

## **Analyzing Subjective Defects in a Civil Tortious Lawsuit: Inconsistencies between Posita and Petitum in the Control Assumption of the Testator's Estate (Case No. 415/Pdt.G/2022/PN.Jkt.Brt)**

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**ABSTRACT.** Referring to a civil case number 415/Pdt.G/2022/PN.Jkt.Brt, the plaintiffs who are the testator's wife and daughter file a Tortious lawsuit against the defendant for an unlawful act. The plaintiffs describe the unlawful act as taking control of the estate by the testator sibling who has a mutual agreement between the defendant and the testator's wife. This has happened prior to the distribution of the estate among the rightful heirs. The panel of judges who have reviewed the case in question, give a verdict of 'an inadmissible lawsuit claim.' The point of interest that the writers want to bring up and research on is the reason behind judges' verdict that has made the case as a "niet onvankelijke verklaard" case. To elaborate further, doctrinal research is done on the principles of civil procedural law, especially the relationship between the type of civil litigation with its legal arguments ('posita') and the legal claims ('petitum'). The research results show that there are major inconsistencies between the type of civil litigation that has been filed with the content of 'posita' and 'petitum.' The plaintiffs file a tortious lawsuit at the district court while their 'posita' are mixing between undistributed testator's estate and the defendant's action of taking over the estate that is based on an agreement. Besides that, the legal claims have a few mix-ups, including demanding to state a tortious act by the defendant, petitioning the court to invalidate the mutual agreement, and seeking the court's determination of heirs. In a tortious lawsuit, the plaintiffs shall seek compensation for their losses. As an advocate, it is expected to have an awareness in preparing a good and proper legal argument and claims in a civil lawsuit. These inconsistencies yield an inadmissible lawsuit; hence the plaintiff's legal interests cannot be served through civil legal proceedings.

**KEYWORDS.** Inconsistency, Plea for Damages Lawsuit, Inadmissible Lawsuit

# Analyzing Subjective Defects in a Civil Tortious Lawsuit: Inconsistencies between Posita and Petitum in the Control Assumption of the Testator's Estate (Case No. 415/Pdt.G/2022/PN.Jkt.Brt)

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## Introduction

*Inheritance law* is intricately tied to the various stages of a person's life, as it becomes relevant to each person when they encounter the legal occurrence known as death. When a family member passes away, possessing rights and responsibilities in property law, and with surviving family members in place, inheritance law becomes applicable. Inheritance law constitutes a set of regulations governing the transfer of rights and responsibilities from descendants to their own successors.<sup>2</sup> Inheritance is a process that exclusively takes place following an individual's demise. Inheritance law is a legal framework that oversees the transition of the deceased's assets, specifying how the assets bequeathed by the deceased are conveyed and the consequences for the heirs involved.<sup>3</sup>

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<sup>2</sup> Wirjono Prodjodikoro, *Hukum Warisan di Indonesia*, (Bandung: Sumur Bandung, 1995).

<sup>3</sup> Setio Prabowo, M. Sudirman, and Cicilia Julyani Tondy. "Perlindungan Hukum Bagi Ahli Waris Terhadap Harta Warisan Yang Beralih Tanpa Persetujuan Ahli Waris." *Jaksa: Jurnal Kajian Ilmu Hukum dan Politik* 1, no. 3 (2023): 63-70. *See also*

The inheritance legal system in Indonesia is diverse, comprising a range of legal regulations governing inheritance within society. These encompass inheritance laws delineated in the Civil Code, Islamic inheritance laws, and customary inheritance laws. The Western Civil Inheritance Law (KUHPerduta) exclusively pertains to non-Muslim communities or individuals subject to its provisions, whereas Islamic inheritance law is applicable to Muslim communities, and customary inheritance law is relevant to indigenous communities.<sup>4</sup>

The Civil Code does not explicitly define the concept of inheritance law. Instead, it encompasses various concepts associated with inheritance, such as establishing the eligibility for a portion of the inheritance, apportioning each heir's share, and similar aspects.<sup>5</sup> In Western civil inheritance law, as outlined in the Civil Code, there is no differentiation between male and female heirs. The inheritance system in Western civil law is individual, with each heir receiving a portion of the inheritance.

Inheritance represents a method for acquiring property rights, specifically through the bequeathal by the testator. Inheritance law results in the heir assuming ownership of the inherited assets.<sup>6</sup> It encompasses all rights as assets, as well as the responsibilities or debts of the heir.<sup>7</sup> Under

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Said Ali Assagaff, and Wira Fanciska. "Perlindungan Hukum Bagi Ahli Waris Terhadap Harta Warisan Yang Beralih Tanpa Persetujuan Seluruh Ahli Waris." *Imanot: Jurnal Kemahasiswaan Hukum & Kenotariatan* 1, no. 1 (2021): 279-290.

<sup>4</sup> 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): 1-20.

<sup>5</sup> Titik Triwulan Tutik, *Pengantar Hukum Perdata di Indonesia* (Jakarta, Prestasi Pustaka, 2006), p. 275

<sup>6</sup> Elfira Permatasari, Habib Adjie, and Hardianto Djanggih. "Perlindungan Hukum Kepemilikan Tanah Absentee yang Diperoleh Akibat Pewarisan." *Varia Justicia* 14, no. 1 (2018): 1-9.

<sup>7</sup> Klaudius Ilkam Hulu, and Dalinama Telaumbanua. "Kepemilikan Hak Atas Tanah Warisan Yang Diperoleh Melalui Harta Peninggalan Orang Tua." *Jurnal Panah Keadilan* 1, no. 2 (2022): 52-61. In similar context, it is highlighted and emphasized that the issue of ownership rights over inherited land acquired through parental estates poses a complex and multifaceted challenge within the legal landscape. Inherited land, typically passed down through generations, often becomes a focal point of legal disputes, necessitating a nuanced examination of familial and property law. Cases involving the inheritance of ancestral land frequently delve into intricate questions surrounding the legitimacy of claims, the determination of rightful heirs, and the equitable distribution of assets. One illustrative case highlights these complexities: a dispute arising from the inheritance of ancestral land. The legal intricacies involve navigating through the specifics of the deceased parents' estate, discerning the applicable inheritance laws, and addressing potential conflicts among heirs. The

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Western civil law, as detailed in the Civil Code, inheritance encompasses all properties, encompassing the rights and responsibilities of heirs in the realm of property law, which can be quantified in monetary terms.<sup>8</sup>

Inherited assets belong to all the heirs. Inherited assets that have not yet been divided are jointly owned assets of the heirs of the inheritance 'boedel.'<sup>9</sup> Each heir has the right to the undivided inheritance. If there is more than one heir then the inheritance is 'mede eigendom' (joint property rights).<sup>10</sup> Until the distribution is made among the heirs. In principle, inherited assets cannot be left undivided (Article 1066 of the Civil Code).

The inheritance system established in the Civil Code is individually bilateral, signifying that every heir has the entitlement to a portion of the inherited property that is rightfully theirs. This holds true for assets inherited from both their father and mother. The provision granting heirs the right to claim their inheritance share underscores the individual nature of inheritance as stipulated in the Civil Code.<sup>11</sup> Nevertheless, it is possible to reach an agreement to defer the distribution of inherited assets for a period of up to 5 years, and this arrangement can be extended upon the lapse of each specified period (as per Article 1066, paragraphs 3 and 4 of the Civil Code).

The existence of law is necessary to maintain order in social interactions. There are many relationships in social life. One of them is the legal relationship between two parties in the field of property law which gives

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academic analysis of such cases requires a comprehensive understanding of property law, succession laws, and the intricacies of inheritance procedures. As scholars explore these matters, they contribute to the broader academic discourse surrounding property rights, inheritance laws, and the evolving dynamics of familial property ownership within the legal framework. *See also* Dian Agustina Wulandari, "Pengelolaan Administrasi Tanah Aset Pemerintah Guna Mendapatkan Kepastian Hukum." *Unnes Law Journal* 4, no. 1 (2015): 94-106; Ana Silviana, "Kajian Tentang Kesadaran Hukum Masyarakat dalam Melaksanakan Pendaftaran Tanah." *Pandecta Research Law Journal* 7, no. 1 (2012): 112-122; Abdul Kholek, and Alfitri Alfitri. "Sue for Disputes Resolution of Land Conflict in South Sumatera." *Komunitas* 9, no. 1 (2017): 161-169.

<sup>8</sup> Muhamad Faisal Tambi, "Studi Komparasi Pembagian Warisan Menurut Hukum Islam dan Hukum Adat." *Lex Privatum* 6, no. 9 (2019): 44-51; Rofi Wahanisa, et al. "Problems of Disputes/Conflicts Over Land Acquisition Towards Development dor Public Interest in Indonesia." *International Journal of Criminology and Sociology* 10 (2021): 320-325.

<sup>9</sup> Patma Patma, Suwarti Suwarti, and Nam Rumkel. "Kedudukan Hukum Perjanjian Jual Beli Yang Dilakukan Oleh Ahli Waris Terhadap Harta Warisan Yang Belum Dibagi." *Hermeneutika: Jurnal Ilmu Hukum* 5, no. 2 (2021): 353-363.

<sup>10</sup> Patma, et.al.

<sup>11</sup> Muhamad Syaifullah Abadi Manangin, Leni Dwi Nurmala, and Nurmin K. Martam. "Pengalihan Atas Harta Warisan di Indonesia." *DIH: Jurnal Ilmu Hukum* 16, no. 2 (2020): 177-270.

rise to rights and obligations. Article 1233 of the Civil Code determines that an agreement arises from an agreement or by law. An obligation is a legal relationship ('*van verbintennisen*'). According to civil law science, an obligation is a legal relationship that occurs between two or more people who are located in the field of property law, where one party is entitled to performance and the other party is obliged to fulfill performance.<sup>12</sup> These rights and obligations are interests that are formed between members of society, some of which are in line and some of which are not. An example of parallel interests is an interest in a legal act in the form of a sale and purchase agreement. There is harmony between the interests of the seller and the interests of the buyer. The seller's interest in relinquishing his ownership rights by obtaining a certain amount of money goes hand in hand with the buyer's interest in obtaining ownership rights to the object by handing over a certain amount of money. However, it is not uncommon to find that there are different interests, even contradictory interests that are detrimental to the interests of other parties. For example, controlling other people's objects by violating the owner's rights, forming agreements with agreements characterized by coercion. Conflicting interests between community members can give rise to a conflict or dispute.<sup>13</sup>

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<sup>12</sup> Mariam Darus Badruzaman, *Kompilasi Hukum Perikatan* (Bandung: Citra Aditya Bakti, 2001).

<sup>13</sup> Retnowulan Sutantio, and Iskandar Oeripkartawinata, *Hukum Acara Perdata dalam Teori dan Praktek* (Bandung: Mandar Maju, 2022). Furthermore, it is emphasized that in the realm of civil law, interests manifest themselves in the form of civil rights and obligations, which are key components regulated by substantive civil law. Civil rights pertain to legally recognized claims or entitlements that an individual holds, such as property rights, contractual rights, or the right to personal security. On the other hand, civil obligations refer to the legal duties or responsibilities that individuals owe to one another, typically arising from agreements, contracts, or legal relationships. When we refer to a dispute in this context, we are essentially describing a situation where the interests of two or more parties are in conflict, leading to a breach or violation of the substantive civil law. This mismatch in interests often results in a disagreement or contention over the exercise or protection of civil rights and the fulfillment of civil obligations. Disputes can arise from various scenarios, such as breaches of contracts, disagreements over property rights, or violations of personal rights. In addition, the concept highlights the inherent tension that can occur when the interests of different parties collide within the framework of civil law. Resolving these disputes involves legal processes that aim to restore balance, clarify rights and obligations, and ultimately provide a remedy or resolution for the parties involved. Legal systems provide mechanisms, such as litigation or alternative dispute resolution, to address these conflicts and uphold the principles and regulations outlined in substantive civil law. *See also* Thomas O. Main, "The procedural foundation of substantive law." *Washington University Law Review* 87, no.4 (2010): 801-842; Muhammad Syamsudin, "Keadilan

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Retnowulan determines what is meant by interests in the form of civil rights and obligations which are regulated in substantive civil law. A dispute is defined as a mismatch in the interests of the parties and results in a violation of material civil law.<sup>14</sup>

Procedural law, a formal legal framework, is responsible for upholding and preserving substantive law. In cases where there is a civil infringement of rights and interests, the means to counteract such violations are provided by formal or procedural law.<sup>15</sup> The presence of procedural law, which upholds substantive law, serves as a deterrent against individuals taking the law into their own hands (known as '*eigen rechting*'). In the realm of civil matters, civil procedural law serves as the formal legal framework. It serves as a mechanism to uphold substantive civil law. Therefore, civil procedural law acts as the protector of substantive civil law and prevents acts of vigilantism.

The civil legal relationship between the parties may arise from a deliberate legal arrangement based on an agreement or a legal relationship established by legal provisions. As stated in Article 1233 of the Civil Code, it is noted that "Obligations may arise from a contract or by judicial code." This signifies that a legal relationship in the form of an agreement is established either by mutual agreement or as mandated by the law.

One of the legal obligations created pertains to actions that violate the law, or known as '*Tort*'. A tortious act is an obligation resulting from human actions that do not comply with the law, necessitating the responsible party to provide compensation for the damages incurred.

In the context of civil law enforcement in court, claims related to rights are initiated through the submission of legal claims. Claims involving disputes are brought to court through the process of filing a lawsuit. Typically, lawsuits are presented with the assistance of legal representatives, often referred to as '*officium nobile*.' However, according to Article 118 of the '*Herziene Inlandsch Reglement*' (HIR), a lawsuit can be initiated by the plaintiff or their legal representative. It is not mandatory to engage legal counsel when pursuing civil cases in court. While advocate services are

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Prosedural dan Substantif dalam Putusan Sengketa Tanah Magersari." *Jurnal Yudisial* 7, no. 1 (2014): 18-33; Bambang Sutiyoso, "Pemihakan Hakim Terhadap Keadilan Substantif dalam Penyelesaian Sengketa Kepemilikan Tanah." *Jurnal Yudisial* 5, no. 3 (2012): 298-315.

<sup>14</sup> Sutantio and Oeripkartawinata.

<sup>15</sup> Bambang Sutiyoso, *Hukum Acara Perdata Khusus di Indonesia* (Yogyakarta: UII Press, 2020), p. 14

valuable, not everyone possesses a comprehensive understanding of the law, including the procedural aspects, making such assistance beneficial.

Filing a lawsuit is an attempt to seek the court's protection for the plaintiff's claimed rights and to compel the defendant to fulfill their obligations. However, the outcome is not always as expected, and there are instances where the plaintiff's efforts may be in vain when the panel declares the plaintiff's claim as inadmissible (*'niet ontvankelijke verklaard'*).

In the legal proceedings before the West Jakarta District Court, Case Number 415/Pdt.G/2022/PN.Jkt.Brt revolves around a tortious act. The plaintiff, acting as an heir, alleges that their sibling has wrongfully assumed control over the inheritance rightfully belonging to them. Despite these claims, the court ruled that the dispute and the plaintiff's assertions could not be accepted. This resulted in the denial of the plaintiff's request for the protection of their interests, shedding light on the emergence of complex legal complications.

The denial of the plaintiff's claims prompts a critical examination of two key aspects in this study. *Firstly*, it seeks to unravel the object of dispute in Case Number 415/Pdt.G/2022/Jkt.Brt, shedding light on the core issues that prompted legal action. *Secondly*, the study aims to analyze the reasons behind the panel's decision to reject the lawsuit in Case Number 145/Pdt.G/2022/PN.Jkt.Brt. This study delves into the intricate legal considerations that led to the dismissal of the plaintiff's claims and explores the ensuing implications for all parties involved in the case.

## Method

This article addresses the identified issues through a comprehensive literature review, relying on documentary legal materials.<sup>16</sup> The primary legal documentation referenced includes court decisions numbered 415 and Articles 830 to 1130 of the Civil Code, with a specific focus on unlawful acts outlined in Article 1365 of the Civil Code. Additionally, connections are drawn to the pertinent provisions of the Civil Procedure Law, specifically within the *'Herzien Inlandsch Reglement'*, particularly those concerning court decisions and formal defects in lawsuits. The exploration is enriched by insights from civil law experts, obtained through interconnected network

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<sup>16</sup> Ade Saptomo, *Pokok-Pokok Metodologi Penelitian Hukum Empris Murni* (Jakarta: Universitas Trisakti, 2009), p. 104



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media on the pages of law journals, where the author has consulted relevant books and articles to substantiate the analysis.

### **Object of Dispute in the Case: A Discourse of Theories and Practices (Court Decision No. 415/Pdt.G./2022/PN.Jakbar)**

Article 1233 of the Civil Code specifies that obligations can arise either from agreements or from legal provisions. An obligation represents a connection that leads to legal implications, forming associations in which the outcomes are prescribed and regulated by law. These obligations are either the result of mutual agreements or are established by statutory regulations. According to Riduan Syahrani,<sup>17</sup> an obligation is defined as a “*legal relationship between two parties in property law, where one party possesses entitlements, while the other party is bound to fulfil these entitlements.*” In line with the concept of obligation as a legal relationship within the sphere of property, one party holds rights, and the other party bears responsibilities.<sup>18</sup>

Performance constitutes the focal point of an obligation. The existence of the obligation hinges on the completion of the required performances. As long as the performances remain outstanding, the obligation endures. When a performance, which is the essence of an obligation, is voluntarily executed, the agreement terminates. In cases where performances are not fulfilled voluntarily, compulsory actions may be taken to ensure their completion. The enforcement of such actions typically involves legal proceedings overseen by a judge.<sup>19</sup>

Within an obligation, there are legal interests safeguarded by the law. These interests pertain to the fulfillment of the rights and obligations of parties engaged in a legal relationship. Legal interests manifest in the form of rights and obligations that are governed by substantive law. To ensure the protection of the rights' holders, adherence to substantive laws must be guaranteed. The realization of these rights is regulated through legal channels and must be in compliance with the law.

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<sup>17</sup> Riduan Syahrani, *Seluk-Beluk dan Asas-Asas Hukum Perdata* (Bandung: Alumni, 2004), p. 196.

<sup>18</sup> J. Satrio, *Hukum Perikatan Pada Umumnya*, (Bandung, Alumni, 1993), p. 12

<sup>19</sup> Badruzaman, *Kompilasi Hukum Perikatan*

Formal legal rules regulate the procedures that should be followed in maintaining material legal rules, especially efforts to resolve disputes through the courts. Therefore, formal law is often referred to as procedural law or procedural law.<sup>20</sup>

Various rights and obligations that remain unfulfilled within the social fabric have the potential to generate conflicts or disputes. Rights and obligations serve as fundamental social elements in communal living. These disturbances in social coexistence can disrupt the harmony of society due to encroachments on legal rights and interests. The existing disruptions need to be resolved to maintain public order, and one approach to achieving this is by applying substantive law through procedural law.

One particular area of interest involves the control of inherited assets. In the Civil Code, the regulation of inheritance law can be found in Book II, encompassing Articles 830 to 1130. Western civil inheritance law offers two methods for acquiring the assets of a deceased individual. The first method is through intestate inheritance ('*ab-intestato*'), and the second is by inheriting a portion of the assets as dictated by a will ('*ad testamento*').

'*Ab-intestato*' inheritance in inheritance law is inheritance where the heir receives the inheritance because it has been regulated and ordered by the applicable laws and regulations. This means that the heirs' rights to inherited assets are obtained in accordance with the provisions of the applicable laws and regulations.<sup>21</sup>

For undivided inherited assets, including bound joint ownership ('*gebonden mede eigendom*').<sup>22</sup> Therefore, legal actions regarding undivided inheritance require the consent of all heirs. According to the Civil Code, those who have the right to be heirs are blood relatives and the husband or wife who lives the longest. So that the heirs automatically obtain all the rights and obligations of the heirs by law. Even though the heir dies, legal relations regarding assets in the form of rights and obligations do not just disappear.<sup>23</sup>

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<sup>20</sup> Willa Wahyuni, "Memahami Hukum Pidana Formil dan Sumber Hukumnya", *Online Article HukumOnline*, 17 February, 2022. Retrieved from <<https://www.hukumonline.com/berita/a/hukum-pidana-formil-lt620e35ede474e/>>

<sup>21</sup> Agustina Suryaningtyas, "Pelaksanaan Pembagian Warisan Berdasarkan KUHPerdara Berkenaan Dengan Adanya Testamen." *Jurnal Daulat Hukum* 1, no. 1 (2018): 265-270.

<sup>22</sup> Endang Heriyani, and Prihati Yuniarlin. "Perlindungan Hukum bagi Ahli Waris yang Tidak Hadir (Afwezig) dalam Pembagian Harta Warisan di DIY." *Transparansi Hukum* 2, no. 1 (2019): 17-30.

<sup>23</sup> Oemarsalim, *Dasar-Dasar Hukum Waris di Indonesia* (Jakarta: Rineka Cipta, 2008).

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Blood consanguinity is a relationship between two people where one is a descendant of the other, or where both come from the same ancestor.<sup>24</sup>

Western inheritance law (Civil Code) recognizes 3 (three) principles, namely first, the individual principle (personal principle) where the heir is an individual, secondly the bilateral principle, namely that a person not only inherits from the father but also vice versa from the mother, as well as siblings. men inherit from their brothers and sisters, the third principle is the principle of degree, meaning that heirs who are close in rank to the heir cover heirs who are further away in rank, so to simplify the calculations, heir classification is carried out.<sup>25</sup>

Position as heir is determined by law as Article 832 of the Civil Code. The people who are entitled to be heirs are:

- a. Blood relatives, whether legitimate or illegitimate;
- b. The husband or wife who lived the longest.

The position of heirs due to family ties due to blood ties is further determined by Article 852 of the Civil Code. Family relations due to blood ties who become heirs are children and all their descendants, parents and ancestors and upwards as well as siblings and their descendants. Pitlo,<sup>26</sup> based on his interpretation, determines the classification of heirs into 4 (four) groups.

- a. The first group of heirs, includes husband/wife and their descendants;
- b. The second group, consisting of parents, siblings and their descendants;
- c. The third group, consisting of ancestors and so on upwards;
- d. The fourth group consists of relatives in the lateral line up to the sixth degree.

According to the Civil Code, not all heirs directly inherit from the heir. There is an order of priority among the 4 (four) groups in question. If the heir has children or descendants, parents and siblings, then those who really have the right to be heirs are the children and descendants as well as the husband or wife who lives the longest. Thus, as long as the first group of heirs still exist, the second group of heirs and those after them cannot appear as heirs. This means that the second group of heirs do not get a share of the

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<sup>24</sup> See Art. 260 Indonesian Civil Code.

<sup>25</sup> Oemar Moechthar, "Kedudukan Negara Sebagai Pengelola Warisan Atas Harta Peninggalan Tak Terurus Menurut Sistem Waris Burgerlijk Wetboek." *Yuridika* 32, no. 2 (2017): 280-309.

<sup>26</sup> Salim HS, *Pengantar Hukum Perdata Tertulis*, (Jakarta: Sinar Grafika, 2005), p. 140

inheritance. If the heir does not have children, then the parents and siblings really appear as heirs, and so on.<sup>27</sup>

Civil procedural law plays an important role and has a strategic position for law enforcement efforts in the judiciary.<sup>28</sup> Although dispute resolution is not always through litigation through the courts. The function of the court in resolving disputes is treated as an '*ultimum remedium*,' if efforts at consensus deliberation outside the court have failed to resolve the existing dispute.

Resolving disputes through court requires paying attention to the guidelines as determined by civil procedural law. Judging from its nature, civil procedural law has a public face with rigid and imperative regulations so that deviations or deviations from what has been determined by law cannot be carried out.<sup>29</sup> Civil procedural law is a legal regulation that determines how to provide guarantees that material civil law is obeyed with the help of a judge.<sup>30</sup>

Enforcement of civil law through litigation is carried out through rights claims. According to Sudikno Mertokusumo,<sup>31</sup> prosecution is an action with the aim of obtaining protection of rights given by the court to prevent taking the law into your own hands. Meanwhile M. Yahya Harahap<sup>32</sup> stated; "A lawsuit is a dispute resolution in court through a refutation process in the form of answers, replies and duplicates."

A lawsuit as an effort to obtain protection must be filed by an interested party. The plaintiff as the party interested in legal protection is required to prove what is the basis of the right and prove his right ('*point d'interer, point d'action*'). Whoever argues is the one who proves it. According to Sudikno Mertokusumo,<sup>33</sup> the requirements for the contents of a lawsuit in principle include:

- a. Identity of the parties;
- b. Statement of legal relationship as the basis of the claim (*posita*);
- c. What is the demand (*petitum*).

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<sup>27</sup> Subekti, *Pokok-Pokok Hukum Perdata* (Jakarta: Intermasa, 2008), p. 98.

<sup>28</sup> Bambang Sutiyoso, *Hukum Acara Perdata Khusus di Indonesia* (Yogyakarta: UII Press, 2020), p. 17.

<sup>29</sup> Efa Laela Fakhriah, *Bukti Elektronik dalam Sistem Pembuktian Perdata* (Bandung: Refika Aditama, 2017), p. 64.

<sup>30</sup> Sudikno Mertokusumo, *Hukum Acara Perdata Indonesia* (Yogyakarta: Liberty, 1998).

<sup>31</sup> Mertokusumo, p. 39.

<sup>32</sup> M. Yahya Harahap, *Hukum Acara Perdata Tentang Gugatan* (Jakarta: Sinar Grafika, 2008), p. 46.

<sup>33</sup> Mertokusumo, *Hukum Acara Perdata Indonesia*, p. 40.

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The main content of the lawsuit is placed in the *posita* section by explaining the concrete arguments regarding legal relations as the basis and foundation of the claim (*posita*).<sup>34</sup> The *posita* element consists of two parts, namely the element describing events or occurrences and the element describing the law. The description of the facts is an explanation of the situation of the case, while the description of the law contains a description of the existence of rights or legal relationships which are the juridical basis of the claim. The part of the claim in the lawsuit that is filed is called the *petitum*. The *petitum* contains what is demanded, or what the plaintiff wants, so that the panel punishes the defendant according to the *petitum*.<sup>35</sup> According to M. Yahya Harahap, the *petitum* contains a request for the panel to declare and determine the rights of the plaintiff or to impose punishment on the defendant.<sup>36</sup>

In case number 415/Pdt.G/2022/PN. West Jkt, what the plaintiff filed was a lawsuit for unlawful acts. As an act that meets the qualifications stipulated in Article 1365 of the Civil Code; “Any action that brings loss to another party and requires the person whose fault it was to cause the loss to compensate for it.”<sup>37</sup>

In relation to unlawful acts, there are 5 (five) elements that need to be fulfilled and proven before the court, namely proof of the author, proof of the act in the category of violation of rights, proof that the act was committed because of a mistake, the act resulted in loss and proof of the causal relationship between the act and the loss who suffered.<sup>38</sup> Because losses are caused by other people's actions, the true source of disputes in unlawful acts are demands for compensation for losses.<sup>39</sup> Because the demand for compensation was not fulfilled voluntarily, the case ended up being resolved in court.

In connection with case number 415/Pdt.G/2022/PN. West Jakarta, from the documents obtained, the plaintiff filed a lawsuit for violating the

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<sup>34</sup> Bambang Sugeng Ariadi Subagyono, Johan Wahyudi, and Razky Akbar. "Kajian Penerapan Asas Ultra Petita Pada Petitum Ex Aequo Et Bono." *Yuridika* 29, no. 1 (2014): 100-112.

<sup>35</sup> Yenny Sri Wahyuni, "Pencabutan Petitum Pada Perkara Cerai Talak (Analisis Putusan Hakim Nomor 217/Pdt. G/2020/Ms-Bna)." *El-Usrah: Jurnal Hukum Keluarga* 4, no. 2 (2021): 295-327.

<sup>36</sup> M. Yahya Harahap, *Hukum Acara Perdata Tentang Gugatan*, p. 63

<sup>37</sup> Khotibul Umam, *Penyelesaian Sengketa di Luar Pengadilan*. (Yogyakarta: Pustaka Yustisia, 2010).

<sup>38</sup> Umam

<sup>39</sup> Umam

law. The plaintiff described in his postal statement the defendant's actions in the form of taking control of the inheritance based on an agreement made by the defendant with the testator's widow.<sup>40</sup> In fact, control of property rights based on an agreement gives rise to an agreement and the agreement is not an act that violates the law.

Acting as plaintiffs are the widow and one of the children of the heir, and those drawn as defendants are the heir's younger siblings who control the inheritance. The defendant is legally domiciled in the jurisdiction of the West Jakarta District Court, so filing a lawsuit for unlawful acts is in accordance with the court's relative competence as required by Article 118 HIR.<sup>41</sup>

In connection with the object of dispute in case number 415/Pdt.G/2022/PN. West Jakarta, with the filing of a lawsuit for an unlawful act, there are inconsistencies in the lawsuit that was filed with the aim of filing a lawsuit. The apparent inconsistency is because the lawsuit stated is a case of unlawful conduct, but in its position the plaintiff tends to be more dominant in describing the dispute over control of inherited assets by the defendant. If we look at the classification of heirs, the plaintiff is the first group of heirs and the defendant is part of the second group of heirs, namely as the heir's sibling. It is as if the object of the dispute is about determining the heir of the testator. The heirs and heirs are people of Chinese descent, so the resolution of inheritance issues is subject to the provisions of Articles 830 to 1030 of the Civil Code, and is the absolute competence of the district court.

If viewed from the interest with the aim of recovering inherited assets controlled by the defendant, then litigation settlement should be the authority of the district court where the heir is domiciled. According to the decision documents, the heir actually lived and died in Medan. Thus, when it comes to resolving inheritance disputes, it should be the authority of the Medan District Court.

Apart from discussing the dispute over control of heritage objects, in the *posita* of the lawsuit the plaintiff also based the fact of the existence of a mutual agreement between one of the plaintiffs and the defendant. The content of the agreement is an agreement between one of the plaintiffs and the defendant for the management of the inheritance to be handed over to the defendant and the results will be distributed to the plaintiff's family and to the defendant. This means that the defendant controls the inherited assets

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<sup>40</sup> *Posita* section (*fundamentum petendi*) Case number 415/Pdt.G/2022/PN.Jakbar

<sup>41</sup> Article 118 HIR determines that the lawsuit is filed at the defendant's residence.

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based on an agreement that creates an agreement. An agreement is a legal act and the agreement formed must comply with the provisions of Article 1320 of the Civil Code regarding the conditions for the validity of an agreement. If the agreed agreement meets the legal requirements for forming an agreement as determined by Article 1320 of the Civil Code, then the agreement is actually binding on the maker. Thus, if in the process of forming an agreement, it is discovered that the requirements stipulated by Article 1320 of the Civil Code are not fulfilled, then there is a chance that the agreement being formed has defects in the formation process and there are indications that the agreement can be requested to be canceled or can be null and void by law. However, a legal relationship formed by agreement cannot of course be resolved by a lawsuit for an unlawful act.

The defendant's possession of inherited assets based on a joint agreement is what the plaintiff categorized as an unlawful act. Namely, the inherited property as the right of the heirs (plaintiffs) is controlled on the basis of an agreement by the defendant. If the plaintiff questions the collective agreement as the basis for the defendant's control of inherited assets, what should be filed is not a lawsuit for unlawful acts, but a lawsuit related to the fulfillment of the agreement or a lawsuit filed because there is a defect in the formation of the agreement by filing a lawsuit for cancellation of the agreement.

Bearing in mind that the agreement stated by the plaintiff was only made by one of the heirs, whereas the inheritance had not been divided so that there was no individual ownership between the ownership of each heir. Judging from the parties, the plaintiff is not authorized to give approval to enter into an agreement, because the plaintiff does not have full authority to carry out legal actions regarding the object of the agreement. where the object of the agreement is inherited property that has not been distributed so that in substance the object of the agreement is still joint ownership (*'mede eigendom'*) of the heirs. To carry out legal actions regarding undivided inheritance, the consent of all heirs is required. If there are heirs who are unwilling or do not give their consent to legal action regarding the object of the agreement, then a defect is found in the subjective conditions for the formation of the agreement.

From the court decision documents, it can be seen that there is an inconsistency between the intention of filing the lawsuit and the formulation of the lawsuit submitted. In fact, what the plaintiff wants is for the assets left by her husband and father (as heirs) to be controlled again by the heirs. The

heir has the first group of heirs who are authorized by law to actually appear as heirs (*'heirs ab intestato'*). This claim can be made by filing a lawsuit for cancellation of the agreement, because the legal basis for control of the inheritance property referred to by the defendant is on the basis of an agreement that has been agreed upon. Indeed, it appears that there are defects in the agreement that was made regarding the transfer of inheritance. The defects exist because inherited assets belong to the heirs together (*'mede eigendom'*). In this case, the first group of heirs are the testator's widow and the testator's two children. In fact, only the testator's widow and the defendant are parties to the agreement. The widow as one of the heirs does not have full authority to make agreements regarding undivided inheritance. If the inherited assets are not yet divided, legal actions regarding the inherited assets should be carried out jointly by the heirs. The comparative part of the agreement should be the widow and the heir's two children on one side and the defendant on the other side. Because defects are found in the subjective terms of forming an agreement between the plaintiff (as the widow of the heir who does not have full authority) in carrying out legal actions regarding undivided inheritance, a request for cancellation of the agreement can be requested.

In accordance with what Riduan Syahrani<sup>42</sup> said, failure to fulfill the subjective requirements in forming an agreement means that the agreement can be requested to be canceled. Cancellation can only be submitted by parties who have defects in their subjective terms. An agreement that is defective in its subjective terms is not null and void by law. The existence of defects in the subjective requirements means that the agreement can be requested to be canceled. Cancellation can be requested, with the consequence that action is required to obtain cancellation. As long as cancellation is not requested, an agreement that has defects in its subjective terms remains binding on the parties.

It appears that there is uncertainty regarding the object of the dispute in the case registered number 415/Pdt. G/2022/PN. West Jakarta. There is a mix-up between inheritance control disputes, unlawful acts and joint agreements to manage inherited assets.

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<sup>42</sup> Riduan Syahrani, *Seluk Beluk dan Asas-Asas Hukum Perdata*, (Bandung: Alumni 2004), p. 213.



### **Panel's Decision in the Case: A Dubious Verdict Unworthy of Acceptance (Court Decision No. 415/Pdt.G/2022/PN.Jakbar)**

Filing a dispute with the court is driven by the expectation of securing a verdict that validates the plaintiff's claims. The plaintiff, being the aggrieved party whose rights have been infringed by the defendant, seeks legal protection through the court's decision. In scrutinizing a case, the panel prioritizes an in-depth consideration of the facts and events, recognizing their pivotal role in shaping dispute resolution.<sup>43</sup> A thorough comprehension of the problem serves as the foundation for the panel's decision-making process. Consequently, after a meticulous examination of the submitted case, the panel concludes by rendering its final decision.

In case number 415/Pdt.G/2022/PN. West Jakarta, the lawsuit filed is a lawsuit for violating the law. The plaintiff is the widow and one of the heir's children. In relation to the object of the dispute, namely control of inherited property which should be controlled by the defendant, but with an agreement by the heir's widow and the defendant it has been agreed that it will be managed by the defendant and the results will be divided.

Because the basis of the legal relationship is the agreement between the testator's widow and the defendant. The agreement made is binding on the party making it. Based on the provisions of Article 1340 of the Civil Code, an agreement is only binding on the party making it. Failure to fulfill one or more of the conditions for the validity of the agreement as regulated in Article 1320 BW, both subjective and objective conditions, will have the following consequences:<sup>44</sup>

- a. Non-existence, if there is no agreement then no agreement arises.
- b. 'Vernietigbaar' or can be cancelled, if the contract was born due to a defect of will ('wilsgebreke') or due to incompetence ('onbekwaamheid') – (Article 1320 BW conditions 1 and 2), meaning this is related to subjective elements, so the result is that the contract can be cancelled;

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<sup>43</sup> Mertokusumo, *Hukum Acara Perdata Indonesia*, p.165

<sup>44</sup> Xavier Nugraha, John Eno Prasito Putra, and Krisna Darari Hamonangan Putra. "Analisa Daluarsa Gugatan Pembatalan Perjanjian Akibat Adanya Penyalahgunaan Keadaan (Misbruik Van Omstandigheden)." *Jurnal Ilmiah Galuh Justisi* 8, no. 1 (2020): 54-72.

- c. '*Nietig*' or null and void, if there is an agreement that does not fulfill certain object requirements or the cause is not permitted (Article 1320 BW conditions 3 and 4), meaning this is related to objective elements, so that the agreement is null and void.

The formulation of the claim letter prepared and submitted by the plaintiff is the basis and becomes a reference in the examination and handing down of the case decision in court. If the lawsuit does not meet the formal requirements of a lawsuit, the legal consequence is that the lawsuit will be declared inadmissible or '*Niet Ontvankelijke Verklaard*.'<sup>45</sup> The judge stated that the plaintiff's claim was unacceptable for several reasons or considerations, one of which was '*obscur libel*', for example regarding unclear boundaries of the object of the dispute.

Judges play an important role in assessing and considering the formality of a lawsuit, namely whether it meets the formal requirements under Article 8 '*Rv*' or not.<sup>46</sup> An '*obscur libel*' lawsuit is a vague lawsuit or an unclear lawsuit. A vague lawsuit ('*obscur libel*') is where the lawsuit contains elements of ambiguity, vagueness, so that the lawsuit cannot be accepted or is in conflict with the applicable provisions.<sup>47</sup> Like the agreement that is narrated as the basis for control of inherited assets by the defendant. The parties to the agreement are the heir's widow and the defendant as the heir's brother. It is found that there is a defect in the subjective terms of the agreement, the only person who has the opportunity to cancel it is the party whose agreement contains the defect, in this case the heir's widow. However, those who act as plaintiffs in case number 415/Pdt.G/2022/PN.Jkt Barat are not the only parties who made the agreement. There is also the heir's daughter who is seated as the plaintiff. However, the heir's son was not placed as a plaintiff, if it is considered that the object of the dispute is control of the undivided inheritance, this also shows that there was an error in placing the plaintiffs (error in persona).

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<sup>45</sup> Rai Mantili, and Samantha Aulia Lubis. "Pertimbangan Hakim Pengadilan Negeri Terhadap Gugatan Perceraian Yang Tidak Dapat Diterima (*Niet Ontvankelijke Verklaard*) Dalam Praktik." *ADHAPER: Jurnal Hukum Acara Perdata* 3, no. 1 (2018): 111-134.

<sup>46</sup> Hamzah Pai'pin, Sufirman Rahman, and Salle Salle. "Analisis Yuridis Terhadap Putusan Hakim Yang Menyatakan Gugatan Penggugat Tidak Dapat Diterima." *Journal of Lex Generalis (JLG)* 3, no. 4 (2022): 617-633.

<sup>47</sup> Dudung Abdul Azis, and Ayu Novita Sari. "Analisis Yuridis Terhadap Gugatan Obscur Libel Dalam Sengketa BPJS." *IUS FACTI: Jurnal Berkala Fakultas Hukum Universitas Bung Karno* 1, no. 1 (2022): 62-73.

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A mistake in placing a party as the plaintiff in the lawsuit letter results in the lawsuit being an error in person, in the form of disqualification in person.<sup>48</sup> Thus, the lawsuit filed includes disqualification in person because the plaintiff does not have '*persona standi in judicio*.' One of the parties acting as a plaintiff in the disputed case does not fulfill the requirements, because he is not a party to the proposed agreement.

Judging from the position as owner of the inherited property, namely the widow and the two heir children. However, in the plaintiff's position, the heir's son as one of the owners (joint ownership of the undivided inheritance) is also not placed as the plaintiff. From the plaintiff's position there is an '*error in persona*,' namely that one of the plaintiffs is in a state of disqualification in person so that the plaintiff's capacity does not meet the qualities of '*persona standi in judicio*.'

In connection with the posita submitted by the plaintiff, the plaintiff did not consistently state the actions that were categorized as unlawful. The argument put forward is precisely that the defendant's control of the inheritance was based on a letter of agreement with one of the plaintiffs. That the inheritance which is the object of the dispute has not yet been distributed among the heirs. In the sense that inherited assets are under joint control of the heirs (widow and two heir children).

The facts regarding the formation of the agreement made by one of the heirs (the testator's widow) with the defendant are likely to be flawed. The visible flaw is that the testator's widow is not the sole owner of the inheritance because the testator also left behind two adult children. The parties to the agreement regarding inheritance should be the widow and the children of the heir. However, if the inheritance has been divided, the heir's widow can take legal action regarding the portion of the inheritance that is her right. The interest in legal protection for control of inheritance is for the widow and children of the heirs. It's just that the case submitted for examination and decision by the court is not about determining heirs but is a dispute over unlawful acts. However, the lawsuit's posita actually states the fact that there was an agreement between the plaintiff (the heir's widow) and the defendant (the heir's younger sibling) which also does not reveal any unlawful acts.

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<sup>48</sup> Harahap, *Hukum Acara Perdata Tentang Gugatan*, p. 111. Furthermore, it is emphasized that disqualification in person if the person acting as the plaintiff is a party who does not fulfill the requirements.

From decision document number 415/Pdt.G/2022/PN. Jkt. West that can be read is the possibility that there are defects in the subjective terms of the agreement letter so that it does not meet the provisions of Article 1320 of the Civil Code. According to Ridwan Syahrani,<sup>49</sup> if the formation of an agreement does not meet the subjective requirements, then the agreement can be canceled by a judge at the request of the party whose agreement was not freely given. In connection with defects in the formation of the agreement, what can be sued is a lawsuit for cancellation of the agreement and not a lawsuit for unlawful acts.

In connection with claims for unlawful acts that need to be stated in the *posita* section, they describe the defendant's actions or actions that are contrary to subjective rights and that the actions carried out caused harm. The lawsuit filed and registered number 415/JPdt.G/2022/PN.Jakarta Barat can be categorized as a lawsuit containing obscure libel defects. This means that the plaintiff's lawsuit is vague and unclear. According to M. Yahya Harahap,<sup>50</sup> the meaning of a lawsuit that is vague with very broad gradations, among others, is a *posita* that has no legal basis, the object of the dispute is unclear, the *petitum* of the lawsuit is unclear or the lawsuit contains *ne bis in idem*.

In connection with case number 415/Pdt.G/2022/PN.Jkt.Barat, the vagueness of the lawsuit is interpreted as the unclear object of the case. Because in the positive part, the arguments put forward by the plaintiff are unfocused and inconsistent with the lawsuit filed in the form of an unlawful act.

Regarding the *petitum* submitted by the plaintiff, it is also inconsistent with the lawsuit submitted. The plaintiff filed a lawsuit for unlawful acts, but the *petitum* requested was:

- a. Declaring the plaintiff as the legal heir as well as the party entitled to inherit the entire estate of the heir.
- b. Declare that the defendant has committed an unlawful act
- c. Declare the letter of agreement dated 10 December 2020 between the defendant and the plaintiff as null and void.
- d. Sentencing the defendant to hand over income from inherited assets
- e. Punish the defendant to pay material and immaterial damages to the plaintiff.

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<sup>49</sup> Syahrani, *Seluk-Beluk dan Asas-Asas Hukum Perdata*, p. 213.

<sup>50</sup> Harahap, *Hukum Acara Perdata Tentang Gugatan*, p. 889.

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The plaintiff prepared the petitum as an illustration of his request to the panel in an inconsistent manner so that the petitum was not clear. If what is filed is a lawsuit for an unlawful act, the petitum is limited to the consequences of the proven unlawful act, namely to ask for compensation for both material and immaterial losses.

Due to the error in person and the object being disputed being unclear, the examining panel gave a final decision in the form of the plaintiff's claim not being accepted. A vague lawsuit causes the judge to decide the case as unacceptable (*'niet ontvankelijke verklaard'*).<sup>51</sup> This is a final negative decision and the status of the legal relationship which is categorized as a dispute does not change and the position returns to its original position before the case was filed.

### Conclusion

Finally, this study highlighted and concluded that in their ruling, the panel of judges deliberated and adjudicated case number 415/Pdt.G/2020/PN. Jkt. West and declared the plaintiff's claim as inadmissible. This decision was based on several factors. Firstly, the plaintiff's lawsuit was deemed 'obscuur libel,' as it lacked clarity and coherence regarding the subject matter in question. Secondly, the plaintiff's position also exhibited an 'error in persona.' Inconsistencies were noted both in the *posita* and the *petitum* of the lawsuit. While the lawsuit was initially filed for violations of the law as stipulated in Article 1365 of the Civil Code, it appeared to blend issues related to inheritance disputes, contractual agreements, and unlawful acts. Furthermore, the *petitum* not only accused the defendant of an unlawful act and sought compensation but also included determinations of heirs and the cancellation of the agreement. It is advisable for the plaintiff to initiate a new lawsuit with a specific focus on the cancellation of the agreement, addressing the subjective defects.

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<sup>51</sup> Mulyati Mulyati, and Akmaluddin Syahputra. "Analisis Putusan Nomor: 2508/Pdt. G/2022/PA. Mdn Mengenai Pembagian Harta Warisan Terhadap Ahli Waris dalam Gugatan Kabur (Abscruur Libels)." *UNES Law Review* 5, no. 4 (2023): 3834-3845.

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