

The Juridical Implications of the Transfer of Inheritance without the Consent of All Heirs

Windra Anggi Prasasti*)

*) Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, E-mail: windraanggip@gmail.com

Abstract. *This study aims to analyze: 1). The juridical implications of the transfer of inheritance without the approval of all heirs 2). Legal protection for heirs against the transfer of inheritance without the consent of all heirs. The approach method in this research is a sociological juridical approach. The research specifications used are descriptive analytical research. This type of data uses primary data and secondary data. Collecting data by interview method and literature study. The data analysis method used is qualitative analysis. The results of the study concluded: 1) The juridical implication of the transfer of inheritance without the approval of all heirs is an act against the law as stipulated in Article 1365 of the Civil Code, so that the sale-purchase agreement is of course detrimental to the legal heirs which results in the reduction of the object of inheritance. Legal certainty regarding the sale and purchase of inherited land without the consent of the heirs is guaranteed by the Legislation in Article 1471 of the Civil Code, which states that buying and selling other people's goods is void, and can provide a basis for reimbursement of costs, losses and interests. 2) Legal protection for heirs against the transfer of inheritance without the approval of all heirs Legal protection for heirs against the transfer of inheritance without the consent of all heirs if a certificate has been issued on behalf of another party is given repressive protection, namely filing a lawsuit to the Court. In the criminal law code relating to the sale of inheritance, especially inherited land sold by heirs, it does not involve the approval of other heirs, which can be entangled with criminal sanctions. This is as explained in Article 372 of the Criminal Code regarding embezzlement and also Article 385 of the Criminal Code relating to land grabbing. In addition to criminal penalties, the injured heirs can sue in a civil manner with a lawsuit against the law.*

Keywords: *Assets; Implications; Inheritance; Transfer.*

1. Introduction

The increasing need for land, coupled with the increasingly limited supply of land, has also had a major impact on increasing the value and price of land. This increases the potential for conflicts and problems related to or caused by land. The increasingly complex problems of human life caused by land nowadays require that there be a rule governing the guarantee of legal certainty in the relationship between humans and land.¹In Article 2 paragraph (1) of the Basic Agrarian Law it is stated that: "Earth, water and space including the natural wealth in it at the highest level are controlled by the State as the organization of the power of all the people." It is through this right to control from the State that the State as the governing body will always be able to control or direct the management of the functions of earth, water and space as well as the natural resources contained therein in accordance with existing regulations and policies, namely within the scope of jurisdictional control with a public aspect.²

Forms of transfer of ownership of land rights can occur through legal acts of transferring land rights. These legal actions include buying and selling, inheritance, grants, endowments, auction exchanges and so on. This transfer of rights causes the transfer of the right to control from one person to another. One of the legal actions in the transfer of ownership of land and building rights that is most often carried out by the community is through inheritance. Every natural event related to death will arise/birth of a civil legal event both related to the deceased/alamrhumah (the heir) as well as to those left behind (the heirs), which inevitably must be resolved immediately by the heirs.³

Several legal experts in Indonesia have tried to provide a formulation regarding the legal definition of inheritance, one of which is according to Wirjono Prodjodikoro argued that inheritance is a matter of whether and how various rights and obligations regarding a person's wealth when he dies will be

¹Dyara Radhite Oryza Fea. (2018). Guide to Managing Home Land and Permits. Yogyakarta: Legality. p. 2

²Muhammad Bakri. (2007). Land Ownership Rights by the State (New Paradigm for Agrarian Reform). Yogyakarta: Image Media. p. 5

³Umi Setyawati. Antonius Iwan Murdianto. Amin Purnawan . Deed of Affirmation of Inheritance Statement as a Substitute for Certificate of Inheritance in Management of Transfer of Inheritance at the Semarang City Land Office. Deed Journal. Vol 5 No 1 January 2018. Unissula. Semarang. p.40

transferred to the person who still alive.⁴ According to Soepomo, the law of inheritance is a law that contains regulations governing the process of passing on and passing property and intangible goods from one generation of humans to their offspring.⁵

Laws related to the issue of inheritance of the Indonesian State, there is still pluralism so that, regarding inheritance law, three different systems of inheritance law are still valid, namely the inheritance law regulated in Burgerlijk Wetboek (BW) which is intended for residents of Europe and Foreign East Chinese, then there is an inheritance law which governed by customary law where the provisions are regulated according to each region as local customs and inheritance laws are regulated based on religion, namely Islam, where the provisions are subject to Islamic law and are intended for people who are Muslim. Inheritance according to Islamic law is the law governing the transfer of assets left by someone who dies and the consequences for his heirs.⁶

The transfer of rights to inheritance is indeed possible as stated in Article 20 paragraph (2) of the UUPA which states that ownership rights to land can be transferred and transferred to other parties. In this case the new right recipient is obliged to register the transfer of ownership rights to the land he has received in order to provide rights protection to the new land right holder for the sake of order in the administration of land registration. As strong evidence, certificates have a very important meaning for the protection of legal certainty for land rights holders. Registration of land rights due to inheritance must be carried out by the holder of land rights who inherited.⁷

Inherited assets must also be transferred to the land rights at the Land Office. In addition to providing legal certainty, the implementation of the transfer of land rights due to inheritance at the Land Office is able to provide legal protection and justice for the community. In order to guarantee legal certainty that a legal action has been carried out regarding the transfer or encumbrance by the parties, the transfer of rights must be made with an authentic deed where the deed must be made before the appointed/authorized official so that it can be

⁴Tinuk Dwi Cahyani. (2018). Inheritance Law in Islam. Malang: University of Muhammadiyah Malang. p.9

⁵Ibid. p. 10

⁶Effendi Warin. (2008). Inheritance law. Jakarta: Rajawali Press . p.3

⁷Said Ali. Legal protection for heirs of inheritance assets that are transferred without the consent of all heirs. Journal of Law & Notary Student Affairs. Volume 1. Number 1. December 2021. p.282

used as perfect evidence. This is intended to guarantee legal certainty regarding rights and even legal consequences by the parties.⁸

Heirs must get legal protection, which means that legal protection will provide justice, order, certainty, benefits and peace, which is explained in Article 28 D paragraph (1) of the 1945 Constitution which states that everyone has the right to recognition, guarantees, fair legal protection and certainty and equal treatment before the law. In fact, there are still transfers of land rights through inheritance which do not involve all heirs in the transition process. Transfer of land rights through inheritance which does not involve all heirs results in guaranteed legal protection for heirs.

2. Research Methods

The approach method in this research is a sociological juridical approach. The research specifications used are analytical descriptive research. Types of data using primary data and secondary data. Data collection by interview method and literature study. The data analysis method used is qualitative analysis.

3. Results and Discussion

3.1. Juridical Implications of the Transfer of Inheritance Without the Consent of All Heirs

Inheritance problems are still the cause of disputes in the community, this is possible because they do not understand inheritance in depth. Sometimes the problem of inheritance is seen as less important in scientific terms, considering that the problem is considered as something commonplace in life. But once a dispute arises in the community about it, they don't know how to settle it peacefully, so the dispute becomes a legal dispute that is brought into the realm of lawsuits. in the court.⁹

An heir must seek approval from other heirs if he wants to buy or sell or transfer rights to inherited land, because other heirs also have rights to the inherited property. If there are other heirs who are also entitled to the inheritance are not involved, in the sense that there is no approval, then there

⁸Instant. Ahmad Khishni. Legal Consequences of the Deed of Sale and Purchase of Land Before the PPAT Made Not In Accordance with the Procedures for Making a PPAT Deed. Deed Journal Vol. 4 No. 2 June 2017. Unissula Semarang. p. 273

⁹Zainuddin Ali. (2010). Implementation of Inheritance Law in Indonesia. Jakarta: Sinar Graphics. p.15

will be a dispute over the Transition process that occurs. Disputes about buying and selling inherited land without the consent and knowledge of the heirs occurred in Madiun Regency. A mother named D sued her biological child's BS, because the BS had sold her inherited rice fields without her mother's permission. The land was sold to a village head named Y. The inherited land was sold in 2015 for IDR 100 million and in 2021 for IDR 150 million. The land was inherited from D's deceased parents.

D then sued his son BS and Village Head Y to the Madiun District Court with Case Number 36/Pdt.G/2021/PN Mjy. When interviewed, Mrs. D stated that she knew her land had been sold from her neighbors. D was very sad because the rice fields that were being sold were rice fields that she used to earn a living by growing rice. D didn't expect much more than simple justice. D just wants his paddy field to return to his family because the paddy field is the only means of livelihood and has been passed down from generation to generation by his family. Party D has attempted discussions with Parties D and Y, but village head Y and his officials seem to be covering up.¹⁰ This case was decided by the Madiun District Court on January 20, 2022.

Based on the analysis of Decision Number 36/Pdt.G/2021/PN Mjy, the Plaintiff demands that the sale and purchase between BS and the Head of Village Y is illegal according to law and null and void, because it was carried out without the permission or approval of the Plaintiff (his mother who still has the right to land) either orally or in writing or with a power of attorney. However, this claim was rejected by the judge on the grounds that the Plaintiff did not include the boundaries of the object of the disputed land, the object of the Plaintiff's claim was unclear, causing the Plaintiff's lawsuit to become obscure libel. If analyzed, the sale and purchase between BS and Village Head Y should not be valid, because not all heirs participated in the transfer of land rights. This is based on Article 1471 of the Civil Code which reads:

"Buying and selling other people's goods is void, and can provide a basis for reimbursement of costs, losses and interest, if the buyer does not already know that the goods belong to someone else."

Based on this article, the sale and purchase agreement between BS and Y should have been canceled because there was no agreement between the heirs and it was proven during the trial with an objection letter by all the heirs where the heirs refused to transfer their rights to other people. There are still many

¹⁰<https://siapgrak.com/artikel/l2E6pL>. accessed on June 2, 2022. at 20.00 WIB

irregularities in the decision of this case, but the Plaintiff has not filed an appeal.

The implication of the sale and purchase agreement for the position of the heir in the inheritance dispute above is an unlawful act as stipulated in Article 1365 of the Civil Code, which reads that any unlawful act, which causes harm to another person, obliges the person who because of the mistake of issuing the loss, compensates for the loss. the. So that the sale and purchase agreement is of course detrimental to the legal heirs which results in a reduction in the object of inheritance.

Based on the analysis of the case for Decision Number 36/Pdt.G/2021/PN Mjy, the Panel of Judges should also have considered that in the buying and selling process what the seller must hand over to the buyer is property rights over the goods, not just power over the goods. What must be done is surrender or "leveraging" legally. Buying and selling is a consensual agreement, meaning that it has been born as a legal agreement (binding or has legal force) at the moment an agreement is reached between the seller and the buyer regarding the main elements, namely goods and prices, even though the sale and purchase is about goods that are not move. The consensual nature of buying and selling is emphasized in Article 1458 which reads, "Buying and selling is considered to have taken place between the two parties when they have reached an agreement on goods and prices,¹¹The sale and purchase agreement for inherited land must also be approved by all heirs. As explained in Article 1313 of the Civil Code which reads that an agreement is an act in which one or more people bind themselves to one or more other people. According to Abdulkadir Muhammad, an agreement is an agreement by which one or more people bind themselves to carry out something in the field of property law.¹²

Making a sale and purchase deed in front of the PPAT if there is a lack of approval or signature from one of the sellers or the seller's heirs, the deed is null and void by law.¹³ Based on the case of inherited land disputes in Madiun, several things were stated as the causes, namely:

¹¹Ferry Adhi Purwantono. Ahmad Khishni. Juridical Review Implications of the Family Sale and Purchase Agreement Made by a Notary on the Position of the Heirs. Deed Journal. Volume 5 Number 1 March 2018. p.102

¹²Abdulkadir Muhammad. (1982). Law of Obligations. London: Alumni. p. 78.

¹³Anita Sofiana. Ahmad Khishni. Legal Consequences of the Transfer of Sale and Purchase Rights through the Deed of Officials Making Land Deeds on Inherited Land Without the Approval of One of the Other Heirs. Deed Journal. Volume 4. Number 1. March 2017. p.67

1. There was carelessness and inaccuracy of the Notary / PPAT in issuing the sale and purchase agreement.
2. There is disorder in the administration of land
3. The Land Office was not careful in issuing certificates.

The pillars of buying and selling require that the requirements for sellers and buyers in carrying out transactions include explaining that the seller selling the goods is the original owner or the absolute owner of the goods. Sale and purchase of inheritance that is carried out without the knowledge or consent of the heirs, the sale and purchase is considered invalid. In the letter An Nisa' verse 29 Allah SWT says which means:

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ
تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ وَلَا تَقْتُلُوا أَنْفُسَكُمْ إِنَّ اللَّهَ كَانَ بِكُمْ رَحِيمًا

It means :

“O you who believe, do not eat each other's wealth in a vanity way, except by way of commerce that applies to each other's likes and dislikes, and do not kill yourselves; Verily Allah is Most Merciful to you.”

Buying and selling inherited land without the knowledge of the heirs is like harassing (seizing) other people's property rights. Islam equates people who take the rights of others to be called thieves or *hasab* (seize) other people's property. Islam has forbidden stealing and *hasab* (*rob*). Islam considers all acts of taking other people's property as null and void, and consuming other people's property means consuming illicit goods.

Judging from Gustav Radbruch's theory of legal certainty which states that positive law is statutory law, so even though a certificate is strong evidence for the holder, it cannot guarantee legal certainty for the buyer. This is because the sale and purchase of inheritance must be carried out by a person who has the right and is approved by all heirs. Legal certainty regarding the sale and purchase of inherited land without the consent of the heirs is guaranteed by the Laws and Regulations in Article 1471 of the Civil Code, which states that the sale and purchase of other people's goods is void, and can provide a basis for reimbursement of costs, losses and interest. Therefore, in buying and selling inherited land, the buyer must be very careful and ensure that the land he is buying does not include disputed land.

3.2. Legal Protection for Heirs Against Transfer of Inheritance Without the Approval of All Heirs in Madiun Regency

In essence, the law of inheritance aims to regulate the distribution of inheritance to the heirs, so that there are no disputes when the inheritance is distributed. So the law of inheritance is a matter of whether and how various rights and obligations over a person's property when he dies will be transferred to other people who are still alive.¹⁴

The decision case Number 36/Pdt.G/2021/PN Mjy is an example of a case where there are heirs who feel their rights have been violated because the ownership rights obtained for the inheritance left by the heir have been transferred without the knowledge of other heirs. The case illustrates that the law provides protection for parties whose inheritance rights are obscured by other parties.

Heirs who are harmed must get legal protection. According to Philipus M. Hadjon, legal protection is a collection of rules or rules that can protect one thing from another. With regard to consumers, it means that the law provides protection for the rights of customers from something that results in non-fulfillment of these rights. According to Hadjon, legal protection for the people includes two things, namely Preventive Legal Protection and ProtectionRepressive Law.¹⁵

Based on protection theory Philipus M. Hadjon, preventive legal protection is legal protection that is more directed to prevent disputes from occurring. Preventive legal protection for holders of land ownership rights that have not been certified is to carry out land registration.Land registration is an administrative activity carried out by the owner of land rights, either in transferring rights or granting and recognizing new rights, this registration activity provides a clear status of land. Land Registration in Article 1 Paragraph 9 Government Regulation of the Republic of Indonesia Number 18 of 2021 Concerning Management Rights, Land Rights, Flats Units, and Land Registration is a series of activities carried out by the Government continuously, continuously and regularly including collection, processing, bookkeeping , and presentation and maintenance of physical data and juridical data, in the form of maps and

¹⁴Prodjodikoro Wiryono. (1983). Inheritance Law in Indonesia. Bandung: Bandung Well. p.13.

¹⁵Philip M. Hadjon. (1987). Legal Protection for Indonesian People. Surabaya: Science Development. p.4.

lists, regarding land parcels, above ground space, basements and apartment units, including the issuance of certificates of title proof for the land parcels,¹⁶

A person who has registered his land will issue a proof of title in the form of a certificate issued by BPN. With this certificate, a person can prove himself as a legitimate holder of land rights and can provide legal certainty and legal protection for rights holders and their land as stated in Article 3 PP 24/1997 and Article 2 paragraph (2) Permen of ART/BPN 6/2018 concerning Complete Systematic Land Registration.¹⁷

Judging from the theory of legal protection, repressive legal protection is in the form of cancellation of certificates of land rights for holders who are not entitled. Repressive legal protection efforts for disputes over the sale and purchase of inherited land without the consent and knowledge of the heirs, the legal heirs or holders of legal property rights over the inherited land can file a lawsuit to the Court in a criminal and civil manner. In the book of criminal law laws relating to the sale of inherited assets, especially inherited land sold by heirs, does not involve the approval of other heirs that can be entangled with criminal sanctions. This is as explained in Article 372 of the Criminal Code regarding embezzlement and also Article 385 of the Criminal Code relating to land grabbing. In addition to being prosecuted criminally, the heirs who are harmed can also sue civilly with lawsuits against the law. According to Article 1365 of the Civil Code, every person who commits an unlawful act is required to compensate for losses arising from his mistakes. Regarding inheritance rights disputes over land that are illegally controlled, the elements that must be met are:

1. There is an illegal act.
2. This action must result in a loss
3. The act must be done with fault (negligence)
4. Between the deed and the loss that arises there must be a causal relationship.

In this case if the four elements above have been fulfilled then a lawsuit can be filed for an unlawful act.¹⁸

Legal protection for heirs against the transfer of inheritance without the consent of all heirs in Madiun Regency has not materialized. The case of Ms D who sued

¹⁶Musta'in. Sukarmi. Implementation of Registration of Land Ownership Certificates in the Distribution of Inheritance and Problems at the Semarang City Land Office. Deed Journal. Volume 4 Number 2 June 2017. p.136

¹⁷Master. et al.. Legal Protection of Land Rights Through Complete Systematic Registration at the Semarang City Land Office. QISTIE Law Science Journal. Volume 15 Number 1 May 2022. p. 104

¹⁸YLBHI and PSHK. (2006). Association for Legal Aid in Indonesia. Jakarta. p. 283

her son for selling her inherited land illustrates that protection for Ms D as an heir has been obscured by other parties. Even though the certificate had been issued by the Office of the National Land Agency, by filing a lawsuit and with strong evidence, the sale and purchase between BS and Village Head Y should have been canceled and Mrs D's land rights could be reinstated. Because buying and selling must be carried out by parties who really have the right to sell it as in the provisions of Article 1471 of the Civil Code. Buying and selling must also meet the requirements as stated in Article 1320 of the Civil Code. A sale and purchase agreement can be canceled if the act is not in accordance with the elements of the agreement in Article 1320 of the Civil Code, which states four conditions for the validity of an agreement, namely the agreement of those who bind themselves, the ability to make an agreement, a certain thing, a lawful cause. Therefore, the sale and purchase between BS and Y should be null and void by law. This null and void law also results in subjects and objects, and results in criminal and civil sanctions for the parties concerned if they are proven to have committed an unlawful act. To guarantee Ms D's legal protection, PPAT as the party issuing the sale and purchase and BPN as the party issuing the land certificate should also be held responsible.

Legal protection is only given to landowners who are right based on evidence of legal land ownership rights, because legal landowners have juridical data and physically control their land directly, meaning that landowners are entitled, free to control their land and own it. attached to his heirs as long as not transferred to other parties. Certificate as a strong means of proof in proof of ownership, the Certificate guarantees Legal certainty regarding the person who is the holder of land rights, Legal certainty of the location of the land, boundaries and area of land parcels and Legal certainty regarding the rights to his land, with this Legal certainty can be given Legal protection for people whose names are listed in the Certificate as landowners.¹⁹

The law has a function as a protector of everyone's interests. Legal protection itself is the protection and recognition of human rights owned by legal subjects in a state of law based on applicable legal provisions. In order for everyone's interests to be protected, the law must be implemented. Legal protection exists because everyone expects legal certainty that can guarantee protection for themselves from the emergence of arbitrary actions and make society more orderly.

¹⁹Adrian Sutedi. (2006), *Transfer of Land Rights and Registration*, Jakarta: Sinar Graphic. p.30

4. Conclusion

The juridical implication of the transfer of inheritance without the consent of all heirs is an unlawful act as stipulated in Article 1365 of the Civil Code, so that the sale and purchase agreement is of course detrimental to the legal heirs. Legal certainty regarding the sale and purchase of inherited land without the consent of the heirs is guaranteed by the Laws and Regulations in Article 1471 of the Civil Code, which states that the sale and purchase of other people's goods is void, and can provide a basis for reimbursement of costs, losses and interest. Legal protection for heirs against the transfer of inheritance without the consent of all heirs if a certificate has been issued on behalf of another party is given repressive protection, namely filing a lawsuit to the court. Repressive legal protection efforts for disputes over the sale and purchase of inherited land without the consent and knowledge of the heirs, the legal heirs or holders of legal property rights over the inherited land can file a lawsuit to the Court in a criminal and civil manner. This is as explained in Article 372 of the Criminal Code regarding embezzlement and also Article 385 of the Criminal Code relating to land grabbing. Apart from being criminally injured, heirs who are harmed can sue civilly with lawsuits against the law.

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