

LEGALITY OF SALE AND PURCHASE OF INHERITANCE OBJECTS EXCEEDING THE LEGITIME PORTIE AND WAIVER OF ABSOLUTE RIGHTS IN THE MATARAM DISTRICT COURT DECISION

Wafiy Ahmad Ardhika¹, Wardani Rizkianti²

^{1,2} Fakultas Hukum Universitas Pembangunan Nasional "Veteran" Jakarta

Email: 2210611431@mahasiswa.upnvj.ac.id, wardanirizkianti@upnvj.ac.id

Received : 20 September 2025

Revised : 10 October 2025

Accepted : 05 November 2025

Published : 17 November 2025

DOI : <https://doi.org/10.54443/morfai.v5i5.4436>

Link Publish : <https://radjapublika.com/index.php/MORFAI/article/view/4436>

Abstract

The purpose of this article is to analyze the legality of the sale and purchase of inheritance objects that exceed the legitime portie (absolute share) and examine the application of the protection of absolute rights in the Mataram District Court Decision Number 109/Pdt.G/2009/PN.Mtr, using a normative juridical method with a statutory approach and case studies. Normatively, the sale and purchase of inheritance objects that violate the legitime portie (Article 913 of the Civil Code) is invalid and can be canceled, and the injured heirs have the right to demand a reduction (inkorting) according to Article 916 of the Civil Code. In the Mataram District Court Decision, the judge rejected the lawsuit for cancellation of the gift on the grounds that the gift was valid because it was made during the testator's lifetime, thus emphasizing formal legal certainty rather than substantive justice. The plaintiff's defeat was caused by the inaccuracy of the legal basis of the lawsuit in filing for cancellation, even though the mechanism that should have been taken was inkorting. This research's contribution is to emphasize that, despite decisions being formalistic, the substantive rights of heirs must still be protected and can be restored through inkorting after the testator's death. Therefore, it is recommended that the inkorting mechanism be strengthened through Supreme Court guidelines to ensure a balance between legal certainty and substantive justice in Indonesian civil inheritance law.

Keywords: legitime portie, inkorting, judicial decisions

I. INTRODUCTION

Inheritance law is a branch of civil law that regulates the distribution of a deceased person's inheritance to the heirs who are entitled to receive their fair share. The Indonesian legal system regulates the provisions regarding inheritance distribution in the Civil Code, specifically in Book II, Chapters XII through XVIII, or in Articles 830 through 1130 of the Civil Code.¹Inheritance law not only functions as a mechanism for the distribution of assets, but also as a legal system that regulates the individual freedom rights of the heir with protection of the rights of the heirs.²The concept of legitime portie is one of the important concepts in inheritance law which is regulated in the Civil Code, namely the absolute part of the inheritance which cannot be removed or reduced by the heir, even by donating part of the assets in a will.³This provision is clearly stated in Article 913 of the Civil Code which states that "legitime portie is a part of the inheritance which cannot be eliminated by the heir, either by appointing an heir or by gift."⁴This principle arose from legal efforts to protect the rights of lineal heirs, such as children and parents, so that they do not lose their rights due to unilateral actions taken by the testator. Provisions regarding legitime portie often clash with the principle of freedom of action inherent in every individual.⁵The heir has full rights to manage, transfer, or donate his assets during his lifetime. If the heir exercises this right in its entirety, for example by donating all of his assets to only one heir, then the question will arise regarding the validity of the actions taken by the heir regarding the absolute rights of the other heirs. This issue is relevant because in some cases, gifts or sales made by the heir during his lifetime give rise to disputes after the testator's death. Mataram District Court Decision Number

¹Civil Code

²Subekti, Principles of Civil Law, (Jakarta: Intermasa, 1987), p. 45.

³Saleh, Inheritance Law According to the Civil Code, (Jakarta: Ghalia Indonesia, 1983), p. 73.

⁴Civil Code, Article 913.

⁵Atkinson, JK, Wills and Succession Law in Common Law Systems, (Oxford: Oxford University Press, 2019), p. 22.

LEGALITY OF SALE AND PURCHASE OF INHERITANCE OBJECTS EXCEEDING THE LEGITIME PORTIE AND WAIVER OF ABSOLUTE RIGHTS IN THE MATARAM DISTRICT COURT DECISION

Wafiy Ahmad Ardhika and Wardani Rizkianti

109/Pdt.G/2009/PN.Mtr is one example of this phenomenon. In this case, the plaintiff filed a lawsuit against a gift made by the heir to one of his children because it was considered to violate the limits of legitime portie. In its decision, the panel of judges rejected the lawsuit on the grounds that the gift made by the heir was made during his lifetime, therefore it is valid as a legal act and cannot be categorized as part of the inheritance.⁶ This decision gave rise to different views regarding the limits of the heir's authority in donating assets and the protection of the heir's absolute rights.

Legitime portie Normatively, it can be interpreted as a mechanism for limiting the freedom to inherit, which aims to maintain a balance between the individual rights of the testator and the interests of the family. According to R. Soetojo Prawirohamidjojo, the freedom of the testator to manage his assets during his lifetime is not absolute, because the law requires a balance between individual rights and family protection.⁷ This means that even though a gift is a legal act that is legitimately carried out by the heir, this right cannot be fully used because the heir's rights cannot be eliminated, where if the heir makes a gift of all the assets he owns, then the heir will lose the right to the inheritance. The law has regulated what efforts can be made to anticipate this action, namely by continuing to provide protection to the heirs who are harmed through the inkorting mechanism, namely reducing the gift that exceeds the legitime portie limit.⁸ Disadvantaged heirs often do not receive the legal protection they deserve. This situation indicates a need to reaffirm or review the legal position of legitime portie in judicial practice so that it can function in accordance with its social purpose, namely to provide protection for family members who are legally entitled to a share of the inheritance.

The sale and purchase of land derived from inherited assets should ideally be carried out after the distribution of the land (the object of inheritance) to the heirs has been completed. This is important to provide legal certainty for the parties involved, protect the buyer from potential violations of legal procedures, and ensure that the valid terms of the agreement are met. Based on the Civil Code, specifically Book III, regulations regarding assets and the transfer of rights form the legal basis for implementing this type of agreement. The validity of an agreement under law is expressly regulated by Article 1320 of the Civil Code (KUHPperdata), which requires four important points. These requirements include a consensus (agreement) between the parties making the commitment, the legal capacity (capacity) of the parties to bind themselves, a clear determination of the object of the agreement, and the reasons (causes) used in the agreement must not violate applicable legal provisions.⁹ A sales and purchase agreement is legally defined by Article 1457 of the Civil Code (KUHPperdata) as an agreement in which one party states its willingness to hand over an item, while the other party is obliged to pay the agreed price for the item.¹⁰ In land sales and purchases, the parties making the purchase require a land title certificate in the form of a Land Ownership Certificate (SHM). A land title certificate is an administrative document used to prove that a person has control over the land they occupy. This document also serves as proof of ownership. The land administration process ends with the issuance of a Land Ownership Certificate (SHM) by the National Land Agency (BPN), which serves as official and legal proof of land ownership.¹¹

Regulations regarding the sale of land that is the object of inheritance are rooted in Article 833 of the Civil Code (KUHPperdata), which expressly states that heirs acquire ownership rights over all assets, rights, and obligations inherited from the testator. Based on this principle of joint ownership, the validity of every inherited land sale and purchase transaction absolutely requires the consent of all entitled heirs. If any heirs are unable to attend, their consent can be facilitated through a written statement legalized by a notary or through a formal notarial deed. Legally, transactions carried out without the collective consent of all heirs are declared invalid and void in accordance with Article 1471 of the Civil Code. Furthermore, the actions of one party who sells inherited assets without permission can be categorized as an unlawful act under Article 1365 of the Civil Code, which provides a legal basis for other injured heirs to file a civil lawsuit.¹² Legal protection for inherited land can be guaranteed through a land registration mechanism that adheres to the *rechts kadastral* system. The primary purpose of this registration is to establish legal

⁶Mataram District Court Decision No. 109/Pdt.G/2009/PN.Mtr.

⁷Prawirohamidjojo, R. Soetojo, Codified Inheritance Law, (Surabaya: Airlangga University Press, 1997), p. 87.

⁸Ibid., p. 92.

⁹Adelia, A., & Wahyuni, R. (2024). The Validity of Land Sale and Purchase Agreements for Undivided Inherited Land Objects Based on the Civil Code. *Journal of Legal Interpretation*, Vol. 5, No. 1, pp. 691-692.

¹⁰Miru, A., & Pati, S. (2020). *Contract Law*. Graphic Rays.

¹¹Rizkianti, RBW Legal Status of Land Ownership Rights Based on Land Sale and Purchase Certificates. (2021). Vol. 8, No. 5, P. 1315.

¹² Ibrahim, MM (2022). *Legal Consequences of Selling and Buying Inherited Land Without the Knowledge of One of the Heirs* (Doctoral dissertation, Islamic University of Kalimantan MAB).

LEGALITY OF SALE AND PURCHASE OF INHERITANCE OBJECTS EXCEEDING THE LEGITIME PORTIE AND WAIVER OF ABSOLUTE RIGHTS IN THE MATARAM DISTRICT COURT DECISION

Wafiy Ahmad Ardhika and Wardani Rizkianti

certainty and guarantee land rights for rights holders. This formal process requires valid proof of ownership and the implementation of legal transfer procedures. All of these processes must be executed by an official authorized to issue land deeds, also known as a Land Deed Official (PPAT), who has the authority under the law.¹³ Article 1457 of the Civil Code indicates that land sales and purchases are, in principle, subject to the provisions applicable to the sale and purchase of objects in general. Implicitly, this provision implies that an absolute prerequisite for validating the sale of an object is that the seller is the legal owner of the object.¹⁴ Ownership rights (Eigendom) are defined as the most complete form of rights over an object, granting the owner full authority to use or dispose of the object. This authority encompasses a broad spectrum of actions, such as selling, giving, pawning, and even destroying or destroying the object. However, the exercise of these privileges must be subject to limitations, namely, they must not violate applicable laws and regulations and must not infringe on the rights of third parties.¹⁵ Article 20 paragraph 2 of the Basic Agrarian Law (UUPA) explicitly states that "Ownership rights may be transferred and assigned to another party." The term "transferred" refers to the transfer of rights that occurs without formal legal action, where the rights automatically become the property of the heirs (for example, through inheritance). Meanwhile, the term "transferred" defines the transfer of rights that arises through certain legal actions, which include various examples such as buying and selling, exchanging, or granting rights through a will.¹⁶

One of the land and building sale and purchase disputes that occurred in Mataram City involved a lawsuit regarding the validity of a grant by Yayak Kurniadi, ST., with the disputed object being a house and land measuring 468 m² located at Jalan Jempiring No. 16, Mataram City. The grant was given by the late RR Sumiati to her daughter, Lely Permana Lestari, based on Deed of Grant No. 531/173/Mataram/1994.¹⁷ Heirs are legally empowered to file a lawsuit against a gift or will that could potentially harm their interests. This authority is based on the principle of legitimate portion, which is detailed in Article 913 of the Civil Code (KUHPerdota). This article defines legitimate portion as the absolute portion of the inheritance that must be distributed to heirs in the direct line, and this portion may not be eliminated or reduced by the testator through a gift or will. Therefore, when executing a gift or drafting a will, it is important to ensure that the rights of the primary heirs are respected. This aims to avoid potential future disputes or conflicts that could arise from ignoring the absolute portion (legitimate portion) regulated by law.¹⁸

The plaintiff felt that the grant had violated the legitimate rights of the beneficiary because it did not take into account the share of the other heirs. The object of the grant had been transferred to a third party through a sale and purchase, which resulted in increasingly difficult dispute resolution. In its decision, the court rejected the plaintiff's lawsuit without considering the legitimate rights of the beneficiary, thus raising the issue of fairness in the distribution of inheritance and raising another perspective from the Singapore inheritance law system which prioritizes inheritance through a will with the existence of a legal provision called the Intestate Succession Act 1967, so that the absolute share or legitimate share is not a problem if it is not fulfilled in the implementation of the beneficiary's beneficiary.¹⁹ Legal consequences are the impacts that arise from an action based on applicable regulations.²⁰ For example, an agreement between two parties that meets the legal requirements can result in a contract. Legal consequences can also arise from a lawsuit to annul a legal action, such as a lawsuit to annul a gift that results in the sale of land and buildings that should have been inherited, which then impacts the status of the gifted assets. In the case of a lawsuit to annul a gift in court, the legal consequences for the gifted assets in question, especially if they exceed the statutory limits, will depend on the judge's decision. Ownership of the gifted assets may be returned to the legal heirs or remain with the recipient of the gift, depending on the judge's decision. The judge

¹³Junaidi Haris. (2020). Criminal Law Aspects of Forgery of Land and Building Sale and Purchase Deeds (Study of Supreme Court Decision of the Republic of Indonesia Number 958K/Pid/2016). *Al-Hikmah Journal of Law and Society*, 1(1).

¹⁴ Patma, P., Suwanti, S., & Rumkel, N. (2021). The Legal Status of Sale and Purchase Agreements Made by Heirs Regarding Undivided Inheritance. *Hermeneutics: Journal of Legal Studies*, 5 (2). Pp. 355-356.

¹⁵Subekti, Principles of Civil Law, Jakarta: PT. Intermedia, 2003, p. 69

¹⁶I Made Dwi Oka Putriyanti, Settlement of Land Rights Disputes Due to Legal Acts of Sale and Purchase, Mataram: 2011, p. 2

¹⁷Supreme Court Decision Number 109 Rev.G 2009 PN.Mtr

¹⁸ Sahid, KAS, Junus, N., & Elfikri, NF (2025). Settlement of Disputes over Wills Granted to Adopted Children without the Consent of the Heirs in Indonesia. *SINERGI: Journal of Scientific Research*, Vol. 2, No. 2. P. 721

¹⁹ Wibowo, AS, & Humaira, L. (2023). Comparison of the Position of Wills in the Inheritance Law of the Indonesian Civil Code and Singapore Inheritance Law (Case Study: Decision No. 43/Pdt. G/2020/PN Mdn, Decision No. 194/Pdt. G/2022/PN Amb, and Decision UWF v UWH [2020] SGHCF 22). *Lex Patrimonium*, Vol. 2, No. 2. P. 2

²⁰Hukum Pedia, Legal Consequences of Granting Grants, accessed from http://hukumpedia.com/index.php?title=Lawful_Consequences, June 22, 2010.

will consider the statements of the disputing parties, the testimony of witnesses, and the evidence presented during the trial.²¹

II. RESEARCH METHODS

In this research, the author uses a normative juridical method, namely legal research that emphasizes the doctrinal study of legal norms, principles, and concepts contained in legislation. This approach stems from the understanding that law is a stand-alone normative system, so the analysis focuses on positive legal texts without directly linking them to social practices or societal behavior.²² This study focuses in depth on two key provisions in the Civil Code (KUHPerdata), namely, Article 833 which regulates the principle of heirs' ownership rights, and Article 913 which establishes and guarantees absolute shares (legitime portie) for heirs in the line of succession. Based on this, this study aims to analyze and evaluate the validity of sales and purchase agreements involving inherited objects, especially if the transaction violates or exceeds the predetermined legitime portie limits. As a case study, this study describes the judge's considerations for waiving absolute rights in Decision Number 109/Pdt.G/2009/PN Mataram and the possibility of legal remedies in the form of inkorting as a corrective mechanism for gifts or legal acts that violate the heirs' absolute shares. With this normative analysis, the study seeks to assess the extent to which the judge's decision has realized substantive justice for the plaintiff.

This research applies two methodological approaches: the statute approach and the case approach. As explained by Peter Mahmud Marzuki, the statutory approach is implemented by analyzing the legal norms contained in various laws and regulations, which then serve as the primary basis for the analysis.²³ This approach is relevant to use because the focus of the research is directed at the provisions of the Civil Code (KUHPerdata), specifically Article 833 of the Civil Code which affirms the rights of heirs to all inheritance of the testator, as well as Article 913 of the Civil Code which regulates legitime portie as an absolute part for heirs in the line of succession. In addition, this research also uses a case approach. This approach in normative legal research functions to examine how legal norms are applied in practice through analysis of court decisions. The case study raised is Decision Number 109/Pdt.G/2009/PN Mataram, which shows a dispute between the Plaintiff, Yayak Kurniadi, and the Defendant, Dr. Ir. Tjok Sugiarta, MM., regarding the sale and purchase of inheritance objects in the form of land and buildings. The court decision that rejected the lawsuit became the focus of the analysis to assess the application of inheritance law and the substantive justice contained therein.

III. RESEARCH RESULTS AND DISCUSSION

3.1. Legality of sale and purchase of inheritance objects that exceed the Legitime Portie

The transfer of ownership rights of inherited assets in the Indonesian civil law system occurs automatically to the heirs immediately upon the testator's death. This principle is in accordance with Article 833 paragraph 1 of the Civil Code (KUHPerdata), which stipulates that the heirs obtain legal ownership rights over all assets and receivables left by the testator. Initially, these assets are considered joint ownership that has not been divided. Therefore, all legal actions related to the object of inheritance, including sales, are only considered valid if they obtain the collective approval of all entitled heirs. Furthermore, legal actions such as the sale and purchase of an inheritance object that exceeds the limits of legitime portie are legally considered not fully legal and have the potential to be canceled, because they violate the absolute rights of the heirs that are protected by law. As regulated in Article 913 of the Civil Code, legitime portie is defined as a portion of the inheritance that is obligatory to be given to the lineal heirs and cannot be reduced by the testator through a will, gift, or other legal action. This indicates that this part is absolute and cannot be transferred without the explicit consent of the intended heirs.²⁴

Article 1471 of the Civil Code states that "a sale or purchase made of another person's property is void." Therefore, if one heir sells an inheritance without the consent of the other heirs, the act can be declared null and void

²¹ Utami, DS (2016). Legal Consequences of Granting Grants Exceeding the Legitimacy Portie Limit (Case Analysis of District Court Decision Number 109/pdt. g/2009/pn. mtr. Concerning Grants). IUS Journal of Law and Justice Studies, Vol. 4, No. 2. Pp. 99-100.

²² Willa Wahyuni (2023). Three Types of Methodology for Law Thesis Research. <https://www.hukumonline.com/berita/a/tiga-jenis-metodologi-untuk-penelitian-skripsi-jurusan-hukum-lt6458efc23524f/>. Accessed on: 01/05/2024

²³ Mukti Fajar and Yulianto Achmad, Dualism of Normative and Empirical Legal Research, Pustaka Pelajar, Yogyakarta, 2010, p. 157.

²⁴ Notaria, I. (2020). Legal Consequences of Cancellation of a Deed of Gift Where the Object is Inheritance Assets That Have Not Been Distributed to Heirs and Exceed the Legitieme Portie Based on Supreme Court Decision Number 2954 K/PDT/2017. Indonesian Notary, 2(3), 17. p. 361.

LEGALITY OF SALE AND PURCHASE OF INHERITANCE OBJECTS EXCEEDING THE LEGITIME PORTIE AND WAIVER OF ABSOLUTE RIGHTS IN THE MATARAM DISTRICT COURT DECISION

Wafiy Ahmad Ardhika and Wardani Rizkianti

because it does not meet the requirements of a subject having authority over the object being sold. According to Subekti, the requirements for a valid agreement in Article 1320 of the Civil Code must be fully met, namely agreement, capacity, a specific object, and a lawful cause. If any of these elements are not met, the agreement can be void or can be canceled.²⁵ In line with Wirjono Prodjodikoro's view, ownership of inherited assets is communal before distribution is carried out, so that each heir only has the right to a portion of which the size or amount cannot be determined.²⁶ This means that the sale and purchase of undivided inheritance objects raises legal issues regarding authority and legal certainty. Research conducted by Keren Febryanthi explains that the transfer of land rights without the consent of the heirs is the main cause of inheritance disputes. According to Article 23 of the UUPA, every transfer of ownership rights must be registered and accompanied by valid evidence. If the transfer or sale is carried out by one of the heirs without involving the other heirs, then the legal act is flawed from an administrative and civil perspective, and can be declared null and void. Sale and purchase transactions of inherited land that have not been divided or carried out without the consent of all heirs, including resulting in the loss of the legitimate portion of the property, will result in non-binding legal force.²⁷

The problem becomes more complex when the testator during his lifetime has made a gift that exceeds the limit of legitime portie. Article 913 of the Civil Code stipulates that "legitime portie is a part of the inheritance that cannot be eliminated by the testator, either by appointing an heir or by gift." If the gift exceeds this limit, the injured heir can file an inkorting lawsuit based on Article 920 of the Civil Code to request a reduction in the gift or will. According to R. Soetojo Prawirohamidjojo, inkorting functions as a corrective tool to maintain a balance between the testator's freedom and protection of legitimacy.²⁸ This principle shows that the freedom to determine the distribution of inheritance is not absolute, but is limited by legal protection for the family. A similar opinion was expressed by Saleh, that legitime portie is the boundary between the heir's freedom and the heir's absolute rights which are protected by law.²⁹ An inheritance object that is sold or transferred, whether through a gift, will, or sale and purchase agreement that exceeds the legitime portie limit, is considered completely invalid and can be canceled. Based on Article 920 of the Civil Code, an injured heir has the right to file a claim for reduction (inkorting) against the legal actions of the testator or other heirs that violate their absolute rights. Legal actions such as the sale and purchase of an inheritance object that exceeds the legitime portie are only binding as long as they do not violate the rights of the legitimate heirs, while the violating part can be reduced or canceled.³⁰

The inkorting mechanism is a fundamental legal instrument in the civil inheritance system designed to ensure the protection of the absolute rights (legitime portie) held by legitimate heirs. The goal is to prevent the testator or other heirs from taking or controlling a portion of the inheritance that exceeds the limits set by law. The legal basis for inkorting is specifically contained in Article 920 of the Civil Code (KUHPerdata). Article 913 of the KUHPerdata defines legitime portie as a portion of the inheritance that cannot be ignored or disputed by the testator's actions. Furthermore, Article 920 of the KUHPerdata emphasizes that if the distribution of inheritance (for example through a gift or will) exceeds the limits of legitime portie, the heirs who feel disadvantaged have the right to demand a reduction or reduction (inkorting) of the excess gift.³¹ Inkorting serves to restore the balance of rights between heirs and ensure that no party is disadvantaged by the unilateral grant or control of inheritance assets. In practice, inkorting is carried out by first reducing the remaining portion of the inheritance (boedel waris), then the bequest, and finally the lifetime bequest, starting with the most recent bequest made by the testator.³² There are two types of inkorting, namely pseudo inkorting (oneigenlijke inkorting) which is carried out on the remaining inheritance, and actual inkorting (eigenlijke inkorting) which is carried out on gifts or wills which have exceeded the legitime portie limit.³³ The mechanism for grants or wills that have exceeded the legitime portion limit is carried out when the testator,

²⁵Subekti. (1987). Principles of Civil Law. Jakarta: Intermasa.

²⁶Wirjono Prodjodikoro. (1983). Inheritance Law in Indonesia. Bandung: Sumur Bandung.

²⁷Tampil, KF (2024). INHERITANCE LAND DISPUTES ACCORDING TO CIVIL LAW (CASE STUDY IN MANADO CITY). LEX ADMINISTRATUM, 12(4). p. 4.

²⁸Prawirohamidjojo, RS (1997). Codified Inheritance Law. Surabaya: Airlangga University Press.

²⁹Saleh. (1983). Inheritance Law According to the Civil Code. Jakarta: Ghalia Indonesia.

³⁰ Suryadini, Y., & Widiyanti, AT (2020). Legal consequences of testamentary gifts exceeding the legitime portie. Media Iuris, 3(2), 241-256.

³¹Annajwa, L. (2025). INCORPORATING OF INHERITANCE IN THE CONTROL OF HEIR: A CASE STUDY OF DISTRICT COURT DECISION NUMBER 210/PDT. G/2025/PN/KPG/JO HIGH COURT DECISION NO. 122/PDT/2016/PT. KPG JO SUPREME COURT DECISION NUMBER 1354/PK/PDT/2024. Lex Patrimonium, 4(1), 6. p.10.

³²Ibid., p. 11.

³³Ibid., p. 10.

LEGALITY OF SALE AND PURCHASE OF INHERITANCE OBJECTS EXCEEDING THE LEGITIME PORTIE AND WAIVER OF ABSOLUTE RIGHTS IN THE MATARAM DISTRICT COURT DECISION

Wafiy Ahmad Ardhika and Wardani Rizkianti

through a grant (gift during life) or a will (gift due to death), is proven to have exceeded the portion of the assets that he is free to use in the inheritance rights, thereby reducing or violating the legitime portion of the legitimate heirs. This process begins with the calculation of Fictitious Inheritance Assets (fictieve massa) based on Article 926 of the Civil Code, namely adding up the assets that existed at death with all grants that have been given. After the legitime portion of each heir and the free portion are determined, and there is proven to be a violation, the aggrieved heirs can file an inkorting lawsuit to the court. According to Articles 924 and 929 of the Civil Code, the deduction is carried out in stages, the first of which is inkorting applied to the will given, and if the right of legitime portion is still not fulfilled. Second, the deduction proceeds from the gifts in a strict sequence, starting with the most recent or most recent gift, then progressing to the earlier gifts until the legitime portion is fully satisfied. Inkorting essentially forces the recipient of the gift or will to return the assets received up to the value necessary to satisfy the absolute rights of the legitimate heirs.

In practice, even a buyer in good faith is not always protected if the object they purchase comes from a gift or inheritance that violates legitime portie. This legal principle is in line with the principle of *nemo plus juris transferre potest quam ipse habet*, which essentially states that a person cannot transfer a right that exceeds or is greater than the rights they already have. In this context, Maria SW Sumardjono firmly stated that legal protection cannot be granted to a buyer in good faith if the property object they acquire comes from a legal process that contains substantive defects.³⁴ Therefore, rigorous due diligence regarding inheritance status, gift history, and ownership documents is essential in every transaction. In comparison, the Common Law system does not recognize the concept of legitime portion, but does have a family provision mechanism that allows family members to claim their fair share if they are excluded from the inheritance.³⁵ This difference confirms that the Indonesian legal system, rooted in Civil Law, places greater emphasis on the balance between the individual freedom of the testator and the protection of the family. Therefore, from a substantive legal perspective, in Indonesia, the sale and purchase of inheritance objects that exceed the limits of legitime portie should not be considered valid if such action reduces the absolute rights of the heirs. However, the decision made by the Mataram District Court provides a different view that in Indonesia, testamentary gifts are still possible even if they exceed the limits of legitime portie. In addition, if a gift or sale has occurred, the injured heirs have the right to demand the restoration of their rights through the inkorting mechanism or cancellation of the agreement as a form of protection against legitimacy.

Indonesian Civil Law provides a dual-layered, substantive protection for heirs' rights against flawed asset transfers. First, due to the automatic transfer principle (Article 833(1)), inherited assets are initially held in communal joint ownership, rendering any sale by a single heir without collective consent void because the heir lacks the authority to sell the specific object (Article 1471 and 1320). This addresses the procedural requirement of valid ownership transfer. Second, and more critically, the doctrine of legitime portie (absolute portion, Article 913) acts as the ultimate substantive shield, ensuring that even legal actions initiated by the testator (gifts or wills) or other heirs' flawed sales cannot diminish the guaranteed share of legitimate lineal heirs. If an action infringes upon this absolute right, the injured heir can utilize the inkorting mechanism (reduction, Article 920) to sue for the cancellation or reduction of the excess transfer, even against a buyer in good faith, based on the *nemo plus juris* principle. Therefore, the research comprehensively explains that the validity of an inheritance transfer in Indonesia depends not only on administrative completion and procedural consent but also, fundamentally, on the transaction's adherence to the absolute, substantive rights of the heirs protected by legitime portie and enforced through inkorting.

3.2. Waiver of Absolute Rights in Judge's Decisions

Achieving legal certainty in a judge's decision in a civil dispute is determined by two fundamental variables: juridical and non-juridical factors. Juridical factors encompass all considerations directly related to positive law, serving as a foundation to ensure that decisions are based on clear rules. These factors include adherence to relevant laws and regulations (the principle of legality), valid proof of legal facts in court, and the use of jurisprudence to create consistency and predictability. Meanwhile, non-juridical factors are considerations outside of formal provisions that serve to balance legal certainty with the values of justice and social benefit. A judge's decision that is punitive and has obtained permanent legal force essentially aims to end the conflict and create legal certainty that must be realized immediately.³⁶ However, in practical implementation, significant obstacles often arise that lead to

³⁴ Sumardjono, MSW (2009). *Land in the Perspective of Economic, Social and Cultural Rights*. Jakarta: Kompas.

³⁵ Atkinson, J. K. (2019). *Wills and Succession Law in Common Law Systems*. Oxford: OUP.

³⁶ Yasa, IW, & Iriyanto, E. (2023). Legal certainty of judges' decisions in the settlement of civil disputes. *Jurnal Rechtsens*, 12(1), 33-48. p. 33.

LEGALITY OF SALE AND PURCHASE OF INHERITANCE OBJECTS EXCEEDING THE LEGITIME PORTIE AND WAIVER OF ABSOLUTE RIGHTS IN THE MATARAM DISTRICT COURT DECISION

Wafiy Ahmad Ardhika and Wardani Rizkianti

uncertainty in the execution process. These obstacles can stem from legal aspects, such as contradictory laws and regulations that do not provide sufficient clarity. Furthermore, non-legal factors related to the technical implementation of decisions also significantly influence execution difficulties. Some examples of common non-legal challenges include resistance from the party being executed against the officer, difficulty for the applicant in identifying and specifically delineating the boundaries of the object, ownership of the disputed object being transferred to another party, or the unclear whereabouts of the object to be executed.³⁷ Judges' decisions can be less than ideal or controversial due to several conditions grouped into two main types of obstacles: internal and external, coupled with the problem of discrimination in law enforcement practices. Internal obstacles that can affect the quality of decisions include factors originating from within the judge or the system itself. Several non-judicial factors that can reduce the quality of the judicial process include limited judge recruitment processes, inadequate training and education for judges, low moral integrity, and insufficient attention to judges' welfare. Furthermore, there is the potential problem of erroneous mastery of legal knowledge by law enforcement officials themselves. The combination of low morals and a lack of adequate legal mastery by judges can result in law enforcement that does not reflect substantial justice, thereby harming the public's sense of justice. This condition often occurs because judges' considerations are still dominated by formal legality alone.³⁸

The quality and independence of judicial institutions can be hampered by various external constraints. These inhibiting factors encompass several crucial aspects, one of which is the independence of the judiciary, which largely relies on the integrity and personal conscience of judges. Furthermore, regulatory issues arise from the lack of comprehensive unification in the formation of laws. Other challenges lie in a judicial system that is not yet fully transparent, low levels of public awareness of active participation, and suboptimal oversight mechanisms for judges. These conditions create an environment where decisions often generate controversy, particularly due to discrimination in law enforcement practices in the courts. Judges' decisions are often influenced by non-judicial considerations, such as social standing, power, position, class background, or the financial factors of the parties involved. The intervention of these factors directly transforms the judicial institution into a "fair market," where the principle of true justice is no longer realized. This phenomenon indicates that substantial justice for society is neglected, and court decisions can only be purchased or obtained by individuals with superior financial capabilities.³⁹ This explanation is understandable if viewed in general terms only in relation to several court practices that are considered unfair, but not in terms of civil law which looks at the aspect of justice and legal certainty of the applicable rules.

Mataram District Court Decision Number 109/Pdt.G/2009/PN.Mtr sets an interesting precedent in the discourse of Indonesian civil inheritance law. This case demonstrates the conflict between the principle of the testator's freedom to perform legal acts during his lifetime and the principle of protection of legitime portie. In this case, the plaintiff (Yayak Kurniadi) sued the late RR Sumiati's gift to her daughter, Lely Permana Lestari, on the grounds that the gift violated legitime portie because the entire and sole inheritance was given to only one heir. However, the panel of judges rejected the lawsuit and declared the gift valid because it was made while the testator was still alive. The panel of judges considered that while the testator was alive, his assets had not yet become inheritance, so the testator had full freedom to donate his assets. This consideration is in line with Subekti's view that "as long as the testator is still alive, his assets cannot be considered inheritance because inheritance only exists after the testator's death."⁴⁰ This view reflects the application of the principle of freedom of disposition in civil law. This approach has drawn academic criticism because it is considered to ignore Article 913 of the Civil Code, which protects the absolute rights of heirs. According to Soetojo Prawirohamidjojo, the freedom of inheritance is not absolute because the law requires a balance between individual rights and family protection.⁴¹ The court's approach that places too much emphasis on the formal aspects of grants risks eroding protection against legitimacy.

This creates a gap between formal legal certainty and substantive justice. This gap is evident in the Mataram District Court Decision Number 109/PDT.G/2009/PN.MTR. The judge's decision formally creates legal certainty by rejecting the Grant Cancellation Lawsuit filed by the Plaintiff (Yayak Kurniadi, ST.). The consequence of this rejection is that the ownership of the gift object by a third party (Dr. Ir. Tjok Sugiarta, MM) who obtained it through

³⁷Ibid., p. 35.

³⁸ Rayfindratama, AD (2023). The Freedom of Judges in Making Decisions in Court. *Bureaucracy: Journal of Law and Constitutional Studies*, 1(2), 1-17. p. 2.

³⁹Ibid., p. 8.

⁴⁰Subekti, Op. Cit., p. 55.

⁴¹Prawirohamidjojo, Op. Cit., p. 87.

LEGALITY OF SALE AND PURCHASE OF INHERITANCE OBJECTS EXCEEDING THE LEGITIME PORTIE AND WAIVER OF ABSOLUTE RIGHTS IN THE MATARAM DISTRICT COURT DECISION

Wafiy Ahmad Ardhika and Wardani Rizkianti

the purchase of the object from one of the heirs remains valid. The concept of formal legal certainty requires the implementation of general laws, formulated rigidly and strictly, so as to ensure that equal treatment is given to individuals with similar situations, while minimizing ambiguity. However, the decision rejecting the lawsuit is considered not to be in line with the principles of justice, thus creating a discrepancy with the demands of substantive justice. Substantive justice requires that the substance of legal provisions must be fair, and requires judges to ensure that the decisions they make reflect a sense of justice, taking into account relevant legal aspects, legislation, and factual truth. This gap arises because the judge in his considerations is deemed to have completely ignored Article 913 of the Civil Code. According to Article 920 of the Civil Code, if a gift results in a lack of absolute share, the absolute heirs (legitimate) can demand a reduction (inkorting) of the gift when the inheritance is opened. In fact, the legitimate has the right to file a reduction claim against a third party occupying immovable property that has been sold by the recipient of the gift, in accordance with Article 929 of the Civil Code. By ignoring the rights of absolute heirs, the decision that provides certainty for third parties is considered detrimental to the heirs' legitimate share. The uniqueness of this Mataram District Court ruling lies in the judge's boldness in interpreting the testator's freedom of action as a primary principle in inheritance law. While progressive in upholding individual freedom, this precedent also raises concerns about the reduced protection of heirs entitled to legitime portie. In this context, preventive measures such as verification of inheritance status by the Land Deed Official (PPAT), transparency of information at the National Land Agency (BPN) and the courts, and public education regarding the risks of gifts are crucial to prevent future disputes. The Mataram District Court's decision No. 109/Pdt.G/2009/PN.Mtr, which rejected the plaintiff's lawsuit, has important implications for the legal position of heirs who feel disadvantaged by gifts exceeding the limits of legitime portie. Although the panel of judges deemed the gift valid because it was made while the testator was still alive, the heirs' substantive rights as legitimate should still be recognized and protected by law.

A judge's decision that favors the validity of the sale and purchase of an inheritance object and overrides the heirs' legitimate rights of inheritance can be analyzed as a decision that places greater emphasis on the principle of legal certainty. This emphasis is manifested by the judge's tendency to uphold the written legal norms of applicable positive law, such as regulations regarding contracts and the transfer of ownership rights, which aim to guarantee legal certainty, and these aspects of legal certainty and justice are usually in conflict.⁴² Judges who prioritize the principle of legal certainty in assessing the validity of a sale and purchase transaction will face a dilemma when written legal provisions fail to provide a fair solution to heir disputes. The consequence of this impasse is the neglect of the heirs' legitimate rights to property, which are a fundamental aspect of substantive justice. In fact, emphasizing the principle of justice requires judges to consider the prevailing laws of society, including unwritten customs and legal norms. Therefore, decisions that tend to prioritize the formal validity of a transaction over the heirs' rights to justice demonstrate the judges' failure to accommodate and reflect all the provisions that actually apply in society.⁴³

In Supreme Court Decision No. 3269 K/Pdt/1984, the Court stated that "heirs who are disadvantaged due to a gift that exceeds the legitime portie have the right to file for inkorting after the testator dies."⁴⁴ This ruling reinforces the view that legitimate rights can still be restored, even if the gift was validly made during the testator's lifetime. From a substantive justice perspective, the Mataram District Court judge's reasoning is considered to overemphasize legal formalism by assessing the validity of the gift deed alone, without considering the principle of protection for heirs. This approach has the potential to ignore the essence of legitime portie as an instrument of family justice. Soetojo Prawirohamidjojo reminded that "the testator's freedom during his lifetime is not absolute, because the law requires a balance between individual rights and family protection."⁴⁵ Judges should be able to systematically interpret the provisions of gifts (Article 1666 of the Civil Code) with the protection of legitime portie (Articles 913–916 of the Civil Code), in order to achieve more substantive justice for the heirs. The immediate implication of this ruling is the emergence of a legal loophole that allows an heir to transfer his entire estate through a gift to avoid inheritance distribution, thereby weakening the legitimate position. To prevent such abuse, several steps can be recommended, namely:

1. Strengthening the inkorting mechanism through Supreme Court guidelines so that it can also be applied to excessive lifetime grants.

⁴² Djojarahardjo, RH (2019). Realizing the Aspect of Justice in Judges' Decisions in Civil Courts. *Journal of Legal and Judicial Media*. p. 88.

⁴³ *ibid.*, p. 90.

⁴⁴ Supreme Court of the Republic of Indonesia, Decision No. 3269 K/Pdt/1984.

⁴⁵ Prawirohamidjojo, RS (1997). *Codified Inheritance Law*. Surabaya: Airlangga University Press, p. 87.

LEGALITY OF SALE AND PURCHASE OF INHERITANCE OBJECTS EXCEEDING THE LEGITIME PORTIE AND WAIVER OF ABSOLUTE RIGHTS IN THE MATARAM DISTRICT COURT DECISION

Wafiy Ahmad Ardhika and Wardani Rizkianti

2. Implementation of the principle of caution by PPAT and notaries, including the obligation to check the inheritance status before making a deed of gift
3. Legal education for the public, so that they understand that grants that exceed the legitimate portie can be challenged and corrected legally.

Thus, even though the judge's decision rejected the plaintiff's lawsuit, the heirs' substantive rights are not completely lost; they simply cannot be restored through the proper legal mechanisms. These rights can still be pursued through inkorting after the testator's death as a form of protection for family justice and balance in Indonesian civil inheritance law.

IV. CONCLUSION

Based on the analysis of the legality of the sale and purchase of inheritance objects exceeding the legitimate portie and the exclusion of absolute rights in the Mataram District Court Decision, it can be concluded that the judge in this case emphasized the validity of the gift as a legal act carried out while the testator was still alive. The judge was of the opinion that while the testator was alive, the assets donated were still personal property and were not included in the category of inheritance. Therefore, a gift made by a notarial deed was considered valid and could not be revoked simply because the testator donated all of his assets to one party. This decision shows that the court emphasized the formal aspect of the validity of the gift rather than protecting the absolute rights of the heirs (legitimate portie). However, the rejection of the lawsuit filed by the plaintiff does not mean that his inheritance rights as legitimate have been lost. Based on the provisions of Article 913 and Article 916 of the Civil Code, the absolute rights of heirs are still protected by law through the inkorting mechanism (reduction of the gift). In other words, the rejection of the lawsuit in this case was not because the plaintiff did not have the right, but because the legal basis used in the lawsuit, namely the lawsuit for cancellation of the gift, was inappropriate.

The plaintiff should have used the inkorting mechanism after the testator's death to demand a reduction in the grant exceeding the legitimate portie limit. In this context, the judge should have been able to interpret the norm systematically and place the protection of the heirs' rights as part of substantive justice, rather than merely assessing the formalities of the deed of gift. Conceptually, the Mataram District Court's decision reflects a shift in jurisprudential paradigm from an orientation toward protecting the family toward strengthening the individual freedom of disposition of the testator. Although progressive in upholding the testator's freedom of action, this approach raises concerns because it has the potential to weaken the function of legitimate portie as an instrument of balance between individual rights and family protection. Therefore, in the future application of civil inheritance law, a more proportional understanding is needed between the principle of the testator's freedom of action and the principle of protection for absolute heirs to create a balance between legal certainty and social justice.

REFERENCES

Peraturan Perundang-Undangan

Kitab Undang-Undang Hukum Perdata.

Undang-Undang Nomor 5 Tahun 1960 tentang Peraturan Dasar Pokok-Pokok Agraria.

Mahkamah Agung Republik Indonesia. (1984). Putusan Nomor 3269 K/Pdt/1984.

Mahkamah Agung Republik Indonesia. (2009). Putusan Pengadilan Negeri Mataram Nomor 109/Pdt.G/2009/PN.Mtr.

Buku

Atkinson, J. K. (2019). Wills and succession law in common law systems. Oxford: Oxford University Press.

Fajar, M., & Achmad, Y. (2010). Dualisme penelitian hukum normatif dan empiris. Yogyakarta: Pustaka Pelajar.

Hartono Soerjopratiknjo. (1984). Hukum waris testamenter. Yogyakarta: Seksi Notariat Fakultas Hukum Universitas Gadjah Mada.

Miru, A., & Pati, S. (2020). Hukum perjanjian. Jakarta: Sinar Grafika.

Pitlo, A. (1979). Hukum waris. Jakarta: Intermasa.

Prawirohamidjojo, R. S. (1997). Hukum waris kodifikasi. Surabaya: Airlangga University Press.

Prodjodikoro, W. (1983). Hukum warisan di Indonesia. Bandung: Sumur Bandung.

Saleh. (1983). Hukum waris menurut KUHPperdata. Jakarta: Ghalia Indonesia.

Subekti. (1987). Pokok-pokok hukum perdata. Jakarta: Intermasa.

Sumardjono, M. S. W. (2009). Tanah dalam perspektif hak ekonomi, sosial, dan budaya. Jakarta: Kompas.

LEGALITY OF SALE AND PURCHASE OF INHERITANCE OBJECTS EXCEEDING THE LEGITIME PORTIE AND WAIVER OF ABSOLUTE RIGHTS IN THE MATARAM DISTRICT COURT DECISION

Wafiy Ahmad Ardhika and Wardani Rizkianti

Surani Ahlan Sjarif. (1982). Intisari hukum waris Burgerlijk Wetboek. Jakarta: Ghalia Indonesia.

Karya Ilmiah

- Adelia, A., & Wahyuni, R. (2024). Keabsahan perjanjian jual beli tanah dari objek tanah warisan yang belum dibagi berdasarkan KUHPerdota. *Jurnal Interpretasi Hukum*, 5(1), 691–692.
- Annajwa, L. (2025). INKORTING TERHADAP HARTA WARISAN DALAM PENGUASAAN AHLI WARIS: STUDI KASUS PUTUSAN PENGADILAN NEGERI NOMOR 210/PDT. G/2025/PN/KPG/JO PUTUSAN PENGADILAN TINGGI NO. 122/PDT/2016/PT. KPG JO PUTUSAN MAHKAMAH AGUNG NOMOR 1354/PK/PDT/2024. *Lex Patrimonium*, 4(1), 6.
- Djojarahardjo, R. H. (2019). Mewujudkan Aspek Keadilan Dalam Putusan Hakim Di Peradilan Perdata. *Jurnal Media Hukum dan Peradilan*, 88–100.
- Elittrosint, V. (2020). Pendaftaran peralihan hak atas tanah berdasarkan akta pengikatan perjanjian jual beli di Kota Padang. *ALHURRIYAH: Jurnal Hukum Islam*, 5(1).
- Fathurrozy, F. (2018). Keabsahan akta hibah waris yang melebihi legitime portie ditinjau dari Kitab Undang-Undang Hukum Perdata. *Jurnal Hukum dan Kenotariatan*, 2(1), 56–57.
- Haris, J. (2020). Aspek hukum pidana terhadap pemalsuan akta jual beli tanah dan bangunan (Studi Putusan Mahkamah Agung R.I. Nomor 958 K/Pid/2016). *Jurnal Hukum dan Kemasyarakatan Al-Hikmah*, 1(1).
- Ibrahim, M. M. (2022). Akibat hukum jual beli tanah warisan tanpa sepengetahuan salah satu ahli waris (Disertasi doktoral, Universitas Islam Kalimantan MAB).
- Notaria, I. (2020). Akibat Hukum pembatalan Akta Hibah Yang Objeknya Harta Warisan Yang Belum Dibagi Kepada Ahli Waris Dan Melebihi Legitieme Portie Berdasarkan Putusan Mahkamah Agung Nomor 2954 K/PDT/2017. *Indonesian Notary*, 2(3), 17.
- Patma, P., Suwari, S., & Rumkel, N. (2021). Kedudukan hukum perjanjian jual beli yang dilakukan oleh ahli waris terhadap harta warisan yang belum dibagi. *Hermeneutika: Jurnal Ilmu Hukum*, 5(2), 355–356.
- Pramono, D. (2016). Gugatan pemotongan (inkorting) dalam pembagian warisan menurut Kitab Undang-Undang Hukum Perdata. *Forum Ilmiah*, 13(3), 3.
- Rizkianti, R. B. W. (2021). Status hukum kepemilikan hak atas tanah berdasarkan surat keterangan jual beli tanah. *Jurnal Hukum*, 8(5), 1315.
- Rudito, S. (2015). Penerapan legitime portie (bagian mutlak) dalam pembagian warisan menurut KUHPerdota (Disertasi doktoral, Universitas Tadulako).
- Sahid, K. A. S., Junus, N., & Elfikri, N. F. (2025). Penyelesaian sengketa hibah wasiat kepada anak angkat tanpa persetujuan ahli waris di Indonesia. *SINERGI: Jurnal Riset Ilmiah*, 2(2), 721.
- Tampil, K. F. (2024). SENGKETA TANAH WARISAN MENURUT HUKUM PERDATA (STUDI KASUS DI KOTA MANADO). *LEX ADMINISTRATUM*, 12(4).
- Utami, D. S. (2016). Akibat hukum pemberian hibah yang melebihi batas legitime portie (Analisis Kasus Putusan Pengadilan Negeri Nomor 109/Pdt.G/2009/PN.Mtr mengenai hibah). *Jurnal IUS: Kajian Hukum dan Keadilan*, 4(2), 99–100.
- Wibowo, A. S., & Humaira, L. (2023). Perbandingan kedudukan surat wasiat dalam hukum kewarisan KUHPerdota Indonesia dan hukum kewarisan Singapura. *Lex Patrimonium*, 2(2), 2.

Sumber Lainnya

- Hukum Pedia. (2010, Juni 22). Akibat hukum pemberian hibah. Diakses dari http://hukumpedia.com/index.php?title=Akibat_hukum
- Putriyantini, I. M. D. O. (2011). Penyelesaian sengketa hak atas tanah karena perbuatan hukum jual beli. Mataram.
- Wahyuni, W. (2023, Mei 1). Tiga jenis metodologi untuk penelitian skripsi jurusan hukum. <https://www.hukumonline.com/berita/a/tiga-jenis-metodologi-untuk-penelitian-skripsi-jurusan-hukum-lt6458efc23524f/>