

**ANALYSIS OF FAMILY LAND DISPUTES BETWEEN HEIRTS WHO STILL HAVE RIGHTS AND HEIRTS WHO NO LONGER HAVE RIGHTS**

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**ABSTRACT**

*Most people often experience injustice and fraud when dividing inheritance in sibling conflicts. The problem is that heirs who no longer have rights but participate in the distribution of inheritance who do not have their rights. Therefore, this problem is resolved through mediation which aims for negotiation supported by a mediator. Therefore, disputes and division of heirs' land must be resolved through mediation in accordance with applicable regulations. Mediation and agreement can be done both inside and outside the court. This study uses descriptive analysis. Observing and taking data from scientific research. John Rawl's theory of justice is used. The study was conducted in Kp. Tipar Cianjur, West Java, because the location is an important dispute in the nuclear family inheritance. The results of the study show that the dispute resolution mechanism carried out by the parties through mediation outside the courts based on mutual agreement is the most common in cases of inheritance division. In this case, civil law is used to prioritize justice, status, and equal rights between daughters and sons when dividing inheritance rights to inherited land. Thus, the Islamic law of the parties is not taken into account in this case. to ensure that the distribution of inherited land is carried out evenly, effectively and with full deliberation so that family harmony is created and each party receives their respective share.*

**Keywords:** Mediation; Distribution of Inheritance; and land ownership.

**INTRODUCTION**

This issue is very important to discuss because the situation can be worse if one or more heirs feel that the division of inheritance is unfair. This also applies if one of the heirs feels that the inheritance is hidden or controlled by other heirs. After that, the inheritance discussion is identical to a case that results in a dispute in court. Choosing who is entitled to the inheritance and how much share each heir has is another sensitive aspect in the inheritance discussion. This must be resolved because everyone can prepare themselves to avoid future family disputes by making a will or free assistance while they are still alive. Article 171, letter (f) of the Compilation of Islamic Law defines a will as a gift of goods to another person or forum that will be valid after the testator dies. A will is made while the testator is still alive and is submitted to the recipient after the testator dies. This problem stems from the author's anxiety, who has an emotional relationship with the author's family. To avoid conflict and problems, especially in family relationships, this matter must be discarded. The author also believes that cases like this can be resolved amicably before finally entering the court process. All heirs agreed that one party must renovate the competing house. After the renovation was completed, the house was not occupied by the renovating party. Finally, one of the parties, Agus Dandan, guaranteed a plot of land and a building that was considered part of his rights, even though the party did not have official documents for the land and building. This also happens because the related parties feel that they have been obsolete in occupying the location. As a result, disputes arise between the heirs because they are considered to have violated the agreement by only occupying the object of the dispute.

Arbitration and mediation, or similar techniques, are used to resolve these cases. In his book "Mediation in Court", Rachmadi Usman, S.H., M.H., said that non-litigation dispute resolution can also be done other than through the court process. This is known as alternative dispute resolution or ADR. It can be done outside the court through the process of family counseling and mediation. The family of Pasundan University students has never experienced a problem like this, so the author must write more about this problem. In this paper, the author acts as an intermediary and is also responsible for storing the documents needed to solve the author's family problem (Riswanto and Amin n.d.).

Because inheritance law has its own rules in both Western civil law, Islamic law, and customary law, the resolution of land disputes that constitute inheritance is not in line with the resolution of conventional civil disputes.

The disputing parties are authorized to use the types of laws that currently exist. The best solution to inheritance disputes in society is usually deliberation among the heirs. However, if the division of the inheritance cannot be resolved through deliberation, the heirs can file a lawsuit in court according to the legal options mentioned above.

Inheritance law, according to Dr. Wirjono Prodjodikoro, an Indonesian legal expert, is a law that regulates how a person's property is placed after the heir dies and how the property can be transferred to other heirs or other people. While the Civil Code does not define inheritance law, it regulates how inheritance law is applied. In contrast, Presidential Decree Number 1 of 1991 is the basis of the Inheritance Law, which regulates who is entitled to be an heir and how much ownership rights the heir has over the inheritance.

The main difference of this writing is that this case was resolved through mediation, or out-of-court settlement. The initial purpose of this writing was to prevent the dispute from continuing to the court process, so the writing went directly to the field to collect the data and facts needed for the mediation process. In addition, as in the case of dispute resolution in court, the decision in this case was based on the results of mediation between the parties involved rather than the decision of the judge. As previously mentioned, the purpose of this paper is to show that mediation can help resolve disputes and prevent disputes from ending up in the court process. On the other hand, this paper also aims to prove that mediation can help resolve disputes.

Based on the background above, the author formulates the problem to determine what problems will be studied so that the author can study them thoroughly. These problems include: 1) Who are the legitimate heirs of the disputed land? 2) The position of the disputed inheritance land? and 3) What legal strategies can be used to resolve the problem.

## RESEARCH METHODS

Writing, also known as research, is a scientific activity that is carried out systematically, directed, and goal-oriented. Therefore, the information or data collected in this writing must be relevant to the problem being discussed. This shows that the data is relevant and accurate. In contrast, the survey method involves collecting data and comparing it to some standard measurements. To maximize the results, the author uses writing tools that adhere to this writing method. Empirical and normative legal descriptions are included in it. Legal spelling has many features. Normative legal documents include explanations of legal principles, legal systems, levels of legal harmony, and legal history.

This writing is a type of empirical legal writing; in other words, it is a type of sociological legal writing, or field writing, which includes applicable laws as well as social realities or conditions that actually occur in society. The purpose of your research is to find out and find the necessary facts and data, collect the necessary data, and finally find a solution to the problem.

This writing is empirical because the author's goal is to determine the impact of land conflicts in Tipar Regency, West Java. Section 49b Article 3 of Law 2006 concerning the Revision of Law Number 7 of 1989 concerning Religious Courts explains the duties and authorities of the inquisition, and Cianjur relates to the problem of disputes between legitimate heirs and legitimate heirs in inheritance cases.

Primary data for writing legislation comes primarily from empirical research—that is, from writings conducted directly in the community. Secondary data comes from various literatures or literatures that are related or studied. results of literature studies related to library materials. Materials are often called legal materials. In this writing, the type of data used is primary data. Primary data can be used as supporting or comparative data, so this assignment uses both primary and secondary data. Normative legal description consists of bibliographic descriptions, or writings written for secondary data. Primary, secondary, and tertiary legal materials consist of secondary data of binding strength, according to Ronny Hanitijo Soemitro.

## Writing Approaches

In legal writing, there are three approaches: the case approach, the statute approach, and the historical approach.

In writing this law, two approaches are used: the statute approach and the historical approach. The statute approach looks at the rules and regulations related to the legal problem, and the historical approach looks at a problem that underlies what is being studied and the development of the system.

## Methods for Data Collection

The author will collect data to help with this writing. The data collection techniques used by the author are as follows:

Interview, Data or information can be obtained through conversations called interviews or interviews. Qualitative data is obtained from interviews and from related sources. The author conducts unstructured interviews. This means that the author will only start the interview by setting the main topic and questions, so that they can use the source to follow the flow of the interview. Wisely, the author uses it to get more information about the data the author needs.

Literature Study, In this case, the author obtained data from scientific journals, online media, and relevant laws and regulations.

Data Analysis Methods, The author will use a qualitative descriptive analysis method. This method involves processing primary and secondary data, then providing an explanation of the data generated from the author's work by considering the problems to be discussed in descriptive form. Quantitative means that when processing data, priority will be given to data that has a higher value and can be accounted for. This does not prioritize the amount of data used by the author for the writing results, but depends on the quality and validity of the data they obtain. In its implementation, after qualitative data is entered into descriptive form, they will be presented deductively, which means that general phenomena are presented until they finally become one specific or special thing.

**DISCUSSION**

Land throughout Indonesia is owned and managed by the Indonesian people. Based on this provision, land rights are rights granted or owned by a person, either individually or together with other people or legal entities. Land rights are rights granted to a person who, based on their function, grants the right to use and utilize the land. Article 16 of the Basic Law on Agriculture regulates ownership rights, business, building use rights (HGB), use, building rental, land reclamation, and forest products.

According to the Regulation of the Minister of State for Agrarian Affairs/Head of the National Land Agency No. 9 of 1999, Indonesian citizens, foreign citizens domiciled in Indonesia, Indonesian legal entities, and foreign legal entities can obtain land rights. You can obtain land rights through:

1. Land sale and purchase: UUPA does not explain in detail about land sale and purchase, but since PP No. 4 of 1997 concerning Land Registration came into effect, land sale and purchase is carried out before a PPAT who is responsible for making the deed. The existence of a deed of sale and purchase indicates that a legal act of transfer of rights has occurred and the buyer has become the new rights holder (Sutedi, 2009: 76-77).
2. Land Grant: Land grant is a gift given voluntarily to another person without asking anything from the recipient, and is done while the giver is still alive (Harsono, 2003: 3). To protect land grants, land grants must be documented with a PPAT deed and the transfer of rights must be registered at the local Land Office.
3. Chapter V Paragraph 3 on Transfer of Rights Due to Inheritance, as stated in Article 4 of PP No. 4 of 1997, states that to transfer a registered land plot, it is necessary to submit the relevant land certificate, death certificate of the person registered as the rights holder, and proof of heir to the Land Office. If the inheritance of the land has not been registered, it is necessary to submit documents. Registration of transfer of land rights is carried out to one person as heir based on the deed of inheritance distribution and proof as heir. If there is more than one heir, registration is carried out to each heir based on a letter of proof as heir. If there is no deed of inheritance distribution, the transfer of rights to the entitled beneficiaries of the inheritance is recorded as their joint rights based on evidence as heirs and/or the deed of inheritance distribution.

Three inheritance laws apply in Indonesia for rights to inherited land: Customary Inheritance Law, Islamic Inheritance Law, and Civil Code Inheritance Law. According to local customary law, customary inheritance law regulates how property is inherited from one generation to the next. Islamic Inheritance Law regulates how property from an heir who has died to heirs based on Islamic law, this is given to people who are Muslim. While the Civil Code Inheritance Law uses an individual system, which means that everyone receives the same portion (Kuncoro, 2015: 30). In addition, Law of the Republic of Indonesia Number 5 of 1960 concerning Basic Agrarian Principles, or UUPA, regulates inheritance rights to land. People who inherit land must comply with the requirements stipulated in Government Regulation Number 4 of 1997 concerning Land Registration.

Inheritance is basically the transfer of all the rights and obligations of a deceased person to his/her heirs. Inheritance law governs the transfer of property left by a deceased person and how this affects the heirs. Inheritance by law (also called inheritance abintestato) and inheritance by will (also called inheritance by will or testament) are two categories of inheritance.

Inheritance law is very important to regulate the inheritance distribution process. One of the family members may be dissatisfied with the portion of the property they receive because the division of the inheritance is considered unfair. As a result, they go to court to get

the expected justice. If the family admits that family reconciliation is the best option but the process is not possible, a fair decision is the legal certainty of the disputing parties.

The results of a field study in KP. Tipar, Cianjur Regency, West Java, conducted by the author in this Dispute Land Dispute are as follows:

Who are the legitimate heirs of the disputed land object

4 of the 10 children of the late Rd. Adang Faaz are the legal heirs of the disputed object, namely:

1. Hj. Neneng Yulia (57 years old)
2. Emas Sopiawati (55 years old)
3. Eulis Pitria (43 years old)
4. Dede Ramzi Faaz (40 years old).

What is the status of disputed inherited land

Civil law has the right to inherit property left by an object that legally has a close relationship with the heirs, family, or property, and regulates the transfer of ownership rights to the heirs and the number of each heir, according to Article 171 of the Civil Code.

If there is no joint decision between the two parties regarding ownership of the land in dispute, the inheritance status of the land in dispute or in an out-of-court process will definitely be returned to the decision of the family deliberation. Therefore, issues related to the location of the land in dispute have legal consequences for both parties to the dispute.

### **Position of Heirs in Land Ownership Disputes**

Inheritance law regulates how the deceased's property is passed on to heirs such as family and other groups of heirs.

Both inside and outside the courtroom, land ownership must be proven. Therefore, anyone who wants to claim the right to obtain an individual, an individual, or a legal entity, if there is evidence before being submitted to court, must use legal channels. In Indonesia, there are three inheritance laws that apply: customary inheritance law, Islamic inheritance law, and civil inheritance law.

Each region has different laws according to the kinship system they adhere to, known as heirs (Dr. Vladimir, 1967). You have the right to transfer or inherit rights if the owner of the intended object of inheritance dies. This is in accordance with what is meant by jurisprudence: in legal science, the rights underlying Inheritance Law refer to the provisions stipulated in the Civil Code (KUHPerdata). The inheritance law is regulated in Articles 830 to 1130 of the Civil Code.

In addition, Article 171 of Presidential Decree Number 1 of 1991 states that heirs must have a deceased person in all civil processes.

"Inheritance only occurs due to death," according to Article 830 of the Civil Code. Thus, all assets, both assets and liabilities, previously owned by the heirs are inherited simultaneously to them. During the distribution of inheritance, there are no rules that differ from the Civil Code Inheritance Rules. However, Article 1066 of the Civil Code states that inherited assets cannot be left alone.

The division of an inheritance, also known as the division of the estate, begins with determining who is entitled to a share and how much of it they receive. After that, the division of the inheritance is complete. According to Article 913 of the Civil Code, "the absolute share or legitimate portie is a part of the estate that must be given to the heirs in a straight line according to the law, regarding which the deceased is not allowed to stipulate anything, either as a gift between the surviving parties or as a will."

In addition, there are people who are referred to as beneficiaries. In this case, the heir who receives the beneficiary is fully responsible for all debts and expenses related to the will. Since the remaining property is owned more by the heir, his remaining wealth will not be affected by claims related to the inheritance.

In reality, the beneficiaries receive less than 1% of the property they receive. Primarily, the justification is due to the legal process carried out on the beneficiary's heirs; on the contrary, the acceptance of the justification is considered as a felling of trees from the perspective of society. The general opinion is that the financial position of the heirs is not so strong because the beneficiaries will be announced (Articles 1075 and 1082 of the Civil Code).

### **What legal steps can be taken to resolve this problem.**

Legal efforts are made to resolve this dispute using methods such as arbitration and mediation. Rachmadi Usman, S.H., M.H. also does it in his book "Mediation in Court", where he says that in addition to the court process, non-litigation dispute resolution can also be done. This is known as alternative dispute resolution or ADR.

It can be done outside the court through family counseling and mediation. The author made the decision to use alternative dispute resolution (ADR) as an alternative dispute resolution because of the importance of out-of-court dispute resolution and the tendency of society to use it for various reasons. These factors include legal culture, economics, and the breadth of the scope of disputes that can be resolved.

1. Economic Factors: Settlement of disputes outside the court is more economical because it is faster and costs less than in court. "If someone loses a goat brought to court, he could lose a cow," someone said. The costs that must be borne by justice seekers (justiciabellen) are also influenced by the length of time it takes to resolve the case in court. As a result, to avoid financial burdens for justice seekers and their families, the economic component must be carefully considered when choosing dispute resolution.
2. The values and feelings of community members related to law are components of legal culture (Satjipto Raharjo, 1980: 36). In addition, the legal culture of society influences the importance of resolving business disputes outside the courts. In addition to formal courts, traditional cultures that emphasize *primus inter peres*, community, and harmony have encouraged the resolution of business disputes without court. The same applies to cultures that emphasize efficiency and effectiveness (Erman Rajagukguk, "Legal Culture and Civil Dispute Resolution Outside the Courts, *Jurnal Magister Hukum*, Vol. 2 No. 4, October 2000).
3. With the flexibility of the ADR process, it is more likely to reach an agreement that meets the needs and interests of the parties (pareto ideal or win-win solution).

### **Results of Inheritance Land Dispute Settlement**

In this research methods section, the methods used to complete the results and discuss them. In addition, the results are discussed or interpreted using the approaches or analyses mentioned here.

Research discussion can also be defined as a conversation between research findings and the main theories presented in the framework of thought. In cases or field studies, research discussion can also include conversations about what happens in the real world.

The author must conduct an in-depth evaluation. Researchers must also investigate various factors that affect the results of the study, although the research is a very specific focus. However, research on the use of analysis is still limited. Likewise, the influence and influence are certainly limited. Although quantitative studies can usually measure the impact, it emphasizes that the results of the study must affect both quantitative and qualitative aspects.

However, the impact is not too significant, and the purpose of the investigation is not for that. In addition, when determining the impact, do not be too sure. Therefore, researchers can explain the limitations of their research and recommend other research to be conducted in the conclusion. The most important part of this discussion is the researcher's ability to show progress. Research results (discoveries) or applications, analysis, and modern methods can show progress. In addition, researchers should try to present original, if not original, disputes. In other words, each argument must be truly new. Otherwise, the research discussion must inform the general reader, especially for a specific target audience, depending on the discipline.

The result of the non-litigation dispute resolution method is the result of deliberation between the parties involved, which means that the land in KP. Tipar, Cianjur Regency, West Java remains the property of the heirs who still have rights, namely:

1. Hj. Neneng Yulia (57 years old)
2. Emas Sopiawati (55 years old)
3. Eulis Pitria (43 years old)
4. Dede Ramzi Faaz (40 years old)

All heirs receive joint rights to a building of 80 square meters on the land with the following provisions:

1. Refund of the proceeds from building a residential house on the land with an area of (80m<sup>2</sup>) at a price of Rp.300,000,000 (three hundred million rupiah)
2. The refund is no later than 6 months since the deliberation was carried out, namely from May 2022 to October 2022
3. This agreement was made through deliberation without being done through a notary or a letter of agreement between the parties, but witnessed by all parties
4. family, and the Author. 5. If the agreement of the parties violates/is in default, then action will be taken in the form of destroying the residential building by the party who has the rights to the building, namely, Mrs. Emas Sopiawati

## **CONCLUSION**

The conclusion of this problem is that the family land dispute in KP. Tipar, Cianjur Regency, West Java, was resolved by arbitration and mediation methods. In his book "Mediation in Court", he explains that in addition to dispute resolution through the courts (litigation), dispute resolution can also be done outside the court (non-litigation). This dispute resolution method is known as Alternative Dispute Resolution (ADR). In this case, the problem can be resolved outside the court through a family deliberation process and mediation. The author highly recommends this method because it is a dispute resolution mechanism outside the courts which is considered more efficient, fast, cheap, and beneficial to both parties involved in the case.

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