

## HERITAGE STATUS FOR THE HEIRS IGNORING THEIR LIABILITIES IN BALINESE LOCAL CUSTOMARY LAW PERSPECTIVE

### Case Study: The adopted child who returned to his/her family

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Received: 28/04/2018

Revised: 02/06/2018

Accepted: 28/07/2018

How To Cite: Srimurti, I. N. Heritage Status For The Heirs Ignoring Their Liabilities In Balinese Local Customary Law Perspective Case Study: The Adopted Child Who Returned To His/Her Family. *Kertha Wicaksana*. 2018. Volume 12, Nomor 2. Hal 98 - 103. <http://dx.doi.org/10.22225/kw.12.2.705.98-103>

#### Abstract

In human life, inheritance, especially in the form of land, is a very important asset because it is a very basic need for human beings. There are various ways to get inheritance, especially property rights on land. One of the ways in question is by being an heir. This research intends to answer the question of how the status of the estate inherited by the heirs but leaves his obligation as heir when examined from the perspective of Balinese customary law is. The type of research used in this study is empirical law study. Data analysis was done by using qualitative data analysis technique. The processed data was presented using systematic description techniques. The results of the present study indicate that the status of inheritance in any form, especially in the form of land controlled by the heir who leaves his obligation, in Balinese customary law, is illegitimate. This means that the inheritance of the heirs must be returned to those who are deemed to have the right. The technique of solving the problem of the illegality of acquisition of inheritance by the heirs who neglect their obligations, namely through non-litigation or through deliberation to reach consensus by mediation by Kerta of Customary Village. If through the path of consensus can not be reached, settlement can be through litigation or legal efforts can be taken, that is by making a civil suit to the court based on the provisions of committing the act against the law.

**Keywords: Inherited Land; Heir's liability; Balinese Customary Law.**

#### I. INTRODUCTION

Land is the most underlying need for human. Its status is unavoidably important and strategic. Apart from the land, there are other human needs, in addition to their basic needs. However, the ownership of land rights, especially for the use as a place of residence and as a source of life, makes it a source of disputes. Since the land can be a source of conflict, various regulations, such as formal law such as positive law and non-formal law, such as customary law, are always made to be maximally obeyed by society. In order to obtain the right ownership of land, several general ways can be undertaken through testament, becoming a heir, sale and purchase, granting.

All land is scarce due to competing demands for its use, and sustainable land use and coordinated land policies have come under increasing pressure from industrialization and

urbanization and ecological civilization construction (Wang, Lin, Glendinning, & Xu, 2018). Decisions about land use are sites of political and legal contestation about social and environmental justice in both rural and urban contexts (Van Wagner, 2016). The land narrative is based on the dichotomous distinction between urban and rural-agricultural land, and consequently between urban and rural-agricultural settlers (Hananel, 2015). Cultivated land use is a process by which people make use of the ecosystem service functions of cultivated land to meet their own needs (Li, Zhang, Zhang, & Wu, 2017). The migration of people from rural to urban areas in the region has overwhelmed the capacity of municipal governments to provide both infrastructure and social services (Hawley, Miranda, & Sawyer, 2018). The right to land possession and use of peasants and pastoralists is perpetual as it cannot be restricted except in cases

of expropriation by the government authorities (Tura, 2018).

Efforts to plan economic development tend to apply uniform and supposedly optimal solutions, increasingly expressed in terms of targets, such as, in the area of interest here, the percentage of registered and properly mapped land (Arruñada, 2018). However, although land reforms have advanced in many developing countries, some continue to suffer from a lack of effective land use and management (Ekpodessi & Nakamura, 2018). "Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs." Sustainable development focuses on improving the quality of life for all of the Earth's citizens without increasing the use of natural resources beyond the capacity of the environment to supply them indefinitely (Marzukhi, Omar, & Leh, 2012).

The right ownership of land which is automatically obtained by an heir is called an inheritance land. The right ownership of land obtained by the heirs of the testator is obtained when the first heir passed away. Based on the laws and regulations prevailing in the country of Indonesia, the intended first testator here is a person who has passed away and left something that can be transferred to a living heir, while the heir is the person who is entitled to receive the property of the deceased person either because of relationship of family, marriage, or other matters according to the prevailing laws and regulations. The state-owned industrial land ownership is protected by law. The collective industrial land ownership from informal market is not protected by law, so there is the risk of the land requisition by the state (Ye et al., 2018).

Based on Balinese customary law, which is carried out in various customs or traditions of society that are continuously performed by generations of Balinese society, heir is the son of legitimate married couples. In addition, a sentana peperasan (adopted child) who has been adopted through a procession of meras, is also referred to as heir (Diatmika, 2007). As for the sentana peperasan in the context of this study is a foster child who can be from a blood family or perhaps another child whose origin is unknown but has been processed through a ritual known as meras sentana ceremony or adopting a child. After the ceremony was performed, the nyobyahan ceremony to the village krama (a ceremony to

inform the village community) will be done.

In ancient times, the procession of adoption of a child lasted at the event of announcing to the village inhabitants, but lately, the process was felt not enough. It is because of the legal effort to apply for validity of the appointment of the so from a judge in the local District Court is still required. Specifically, this study will conduct a study of an adopted child who had been an heir and had gained heritage estate until now, but he ignored the effort to carry out his duties as he returned to his family of origin. In Hindu Law, the act of ignoring the obligation is known as Menawa Dharmasastra which is represented in Balinese customary law.

There are some disgraceful acts that an heir probably does and can ultimately cause the right as an heir to be withdrawn from him. These disgraceful acts are, among others: to neglect obligations as a heir, to abandon the testator; to not perform ritual worship, either in kahyangan of the village, in the sanggah or pengajan; to not perform obligations as customary village karma; to attempt to kill the heir; to perform mystical activities such as nyet, ngeleak, desti, and trangjana; to misuse inheritance, especially for gambling, dissipation; and to convert his religion to Islam, Christianity, or perhaps other religions (Windia: 2008).

The above exposure is not cumulatively all must have been done by an heir causing the inheritance rights to be revoked, but at least if one of them is violated, the right of an inheritor can be revoked. The process of revocation of the right of an heir who ignores the duties and responsibilities is done through local customary institution known as Kerta Desa (Mardika: 2015).

Compared with the positive law of inheritance law in Indonesia, based on the Civil Code (KUHperdata), persons who can be entitled to be the heir of family members are those who are in the line descent of blood, whether legally or outside of marriage; husband or wife who live the longest according to the rules listed below.

If a family member of the same bloodline and husband and wife who live longer does not exist, all the treasures of those who died belong to the state. The consequence is that the state must pay off all its debts. This is confirmed in article 832 of the Civil Code. Heritage Inheritance is something left by the deceased in the form of money or other property which by legislation is

justified to be inherited to the heirs.

However, in the Balinese customary law, inheritance, right ownership of land is obtained from inheritance without testament/ ormit is known as hereditary land inheritance in the patrilineal line system (*vaderrechtelijk*) to bring rights and duties. It means that a son who becomes an heir besides being granted the right to enjoy and utilize the inheritance, he is also required to carry out the obligations left by the testator, just as it is; in the form of maintenance of sacred buildings; and to carry out religious duties such as, to carry out *piodanan*/ceremony at the temple, to perform the ceremony of *Pitra Yadnya*/pengabenan, and so forth.

In the inheritance system, Balinese society generally adhere to the fatherly line or *vaderrechtelijk* system. In this system Balinese society appears that a wife entered her husband's family, so her children must stay in his husband's family and there is no straight line relationship with her. This is because sons have to pass on the rights and duties of the family lineage. In this study, the story of an adopted son who was nurtured by his mother after being divorced at a time of being in a pregnancy, but in the course of a long life there is a desire to return to the family on the father lineage, is reviewed from a legal perspective. In other words, the adopted child who has earned the right to be an heir but abandoned his or her adoption status and also abandoned all the obligations he had assumed, but the inherited property rights were not returned to him.

When examined from the standpoint civil law rule, the act of an adopted child who abandoned his duty should also leave his rights, especially when viewed from the side of the principle of equilibrium. Such actions result in harm to the heir. Such a case occurred in Buayang, Gunaksa Village, Dawan Sub-district, Klungkung Regency.

The urgency of regulatory legislation concerning the rights of an heir who abandons his duties but demands his rights triggers the importance of conducting a scientific study to take care of and reveal such the situation. Hence, this study is aimed at exploring the status of land right ownership as an inheritance for a heir abandoning his duties and revealing leading factors of abandonment on the duties.

## II. METHOD

This type of research is an empirical law study, conducted by observing and examining the phenomenon of an adopted child who is the heir of a family inheritance but has abandoned his duties since he returned to his home family, which finally he had a desire to regain his right as an heir of inheritance in the form of land right ownership. Data were collected using observation, interview, and documentation techniques. These three instruments were used to observe events related to the case of the return of an adopted children to claim his rights as heir of inherited lands; to interview family members where this child is appointed; and to take notes and record the process of observation and interview as documentation material. In addition, the laws governing adopted children, as an heir to a property, in particular land rights ownership, were collected through literature study, including collecting relevant studies that have been previously conducted. Data were analyzed and presented qualitatively, that is, by explaining data in the form of words, phrases, and sentences.

## III. DISCUSSION

### *Status of Inheritance Land Rights Ownership for Heir Ignoring His/Her Liabilities*

The status of the property rights to an estate inherited by an heir abandoning the obligation is illegal. Therefore, through the local customary village institution, an heir who leaves the duty may be required to return the land rights they have already received, as there are indications to harm the other party. Therefore, an heir who leaves the duty and still controls the inheritance may also be challenged by civil law on the grounds that he has committed an act against the law.

In the context of this research, the origins of the heirs are not distinguished, whether he/she is a biological child of the testator himself or someone else's child. If an heir abandons his/her *swadarma* 'obligation', *swadikara* 'rights' must also be abandoned. In other words, the right of an heir who does not perform his duty can be forcibly revoked through the procedure of bringing a lawsuit to court. Thus, an heir who neglects to perform his duties may lose the right to inherit property.

The customary law community in Bali recognizes various types of inheritance, among others, are:

Inheritance of economic value.

A magical heritage worth.

Inheritance in the form of debt to both the person and the gods.

One of the procedures for obtaining land rights ownership is through the transfer of land rights acquired from inheritance or often referred to as a transitional right. According to civil law, if the right holder passed away, the right is due to law turning to his heirs. It should be understood that "transferring the right" indicates the transition of rights to a land without passing through a particular legal act; that there is only a legal event. Therefore, the right to land only switches because of a legal event. The right is, by law, transferred to the heirs. The transition of land rights ownership reviewed in this study is governed by the law of inheritance, which also depends on which inheritance law is used by the right holder and the heirs concerned, e.g. whether the law of inheritance is under religious law or under customary law. The division of inheritance is governed by customary law or religious law in each region. In other words, it is not regulated under the laws of the land state. Every person who is termed a heir, the procedure of dividing the inheritance must be based on the legal system of inheritance prevailing in their respective regions. The law of the land provides space for the provision of land tenure derived from inheritance, as well as matters concerning the provision of proof of rights to the heirs.

#### ***Leading Factors of Land Rights Ownership Revocation***

Basically, the so-called inheritance is not only property of economic value or assets, but all forms of debt, either debt to other parties or liabilities or debt to the gods, referred to as *nawur sesangi*; these are all referred to as inheritance. Principally, rights and obligations ideally take place in a balanced, fair, and humane way. The point is that an individual's heirs should not only demand their rights but override their obligations. According to Balinese customary law, some acts that may cause the rights of a heir to be revoked are, *inter alia*, he: neglects obligations as heirs, leaving the testator; does not perform ritual worship in *sanggah* of the village or in the *sanggah kahyangan* or *pengajan* own; does not perform obligations as customary village karma; tries to kill the heir; does mystical activities such

as *nyet*, *ngeleak*, *dest* and *trangjana*; abuses the inheritance, especially for gambling, dissipation; and converts his religion to Islam, Christianity, or perhaps other religions (Windia: 2008).

The right to land derived from inheritance is the right to a land that transfers either in the absence of a certain legal act or in the presence of a legal event (H. M. Arba, 2012). In the law of inheritance, there are two legal systems namely the legal system of inheritance based on religious law and the legal system of inheritance based on customary law. In Bali, the inherited system of inheritance is a system of inheritance with which is based on customary law. In customary law, the transition of land rights is carried out according to the father lineage (*vaderrechtelijk*), often called the patrilineal system, where in this system the person entitled to be the heir is only sons and unmarried daughters who are still with their father's family. Every married daughter who follows her husband or leaves their father's family is not entitled to be an heir.

However, specifically for the proceeds of wealth derived from the work of the parents, they are divided based on two division systems of inheritance with a pattern of 2 to 1, which by the inhabitants of Bali is known as '*ategen* and *asuhun*'. In this system, boys get inheritance as much as *ategen* or 2 parts, while daughters get their part as much as *asuhun* or 1 part. As for the reasons why sons must obtain twice as many inheritances from daughters is the consideration that sons hold the obligation to continue the parent lineage for things, such as continuing the obligation to carry out the ceremony in the field of religion including performing the ceremony of *Ngaben* and *piodalan*, as well as caring for temple buildings, carrying out village duties and other social obligations relating to religion, customs and culture. Meanwhile, for hereditary heritage lands, daughters do not get the right to be an heir except for unmarried daughters. If a married daughter follows her husband and lives in his house, she is not entitled to be an heir.

#### ***Liabilities of an Heir on the Inheritance of Land Rights Ownership in the Perspective of Customary Law of Bali***

The Indonesian Book of Civil Code article 833 regulates the inheritance that the heirs, by themselves, have the right because the law is entitled to the goods and all rights and all accounts of the deceased. In the perspective of Balinese customary law, in addition to receiving

the right as mandated by law, the heirs must also fulfill all obligations arising from the acceptance of the right of being an heir. In the case of carrying out the duties, an heir performs a religious ceremony such as cremation, upaca piodaalan at the temple, maintains the existing buildings in the temple of carrying out social obligations and other customs. In performing this obligation, the heirs shall not only carry out one of the obligations he shall perform.

An adopted child who receives the land right ownership acquired by a non-willful inheritance shall carry out obligations whose capacity is equal to the child's biological capacity of the testator because he receives the same right. In performing his duty, the adopted son, observed and discussed in this study, only performed the duties of performing his religious Pitra Yadnya ceremony (Ngaben) for his grandmother, and appealed to the extended family (dadia) to be allowed to leave the status of adopted child so that he could return to the family of his biological parents. In paruma dadia (concensus), the heir did not want to return the estate of two of former heirs, and instead he intended to own it on the grounds that he had performed the ceremony of Pitra Yadnya (Ngaben) for his deceased grandmother

When viewed from the chronology of this incident, heirs who carry out the ceremony Pitra Yadnya (Ngaben) can not immediately master the rights to land obtained from inheritance without a will. If the heir who has abandoned his obligation as an heir due to abandoning the status of adopted child insists on not returning the inheritance to the rightful heir, the rightful expert in the inheritance may file a claim to take the inheritance controlled by the heir who leaves the obligation. The settlement of the case can be done through mutual consensus with the customary counselor and will then be completed in the village meeting. If this settlement path is unsuccessful, the legal course for resolving it in court (litigation) may be made because such action by an irresponsible heir is in breach of any applicable inheritance law and may be accused of being unlawful in accordance with the provisions of article 1365 Civil Code.

In solving this case, the author tries to mediate with the parties to the dispute. The core point that the author uses is to convey to the disputing parties that under the terms of inheritance law from the Balinese customary law perspective, the Balinese community embraces the paternal

lineage system of fathers who straightly acknowledge boys as heirs and girls who are allowed to get the right to be the heirs to the property of the parents are the unmarried child of the unmarried. Furthermore, it has also been submitted that the heir who is an adopted child who abandoned his duty and abandoned the adopted child's status to return to the family of his real father, should return the control of the inherited land through a transition without a will. The final outcome of the mediation process is the heirs who are the adopted children giving away the right of inheritance and he is able to buy the land of residence and build a new residence. Based on this fact, the author state that the status of the right to inheritance land controlled by an adopted child as an heir, to the extent that it has not returned to the rightful heir, the right to the land is still categorized as illegal and has the potential to arise that must be resolved in court.

#### **IV. CONCLUSION**

According to Balinese customary law, some acts that cause the rights of the heirs to be withdrawn are among, among others: neglecting an obligation as an heir, leaving the heir; not performing ritual worship in kahyangan of the village, in the sanggah or pengajan own; not performing obligations as a part customary village karma; trying to kill the heir; doing mystical activities such as nyet, ngeleak, dest and trangjana; abusing of inheritance, especially for gambling, dissipation; and converting his religion to Islam, Christian, or perhaps other religions.

Meanwhile, on the procedure for obtaining the inheritance which is overrun by the heirs who abandon the duty, according to law can be done by talking in a kinship with a deliberation to reach consensus. In this case may involve the mediator ie the party of an adat village institution called sebgai Kerta Desa or a custom justice judge whose existence is in Bali.

If the deliberations do not reach consensus or fail, the second recommended way is to file a civil lawsuit to the court on the basis of the provisions of unlawful acts set forth in article 1365 of the Civil Code with all its consequences. As for what is meant is that if the victory of kinship relationships become less harmonious, and the loser will save revenge.

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