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AUTHOR

Astrid Astrid

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The Legal Status of Testaments That Eliminate the Inheritance Rights for the Longest-Living Marital Spouse

Abstract

The purpose of this study is to examine the legal standing of testaments that forgo a spouse's right to inherit in the event of their death. This study is necessary because, while everyone has the right to draft a testament according to their desires, this does not absolve the contents of the testament from being based on applicable laws and regulations. This study was carried out utilizing a doctrinal and statutory method in a normative juridical manner. The study concludes that a testator's intentions are free to be included in a will; nonetheless, the Indonesian Civil Code governs the legitimacy of *Legitime Portie*. Thus, if a testament is written by a spouse whose marriage has entered into a marital agreement to separate assets, and its contents eliminate the longest-living spouse's inheritance rights, then that will not violate the rights of the longest-living spouse because it is based on Article 914 of the Indonesian Civil Code that the husband or wife does not have *Legitime Portie*. In the meantime, a testament written by a spouse whose marriage did not result in a marital agreement that separates assets only applies to the portion of the maker's assets; in other words, the longest-living spouse still receives a share as part of the joint assets in marriage.

Keywords: Inheritance Rights; Legitime Portie; Marriage Law; Marital Agreement; Testament.

1. INTRODUCTION

Humans are legal subjects and can do a variety of legal actions throughout their lives. R. Soeroso defines legal action as any intentional human action that results in the creation of rights and obligations.¹ Any action taken by a legal subject whose results are governed by law is termed a legal act since those results are seen as the legal subject's will to carry out the law.² Creating a testament is one of the legal actions that a person can take while they are still alive. By creating a testament, a person will be given the right to take legal action regarding what will happen to one's assets and assets management when this person dies. In this respect, the final wishes of the testator as stated in a testament³ serve as their final directives about the asset they will leave behind while they are alive.⁴ This legal action is guaranteed by the constitution, contained in the provisions of the Constitution of the Republic of Indonesia of 1945 and Law of the Republic of Indonesia Number 39 of 1999 concerning Human Rights.

In brief, the Indonesian Legal System reflects a diverse mix of legal traditions and influences, including civil law, customary law or *hukum adat*, and Islamic law, with ongoing efforts to reform and modernize the legal framework to meet the evolving needs of society. It was heavily influenced by the Dutch colonial rule, indigenous traditions, and Islamic principles.

⁴⁶ Soeroso, *Pengantar Ilmu Hukum* (Jakarta: Sinar Grafika, 2011), 291.

³⁷ Achmad Ali, *Menguak Tabir hukum (Suatu Kajian Filosofis dan Sosiologis)* (Jakarta: Ghalia Indonesia, 2008), 192.

² Anak Agung Devyn Amanda Dhiyo dan I Wayan Wiryawan, "Peran Dan Tanggung Jawab Notaris Dalam Memperoleh Surat Keterangan Wasiat Terkait Permohonan Oleh Ahli Waris," *Acta Comitatus Jurnal Hukum Kenotariatan* 6, no. 1 (2021), <https://doi.org/10.24843/AC.2021.v06.i01.p13>.

² Anastassia Tamara Tandey et al., "Pelaksanaan Hak Mutlak Ahli Waris Terhadap Surat Wasiat/Testamen yang Menyimpang Dari Ketentuan Legitime Portie Burgerlijk Wetboek (BW)," *Jurisprudentie: Jurusan Ilmu Hukum Fakultas Syariah dan Hukum* 7, no. 1 (2020): 30–45, <https://doi.org/10.24252/jurisprudentie.v7i1.12563>.

Indonesia ranked as the second-highest Muslim in the world covering up to 84,35% of the population, with a total of 236.000.000 (two hundred million thirty-six) people.⁵ For Muslims in Indonesia, Islamic law applies to matters of inheritance. This law prescribes specific rules regarding the distribution of assets among heirs, including the shares allocated to spouses, children, parents, and other relatives. Customary law is an unwritten regulation and has applied to the Indonesian indigenous community.⁶ It is reflected in the familial system that is influenced by a variety of descendant lines, namely patrilineal (father descendant line), matrilineal (mother descendant line), or bilateral (both father and mother descendant line).⁷ Lastly, for non-Muslims in Indonesia, inheritance law is regulated under the Indonesian Civil Code, specifically in Book II. It was greatly influenced by the Dutch civil law system during the colonial period.

All in all, these systems of inheritance law prevail for Indonesians but differ significantly from one another. They are considering many factors, such as religious affiliation, ethnic customs, and regional regulations. Inheritance disputes are not uncommon in Indonesia, especially in cases where there are ambiguities in the testament or disagreements among heirs regarding the distribution of assets.

According to Article 875 of the Indonesian Civil Code or *Burgerlijk Wetboek*, "a testament containing a person's statement about what he wishes would happen after he dies, and which can be revoked" is what is meant to be understood by a deed, also called a testament. The Indonesian Civil Code also lays forth several prerequisites that must be fulfilled to create a testament, such as the need that the person creating the testament be competent, mature, and of sound mind. In addition, a testament shall not be drafted using any kind of duress, deceit, or dishonesty.

Regarding testaments, the Indonesian Civil Code establishes a framework of limitations on the amount of bequests that can be made to heirs in the form of *legitieme portie* or absolute shares.⁸ Article 913 of the Indonesian Civil Code states that "The legitimate portion or the legal share of the inheritance is that portion of the estate which the lawful heirs in a direct line are entitled to and which the testator is not entitled to dispose of as a gift during his lifetime or by last testament." Furthermore, based on Article 914 of the Indonesian Civil Code implies the appropriate share of the asset that the heirs should get. For example, if the heir only leaves behind his only legitimate child, his absolute share is 1/2 (one-half) of the inheritance. If the heir leaves behind 2 (two) children, the absolute share of each is 2/3 (two-thirds) of what should have been inherited in the inheritance. If the heir leaves behind

⁵ Chandra Dwi, "10 Negara Dengan Umat Muslim Terbanyak Di Dunia, RI Nomor Berapa?," *CNBC Indonesia*, 2024, <https://www.cnbcindonesia.com/research/20240310150636-128-521083/10-negara-dengan-umat-muslim-terbanyak-di-dunia-ri-nomor-berapa>.

⁶ Leni Salma Barlinti, "Inheritance legal system in Indonesia: A legal justice for people," *Indonesia Law Review* 3, no. 1 (2013): 23–41, <https://doi.org/10.15742/ilrev.v3n1.28>.

⁷ Mirna Sulistianingsih Dien, "Hak Waris Anak yang Lahir dari Hasil Inseminasi," *Lex Privatum* 2, no. 3 (2014).

⁸ Erwien Adiswanto dan Wahibatul Maghfuroh, "Tinjauan Hukum Terhadap Bagian Mutlak (Legitime Portie) Ahli Waris Terhadap Harta Warisan Menurut Kitab Undang-Undang Hukum Perdata," *IUS: Jurnal Ilmiah Fakultas Hukum* 9, no. 01 (2022): 39–46, <https://doi.org/10.51747/ius.v0i01.962>.

3 (three) children, his absolute share is 3/4 (three-quarters) of his inheritance. *Legitime portie* essentially results from a direct downward or upward blood relationship between the testator and the heirs by the law. The heirs in the preceding line may receive an absolute share as provided by Article 915 of the Indonesian Civil Code if the heir is single or does not leave any children.

Aside from that, marriage is another legal act that people can perform as legal subjects. The legal action will have legal ramifications for the parties since it will grant the husband and wife, who have committed to being physically and psychologically bound to one another, rights and obligations.⁹ The spouse who lives the longest does not have an absolute share or *legitime portie* in concerns of inheritance in a valid marriage bond. Because the husband or wife is in a line to the side rather than a straight line down, their position as heirs differs from that of children.¹⁰ Put otherwise, a wife or husband does not have *legitime portie* or *non-legitimarum*.¹¹ The provisions of a testament, however, may take precedence over the spouse who lives the longest if a husband and wife sign a marital agreement. Therefore, it needs to be taken into account whether or not a marital agreement is a part of a legitimate marriage.

Erwien Adiswanto and Wahibatul Maghfuroh carried out a comparable study in 2022.¹² The goal of this study is to determine the exact share of the inheritance that needs to be distributed to the heirs by the law, as well as the portion that the deceased is not permitted to assign as a testament as defined by Article 913 of the Civil Code or as an intermediary gift to someone who is still alive. The author concludes that in figuring out how much of an inheritance is legitimate every person must adhere to the guidelines in Article 921 of the Indonesian Civil Code.

The next similar research was conducted by Monica Sriastuti Agustina¹³ in 2020. This research aims to (1) find out the legal strength of a testament that is not submitted to a notary by the maker himself and the consequences of the will being submitted through a third party and the legal strength, and (2) find out how the heirs who are not included in the will can try to get their share of the inheritance. The conclusions drawn by the author are (1) in carrying out the legal act of making a testament, several requirements must be fulfilled by the testator and (2) the testament made by the testator has a big impact after the testator in question dies, both directly to his heirs who do not accept the will made by the testator.

³⁸ Ahmad Rofiq, *Hukum Islam di Indonesia* (Jakarta: Raja Grafindo Persada, 2003), 22.

¹⁰ Sulil Rudito, "Penerapan Legitime Fortie (Bagian Mutlak) Dalam Pembagian Warisan Menurut Kuh Perdata," *Jurnal Ilmu Hukum Legal Opinion* 3, no. 3 (2015).

¹⁸ Miranda Wurabulaeng Temponbuka, "Pelaksanaan Hibah Yang Melanggar Hak Legitime Portie Anak Kandung Menurut Kuhperdata," *LEX PRIVATUM* 10, no. 1 (2022).

¹² Adiswanto dan Maghfuroh, "Tinjauan Hukum Terhadap Bagian Mutlak (Legitime Portie) Ahli Waris Terhadap Harta Warisan Menurut Kitab Undang-Undang Hukum Perdata."

⁷³ M Sriastuti Agustina, "Tinjauan Hukum Surat Wasiat Dalam Penyerahannya Oleh Orang Lain Ke Notaris," *Yustitiabelen* 8, no. 1 (2020): 48–68, <https://doi.org/10.36563/yustitiabelen.v6i1.224>.

Riza Yustiaridinia conducted research in 2017.¹⁴ Her research problems about the legal consequence of a property separation agreement in a marriage, the legal protection for an heir on the inheritance of one of them as the result of a property separation agreement, and the judge's legal consideration in the Supreme Court's Ruling No. 804/Pk/Pdt/2009. As the law mentioned the consequence of a property separation agreement will influence the distribution of inheritance to the heir(s) when one of the married couple dies.

The three research papers mentioned above and this research are comparable in that they both address the topic of testaments and inheritance in general. The research differs in that the author hasn't gone into greater detail about the testament's position on the elimination of the longest-living spouse's inheritance rights in a legal marriage. It is hoped that the findings of related investigations will corroborate the information in this study.

The issue that then develops is when one of the parties to a legally recognized marriage creates a testament that takes away the longest-living spouse's inheritance privileges. Although everyone has the right to draft a will by their intentions, this does not mean that the contents of the will are not subject to applicable laws and regulations and are instead arbitrary. Thus in light of the background information provided above, the purpose of this article is to address whether a testament that eliminates the inheritance rights of the husband or wife who lives the longest is valid or invalid.

2. METHOD

Legal research, according to Peter Mahmud Marzuki,¹⁵ is the act of locating legal doctrine, norms, and principles to address legal issues. Research is conducted using the Normative Juridical Method, which involves reviewing literature derived from different legal theories and statutory rules. This study's problem approach is founded on both a statute approach and a conceptual approach. The conceptual approach¹⁶ deviates from the theories and perspectives that have grown within the field of legal science. Examining all relevant laws and regulations is the statutory regulatory approach,¹⁷ which is used to analyze legal issues.

Legal materials, including main and secondary legal texts, will be used to analyze legal issues. All of these legal documents will be collected later and utilized to help identify solutions for the legal problems being settled. The main legal sources studied in this research were the Indonesian Civil Code, also known as the *Burgelijk Wetboek*, the Law of the Republic of Indonesia Number 1 of 1974 concerning Marriage, as well as the Law of the Republic of Indonesia Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage. Secondary legal sources are sourced from other pertinent legal material in the meantime.

¹⁴ Rizka Yustiaridinia, "Kedudukan Ahli Waris Terhadap Harta Peninggalan dalam Perkawinan dengan Perjanjian Pisah Harta (Putusan Ma Nomor 804/PK/PDT/2009)" (Universitas Sumatera Utara, 2017).

¹⁵ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana Prenada Media Group, 2005), 35.

¹⁶ Marzuki, 137.

¹⁷ Marzuki, 137.

3. RESULTS AND DISCUSSION

3.1 The Indonesian Civil Code's Perspective on Testaments in Inheritance Law

Indonesian inheritance law has up to now followed a pluralistic structure since the country does not acknowledge the existence of a single, unified inheritance law governing all of its citizens.¹⁸ Of course, several factors contribute to this. To begin with, Indonesia is an archipelagic nation rich in traditions and culture. Second, inheritance laws are governed by each subscribed to a belief system and/or religion.¹⁹ As a result, 3 (three) fundamental inheritance laws are applicable in Indonesia: (1) the Indonesian civil code-based, (2) the Islamic inheritance law, and (3) the customary inheritance law.

The Indonesian inheritance law system consists of 3 (three) main components, as stated in the Indonesian Civil Code: (1) an individual who leaves an inheritance (*erflater*); (2) one or more heirs (*erfenaam*) who are entitled to receive the wealth they leave behind; and (3) inherited assets (*nalaten schap*), which is the type of wealth or asset that is left behind and is always transferred to the heirs.²⁰ When heirs are examined from the standpoint of the Indonesian Civil Code, they fall into 4 (four) categories, which are as follows:²¹ (1) Group I consists of children who are acknowledged as genuine heirs, including those in the direct line below, illegitimate children, husband or wife, and adopted children who are adopted by court order and verified as legitimate offspring.; (2) Group II consisted of brothers or sisters, as well as the parents who descend in a straight line, are heirs.; (3) Group III consisted of grandmothers and grandfathers descended in a straight line and upwards are considered heirs.; and lastly, (4) Group IV consisted of siblings of the testator's two parents, or group III and Group IV, are heirs. The Indonesian Civil Code also governs the testator's *legitieme portie*, or absolute rights, over assets left to his heirs.

As stated in Article 830 of the Indonesian Civil Code, inheritance will arise in the event of a legal death. A human being has the right to make a testament at any point in their lifetime as a legal subject. This is to make sure that the assets that the individual owned throughout their lifetime are properly managed at their death. In addition, a testament can stop heirs from squabbling over the bequest from one another. The Indonesian Civil Code, the Law of the Republic of Indonesia Number 39 of 1999 concerning Human Rights, and the 1945 Constitution of the Republic of Indonesia all guarantee and safeguard the making of testaments.

⁶ Indah Sari, "Pembagian Hak Waris Kepada Ahli Waris Ab Intestato dan Testamentair Menurut Hukum Perdata Barat (BW)," *Jurnal Ilmiah Hukum Dirgantara* 5, no. 1 (2018), <https://doi.org/10.35968/jh.v5i1.99>.

¹⁸ Yanuar Suryadini dan Alifiana Tanasya Widiyanti, "Akibat hukum hibah wasiat yang melebihi legitime portie," *Media Iuris* 3, no. 2 (2020): 241–56, <https://doi.org/10.20473/mi.v3i2.18774>.

² Zemar Salim, *Dasar-Dasar Hukum Waris di Indonesia* (Jakarta: PT. Rineka Cipta, 2000), 4.

¹¹ Diana Anisya Fitri Suhartono, Naysya Nur Azizah, dan Claressia Sirikiet Wibisono, "Sistem Pewarisan Menurut Hukum Perdata," *Jurnal Hukum, Politik Dan Ilmu Sosial* 1, no. 3 (2022): 204–14, <https://doi.org/10.55606/jhpis.v1i3.921>.

The definition of testament can be found in Article 875 of the Indonesian Civil Code, "A testament or last will is a deed, containing a statement of an individual's wishes and intents to take effect following his death, and which deed can be revoked". The terms of the testament cannot be detrimental to the people entitled to the testator's inheritance or clash with legal requirements. If a testament is used to express it, that expression is likewise considered valid.²² Furthermore under Article 895 of the Indonesian Civil Code, to make or revoke a last testament, an individual shall have a mental capacity that indicates that he is not gravely unwell and that his memory is not being affected, both of which prevent him from thinking clearly.

In reality, testaments come in a variety of forms. The Indonesian Civil Code governs 2 (two) distinct sorts of testaments, which are: those that are governed by their form and those that are governed by their contents. Its contents indicate that there are 2 (two) different kinds of testaments: (1) a grant (*legaat*) and (2) a testament for the designation of an heir (*erfstelling*). A testament can be (1) an olographic will (a self-written will), (2) a general testament (an *openbaar* testament), or (3) a secret testament (a closed will), per the form.²³

All Indonesians are allowed to practice any religion they choose. 6 (six) religions are officially recognized in Indonesia: Confucianism, Buddhism, Hinduism, Protestant Christianity, and Islam. It makes sense that inheritance disputes in Indonesia can be complicated given its diverse population. Its many legal traditions are accommodated by its diversified legal systems. While civil law principles apply to non-Muslims and Islamic law affects inheritance matters for Muslims, their respective legal systems and historical influences result in variances in the particular laws and procedures. For instance, in one circumstance, the heir is a Muslim, yet he has multiple non-Muslim heirs. Given that the heir and heirs follow different religions, it will be difficult to determine which legal foundation will apply in this situation. Whether female heirs have the same inheritance rights as male heirs is another example of a case. The minority groups, such as non-Muslims, women, and those without having any religion. These groups should receive attention since they may have particular difficulties under the current system.

Based on the case law of the Supreme Court of the Republic of Indonesia Number 368.K/AG/1995, rendered on July 16, 1998, it was concluded that the 2 (two) non-Muslim heirs were placed as heirs using "*wasiat wajibah*". The Panel of Judges took this action to protect justice while allocating inheritance to heirs belonging to various religious traditions. The heir is the point of reference for establishing the legal basis for inheritance, and which religion he followed based on the Jurisprudence of the Supreme Court of the

²² Nadia Boyoh, Engeline R. Palandeng, dan Jemmy Sondakh, "Kekuatan Hukum Surat Wasiat Sebagai Bukti Kepemilikan Tanah Warisan Yang Sah Menurut Kitab Undang-Undang Hukum Perdata," *Lex Privatum* no. 4 (2021).

²³ Wirjono Prodjodikoro, *Hukum Warisan di Indonesia* (Bandung: Vorkink Van Hoeve's Granvenhage, 1962).

Republic of Indonesia Number 172 K/Sip/1974, March 6, 1975, which stated that if an inheritance dispute occurs, the inheritance law used is the law of heirs.²⁴ In addition to legally required wills, a testator's pre-death gift method may also be used to exercise rights over these assets.²⁵ This alternate option is offered to biological offspring of other religions, as well as to biological parents who happen to practice a different religion, such as mothers or fathers. Therefore, even though Indonesia allows its citizens to practice any religion they choose, there will still be challenges and barriers for the community. Particularly for individuals in the same family who practice different religions. However, religious differences shouldn't prevent mutual inheritance in the current context, especially in Indonesia where the population is made up of many ethnicities and religions.²⁶ When family members practice different religions, there should be no animosity, conflict, or crimes committed between them as long as they get along well and live in harmony.

As a comparison, Malaysia also has a similar pluralistic legal system regarding inheritance because it is also a predominantly Muslim country. For non-Muslims, it applied the British common law system.²⁷ In Malaysia it applies if the heir does not leave a testament behind to the heirs, then the Distribution Act 1958 *juncto* Amendments Act 1997 applies. Since Islam is the majority religion, its inheritance laws on the Al-Quran, Hadith, and Ijma, laws governing the transfer of inheritance to non-Muslims from Muslim heirs are not codified in writing. But in the particular situation at hand, the Melaka Islamic Religious Council ("MAIM") showed sympathy for the heir's family by donating to non-Muslim families.

Besides that, Singapore is known as a multi-cultural country in Asia. The Common Law legal system, which Singapore Inheritance Law follows, acknowledges the partition of inheritance by testament, intestacy, or without a testament.²⁸ The heir can freely share his inheritance as specified in the testament, according to Singapore's inheritance law. According to Singaporean law, a testament is essentially the first and primary means of allocating an heir's inheritance. This is evident from the Intestate Succession Act of 1967, which governs what happens to an heir's inheritance if he passes away without leaving a testament or making one. The fact that these laws exist demonstrates how every individual is thought to have made a testament to specify his desires for the distribution of his

²⁴ Kartika Herenawati et al., "Kedudukan Harta Warisan Dari Pewaris Non Muslim Dan Penerapan Wasiat Wajibah Bagi Ahliwaris Non Muslim (Analisis Penetapan Pengadilan Agama Badung Nomor: 4/Pdt. P/2013/PA. Bdg Tanggal 7 Maret 2013)," *DiH: Jurnal Ilmu Hukum* 16, no. 1 (2020): 372219.

²⁵ Maimun Maimun, "Pembagian Hak Waris Terhadap Ahli Waris Beda Agama Melalui Wasiat Wajibah Dalam Perspektif Hukum Kewarisan Islam," *ASAS: Jurnal Hukum Ekonomi Syariah* 9, no. 1 (2017).

²⁶ Muhamad Isna Wahyudi, "Melacak Illat Hukum Larangan Waris Beda Agama," *Jurnal Hukum dan Peradilan* 10, no. 1 (2021): 155–72, <https://doi.org/10.25216/jhp.10.1.2021.155-172>.

²⁷ Meydina Dwi Ariphia, Fifiana Wisnaeni, dan Adya Paramita Prabandari, "Perbandingan Pengaturan Pemberian Waris pada Ahli Waris Non Muslim di Indonesia dan Malaysia," *Notarius* 12, no. 2 (2019): 883–99.

²⁸ Ammar Shahdeepa Wibowo dan Lauditta Humaira, "Perbandingan Kedudukan Surat Wasiat Dalam Hukum Kewarisan KUHPerduta Indonesia dan Hukum Kewarisan Singapura (Studi Kasus: Putusan No. 43/Pdt. G/2020/PN Mdn, Putusan No. 194/Pdt. G/2022/PN Amb, dan Putusan UWF v UWH [2020] SGHCF 22)," *Lex Patrimonium* 2, no. 2 (2023): 4.

inheritance asset upon his death.

Having said that, the common law system was used in both Malaysia and Singapore to govern inheritance law, setting them apart from Indonesia. Still, there is a red line derived from the inheritance laws of Singapore, Malaysia, and Indonesia. In these three countries, a testimony holds a strong and prominent place. Inheritance legislation, as is seen by comparing the positions of the two inheritance laws. Since the majority of the local population is multiple, the three inheritance laws that are being compared demonstrate how free the testator is to express his final wishes through a testament and the opportunity to interfere with the testament.

3.2 The Legality of a Testament that Takes Away the Longest-Living Spouse's Inherited Rights

Inheritance law and testament writing are significantly influenced by the social and cultural environment in Indonesia. In Indonesian society, family responsibilities and relationships are highly valued. Family ties are essential for social support and stability, and extended families reside together or close by. These ideals are reflected in inheritance laws, which emphasize supporting family members and preserving family harmony. Additionally, in Indonesia, a great deal of communities have their customs and traditions related to inheritance. These customs, which sometimes precede official legal frameworks, might contain guidelines for allocating property, settling conflicts, and upholding societal harmony. Customary laws can coexist with formal legal requirements or even deviate from them, influencing how inheritance is distributed among groups.

On the other hand, Indonesia is a multicultural nation with sizable Christian, Hindu, Buddhist, and other religious communities coexisting with a predominantly Muslim populace. Particularly in Muslim societies where inheritance affairs are governed by Islamic law, religious beliefs, and values have a substantial influence on inheritance customs. Individuals' decisions about inheritance and will-making are frequently influenced by religious beliefs on justice, charity, and familial duties. Recognizing this complexity is essential for policymakers, legal practitioners, and individuals navigating inheritance matters in Indonesia. It underscores the importance of legal frameworks that are sensitive to cultural diversity and responsive to the needs and values of the society they serve.

A testament is the last will of the testator containing the last wishes of the testator. Usually, the contents of a testament relate to the distribution of assets from the heir.²⁹ A testament is said to be valid if it meets the formal and material requirements,³⁰ including the following:

²⁹ Rykson Thri Mahatulus dan Tjempaka Tjempaka, "Legal Review of Wills Based on Civil Law," *Journal of Social Research* 2, no. 10 (2023): 3719–26, <https://doi.org/10.55324/josr.v2i10.1464>.

³⁰ Wina Winiawati et al., "the Validity of Wills Which Violate the Legitimate Portion Towards the Position of Child Out of Marriage Based on the Indonesian Civil Laws," *International Journal of Advanced Research* 11, no. 01 (2023): 1732–40, <https://doi.org/10.21474/ijar01/16199>.

(1) Article 888 of the Indonesian Civil Code if the terms of a last testament can be interpreted in several ways, the intent of the testator must be determined rather than interpreting the text literally.; (2) Article 879 of the Indonesian Civil Code, the testamentary disposition through hands or substitution of *fidei-commissarius* is prohibited. Subsequently, concerning the nominated heir or legatee, each provision to the effect that inheritance or the legacy shall be kept, and that the entire or part of the inheritance shall be transferred to a third party shall be void.; (3) Article 901 of the Indonesian Civil Code, a spouse cannot benefit from the last will of the other spouse if the marriage was entered into without proper consent, and if the testator died at a time that the validity of the marriage was being disputed in court.; (4) Article 902 juncto Article 852a. of the Indonesian Civil Code.; (5) Article 903 of the Indonesian Civil Code, spouses, for the community asset, shall not dispose of more than their respective share in the community asset. If, however, any asset from the community asset has been disposed of by testament, the beneficiary cannot claim his share of the asset in its original condition, if the heirs of the testator are not entitled to that asset. In such circumstances, the beneficiary shall be compensated from the share in the community asset to which the heirs of the testator are entitled, and if this is insufficient, from the personal asset belonging to the heirs.; (6) Article 908 of the Indonesian Civil Code, if parents leave legal and natural and legitimized children, the latter mentioned cannot benefit from the last testament of their parents more than the extent to which they are entitled under the twelfth chapter of this book.; (7) Article 909 of the Indonesian Civil Code, male and female adulterers, and their accomplices cannot benefit from each party's last will, unless the adultery, before the demise of the testator, has been proven by a court's judgment.; (8) Article 912 of the Indonesian Civil Code, an individual who has been convicted of killing the testator; an individual who has stolen, destroyed or forged the last testament of the testator, or who has prevented the testator by force or physical deed from revoking or amending his last testament, shall, together with his spouse and children not benefit from the last will.

Additionally, regarding the testament, the related person also needs to consider the heir's absolute right (*legitime portie*), which might be either upward or downward in a straight line when drafting a testament. Articles 914–916 of the Indonesian Civil Code, which specify this absolute right, cannot be diminished, not even by a testament, so long as the absolute heir retains his or her absolute right.

The heirs listed in Articles 838, 839, and 840 of the Indonesian Civil Code who are legally deemed unsuitable to receive inheritance *ab intestato* include (1) individuals who have been convicted of killing or attempting to kill the deceased.; (2) individuals who by legal judgment have been found guilty of slandering the testator by accusing him of committing a crime punishable by a prison term of five years or more.; (3) individuals who under duress or physically have prevented the deceased from drafting or revoking his last testament; and (4) individuals who have obscured, destroyed or forged the last testament of the deceased. Concerning Article 840 of the Indonesian Civil Code, children of an unqualified individual, who have become heirs, shall not be excluded due to the fault of

their parents; the parents, however, shall under no circumstances be authorized to claim the use of proceeds of the assets of inheritance, which the law grants to the parents in respect of those assets received by their children by inheritance.

Apart from that, certain individuals who are legally connected to the deceased or whose job or status prevents them from benefiting from a testament made by the latter, for example, the notary who drafts the testament,³¹ the witnesses who witness the act of the testament, and the priest who provides care for the deceased during his last illness.

Testaments have their own set of legal standards in addition to the previously mentioned ones. Here, freedom implies abiding by the heir's wishes. The testament is revocable and replaceable indefinitely. Additionally, the testator is free to select the letter's format as long as it complies with Article 931 of the Indonesian Civil Code's requirements, which state that a written will rather than an oral one is required.³² In this situation, heirs who believe they have suffered injustice and that their inalienable rights have been infringed upon may seek annulment. It can be cancelled but is not legally void. Thus, the only protective measure that heirs can offer is to file an inheritance case in general court to resolve conflicts. This is repressive legal protection.³³

About testaments, humans are social beings at their core who always have relationships with other humans.³⁴ Similar to this, marriage is an official, legally acknowledged relationship and commitment between 2 (two) people.³⁵ Article 5 Paragraph (1), Article 20 Paragraph (1), and Article 29 of the 1945 Constitution of the Republic of Indonesia list the fundamental human rights that govern civil relations concerning the Law of the Republic of Indonesia Number 1 of 1974 concerning Marriage, as amended by Law of the Republic of Indonesia Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage.³⁶ Marriage according to Article 1 of Law of the Republic of Indonesia Number 1 of 1974 concerning Marriage is "an inner and outer bond between a man and a woman as husband and wife to form a happy and eternal family based on belief in One Almighty God".

³¹ Novinia Yanita, "Roles and Responsibilities of Notaries in Making Certificates of Inheritance Rights for the Disbursement of Time Deposit Savings Funds by Heirs," *TABELLIUS: Journal of Law* 1, no. 3 (2023): 31–40.

³² Helena Benedicta Tambajong, Rietha Lieke Lontoh, dan Annita T S F Mangundap, "Akibat Hukum Pelaksanaan Wasiat yang Tidak Memenuhi Bagian Mutlak Ahli Waris," *UNES Law Review* 6, no. 2 (2023): 7000–7006.

³³ Farah Meutia, "Pembatalan Akta Hibah Wasiat Dan Akibatnya Terhadap Pembagian Waris (Studi Putusan Mahkamah Agung Nomor 2665 K/PDT/2019)," *Indonesian Notary* 4, no. 2 (2022): 19.

³⁴ Masya Nurfitriah, "Janji Menikahi Yang Mengikat Dalam Kaitannya Dengan Asas Pacta Sunt Servanda," *Jurnal USM Law Review* 6, no. 1 (2023): 79–93, <https://doi.org/10.26623/julr.v6i1.5848>.

³⁵ Kartika Septiani Amiri, "Perkembangan Dan Problematika Hukum Perkawinan Di Indonesia," *Al-Mujtahi: Journal of Islamic Family Law* 1, no. 1 (2021): 50–58.

³⁶ Safira Maharani Putri Utami dan Siti Nurul Intan Sari Dalimunthe, "Penerapan Teori Keadilan Terhadap Pembagian Harta Bersama Pasca Perceraian," *Jurnal USM Law Review* 6, no. 1 (2023): 433–47, <https://doi.org/10.26623/julr.v6i1.6899>.

Marriage has legal ramifications that relate to the rights and obligations of the husband and wife, just like other legal acts. One of them has to do with assets.³⁷ As stipulated in Chapter VII of Property in Law of the Republic of Indonesia Number 1 of 1974 concerning Marriage, husband, and wife who are legally bound by marriage have the notion of joint property and inherited property. Articles 35 through 37 of the Republic of Indonesia Law Number 1 of 1974 concerning Marriage regulate arrangements about joint assets as for inherited assets, they are governed by Law of the Republic of Indonesia Number 1 of 1974 concerning Marriage, specifically Articles 35 and 36 paragraph (2).³⁸

Article 35 Paragraph (1) of the Republic of Indonesia Law Number 1 of 1974 concerning Marriage states that an "asset acquired during marriage" is included in the joint asset. Mutual or joint assets might originate from the husband and wife together, from the woman alone, or from either one of them alone. Depending on the couple's agreement, either spouse may claim ownership of this shared asset. Any agreement or transaction involving the guarantee of joint assets must be carried out with the approval of both the husband and the wife.

In contrast, inherited or original assets are those that were possessed by both spouses before marriage, such as inheritances and gifts as long as the husband and wife own it in full and entirety. It is noted that this item is a personal asset.

On the other hand, a marital agreement (prenuptial agreement or postnuptial agreement) may be used to deviate from the terms outlined in the Marriage Law. Transforming original assets into collaborative assets is one of them. The terms of the marital agreement must not go against the dictates of morality, religion, or the law. Unless both parties agree and it doesn't hurt a third party, the marital agreement cannot be altered.³⁹ Both prenuptial agreement and postnuptial agreement are categorized as domestic contracts, should be made in the form of a notarial deed, and legalized by the notary.⁴⁰ Additionally, it is also emphasized in Article 147 of the Indonesian Civil Code, which states that a marital agreement must be made with a notarial deed and must be made before the marriage. If not before a notary, the marital agreement is null and void by law.⁴¹ However, based on the latest decision of the Constitutional Court of the Republic of Indonesia Number 69/PUU-

³⁷ Johannes Suhardin dan Henny Saida Flora, "Division of Inheritance Based on Wills with the Principle of Legitieme Portie," *South East Asia Journal of Contemporary Business, Economics, and Law* 25, no. 1 (2021).

³⁸ Arun Pratama, "Implementasi Percampuran Harta Bersama Dan Harta Bawaan Dalam Perkawinan (Studi Kasus Putusan Pengadilan Agama Nomor: 0189/Pdt. g/2017/Pa. Smg)," *Jurnal Ius Constituendum* 3, no. 1 (2018): 15–26, <https://doi.org/10.26623/jic.v3i1.861>.

³⁹ Artanti Hendriyana, "Guru Besar Unpad Paparkan Konsep Harta Bersama Dalam Perkawinan," 2023, <https://www.unpad.ac.id/2023/05/guru-besar-unpad-paparkan-konsep-harta-bersama-dalam-perkawinan/>.

⁴⁰ Sutria Putri Dwirahayu, "Why Mixed Marriage Couple In Indonesia Need To Have Prenuptial Or Postnuptial Agreement?," 2023, <https://ylpconsulting.com/news-update/postnuptial-agreement/>.

⁴¹ Daffa Alif Utama, Endah Pujiastuti, dan Dian Septiandani, "Penerbitan Kartu Keluarga Bagi Pasangan Nikah Siri Dan Akibat Hukumnya Terhadap Para Pihak," *Jurnal Usm Law Review* 5, no. 2 (2023): 819–31.

XIII/2015⁴⁵ regarding the implementation of the marriage agreement, currently it is not only limited to the period before or⁵⁷ when the marriage takes place but can also be carried out while in a marriage bond, provided that³³ the husband and wife agree to those circumstances.⁴²

By making clear their goals about shared assets and inheritance issues, a married couple who decides to draft a marriage agreement hopes to reduce the likelihood of future disputes. The agreement gives both spouses clarity and assurance by outlining how joint assets will be managed and dispersed⁶³ in the case of divorce or death. The assets that each spouse received as a gift, inheritance, or before marriage are also protected by this agreement. It is possible for a marital agreement to specify that these assets stay separate and are not susceptible to claims for inheritance or partition in the case of a death. A marital agreement can help prevent disputes and expensive litigation by anticipating possible points of contention and addressing them beforehand. Spouses can negotiate and agree upon terms amicably, reducing the likelihood of contentious disputes later on.

³³ According to Article 199 (1) of the Indonesian Civil Code, a marriage may be dissolved⁶⁸ for a variety of reasons, including death.⁷ Article 832 of the Indonesian Civil Code governs the distribution of a husband and wife's assets upon their deaths. According to the following rules, the surviving spouse and legal and blood relatives are the rightful heirs to the asset that makes up the inheritance. If there are no surviving spouse or blood relations, the assets will pass to the State, with the condition that the estate's debts be paid off to the extent that the assets' worth allows.

The idea of inherited and joint assets also affects the idea of testaments. Only their portion of the assets may be left⁵⁸ by a person. The husband and wife will draft a testament with the same contents if the assets being bequeathed are joint or mutual assets, as the wife owns half of the assets and the husband owns the other half. The idea that a testator's will only accounts for half of their property applies if just one party creates a testament and the other party does not. Several case studies demonstrate the application of testaments and inheritance law to actual conflicts involving joint assets and inheritance amongst heirs in Indonesia. Both spouses have addressed any problems and made sure their objectives are enforceable by law by modifying the testament. The testament states that it reduces the possibility of disagreements and gives everyone involved clarity.

Inheritance regulations in Indonesia can be confusing and unclear, which can cause disagreements and legal problems among heirs. These problems can be made worse by vague legal provisions, contradictory statutes, and inconsistent regional interpretations. The proposed amendments are intended to improve accessibility and comprehension for both citizens and legal professionals by streamlining and clarifying inheritance rules. This could entail harmonizing contradictory clauses, expediting legal processes, and

⁴² Lasmaria Manullang dan Amad Sudiro, "Legal Consequences of Making a Deed of Marriage Agreement by a Notary Who Has Not Been Registered," *Jurnal USM Law Review* 6, no. 3 (2023): 1170–80.

establishing precise standards for wealth distribution. Public education initiatives may also be used to increase knowledge of inheritance obligations and rights.

Restrictions on access to legal services, bureaucratic obstacles, and expensive legal representation can make it difficult for people to properly assert their inherited rights. These obstacles may be made worse by intricate legal requirements and formalities, especially for vulnerable and marginalized groups. The proposed changes are intended to lower obstacles to legal remedies for inheritance disputes and increase access to justice. This could involve taking steps to improve legal assistance programs, streamline court processes, and lighten administrative workloads. Furthermore, to assist in a quicker and more economical resolution of inheritance disputes, reforms may promote the use of alternative dispute resolution procedures.

Per Article 35 of Law of the Republic of Indonesia Number 1 of 1974 concerning Marriage, a husband and wife who enter into a marriage with a separate property marriage agreement do not have joint property. As a result, they are both free to decide how to manage their assets, including making arrangements through a testament. Wives and husbands are both capable of writing their testaments, with varying contents. All inherited assets will be dispersed under the terms of the testament if one of the parties passes away first and there is no share of the assets between them, depriving the couple of their claim to half of the joint assets.

The parties' testaments' contents are impacted by this. If a spouse is not granted rights under the testament, the testament is nonetheless enforceable under the law and is still legitimate. Furthermore, since the spouse who has lived the longest does not have a *legitieme portie*,⁴ the spouse who has lived the longest does not have the right to litigate for their *legitieme portie*.

4. CONCLUSION

Although a testator's choices are ultimately what determines what is included in a testament, the Indonesian Civil Code or *Burgerlijk Wetboek* imposes certain constraints in that specific parties may assert their rights if they are dissatisfied with how their asset is distributed, referred to as a *legitieme portie*. The longest-living spouse, under the Indonesian Civil Code, does not have a *legitieme portie*. Therefore, in the event of death that a testament eliminates the longest-living spouse's inheritance rights, then: (1) the longest-living spouse's rights are not violated by a testament drafted by a couple who had agreed to divide their assets during their marriage because spouses do not have *legitieme portie* according to Article 914 of the Indonesian Civil Code; (2) should the testament will be penned by a couple who did not divide their assets during their marriage, it will only apply to the portion of the testator's assets. In other words, the longest-living spouse will

⁴ Siti Rahmah, Hamdan Khairul Mubarak, dan 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 (2023): 51–69.

62 still receive a portion of the joint assets in marriage. However, the spouse who lives the longest is still entitled to half of the joint assets, even whether the spouse's testament names other people as recipients of the bequest because the couple who lived the longest did not have a *legitime portie*, half of the heir's share is divided under his or her testament.

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