

## Settlement of Inherited Land Conflicts for Sale Unilaterally

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### Abstract

*Conflict is a conflict or dispute, a process carried out by people or groups of people to fulfill their goals by opposing the opposing party accompanied by threats and violence. Conflict is usually identified with violence. Later, it was discovered that there were many conflicts in the community related to land assets in the distribution of inheritance. This usually happens because they do not prioritize joint deliberation between family members. Even though the distribution is legal according to the legal provisions for the distribution of inheritance. The problem of land disputes between inheritance is currently a scourge because it is thought that the inheritance can provide welfare for those who receive the inheritance. The news about household rifts due to inheritance in our country is often heard. As in some cases, there has been a unilateral sale of inherited land. Inheritance law contains regulations governing the process of passing on and passing property and intangible goods from a human generation to its descendants. Nature of Inheritance Law The existing and applicable inheritance law in Indonesia is still not a legal unification. The form and system of inheritance law is closely related to the form of society and the nature of kinship. The research method used is a normative juridical approach, namely legal research that uses secondary legal sources, carried out by emphasizing and adhering to the juridical aspects. Nature of Inheritance Law The existing and applicable inheritance law in Indonesia is still not a legal unification. The form and system of inheritance law is closely related to the form of society and the nature of kinship. Meanwhile, the family system in Indonesian society is based on the system of drawing a lineage, which is basically known to have three types of hereditary systems.*

### Keywords

inheritance law; society; land



## I. Introduction

According to Soerjono Soekanto, conflict is a conflict or dispute, a process carried out by people or groups of people to fulfill their goals by opposing the opposing party accompanied by threats and violence. Conflict is usually identified with violence. In every relationship between individuals there will always be conflicts, including family relationships. Conflict in the family usually occurs because of oppositional behavior or disagreement between family members

Later, it was discovered that there were many conflicts in the community related to land assets in the distribution of inheritance. This usually happens because they do not prioritize joint deliberation between family members. Even though the distribution is legal according to the legal provisions for the distribution of inheritance, there are always parties who do not accept the results of the distribution. As a result, there is a struggle for inheritance after the parents die. This kind of thing can cause divisions between families. Family conflicts that occur in this community often occur, especially in the distribution of land inheritance. Many of the people who cut ties of friendship because of fighting over the land they inherited. Not often, there are often murders or fights between families (Aisyah, 2022) Inheritance with an individual or individual system is an inheritance system where each heir gets a division to be able to control and or own inheritance according to their respective parts (Mohamad Imam Suhadak, 2015).

## II. Review of Literature

Inheritance law can be described as all the rules concerning the replacement of the position of assets which include the set of assets and liabilities of the deceased.<sup>2</sup> Inheritance law is regulated in Book II of the Civil Code. Articles governing inheritance as many as 300 articles, starting from Article 830 of the Civil Code to Article 1130 of the Civil Code. ).<sup>3</sup> As soon as a person dies, the heirs by law will replace the position of the heir as the party authorized to own or manage the assets left behind. Regarding the distribution of inheritance, there are three elements in it, namely: (1) The existence of an heir, (2) Inheritance, and (3) The existence of heirs based on the information that the inheritance is in the form of rights and obligations that can be valued in money.

The problem of land disputes between inheritance is currently a scourge because it is thought that the inheritance can provide welfare for those who receive the inheritance. The news about household rifts due to inheritance in our country is often heard. As in some cases, there has been a unilateral sale of inherited land (Supriyani, 2016).

For example, Wirjono Prodjodikoro, uses the term inheritance law. Hazairin, using inheritance law, and Soepomo put forward the term inheritance law. Inheritance law (Soepomo, 1966: 72) Inheritance law contains regulations governing the process of passing on and passing property and intangible goods from a generation of people to their descendants. Inheritance law is the law of property in the family environment, because of the death of a person there will be a transfer of assets left by the dead and the consequences of this transfer for those who obtain it, both in the relationship between them and between them and third parties (Sarini Ahlan sjarif 1983: 9)

With the term inheritance law above, there is an understanding that includes the rules and principles governing the process of transferring property and the rights and obligations of a person who dies. From some of the definitions above, it can be seen several terms, namely: 1. Inheritance is a person who dies, and leaves assets to others 2. Heirs: people who are entitled to assets/inheritance 3. Inheritance: assets left behind in the form of assets and passive (boedel) 4. Inheritance: the process of transferring one's assets (rights and obligations) to the heirs. According to Hilman Hadikusumah (1980: 23), the term inheritance has two meanings, namely: a. Means the forwarding or appointment of the heirs when the heir is still alive b. Means the distribution of inheritance after the heir dies. Furthermore, he argues related to the term that inheritance shows the assets of the deceased person, who is then called the heir, whether the property has been divided up or is still in an undivided state (Himan Hadikusumah, 1980): 21).

Ad. 1. Transferred assets must meet 2 conditions, namely: a. General requirements: 1. There are people who die (Article 830 of the Civil Code) 2. There are heirs who are left behind (Article 836 of the Civil Code) 3. There are assets left behind (Article 1100) b. Absolute condition There must be someone who dies, unless it can occur in an absence (Article 467 jo 470 of the Civil Code) that the testator has not died.

Ad. 2. For the sake of the law (*van rechtswege*) immediately, known as the principle of *le mort saisit le vif*. This principle is contained in Article 833 paragraph (1) of the Civil Code, abbreviated to the principle of *saisine* rights. Therefore, immediately the heirs who are left behind can sue the third party who controls the inheritance so that the inheritance is returned to the inheritance *boedel*. This right is called *hereditatis petitio* (Article 834 of the Civil Code).

Assets in the field of property law are contained in book II and book III of the Civil Code, although there are exceptions. While the rights and obligations contained in book I of the Civil Code do not transfer, there are also exceptions. The assets (rights and obligations) that do not transfer from book II and book III of the Civil Code are: a. Rights and obligations of the power of attorney agreement (Article 1792 of the Civil Code) b. The rights and obligations of a work agreement or labor agreement (Article 1601 a Civil Code c. Membership of a partnership/company (Article 1646 of the Civil Code) d. Life insurance interest rights (Article 1776 of the Civil Code) e. Use of proceeds (Article 756 of the Civil Code) f. There are with restrictions, namely the author's rights for 70 years (Article 58 paragraph (1) in conjunction with the explanation of point a of Law No. 28 of 2014 concerning copyright) 8 The rights and obligations that are transferred from book I of the Civil Code are the right to deny the legitimacy of a child Article 257 of the Civil Code). There are rights and obligations from book I of the Civil Code which have monetary value but do not transfer, such as the right to profit (Article 311 of the Civil Code) and the right of *alimantation* (Article 225 of the Civil Code).

The Civil Code recognizes 2 kinds of inheritance systems, namely: a. System of inheritance *ab intestate* (according to the law/because of death/without a will) b. Inheritance system according to a will (testament).

Nature of Inheritance Law The existing and applicable inheritance law in Indonesia is still not a legal unification. According to Pratiwi (2020) in social life, law and society are two interrelated things that can never be separated. Through instruments, unlawful behavior is prevented and repressive measures are pursued (Tumanggor, 2019). From the aforementioned provisions, it proves the existence of new developments regulated in this Law (Purba, 2019). The form and system of inheritance law is closely related to the form of society and the nature of kinship. Meanwhile, the family system in Indonesian society is based on the system of drawing a lineage, which is basically known to have three types of hereditary systems. The form of society and the nature of kinship in Indonesia according to the hereditary system, namely:

1. The patrilineal system / paternity in principle, the system that draws the lineage of the father or the lineage of his male ancestors. This system in Indonesia is found in people in Gayo Land, Alas, Batak, Ambon, Irian Jaya, Timor, and Bali.
2. Matrilineal system / maternal nature System that draws lineage from female ancestors. This maternal family in Indonesia only has one region, namely Minangkabau
3. Bilateral or parental system/father-mother nature Draws lineage either through the father's line or the mother's line so that in this kind of kinship there is essentially no difference between the mother and the father: Java, Madura, East Sumatra, All Sulawesi, Ternate, Lombok, Riau, Aceh, South Sumatra.

Based on the description above, the authors conducted a study with the aim of finding out how the inheritance distribution system is if the land has been sold unilaterally.

### **III. Research Method**

The research method used is a normative juridical approach, namely legal research that uses secondary legal sources, carried out by emphasizing and adhering to the juridical aspects. The type of research used with a descriptive approach is to provide data that is as accurate as possible for humans, circumstances or other symptoms.<sup>4</sup> Types and sources of data include, secondary data has a scope that includes personal letters, books to official documents issued by government. <sup>5</sup> Furthermore, for primary data, namely the results of interviews. The method of collecting data is through library research and interviews, the data obtained by the author from field studies in the form of interviews with the respondents or sources concerned, for this reason, data collection and compilation is carried out systematically and describes it in regular sentences with a conclusion drawn.

### **IV. Discussion**

In the problem of family conflict that occurs, there must be a way out or a solution to overcome it. There are several explanations given by conflicted families. The conflict resolution above can use the theory of sociology of law according to Soerjono Soekanto, namely the scope of the sociology of law includes: First, patterns of behavior (law) of citizens. Second, laws and patterns of behavior as creations and manifestations of social groups. Third, the reciprocal relationship between changes in law and social and cultural changes. <sup>19</sup> If viewed from the theory of conflict according to Soerjono Soekanto, this then raises the pros and cons in society. If it is reviewed further, the actual family conflict that occurs has the aim of protecting the remaining inheritance land that was previously given by the heirs to the heirs. In this case, according to the researcher, both parties have their respective authorities in defending their rights. However, the way they resolve this problem is not through mediation or through deliberation. Thus, causing a prolonged impact and entering through legal channels. As for the solution to this problem, it should be by dividing the inheritance based on the provisions that should be obtained by each heir, then the nominal value is calculated first.

This is done to avoid injustice in the distribution of inheritance because all the heirs have accepted it with the willingness of their respective hearts. This is in accordance with the Article 183 of the Compilation of Islamic Law (KHI) which states that: "The heirs can enter into an agreement to implement peace in the distribution of inheritance, after each heir is aware of his share." This is also in accordance with the explanation of the sociological theory of law above which explains sociologically, every society that is faced with social changes must show social discrepancies and conflicts and that is a common thing. For this reason, the function of law here is to restore social conditions and order in society, including solving social problems that arise.

Nature of Inheritance Law The existing and applicable inheritance law in Indonesia is still not a legal unification. The form and system of inheritance law is closely related to the form of society and the nature of kinship. Meanwhile, the family system in Indonesian society is based on the system of drawing a lineage, which is basically known as three kinds of heredity system

## V. Conclusion

Settlement of family conflicts regarding inheritance sold unilaterally by one of the heirs based on the Compilation of Islamic Law is in accordance with article 185 which states that the heir who dies before the heir, then his position can be replaced by his child, except those mentioned in article 173. The legal nature of inheritance is also determined based on the form of society and the nature of kinship. While the family system in Indonesian society is based on the system of drawing a lineage, which is basically known to have three kinds of heredity system, so that in resolving inheritance disputes which are sold unilaterally, it must be resolved according to applicable customs.

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