

Family conflict resolution due to land inheritance division in Bali

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ABSTRACT

The division of inheritance, especially land, often causes conflict within the family. This problem occurs due to the absence of clear written documents regarding inheritance distribution, which causes uncertainty and dissatisfaction among some heirs. This research aims to reveal and explain the resolution of family conflicts resulting from the division of land inheritance in Bali. The method used in this research is a qualitative research method with a case study approach on families involved in conflicts over the distribution of land inheritance in Bali. This research focuses on the application of mediation in conflict resolution, highlighting the Balinese customary law approach which prioritizes deliberation and consensus to reach an agreement. The research results show that conflict resolution through mediation in accordance with Balinese customary law can reduce tensions between disputing parties and produce decisions that are fair and accepted by all parties. This mediation prioritizes family values, mutual respect and common interests, so that the problem of dividing land inheritance can be resolved peacefully without the need to go through a lengthy legal process.

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1. INTRODUCTION

Inheritance property is an object in inheritance law that includes all assets left by someone who has died (heir). In this context, wealth includes not only items that have economic value, but also assets that have religious significance. Every Balinese Hindu family has family wealth consisting of objects, both those that have religious magical value related to religion or religious ceremonies, as well as assets that do not have religious magical value, such as akas kaya property, jiwa dana property, and druwe gabro property.

There are elements of inheritance law in the Civil Code, namely heirs, heirs and inheritance (Abdulkadir, 2000). Heirs are people who have died and have inherited property. Inherited property is the inherited property of the heir, the property can be in the form of property, intellectual property rights, trademarks / companies, and property rights (Hadikusuma, 1996).

Inheritance issues often cause problems in everyday life. This problem often arises because there is one of the heirs who feels dissatisfied with the distribution of the inheritance he receives. This arises from the greedy nature of humans who wish to always get more than what has been obtained. To get the inheritance in accordance with the desired amount, the heirs take all the ways

that can be done to achieve their goals, either through legal means or against the law. then there will be legal sanctions given. The problem that arises is whether the legal path taken fulfills the principles of justice for all litigants. Especially in inheritance matters, often a fair decision for one party is not necessarily considered fair by the other party. If the acquisition of inheritance property is carried out against the law, there are certainly legal sanctions awaiting the parties to the action (Arham, 2012).

In the distribution of inheritance, there are certain rules that can be carried out in accordance with the law of inheritance, namely the rules regarding the transfer of property from a deceased person to a person or other person (heir). The regulations contained in the law of inheritance in the Civil Code are closely related to family law, so in studying inheritance law it is also necessary to study the relevant inheritance law system such as the family system, the inheritance system, the form of inheritance goods and how to get inheritance. The family system in the inheritance law in the Civil Code is a bilateral or parental family system, in this system offspring are traced from both the husband and the wife. The inheritance system regulated in civil inheritance law is an individual system, the heirs inherit individually or individually, and the heirs are not distinguished, both men and women have the same inheritance rights (Arham, 2012).

The division of family inheritance in Bali until now still uses a patrilineal system where male descendants play an important role in inheritance law both in terms of rank and influence. Such is the phenomenon that occurred in the family of three siblings namely Mrs. Putu, Made and Wayan in the District of Negara Bali. Where the father of these three siblings died and left an inheritance of 800 m² of land which at that time Bu putu had realized that the inheritance would fall to Made who was the only male heir.

Realizing this, Bu Putu decided to buy her father's land with money transactions and a car to buy the 400 m² land, but at that time there was no land certificate and receipt of payment, in 2023 Bu Putu intended to make a letter for the 400 m² land that had been purchased. However, because Ms. Putu's father had died in 2017, Ms. Putu did not have strong evidence of the purchased land rights. Meanwhile, the 800 m² land certificate was brought by the son, Made. Made did not want to hand over the land certificate, saying that the land was already his because of family inheritance. The Law of Inheritance in the Civil Code has its own provisions that regulate this matter. Therefore, through this thesis the author will discuss: "Settlement of Family Conflicts Due to the Division of Land Inheritance in Bali".

2. METHO

Research method is a scientific activity, which is based on certain methods, systematics, and thoughts aimed at studying one or several certain legal symptoms by analyzing them (Khudzaifah, 2004). Therefore, before the author conducts research, the author should first determine the method to be used in a study. The methods used by the author in this research are as follows:

2.1 Research Type

Judging from the angle of legal research objectives, the research method used by the author in this research is to use the Juridical Sociological Research method which is a non-doctrinal research conducted through field research to describe how to resolve family conflicts due to the division of land inheritance in Bali.

2.2 Research Approach

In this research method using the *Socio Legal Approach* (Approach by applying a social science perspective to legal studies), which is carried out by collecting data which is then processed in accordance with the analytical techniques used and poured in descriptive form in order to obtain the actual state of the law as a social reality (Nurhayati, 2021).

2.3 Data Source

This research uses the type of Data Source: Primary data in this research are: 1945 Constitution; Civil Code; Articles 830 to 1130 of the Civil Code on Inheritance Distribution; Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution; Direct Interviews with Sources. Secondary data is supporting data derived from civil law and customary law books, books on inheritance law, research results, scientific works of scholars, or opinions of legal experts relevant to this research.

2.4 Respondents

Respondents or informants of this research are sources that provide information and explanations related to research needs. In this case, the research informant is the Pemangku Adat.

2.5 Determination of Population and Sample

Determination of population and sample used in this study is to use *Non Probability Sample* because the respondents studied are not random and have been determined by the researcher and in accordance with what the researcher determines.

2.6 Data Collection and Processing Procedures

Data collection is done through literature study by identifying and inventorying legal materials relevant to the research problem. Furthermore, the legal materials were classified in accordance with the formulation of the problem and systematized to facilitate analysis. In the processing process, sorting of legal materials is carried out to ensure their relevance and quality in answering research problems.

2.7 Analysis Data

Data analysis is an activity in exploring and systematically compiling data that has been obtained from interviews, observations and other data, so that it can be understood and can be informed properly. Data analysis is carried out by organizing data into categories, describing, compiling in descriptive form, selecting which ones are important and which ones will be studied, then it can be concluded so that it can be easily understood.

The author's data uses a qualitative data analysis method. The qualitative method is carried out by analyzing data including laws and regulations, documents, literature books, and other literature related to the process of dividing inherited property and resolving disputes over the division of inherited property. Then it will be connected with the data obtained by the author from field studies in the form of interviews with respondents or sources concerned, to then collect and compile data systematically analyzed qualitatively to find solutions so that a conclusion can be drawn.

3. RESULTS AND DISCUSSION

3.1 Land Inheritance System in Bali

3.1.1 Land Inheritance Distribution System in Balinese Customary Law

In Bali, the division of land inheritance using customary law or *awig-awig* in Banjar Kerandan automatically gives the right to inherit to men because they have "tetegenan", which is to continue the fatherhood both at the house, merajan and banjar level. There are no written rules or *awig-awig* but the implementation has been running normally following *pasuara* (agreement), *destra* (custom) and *sima* (accepted from generation to generation).

In the Balinese indigenous community, the Pakraman Village is known. Based on Article 1 point 4 of Regional Regulation Number 3 of 2001 concerning Pakraman Village, it is stated that Pakraman Village is a unit of customary law society in Bali Province which has a unity of traditions and manners of socialization of Hindu society for generations in the bond of *kahyangan desa tiga* or *kahyangan desa* which has a certain area and its own assets and has the right to manage its own household. One form of property of Pakraman villages is customary land or village land managed by village officials and villagers (Mayasari & Rudy, 2021a).

In Balinese customary societies, the legal position of the husband and wife and their children born in the marriage is determined by the form of marriage taken. Thus, the existence of offspring (children) or successors in the marriage (Mayasari, 2021b). *Awig-awig*: the customary rules of Adat villages may have special provisions regarding inheritance, including the portion of each heir, the method of division, and the dispute resolution mechanism; *Pradnya paramita*: Balinese Hindu philosophical values that emphasize balance, harmony and family unity can also be a reference in conflict resolution; *Role of pemangku*: pemangku or Balinese Hindu religious leaders often act as mediators in resolving internal family conflicts.

Many of the items inherited by the testator will be inherited by the heirs which include items that can be divided whose control must be jointly or one or several of the heirs is actually not a difficult matter if the heirs are willing and able to communicate as the principle of their own customary law, namely settlement by family deliberation and respect for the agreed upon agreement. The rights of inheritance division in ancient Bali are often mentioned in inscriptions, especially the division of inheritance in married life.

So the process of distributing rights to inherited land in Balinese customary law can be done by: The process of dividing the rights to inherited land is carried out when the testator is still alive by the testator directly by distributing to his heirs with the distribution as deemed fair by the testator during his lifetime; The process of dividing the rights to inherited land is carried out after the testator dies by the heirs by means of equal distribution between the heirs or based on the agreement of the heirs.

Based on the narrative of Rai Sudarma as Bendesa Desa Adat Denpasar regarding inheritance, especially in Balinese society, there is Customary Law in the form of *awig-awig* on Palet 4 Pawos 69 to Pawos 72 which is written clearly and explicitly regulates inheritance: (Ariani, 2022)

- 1) If there is only one inherited land that will become the property of the heirs, while the heirs are more than one, the handling is to conduct deliberations to reach consensus which is then formed into an agreement so that there is no dispute between the heirs.
- 2) The title to the inherited land will automatically be held by the son who will be divided equally by the testator to each of his male heirs.
- 3) Property rights to the inherited land will be given to the heirs in accordance with the testator's will. Where the inherited land is in the form of heirloom land which should be properly guarded by the heirs.
- 4) The will made by the testator is needed when dividing the inheritance to avoid disputes between heirs. Particularly regarding property rights over inherited land has followed *pasuara* (agreement).

3.1.2 Land Inheritance Division System in Law KUHPerdata

The Burgerlijk Wetboek (BW) / Civil Code regulates inheritance law in approximately 300 articles, which starts from Article 830 to Article 1130. Which starts from Chapter 12 to Chapter 18 of the Civil Code which contains: Chapter 12 on Inheritance by Death ; Chapter 13 on Wills ; Chapter 14 on the execution of a Will and the Management of the Estate ; Chapter 15 on the Right of Thought and the Privilege to Detail the Estate ; Chapter 16 on the Right to Accept and Reject the Estate ; Chapter 17 on the Separation of the Estate ; Chapter 18 on the Unmanaged Estate ; According to BW, Inheritance Law is a set of rules governing the transfer of all assets left behind by a deceased person and the consequences thereof.

While the nature of inheritance law in BW is Individual, meaning that the heirs are individuals / individuals, and there are no known group heirs. Bilateral, that is, heirs are entitled to inherit from 2 parties, namely from the father's side and the mother's side and the Ranking system, meaning that the heir whose degree is closer to the testator is superior to the heir whose degree is further away.

In this study, the object of research is inherited property in the form of land. There are no specific rules regarding the forms of inherited property in BW, but according to the author, inheritable property is all the assets left by the heir.

If the property left behind is in the form of land, then deliberations must first be held regarding the division of the land which then the results of this division deliberation will be decided before a PPAT. This is done so that ownership rights to land have permanent legal force and avoid unwanted things.

3.2 Family conflict resolution through mediation

The conflict over the division of inheritance property in the form of land that occurred in Negara Sub-district, Jembrana Regency, Bali, is a fairly complex issue and illustrates the dynamics involving custom, tradition and formal law in the context of resolving inheritance disputes. This dispute occurred between two children of a father who passed away in 2017, namely NP (female) and M (male). The disputed inheritance land has an area of 800m² and is located in an area that has cultural and historical values that are thick with Balinese customs. In this case, the inherited land became a source of conflict due to the unclear ownership rights claimed by NP and M.

This problem arose in 2007 when NP bought part of the land from her father, but this was only done through an oral agreement without any written documents as proof of the transaction. There was only evidence of money transfer as a sign of payment that took place at the time. The absence of a written agreement or official document governing the purchase of the land adds to the complexity of this dispute. In Balinese tradition, customary law plays an important role in the division of inheritance, and in this case, the inherited land would generally be given to the son. M, as the son, felt that the land was entirely his, while NP, as the daughter, felt entitled to the land due to a verbal agreement she had made with their father.

This inherited land, in the context of Balinese custom, should be given to sons. This relates to the traditional view that land inheritance rights more often go to sons as successors to the family legacy and managers of the family land. Therefore, when their father passed away, M felt that the land was rightfully his. In contrast, NP, who felt that she had purchased some of the land from her father before his death, argued that the land was also rightfully hers.

The dispute involved two conflicting viewpoints on who was entitled to the inherited land. On the one hand, M thought that the inherited land was entirely his due as Balinese customary law prioritizes the distribution of inheritance to sons. On the other hand, NP felt that the land she had purchased in 2007 belonged to her, given the verbal agreement with their father, although there was no valid written evidence. This lack of clarity over the status of the land became the main issue that led to a long dispute.

The dispute was further complicated by NP's claim to the land purchased from their father, which was the object of the dispute, while M did not recognize NP's right to the land. The absence of valid documents to prove the transfer of ownership added to the complexity of the evidentiary process. This led to growing tensions between NP and M. In the end, NP decided to take the matter to court and opted for mediation to resolve the dispute.

The mediation process conducted by NP and M at the court was an important step in finding an amicable solution and avoiding further escalation of the conflict. Prior to the mediation, M had refused to have a direct meeting with NP. This caused communication between the two parties to be very limited, so NP was forced to bring the matter to court to seek a clearer solution. During the court process, both parties agreed to try mediation to find a joint solution.

Mediation is the right choice because in addition to involving a neutral third party (mediator), mediation allows both parties to seek a more flexible settlement without having to take a long and expensive legal route. In this mediation, the mediator plays a very important role in helping both parties understand the differences in views and find a mutually acceptable solution.

In the mediation, the mediator managed to lead both parties to find a tentative agreement, although the main issues regarding land division and ownership rights had not been fully resolved. One of the agreed solutions was an agreement to manage the land together. M had the obligation to maintain the land, while NP agreed to pay the Land and Building Tax (PBB). Although the ownership rights to the land have not been legally clarified, both parties agreed to honor this temporary agreement in order to maintain family relations.

The mediator in this case directed NP and M to look at the problem objectively, not only from a legal perspective, but also in terms of the traditional values that developed in Balinese society. In a situation like this, the mediators not only respond to legal issues, but also have to understand the highly sensitive family situation. They are expected to be able to reduce tensions and help both parties find mutually acceptable common ground. Thus, the mediator functions not only as a connecting party, but also as a rebuilders of harmonious relationships between families.

In addition, mediators also have a role in maintaining a balance between state law values and prevailing customary values. State law tends to prioritize written and formal evidence in resolving disputes, while Balinese customary law is more flexible in terms of evidence, often relying on oral agreements. Therefore, the mediator must be able to navigate these differences and find a solution that is acceptable to both parties, while at the same time being mindful of compliance with both state law and Balinese custom.

Following the provisional agreement reached through mediation, both parties agreed to consult a notary to obtain legal clarity on the division of land rights. This process is important to provide a clear legal foundation and avoid potential disputes in the future.

Consulting a notary is a very wise step. In this case, the notary will create an official document that can be used as valid evidence in the eyes of the law. This written document will not only corroborate the claims of each party, but also provide clear legal guarantees regarding the division of land. Without valid written evidence, such disputes can be protracted and difficult to resolve legally. Therefore, consulting a notary is the right step to ensure that both parties have legal certainty regarding land ownership rights.

In addition, with an official document from a notary, both parties-NP and M-can avoid any future confusion regarding the division of rights to this inherited land. It is also important to ensure that the settlement reflects justice for both parties. Moreover, by using the help of a notary, both parties can clarify who is entitled to the land, as well as avoid any further potential disputes that may arise in the future.

This consultation with a notary, in essence, not only provides legal clarity, but also accommodates existing customary values. In Balinese tradition, although customary law has a very strong position, it is important for parties to understand that in some situations, written proof is also needed to prevent potential abuse or ambiguity that could harm one of the parties.

3.2.1 Dispute resolution using Balinese customary law mediation

After a court mediation process and then a mediation process under Balinese customary law, the two parties finally reached an agreement that allowed them to avoid further conflict. One of the solutions found was the use of part of the 100 m² inherited land for family purposes, in particular to pay for the treatment of their sick mother and for the mother's daily needs. This solution reflects the application of local wisdom that is highly prioritized in Balinese society in resolving land inheritance disputes.

The use of part of the land for the mother's medical treatment and daily living needs shows that although the dispute over land ownership has not been fully resolved, both parties prioritize family interests and efforts to maintain good relations between family members. This temporary solution also shows the commitment of both parties to avoid a bigger conflict, which could damage their family harmony.

The settlement of inheritance division disputes using the Balinese customary law approach reflects the values of local wisdom that are highly upheld by the Balinese people. In Balinese custom, family dispute resolution prioritizes deliberation and consensus over rigid and formal approaches. In this case, although the claim to the land could not be formally proven, both parties agreed to use part of the land for their mother's medical treatment and for daily living. This decision shows that in Balinese society, family values and *gotong royong* are more important than fighting over inherited property which can cause a rift in family relationships.

This solution was not only a measure to reduce tension between NP and M, but also a form of respect for their ailing mother. In many Balinese traditions, the family is the primary source of social support, and the decision to use the land for the benefit of their mother's treatment reflects respect for the family's role in looking after the well-being of other family members. It also underscores that in the resolution of inheritance disputes, family and the health of family members come first.

While the solution reached in this mediation can be considered a positive first step in the resolution of this dispute, the main issue regarding the division of rights to the inherited land has not been fully resolved. Both parties agreed to consult a notary in order to obtain more formal legal clarity regarding the division of the land. Consultation with a notary was considered an important step to ensure that a more definitive settlement could be reached, by referring to the applicable laws of the country and providing valid written documents as legal proof of ownership.

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3.2.2 Challenges in Inheritance Dispute Resolution in Bali

The resolution of land inheritance disputes in Bali faces various challenges, both in terms of state law and customary law prevailing in the community. One of the main challenges that often arises in

inheritance disputes is the lack of valid evidence, such as written documents or letters of agreement that can strengthen ownership claims to the land in dispute. In many cases, claims based on oral agreements are very difficult to prove before state law, although in Balinese society, oral agreements are often accepted as valid evidence in the context of customary law.

The main problem arising from this lack of written evidence is the difficulty in providing evidence strong enough to prove ownership or division of rights over the inherited land. In the country's legal system, claiming ownership of an asset, such as land, generally requires valid written evidence, such as a land certificate or an agreement recognized by a notary or authorized party.

In addition to the challenges related to the lack of written evidence, the profound differences between state law and Balinese customary law also add to the complexity of resolving inheritance disputes. State law, with its formal legal system, prioritizes written evidence and official documents as the basis of proof in a dispute. Land certificates, deeds of sale and purchase, and notarized documents are things that are considered valid and accountable in the state legal system. In contrast, Balinese customary law is more flexible and emphasizes family relationships and deliberation in resolving inheritance disputes. In Bali, many inheritance distributions are made with reference to oral traditions and mutual agreements, which are considered valid within the local customary community despite the lack of supporting written documents.

This difference often causes confusion for the parties involved in inheritance disputes, as they have to navigate two different legal systems. On the one hand, they are faced with a state legal system that prioritizes proof with valid written documents, while on the other hand, they are also bound by customary law that prioritizes mutual agreements made in the form of deliberations without written documents. This lack of clarity creates confusion for the parties to the dispute, who may feel that their rights are not being respected by the more formal legal system.

To overcome these challenges, one possible solution is through a mediation process involving a third party who has the competence to mediate and understands both state and customary law. Mediation can help bring together two different views and create a middle ground that is acceptable to both parties. A competent mediator will seek to understand the legal position of each party, both from the perspective of state law and customary law, so as to help find a solution that is not only fair, but also accommodates both legal systems. Mediation also opens up space for both parties to dialogue and compromise, prioritizing family values and deliberation, which are at the core of Balinese customary law.

In addition, consultation with a more competent third party, such as a notary public, can also be an important step in finding a clearer and more legitimate solution according to state law. Notaries can help the disputing parties to create a written agreement that is valid and has legal force recognized by the state. By consulting with competent parties like this, it is hoped that it can clarify the distribution of inheritance rights and avoid further disputes.

Overall, the resolution of land inheritance disputes in Bali does face major challenges due to the fundamental differences between state law and customary law. However, with prudent approaches, such as mediation that prioritizes the principles of deliberation and compromise, and involves parties with expertise in both legal systems, it is hoped that these inheritance disputes can be resolved fairly and accommodate the interests of all parties involved.

4. CONCLUSION

Balinese land inheritance distribution system is governed by Balinese customary law based on *awig-awig*, which grants inheritance rights to men as the successor of the lineage. Balinese customary law has basic principles oriented towards deliberation to reach an agreement, and prioritizes family harmony and balance. In Balinese society, the division of inherited land can be done either during the lifetime of the testator or after the testator dies, with the consent or deliberation of the heirs. In practice, the division of inherited land can lead to disputes if there is no agreement or clear understanding between the heirs. In addition, the division of inheritance is also regulated in the Civil Code (KUHPerdata), which emphasizes the principles of equality and justice in the division of inheritance, where the inheritance is divided based on the degree of family relationship with the testator. The Civil Code strictly regulates the distribution of inheritance, including the rights of legal heirs and provisions regarding the distribution of inheritance in the event that the testator does not leave a will. The land inheritance dispute in Bali between NP and M reflects the complexity of family conflicts involving Balinese customary law and state law. NP and M had different claims regarding

the ownership rights of the inherited land, with NP relying on oral agreements and M referring to customary law that favors sons. The dispute was resolved through court mediation and Balinese customary law, which resulted in a temporary agreement to use part of the land for their mother's treatment. Although the issue of dividing land rights was not fully resolved, the mediation succeeded in reducing tensions. The main challenge in this settlement was the difference between the state legal system which requires written evidence and Balinese customary law which favors oral agreements. The appropriate solution was through mediation involving a third party who understood both legal systems, as well as consultation with a notary to ensure legal clarity. Overall, mediation and notary consultation can help overcome these challenges and achieve a fair settlement for both parties.

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