

Jurnal Notariil

Jurnal Notariil, Vol. 6, No. 1, Mei 2021, 9-15

Available Online at <https://ejournal.warmadewa.ac.id/index.php/notariil>

P ISSN 2540 - 797X

E ISSN 2615 - 1545

LEGAL FORCE OF INHERITANCE CERTIFICATES ISSUED BY THE VILLAGE HEAD AS THE BASIS FOR OBTAINING THE OWNERSHIP RIGHT TO LAND (IN BLIMBINGSARI VILLAGE, JEMBRANA REGENCY, BALI PROVINCE)

Ni Putu Theresa Putri Nusantara, I Made Suwitra and I Nyoman Sujana
Universitas Warmadewa, Denpasar-Bali, Indonesia

Email: theresaputri20@gmail.com

How To Cite:

Nusantara, N, P, T, P., Suwitra, I, M., Sujana, I, N. (2021), Legal Force of Inheritance Certificates Issued by The Village Head as The Basis For Obtaining The Ownership Right to Land (In Blimbingsari Village, Jembrana Regency, Bali Province), *Jurnal Notariil*, 6 (1) 2021, 9-15, Doi: <https://doi.org/10.22225/jn.6.1.3610.9-15>

Abstract

This study examines the existence of the Bali customary law for the transfer of land rights in Blimbingsari Village, and examines function of the Inheritance Certificate for the transfer of rights to land through inheritance. The research method used in this study is an empirical law research. In this case the research uses empirical legal research conducted in Blimbingsari Village, Jembrana Regency. The results showed that the inheritance law that applies to Christian Balinese tribes in Blimbingsari Village, Jembrana, Bali is receptive to Balinese customary inheritance laws which should only be used for Hindus. In its implementation, it is not the Hindu religious law that was received by the Blimbingsari Village community but the Balinese customary inheritance law that was received. Moreover, legal force of a Certificate of Inheritance issued by the village head for the Christian Balinese community in Blimbingsari Village, Jembrana, Bali can be used as a basis in the transfer of ownership rights to the land for the heirs.

Keywords: Balinese Traditional Inheritance Law; Blimbingsari; Inheritance Certificate; Village Head

1. INTRODUCTION

Indonesia is a country that consists of various ethnic groups, races and religions. Bhinneka Tunggal Ika is a reflection of the cultural diversity of the Indonesian people within the aegis of the Republic of Indonesia. It was because of this diversity that led to the Dutch colonial administration in the past colonizing the population classification. Furthermore, in accordance with the provisions in Article 163 IS, it is divided into 3 (three) classifications in inheritance consisting of several groups:

European group. People included in this

group are Dutch, British, French;

Foreign Easterners. People included in this group are Chinese, Pakistani, Arabic; and

Son of Earth Group. The people included in this group are Original Indonesians (Ramulyo, 1996).

Furthermore, based on Article 131 IS regulates the law used for groups divided according to classification under Article 163 IS, which consists of (Ramulyo, 1996):

European group : Burgerlijk Wetboek, in Article 75 paragraph (2) Regerings Reglement

Foreign Easterners : Article 75

paragraph (4) Regerings Reglement

Son of Earth Group : Article 75
paragraph (3) Regerings Reglement

There are 2 (two) conditions that must be fulfilled to be referred to as subjects of heirs, namely: heir and heir. Heir is a person who died. Inheritance can only be carried out when someone dies as stated in Article 830 BW. While the heirs who are present at the time of the death of the testator as mentioned in Article 836 BW (Prawirohamidjojo, 2000).

In the process of inheritance, the most important element is the heirs, heirs, and goods to be inherited. But besides these three elements, the heir in this case can make a will that will be carried out according to his last will when the heir dies. Furthermore, the will is one of the conditions in the management of an Inheritance Certificate.

Discussing about inheritance, of course, cannot be separated from the making of an Inheritance Certificate, in which Inheritance Certificate is used as proof that contains the subject of rights or who are the heirs who are entitled to the inheritance of the heir. Background with the implementation of the classification system of the population in the making of a Certificate of Inheritance contained in Article 111 Regulation of the Minister of Agrarian Affairs / Head of National Land Agency Number 3 of 1997 concerning Government Implementation Number 24 of 1997 letters b and c concerning Land Registry, which states as follows:

b. death certificate in the name of the right holder listed in the certificate concerned from the Head of the Village / Lurah where the heir lived at the time of death, hospital, health worker, or other authorized agency;

c. roof of inheritance which can be in the form of:

testament of the testator; or

court ruling; or

Determination of Akim / Chair of the Court; or

(a) for native Indonesian citizens: certificate of heirs made by heirs witnessed by 2 (two) witnesses and confirmed by the Head of the Village / Kelurahan and Sub-District where the heir lives at the time of death;

(b) for Indonesian citizens of Chinese descent: notarial deed of inheritance from the Notary Public;

(c) for other Indonesian citizens of Eastern Eastern descent: certificate of inheritance from the Probate Court.

The position of the Inheritance Certificate in the inheritance system in Indonesia is very important. In the process of transferring land rights carried out by a Notary public the documents of the parties need to be submitted to the PPAT (Land Deed Making Official) prior to signing the deed of sale and purchase, this is so that PPAT can prepare its AJB in advance so that on the agreed day for the signing of the AJB (Deed of Sale) can be done immediately. Where one of the required documents is the certificate of inheritance.

Transfer of land rights due to inheritance occurs by law, which means that with the death of the testator, the heirs obtain ownership rights to the assets and assets of the testator. The transfer of inheritance rights in the form of land is proven by a certificate of inheritance made by the heirs and known or authorized by the authorized official. With the certificate of inheritance, then registration is carried out at the local Land Office so that it is recorded in the land book about the new right-holders namely on behalf of the heirs, this is very important so that the heirs have legal force (Setiyarini, 2014).

This writing discusses how the inheritance law applies to native Indonesian groups namely Balinese who embraced Christianity in one Christian village located in the western part of the island of Bali which lies transversely from east to west within the administrative area of Jembrana district namely Blimbingsari Village. This village is one of ten villages in Melaya sub-district, Jembrana Regency.

There is a uniqueness in Indonesia, which is related to the inheritance legal system in Indonesia which is pluralism. Especially in Bali. The inheritance legal system in Bali still uses the customary legal system which in later execution of inheritance law uses standards according to customs in Balinese society. The majority of residents in Bali are Hindu.

The management related to inheritance still uses the customary inheritance legal system which is carried from generation to generation. The customary inheritance law of Bali which is also used in the management of the customary inheritance law system in Bali is used for Balinese people who are Hindu. However, the reality is that there is an area in Blimbingsari Village, Jembrana Regency which as a whole is Christian, there are still some people who still use the Balinese traditional inheritance legal system, which should use the BW inheritance legal system.

In Blimbingsari Village, in the process of managing the heirs, which was carried out by the Village Head, there were still several separate polemics and problems. Starting from making a will, making Inheritance Certificate that is used as a basis for acquiring land rights. Blimbingsari village is indeed different from the villages in general in Bali, the village community in Blimbingsari village is Christian, even though their religious identity is still attached and still exists today, especially regarding their social and cultural sides (Sunarya, 2009). So that in the transfer of land rights in Blimbingsari Village there are still some problems which are separate because the villagers should not use the customary inheritance law of Bali but are still being used. This needs the existence of legal unification related to the rule of law regarding inheritance in Blimbingsari Village. The similar study with this present study was conducted by (Kirana, Nurjaya, & Suryokumoro, 2019) that examined "The Authority of Property and Heritage Agency Regarding Making of Inheritance Certificate for the Descendant of East

Asian". The result of this study showed that the basis of the authority of Property and Heritage Agency is not in accordance with the state of the nation at this time and also based on the hierarchy of legislation is lower than the position of Law No. 23 of 2006. In addition, the certificate of inheritance made by the Property and Heritage Agency does not guarantee certainty and legal protection for Indonesian citizens because the strength of proof is not as perfect as the deed of inheritance made by the Notary. Thus, based on the explanation above, this study aims to examine the existence of the Bali customary law for the transfer of land rights in Blimbingsari Village, and to examine function of the Inheritance Certificate for the transfer of rights to land through inheritance.

2. METHOD

The method used in this study is Empirical Law Research. In this case the research uses empirical legal research conducted in Blimbingsari Village, Jembrana Regency. It can be found legal facts and behavioral facts both in the community, legal entities and government agencies in this Blimbingsari Village. In other words, the type of sociological legal research can be said as field research which examines the writing by using facts that occur in the community and related to the applicable laws and regulations so that it can lead to the identification of problems and ultimately to the resolution of problems. So that what is meant in this study is research conducted directly by looking at real or real situations between community relations in applying the applicable legal rules, which are obtained through the process of taking facts with the interview method both direct interviews (interviews) and free guided interviews, observation techniques used where the author can directly feel and see directly the circumstances and situations in this study.

3. RESULTS AND DISCUSSION

The Existence of the Bali Customary Law for the Transfer of Land Rights

Bali's customary inheritance law is inheritance law that cannot be separated from customary inheritance law in Indonesia (Panetja, 1986). The customary inheritance law of Bali is emphasized in inheritance law which only applies in the scope of Bali which is obeyed and implemented for the Balinese Hindu community. Soepomo in the customary inheritance law states that the regulations governing the process of passing on and passing on property and intangible goods from a human force to their descendants or heirs (Soepomo, 2016).

In inheritance also requires the existence of 3 (three) elements of inheritance that must exist, namely the existence of inheritors, inheritance and inheritance experts. These three elements are cumulative not alternative. So if one element is not fulfilled, the inheritance process cannot be carried out. But there are things that can create problems or disputes, namely the heir element. In Balinese customary inheritance law applies to Balinese indigenous people who adhere to a patrilineal inheritance system. This is based on thought because men receive inheritance from their fathers and have gone down and down. In the Balinese indigenous community family inheritance can be in the form of objects and are classified in the following classification (Windia & Sudantra, 2006):

Tetamian;

Tetatadan;

Pegunakaya / Gunakaya.

The Balinese customary inheritance law is a characteristic of the Balinese indigenous people which has been carried down and passed down and imbued with Balinese Hindu communities. However, in Blimbingsari Village which is a community whose residents are Christian villages still use Balinese customary inheritance law which should only be used for Balinese Hindu communities. This can be legal uncertainty. Blimbingsari villagers are

supposed to use BW's legal rules but there are still some people who use Balinese customary inheritance law.

This is based on the factors that cause the community to use Balinese customary inheritance law, namely heredity. The Blimbingsari Village community still has descendants of the above who are Balinese Hindu communities. So that in the process of inheritance even though the Hindu is still using Balinese inheritance law. So that in the process of inheritance still uses Balinese customary inheritance law that should only be used by the Balinese Hindu community. Second, the lack of socialization and public ignorance about what laws should be used for inheritance purposes.

The Function of the Inheritance Certificate for the Transfer of Rights to Land through Inheritance

Inheritance Certificate in Indonesia has a very plural nature of its application in terms of inheritance in Indonesia. Inheritance Certificate in this case is a letter containing a statement stating the proof of inheritance, where the letter is a letter that provides proof that what is stated in the Inheritance Certificate is truly the rightful heir and heir. In practice in Indonesia in connection with Inheritance Certificate is the basis of the right for someone to take care of their rights. Associated with inheritance also cannot be released with the issue of evidence as someone said to be a legitimate heir.

The existence of an heir is one of the conditions for inheritance where there are three elements, namely the heir, the heir, and inheritance. In the context of inheritance law, proof as an heir is very important and one of the main evidences in terms of proof as a legal heir and is a certificate that can be used for the benefit of the heirs for the death of the testator (Sihabudin & Hamidah, 2018).

Inheritance Certificate according to Article 1 number 6 of the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 60 of 2016

is a letter whose contents describe the registered or unregistered deed of a will made before a Notary that has been reported on the Register of Wills. Inheritance Certificate regulated in Indonesia is inseparable from the classification of the population that existed since the Dutch era, and which has been explained at the beginning of this paper. According to the Supreme Court in the Decree of the Supreme Court of the Republic of Indonesia on May 8, 1991 No. MA / Kumdil / 171 / V / K / 1991 which has appointed a Circular Letter on December 20, 1969 Dpt Number / 12/63/12/69 which in this case was issued by the Directorate General of Agrarian Land Directorate of Land Registration (Kadaster) (Sihabudin & Hamidah, 2018),

The form of discrimination in the rule of law in the issuance of Certificate of Inheritance has indeed been established since the Dutch era. At present there are three formal forms of proof of inheritance and there are also three institutions that can form and issue inheritance certificates which are adjusted according to classification or according to ethnic population, or Indonesian citizens. The working power of the Inheritance Certificate begins when a person dies and leaves an inheritance and heirs. Inheritance Certificate is required by the heirs as a basis for taking legal actions concerning the interests of the testator. However, in the issuance of Inheritance Certificate there was legal discrimination, distinguished according to classification in the Dutch era.

This can become a dispute because the making of Inheritance Certificate is not only done by a notary who does have access to the Test Center List. The Lurah / Camat / BHP do not have access in such a way that is owned by a Notary Public so that the issuance of Inheritance Certificate can cause disputes in the future. The distribution of Inheritance Certificate issuance is issued by Notary / Lurah / Camat / BHP based on Article 111 of Minister of Agrarian Regulation No. 3 of

1997 concerning Implementation of Government Regulation No. 24 of 1997 letters b and c regarding Land Registration mention that there are several agencies that can issue Inheritance Certificate in accordance with the classification and do not have the same access as owned by a Notary Public, in this case a unification in inheritance law is required regarding the issuance of Inheritance Certificate in Indonesia.

In this case, there will be a separate problem with the Village / Kelurahan and Camat Heads not having access as possessed by the Notary Public to the Probate Center List. As for the conditions in the management of an Inheritance Certificate at the Village Head, Lurah, and Camat as follows: Fill out the application form and sign on the stamp. This application form contains: (bpn.go.id)

Personal identity

Size, location and use of the requested land

Land statement is not disputed

The land statement is physically controlled

Photocopy of the identity of the applicant / heirs (KTP, KK) and power of attorney if authorized, which has been matched to the original by the ticket window clerk

Original certificate

Inheritance Certificate in accordance with statutory regulations

Notariel Deed

Photocopy of SPPT PBB of the current year that has been matched to the original by the ticket window clerk

Submission of proof of SSB (BPHTB), proof of SSP / PPH for the acquisition of land more than 60 million Rupiah proof of payment of income (at the time of registration of rights).

So in accordance with the rules relating to the making and / or ratification of an heir certificate, then the function of inheritance certificate as one of the

conditions for transferring land rights is very important. In the certificate of inheritance will be written any inheritance inherited by the testator and appoint any heir who has the right to inherit the assets of the testator. In the making of a certificate of inheritance, especially in Blimbingsari Village, making a certificate of inheritance corroborated by the Head of the Village / Kelurahan and Camat where the heir lived at the time of death witnessed by 2 (two) witnesses, and also the form of making an heir certificate has been made by the village. Rules relating to the authority of the Blimbingsari Village Head in making the heir certificate according to Article 111 Minister of Agrarian Regulation No. 3 of 1997 concerning Implementation of Government Regulation No. 24 of 1997 letters b and c concerning land registration. So before the heirs reverse the name or take legal action against the assets of the testator is required to make a certificate of inheritance as one of the absolute conditions.

4. CONCLUSIONS

Based on the discussion above, thus it can be concluded that the Inheritance law that applies to Christian Balinese tribes in Blimbingsari Village, Jembrana, Bali is receptive to Balinese customary inheritance laws which should only be used for Hindus. In its implementation, it is not the Hindu religious law that was received by the Blimbingsari Village community but the Balinese customary inheritance law that was received. So far some people in Blimbingsari Village still use the customary inheritance law of Bali in terms of inheritance. This also occurs due to heredity on the line up for the people in Blimbingsari Village and also the presence of relatives. Furthermore, the Legal Force of a Certificate of Inheritance issued by the village head for the Christian Balinese community in Blimbingsari Village, Jembrana, Bali can be used as a basis in the transfer of ownership rights to the land for the heirs. However, in accordance with the research in the formulation of problem

one, it was found that there are two inheritance systems used, namely Balinese and BW customary inheritance law. However, in accordance with Article 111 of the Minister of Agrarian Regulation No. 3 of 1997 concerning Implementation of Government Regulation No. 24 of 1997 letters b and c concerning Land Registration mention that there are several agencies that can issue inheritance certificate, one of which is the Village Head, Lurah, and Camat. So the inheritance certificate issued by the Blimbingsari Village Head has legal force even though there are two inheritance systems used.

REFERENCES

- Kirana, N. W. R., Nurjaya, I. N., & Suryokumoro, H. (2019). The Authority Of Property And Heritage Agency Regarding Making Of Inheritance Certificate For The Decendant Of East Asian. *UNRAM Law Review*, 3(1). Retrieved from <http://unramlawreview.unram.ac.id/index.php/ulrev/article/view/54>
- Panetja, G. (1986). Inheritance to Balinese Indigenous People related to Heirs who Switch to Religion. *Scientific Journal of the Notary*.
- Prawirohamidjojo, R. S. (2000). *Codified Inheritance Law*. Surabaya: Airlangga University Press.
- Ramulyo, M. I. (1996). *Some of the Problems with the Implementation of Western Civil Heritage Law (Burgerlijk Wetboek)*. Jakarta: Sinar Grafika.
- Setiyarini, E. P. (2014). *Legal Results of the Transfer of Land Rights Due to Inheritance Not Registered at the Land Office According to Article 42 of Government Regulation Number 24 of 1997 Concerning Land Registration*. University of Brawijaya.
- Sihabudin, A. A., & Hamidah, S. (2018). Legal Certainty Inheritance Certificate as Requirements for Taking Credit Collateral. *Strait Journal*, 6(1).
- Soepomo, R. (2016). *Chapters on Customary Law*. Jakarta: Pradya Paramita.
- Sunarya, W. (2009). *Blimbingsari at a Glance*. Yogyakarta: Andi.
- Windia, W., & Sudantra, K. (2006). Introduction to Bali Traditional Law. *Journal of Documentation and Publication*

Institutions. Retrieved from https://scholar.google.co.id/citations?hl=id&user=q63g684AAAAJ&view_op=list_works&sortby=pubdate