

Legal Aspects of Inheritance in the Batak community in Parapat

Imman Yusuf Sitinjak¹, Humala Sitinjak²

^{1,2}Universitas Simalungun, Indonesia

immanjoes@gmail.com, sitinjakhumala@gmail.com

Abstract

This study aims to determine how the implementation of inheritance that occurs and the problems that often occur with inheritance in the Batak community in Parapat. Inheritance is not a problem if it is carried out in accordance with the provisions of the division of inheritance, and the division of inheritance is carried out by mutual agreement. However, currently there are many problems that occur when inheritance is not carried out evenly, and it is not uncommon for inheritance to become a dispute for each heir. This study discusses the implementation of community inheritance in Parapat as well as the problems that often occur in the implementation of inheritance and the problem of transferring inheritance rights to the Batak community in Parapat. In the Parapat community, the dominant ethnicity is the Batak, most of them carry out inheritance by dividing the inheritance of customary law. The implementation of the division of inheritance is by focusing on boys as heirs, while for girls it is only limited to "Lean-lean = or commonly called gifts from male heirs". At the time of transferring the inheritance as the right of the heirs, there are many obstacles for the heirs to control their rights, due to the existence of heirs who make it difficult by not recognizing the rights of the other heirs according to their share. When you want to take over, you need the heirs, both boys and girls, to sign. However, when other heirs often do not want to recognize the rights of other heirs, it makes it difficult for other heirs to claim or transfer their rights as traditional owners of the inheritance. Therefore it is important in the implementation of customary inheritance in Parapat, the heirs make a certificate of inheritance rights and also a power of attorney to be able to transfer the rights of the inheritance. Because when later the heirs do not want to recognize or sign for the transfer of rights, the existence of such a power of attorney will not make it difficult for the other heirs to transfer their respective rights in the customary inheritance.

Keywords

inheritance; indigenous peoples; hotel policy



I. Introduction

Since ancient times until now, inheritance law is still in various forms, each population group is subject to the rules of its class. Therefore, matters relating to inheritance are closely related to the kinship system and the close relationship between individual families, thus if one of the family members dies, it is the person who has the closest blood relationship who first becomes the heir, with First look at the origins of the relationship.

Inheritance law in Indonesia from the past until now has various forms, each population group is subject to the legal rules that apply to it in accordance with the provisions of Article 131 IS (Indische Staatsregeling). The population group consists of the

European group and those who are equal to them, the Chinese and Non-Chinese Foreign East groups, and the Bumi Putera group.

The basis and purpose in Law no. 1 of 1974 concerning marriage is stated in Articles 1 and 2, namely marriage is a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on God Almighty. Marriage is legal if it is carried out according to the laws of each religion and belief. Each marriage is recorded according to the applicable laws and regulations.

The legal consequences of this marriage are that they have assets, giving rise to a legal relationship between them and these assets. Because the legal consequences of a marriage will arrive at the execution of inheritance in the future.

If a member of the community dies, then one of the consequences in the law is regarding the status of the property he left behind. If the status of this property is related to other people who are still alive, what is called an inheritance will arise. The provisions of the law of inheritance in the Civil Code (BW) do not provide a definition of inheritance, but only determine the time of inheritance, namely when a death occurs which is written in Article 830 of the Civil Code.

Inheritance is not a problem if it is carried out in accordance with the provisions of the division of inheritance, and the division of inheritance is carried out by mutual agreement. However, currently there are many problems that occur when inheritance is not carried out evenly, and it is not uncommon for inheritance to become a dispute for each heir. Based on this, the researchers wanted to do research "Legal Aspects of Inheritance in the Batak Community in Parapat". Based on the above background, the researchers are interested in researching further about the inheritance problem. The main problem in this research is formulated in the form of the following main questions: How is the implementation of inheritance that occurs and the problems that often occur with inheritance in the Batak community in Parapat.

II. Review of Literature

2.1 Theoretical Framework

Theory is a series of assumptions, definitions, and propositions to explain a social phenomenon systematically by formulating the relationship between concepts. According to Soerjono Soekanto, the continuity of the development of legal science apart from depending on methodology, research activities and social imagination, is also largely determined by theory.

A study aims to find answers to problems and explain specific symptoms or processes that occur, but must be tested by confronting facts that are able to show the truth through theories.

Theory is used as the basis or reason why a certain independent variable is included in the study, because based on the theory the variable concerned can indeed affect the dependent variable or is one of the causes. The function of theory in this research is to provide direction/guidance and explain the observed phenomena. Because this research is a legal research, the theoretical framework is directed towards legal science and directs itself to legal elements.

The theory used in the completion of this research are:

- a. Legal Certainty Theory
- b. Ethical Theory

The theory of legal certainty is a theory that emphasizes the juridical element. Legal certainty has two meanings, namely, first, there are general rules that make individuals know what actions may or may not be done, and second, legal security for individuals from government arbitrariness because with the existence of general rules, individuals can know what may be charged or carried out by the State against individuals.

Ethical theory is a theory that explains the law solely to achieve justice, where the law contains ethical beliefs about what is fair and unfair. The main focus of this theory is on the nature of justice and norms to act concretely in certain circumstances.

2.2 Conceptual Framework

According to Samadi Suryabrata, conception is one of the most important parts of theory, because the concept is a link that explains something that previously only existed in the mind or idea. The role of concepts in research is to link the world of theory and observation between abstraction and reality. Samadi Suryabrata also gives a special meaning to what is meant by the concept, which is related to operational definitions. Concept is defined as a word that expresses a generalized abstraction of specific things which is called an operational definition.

The descriptions of the concepts used in this study are:

- a. Inheritance law in the Civil Code (BW) does not provide a definition of inheritance, but only determines the time of inheritance (article 830 of the Civil Code). Article 830 of the Civil Code states that inheritance only occurs due to death.
- b. The implementation of inheritance is not only carried out in a civil manner, but also according to customs, as well as for the Islamic religion the distribution of inheritance is carried out according to Islamic inheritance.
- c. Policy is a direction of action proposed by a group, a person, or also the government in a certain environment that provides obstacles and also opportunities for a proposed policy to be able to use and also overcome in order to achieve a goal, or also realize a certain goal or purpose.
- d. Heirs are those who are determined as heirs.

2.3 Research Hypothesis

A hypothesis is a temporary answer to a problem that is still presumption because it still has to be proven true. One hypothesis can be tested if the hypothesis is formulated correctly. As a hypothesis in this study are:

The implementation of inheritance that occurs in Parapat is mostly carried out by the community according to customs, both the Simalungun and Toba Batak customs because the majority of the local indigenous people are Toba Batak and Simalungun tribes. The problem that often occurs with inheritance in the community in Parapat is where the assets that have been distributed according to customs, both after the heir dies and the mandate of the inheritance distribution by the heir before he dies and have received their respective portions, are not distributed immediately when the inheritance is open. . This resulted in many obstacles for the heirs to control their rights, due to the existence of heirs who made it difficult by not recognizing the rights of the other heirs according to their share.

III. Research Method

In this paper, the research method used in completing this discussion is normative juridical, namely the approach taken based on the main legal material by examining theories, concepts, legal principles and legislation related to this research. In this study, to

discuss the problem of writing in accordance with the theory and legal basis used by comparing the results of writing books, legal experts and regulations / laws.

Solving a legal issue through legal research requires certain approaches as a basis for developing appropriate arguments. There are various approaches in legal research, namely the statutory approach, the case approach, the historical approach, the comparative approach, and the conceptual approach.

In carrying out research on "Legal Aspects of Inheritance in the Community in Parapat", it is necessary to use a conceptual approach, which is a type of approach in legal research that provides an analytical point of view of problem solving in legal research in terms of the aspects of the legal concepts behind it. , or it can even be seen from the values contained in the norming of a regulation in relation to the concepts used.

IV. Results and Discussion

In principle, everything left by the deceased can be declared as inheritance or inheritance. In this case, what is included is debt and receivables, whether the debt is related to the principal assets, or debts related to personal obligations that become obligations, also includes assets that will be passed down to legal heirs.

Inheritance property is property that comes from those who have died, where the property owned by Simati is what will be divided by the heirs who are still alive. Regarding inheritance law itself in the Civil Code does not provide an understanding of inheritance but only about when inheritance occurs, namely when a death occurs as stated in Article 830 of the Civil Code.

In respect of inheritance, namely the property of a person who has died is the property of the heirs either according to law or through a will. Meanwhile, the implementation of inheritance distribution has certainly been regulated in terms of who has the right to inherit, how much is obtained or how many objects will be inherited as stated in the Act.

Heirs are people who receive inheritance and those who are included as heirs are:

- a. The person who becomes the heir has the right to the inheritance of the heir. This right can arise because:
 1. The existence of blood relations, whether legal or out of wedlock (Article 832 of the Civil Code);
 2. Giving through a will (Article 874 of the Civil Code);
- b. The person who becomes the heir must be present when the testator dies (Article 836 of the Civil Code). With the exception of what is stated in Article 2 of the Civil Code which reads: "A child in a woman's womb is considered to have been born, if the interests of the child want her to die when she was born, it is considered that she never existed". alive when he breathes. The author is of the opinion that if the child is born without breathing, then the child is considered dead at birth and is considered to have never existed."

In the Parapat community, the dominant ethnicity is the Batak, most of them carry out inheritance by dividing the inheritance of customary law. The implementation of the division of inheritance is by focusing on boys as heirs, while for girls it is only limited to "Lean-lean = or commonly called gifts from male heirs". Indeed, that is the problem of inheritance in Batak customary law. Meanwhile, according to civil law in article 852 of the Civil Code, it is stated that heirs according to civil inheritance law are not distinguished

according to gender. In civil inheritance law, heirs due to marriage and blood relations, whether legally or not, those who have the closest blood relationship are entitled to inherit.

Family life is bound by the existence of relationships between family members. Relationships in the family can be viewed from the dimensions of blood relations and social relations (Djamarah in Hendra, Y. et al. 2019).

If seen as a whole, there are many indigenous peoples who prefer to carry out the distribution of inheritance in a civil manner, this is because many think that there is no difference between boys and girls. Because after all there are also in the family which does not have a son even his son is an adopted child. So the principle of carrying out traditional inheritance has actually begun to fade at this time.

Often parents have given a will orally to their children about the share of each child from the assets they have during their lifetime. With the hope that when they die, the child will already know the part of each.

However, even though the Batak custom has its own way of inheritance, when they are going to take over the rights to the property, they must also apply the existing civil law. The civil law in question is that when transferring the right to be heirs such as land ownership, those who are not included in the customary heirs are obliged to participate in signing as heirs of the simati.

Indeed, the existence of positive law that applies in Indonesia must be mingled with customary law. Because when proving the implementation of customary law, it is the implementation of positive law that is partially applied by customary law as legal evidence. It is the same as above that even though the heirs are only boys, when transferring rights, girls are still considered as heirs even though sometimes they do not get anything from the customary inheritance.

With regard to inheritance itself, this is a more complicated problem. When you want to take over, you need the heirs, both boys and girls, to sign. However, when other heirs often do not want to recognize the rights of other heirs, it makes it difficult for other heirs to claim or transfer their rights as traditional owners of the inheritance.

As is the case with the transfer of land rights through inheritance which does not involve all heirs in the transition process, in addition to Article 832 and Article 833 of the Civil Code, as studied by Said Ali Assagaff, et al, that the transfer of rights in inheritance is also contained in Government Regulation of the Republic of Indonesia Number 24 of 1997 concerning Land Registration, as well as in decision Number 100/Pdt.G/2019/PN Amb Juncto Decision Number 3/PDT/2020/PT AMB, where in the decision there is an unlawful act of one of the experts the heir who transfers the rights to the inheritance land without obtaining the approval of all heirs who have the rights of the inheritance.

The implementation of the sale and purchase agreement of inherited land, the process is no different from the implementation of the sale and purchase of individual land, the difference is that the land is certified or not. The sale and purchase of inherited land must be approved by all the heirs whose names are in the list of heirs certificate issued by the Camat or Notary, the sale and purchase of inherited land is carried out without the knowledge of one of the entitled heirs, then the sale and purchase agreement of the inherited land becomes legally disabled, and the heirs who feel aggrieved can claim their rights, even though the sale and purchase of the land has been carried out before the Land Deed Maker Official.

Therefore it is important in the implementation of customary inheritance in Parapat, the heirs make a certificate of inheritance rights and also a power of attorney to be able to transfer the rights of the inheritance. Because when later the heirs do not want to recognize

or sign for the transfer of rights, the existence of such a power of attorney will not make it difficult for the other heirs to transfer their respective rights in the customary inheritance.

V. Conclusion

The implementation of inheritance that occurs in Parapat is mostly carried out by the Batak customary community because the majority of the local indigenous community is the Batak tribe, but that only applies to the Batak tribal community. The problem that often occurs with inheritance in the community in Parapat is where the assets that have been distributed according to customs, both after the heir dies and the mandate of the inheritance distribution by the heir before he dies and have received their respective portions, are not distributed immediately when the inheritance is open. . In the Parapat community, the dominant ethnicity is the Batak, most of them carry out inheritance by dividing the inheritance of customary law. The implementation of the division of inheritance is by focusing on boys as heirs, while for girls it is only limited to "Lean-lean = or commonly called gifts from male heirs". At the time of transferring the inheritance as the right of the heirs, there are many obstacles for the heirs to control their rights, due to the existence of heirs who make it difficult by not recognizing the rights of the other heirs according to their share. When you want to take over, you need the heirs, both boys and girls, to sign. However, when other heirs often do not want to recognize the rights of other heirs, it makes it difficult for other heirs to claim or transfer their rights as traditional owners of the inheritance. Therefore it is important in the implementation of customary inheritance in Parapat, the heirs make a certificate of inheritance rights and also a power of attorney to be able to transfer the rights of the inheritance. Because when later the heirs do not want to recognize or sign for the transfer of rights, the existence of such a power of attorney will not make it difficult for the other heirs to transfer their respective rights in the customary inheritance.

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