## 2. The judge's Legal Considerations in Decision No. 560/Pdt.G/2015/PN.Sby

Article 1666 of the Civil Code states that, "Gift is an agreement by which a donor hands over an item or simply, without being able to withdraw it, for the benefit of the person who receives the gift. The law only recognizes gifts between living persons." Provisions regarding grants have been regulated in the Civil Code. Article 1666 of the Civil Code states that a gift cannot be revoked or withdrawn. However, there are provisions that can cancel a grant as regulated in Article 1688 of the Civil Code, namely:

1. If the conditions of the gift are not fulfilled by the recipient of the gift;
2. If the person given the gift is guilty of committing or participating in an attempted murder or other crime against the person of the donor;
3. If the donor falls into poverty and the donor refuses to provide for him.

Apart from the provisions above, in the Civil Code there is also a provision that can cancel a gift, namely a gift that violates the legitimacy of the portie as regulated in article 913 of the Civil Code which states that; "Legitimie Portie or inheritance share according to law is a share 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 will."<sup>20</sup>In this case, the Panel of Judges gave legal considerations and were of the opinion that Will Deed Number 11 dated January 30 2006, was essentially a testamentary gift given by the late Emmy Maria Lezana to Defendant Leo Alphons Sandhaka over a plot of land and building rights as stated in the Ownership Certificate. Number 842/Petojo. Therefore, the grant of will has only been in effect since the death of the grantor of the will, namely since the death of the late Emmy Maria Lezana on August 2 2009. Furthermore, for the implementation of the grant of will, there needs to be approval from the Plaintiff who is one of the heirs and also has a share of rights. absolute (Legitime portie) even though the Plaintiff is a foreign citizen,

Article 1365 of the Civil Code states that, "every act that violates the law and causes harm to another person, requires the person who caused the loss through his fault to compensate for the loss."<sup>21</sup>Based on this article, an unlawful act must contain elements, namely, the existence of an act, the act being against the law, a mistake on the part of the perpetrator, a loss to the victim, a casual relationship between the act and the loss, negligence or carelessness.

After the panel of judges studied the Plaintiff's lawsuit, it turned out that the legal basis for the plaintiff's lawsuit was clear, as in the posita and petitum it had been stated and explained that the basis of the lawsuit brought against the Defendant was regarding the Plaintiff as one of the heirs of the late Emmy Maria Lezana and demanding the distribution of inheritance based on article 913 jo. Article 914 of the Civil Code, namely the absolute share of the heir (legitime portie) of the assets inherited from the late Emmi Maria Lezana

Regarding the Plaintiff's lawsuit containing errors in person; namely, the plaintiff does not have a legal basis to sue the defendant because the plaintiff is a foreign citizen, namely a Dutch citizen. Regarding this exception, the Panel of Judges was of the opinion that even though the Plaintiff was a foreigner, the Plaintiff as an heir did not automatically lose his right to claim inheritance rights over the assets inherited from his parents. Regarding foreigners not being able to have rights to land is another issue

<sup>20</sup> Joko Trio Suroso.2021.Cancellation of the Deed of Grant which Violates Legitieme Porti Viewed from the Perspective of Indonesian Civil Law. Discourse Paramarta Journal of Legal Studies 20(2):46-64.

<sup>21</sup> Kunni Afifah. 2017. Responsibility and Legal Protection for Notaries in Civil Procedure for the Deeds They Make. Lek renaissance 8 No. 1 VOL. 2: 147 – 161.

Regarding the exception that the Plaintiff's Lawsuit Has Expired; because the right to claim *legitime portie* related to inheritance cannot expire 3 (three) years from the time the *legitimar* declares that they have received the inheritance; namely by giving approval on 22 December 2010 for the making of a Deed of Will dated 31 May 2011 No. 18/2011. Regarding this exception, according to the Panel of Judges, proof is needed, namely whether it is true that the Plaintiff's claim that the legal claim for inheritance of inheritance is 3 years overdue is true. Therefore, this matter has entered into the main case and is not appropriate to be questioned in the exception

Regarding the exception that the plaintiff's lawsuit contains errors in person, namely that the plaintiff's lawsuit lacks parties, Henny Kurnia Tjahja, SH, Notary in Jakarta and Head of the Central Jakarta Administrative City Land Office should be withdrawn as parties to the lawsuit. Regarding this exception, the Panel of Judges is of the opinion that the party being sued in this lawsuit is correct, because the person who controls the inheritance which is the object of the dispute in this case is actually the Defendant, while the party who issued the letters relating to the object of the dispute does not need to be sued. because the party does not control the object of the dispute. that based on the considerations above, the various types of exceptions submitted by the Defendant are without legal grounds, therefore all of these exceptions must be declared rejected.

Whereas regarding the subject matter of the dispute, the Panel of Judges gave legal considerations and were of the opinion that Will Deed Number 11 dated January 30 2006, was essentially a testamentary gift given by the late Emmy Maria Lezana to Defendant Leo Alphons Sandhaka over a plot of land and building rights as mentioned in Certificate of Ownership Number 842/Petojo. Therefore, the grant of will has only been in effect since the death of the grantor of the will, namely since the death of the late Emmy Maria Lezana on August 2 2009. Furthermore, for the implementation of the grant of will, there needs to be approval from the Plaintiff who is one of the heirs and also has a share of rights. absolute (*Legitime portie*) even though the Plaintiff is a foreign citizen,

Due to Deed of Will Number 11 dated 30 January 2006 and the issuance of Deed of Grant of Will Number 18/2011, dated 31 May 2011 on the basis of approval from the Plaintiff with a Letter of Approval dated 21 December 2010, which means that the Plaintiff has waived his rights, then The Panel of Judges was of the opinion that the deeds of grant were valid according to law, even though the letter of approval was revoked by the Plaintiff on 20 May 2015 on the grounds that the Plaintiff was concerned that the letter of approval would be unilaterally misused by the Defendant, because the purpose of the letter of approval was to The land inherited from the late Emmy Maria Lezana is easier to sell and distribute the proceeds to the Plaintiff. However, the reason for the revocation according to the Panel of Judges cannot be justified because in the agreement letter there is no clause as intended by the Plaintiff, in the agreement letter it is clear that the Plaintiff has given approval regarding will deed number 11 dated January 30 2006 and the Plaintiff will not sue or sue any party and release it from all demands or lawsuits, therefore the letter of revocation by the Plaintiff dated 20 May 2015 has no evidentiary value and must be set aside. In the letter of agreement it is clear that the Plaintiff has given approval regarding will deed number 11 dated 30 January 2006 and the Plaintiff will not sue or sue any party and is free from all claims or lawsuits, therefore the letter of revocation by the Plaintiff dated 20 May 2015 is has no evidentiary value and should be set aside. In the letter of agreement it is clear that the Plaintiff has given approval regarding will deed number 11 dated 30 January 2006 and the Plaintiff will not sue or sue any party and is free from all claims or lawsuits, therefore the letter of revocation by the Plaintiff dated 20 May 2015 is has no evidentiary value and should be set aside.

Because Deed of Will Number 11 dated 30 January 2006 and Deed of Grant of Will Number 18/2011, dated 31 May 2011 as well as the issuance of certificate of title Number 842 in the name of the right holder Leo Alphons Sandhaka are valid according to law, the land and building objects in dispute are valid according to The law becomes the full property of the Defendant, therefore the main claim of the



Plaintiff as stated in the petition petition numbers 3 and 4 has no legal grounds and must be declared rejected.

Considering, that because the main claim of the lawsuit is declared rejected, the plaintiff's remaining claims relating to the main claim must also be declared rejected in their entirety. that regarding other evidence submitted by the parties which is deemed not relevant to this case, there is no need for further consideration. Remembering article 178 HIR and article 1320 of the Civil Code and other regulations relating to this case

In fact, the plaintiff no longer has the right/legality to question the ownership of the land in question, because besides the plaintiff as a foreigner cannot have ownership rights to land in Indonesia based on the provisions of Article 21 of the UUPA, it is also necessary to understand that Ownership Rights No. 842/ North Petojo, the land which was bequeathed by will to the defendant has been terminated by law and the land has become State land, so it is impossible for the plaintiff to claim legitimeportie over State land. Thus, the plaintiff's lawsuit contains an error in person defect in the form of a disqualification exception (*gemis aanhoedanigheid*), namely that the plaintiff does not have a legal basis to sue the defendant, so it is appropriate and appropriate for the plaintiff's lawsuit to be declared unacceptable.

### **Conclusion**

1. The implementation of the will which was submitted with the approval of the Plaintiff which was followed up with the deed of grant of will dated 31 May 2011 has exceeded the 1 (one) year time limit stipulated in Article 21 paragraph 3 of the UUPA, then the ownership rights to the land which was donated by the will have been invalidated by law and the land becomes State land, so it is impossible for the Plaintiff to claim legal title to State land. The gift of the will has only been in effect since the death of the grantor of the will, namely since the death of the late Emmy Maria Lezena on 2 August 2009 (see Exhibit P-5 or T-1b). Furthermore, for the implementation of the testamentary grant, it is necessary to obtain approval from the Plaintiff who is one of the heirs and also has absolute rights (*legitime portie*) even though the Plaintiff is a foreign citizen,
2. The plaintiff's lawsuit contains an error in person defect in the form of a disqualification exception (*gemis aanhoedanigheid*), namely that the plaintiff does not have a legal basis to sue the defendant, so it is appropriate and proper for the plaintiff's lawsuit to be declared inadmissible. the plaintiff's claim has expired because the right to claim legitimeportie regarding inheritance cannot expire 3 (three) years from the time the legitimaris declares that they have received the inheritance. Based on the provisions of Article 929 paragraph 4 of the Civil Code, the right to claim legitimeportie will expire after 3 (three) years have passed. The legitimaris begins to declare that he has received the inheritance, thus the plaintiff's right to claim his legitimeportie in the a quo case has expired (*exceptio temporis*).

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