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Occupying Inherited Land Rights Impllemented Without The Consent of The Heirs

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Abstrak. Hak atas tanah dapat dialihkan atau dialihkan kepada pihak lain. Perpindahan hak atas tanah berarti bahwa pemilikan hak atas tanah itu berpindah karena hukum atau dengan sendirinya. Namun dalam prakteknya banyak terjadi pelanggaran peralihan hak atas tanah tanpa persetujuan ahli waris. Kajian ini akan menganalisis masalah pengalihan hak atas tanah yang obyeknya menjadi objek sengketa tanah sesuai dengan kasus yang terjadi pada Putusan Mahkamah Agung Nomor 723 PK/PDT/2017. Tujuan penelitian ini adalah untuk mengetahui, menganalisis, dan mendeskripsikan: (1) apakah peralihan hak atas tanah tanpa persetujuan ahli waris dapat dinyatakan sah dan mempunyai kekuatan hukum; dan (2) apa akibat hukum dari peralihan hak atas tanah tanpa persetujuan ahli. Hasil penelitian ini menunjukkan bahwa: (1) Perolehan hak milik atas tanah dapat terjadi melalui pewarisan dari ahli waris kepada ahli warisnya yang sah sesuai dengan yang diatur dalam UUPA; dan (2) perlindungan hukum bagi ahli waris yang haknya dirugikan atas peralihan hak atas tanah warisan yang dikuasai dan dipergunakan tanpa persetujuan ahli warisnya berdasarkan Pasal 1365 adalah melawan hukum, sehingga diberi hak untuk mengajukan gugatan untuk mempertahankan hak warisnya dengan membuktikan bahwa mereka adalah ahli waris yang sah.

Kata kunci : ahli waris; pengalihan hak; perlindungan hukum

Abstract. *Land rights can be transferred or transferred to other parties. The transfer of land rights means that the ownership of the land rights is transferred by law or by itself. However, in practice, there are many violations of the transfer of land rights without the consent of the heirs. This study will analyze the problem of the transfer of land rights whose object is the object of a land dispute in accordance with the case that occurred in the Supreme Court Decision Number 723 PK/PDT/2017. The purpose of this study is to find out, analyze, and describe: (1) whether the transfer of land rights without the consent of the heirs can be declared valid and has legal force; and (2) what are the legal consequences of the transfer of land rights without expert approval. The results of this study indicate that: (1) The acquisition of property rights to land can occur through inheritance from the heir to his legal heirs in accordance with what is stipulated in the UUPA; and (2) legal protection for heirs whose rights have been impaired on the transfer of rights to inherited land that are controlled and used without the consent of their heirs based on Article 1365 are against the law, so that they are given the right to file a lawsuit in order to defend their inheritance rights by proving that they are legal heirs.*

Keywords **:** *heirs; lega protection; transfer of rights*

INTRODUCTION

The rule of law is a crucial instrument for enforcing rules and promoting peaceful cooperation. The purpose of applying the law is to ensure legal fairness and clarity for all people. Based on article 20 paragraph (2) of the Basic Agrarian Law (UUPA), which specifies that "property rights can be transferred to third parties," enumerates all land rights in general. Transferring land rights involves transferring ownership of the land, either for legal reasons or on its own. There is no intentional legal action, such as inheritance, to transfer the right to another individual. When a landowner passes away, their heirs inherit the property (Santoso, 2010). The importance of land in human life cannot be overstated (Kartasapoetra, 1991). According to UUPA No. 5 of 1960, which describes the social function of a territory by prioritizing public interests above individual or group interests, in the case of a dispute between individual or group interests and the public interest, the public interest takes precedence (Iskandar, 2015).

Land usage should not be harmful to others. If this happens, it is feasible to argue that the law has been breached and that legal action is necessary. Furthermore, land ownership is forbidden from being abandoned, which implies that the land owner is expected to take care of the land at least to show that the land is still theirs so that a future dispute does not arise. If the land is ignored by not performing upkeep or posting a

sign and just leaving it unoccupied, this is considered a breach of the law and may also result in legal consequences (Vernando, 2019). The most prevalent scenario in the sector is the process of acquiring or transferring land rights through inheritance. It is critical to choose a legal heir whose name appears on the certificate or evidence of title of the land as the heir. Civil cases involving default and criminal activities are regularly filed in this case. For example, illegally taking land and property belonging to others without their agreement and generating a land dispute Cases like these are common since each individual has his or her own land interests. Property conflicts are always evolving, as is the number of individuals who require land to suit their requirements (Vernando, 2019).

According to Article 188 of the Compilation of Islamic Law, heirs may request that other heirs immediately divide their inheritance, either jointly or separately. For individuals who are Muslim, the involved party has the right to initiate a lawsuit through the local Religious Court to resolve the inheritance distribution if some of the heirs disagree with the request (Fakhirzal, 2020). In practice, there are many violations of land rights transfer that hurt particular parties, notably heirs who are entitled to their inheritance. According to Article 834 of the Civil Code, *"an heir may launch a lawsuit in order to collect their inheritance."* As a result, based on the case in "Supreme Court Verdict Number 723 PK/PDT/2017," the author will address the question of the transfer of property rights whose object is the subject of an inherited land dispute. The goal of this study is to discover what the legal repercussions are and how heirs' legal protection and settlement occur in the case of land disputes emerging from the object of inheritance. Based on the description provided, the problem that may be defined and analyzed in this conceptual idea article is "Occupying Inherited Land Rights without the Consent of the Heirs."

METHODS

This research was carried out utilizing normative juridical research, a method that emphasizes the science of law and aims to evaluate written law sources and legal concepts that are relevant to people's daily lives. In particular, secondary data and tertiary legal sources are the subject of this study's investigation of the usage of library resources as research sources. Among the secondary sources are: (1) "Court Verdicts, the Civil Code, Basic Agrarian Law, and Government Regulation Number 24 of 1997 Governing Land Registration."; (2) Secondary legal sources, such as scientific articles, theses, dissertations, research reports, law journals, and other works; and (3) Tertiary legal materials are legal materials that supplement the two other legal materials, the legal dictionary and the big Indonesian language dictionary.

RESULT

Legal Consequences From Occupying Inherited Land Rights without The Consent of The Heirs in Cases of Supreme Court Decisions No. 723 PK/Pdt/2013

The right to land, which is an object of inheritance, is granted with the transfer of land rights in accordance with the inheritance of the transition, which is carried out by an authorized official and then processed at the local land office. The inheritance in dispute is land rights. The goal of land rights inheritance is to provide heirs legal authority over and use of the land they possess (Santoso, 2010). The registration of land rights transfers is outlined in Government Regulation No. 24 of 1997 concerning Land Registration, which specifies that land transfers owing to inheritance must be reported immediately at the local regional land office. Documents needed by heirs to transfer land rights, including: 1) Authentic land certificate, 2) The death certificate of the testator, 3) Heirship Certificate.

If the inherited land item lacks a certificate, then further solid proof is required. If the information supplied is imbalanced, the facts on the ground can be used to assess if ownership of the land in issue has lasted at least 20 years. If there are several heirs, the inheritance will be distributed among them based on the certificate signed by the heirs in question. The major asset of an inheritance, in the form of land, is allocated as a joint right to all heirs. The transfer of land rights due to inheritance can be recorded using a proof of deed prepared by the Land Deed Official (LDO). The LDO will then record the deed. Then there will be property ownership rights in the name of more than one individual; that is, the land certificate will contain all heirs.

In accordance with "Verdict of the Supreme Court Number 723 PK/PDT/2017", in which in the verdict the object of transferring land rights was the inherited land of the late Nang Rudia having six heirs namely, I Wayan Rudia, I

Made Parda, I Nyoman Nuarsa, I Ketut Sarwika, I Ketut Suartana, and I Ketut Giri Arnaya, leaving a patch of Tegal land located in the Sanggulan Traditional Village Number 196 Pipil Number 257 Persil 9 with an original area of 1,150 m2, where the land had received widening of Denpasar Street to Tabanan so that the area was to 700 m2 in the name of The Late Nang Rudia. In 1992, the Tabanan National Land Agency carried out a measurement of the land which resulted in a measurement of 1,150 m2 with a boundary, that is, land on the name of Nang Pasek to the east, and land on the name of Alm. Nang Rudia is now being used as a road to the Parliament and National Saving Bank Sanggulan offices, and it is true that the land is disputed land.

Property rights regulations are defined in Article 20 of Basic Agrarian Law Number 5 of 1960, according to the rules described in the Basic Agrarian Law, if property rights may be transferred or transferred to another party, this indicates that the owner of the property rights has the authority to transfer their land ownership rights to another party (Pramukti, 2015). More than that based on Civil Code Article 830, inheritance happens when someone dies. In this case, the individual who dies leaving their property behind becomes an absolute element due to inheritance, and the inheritance can be dispersed to the heirs. When the late Nang Rudia was still alive in 1992, the Head of Service wrote and signed a conversion letter, together with the associated proof, to keep the area under control by planting banana trees and firewood. However, the property was recognized by Ni Nyoman Darwati, son of Kade Astra and I Gede Made Guna Laksana, for damaging the land a few years later, and it was known by one of Nang Radia's successors that he filed a complaint against the court for the actions that Nang Rudia took.

If the owner of the land and buildings on it believes that their rights have been taken away or taken away by another person, the land owner has the right to file a lawsuit against the confiscated land with the court in accordance with Articles 1335 and 1337 of the Civil Code, namely, agreements without cause made because there are false or prohibited causes that are contrary to the law and are suspected of having harmed the interest. The action taken by Ni Nyoman Darwati was an unlawful act, by damaging the land of other people's inherited objects without obtaining the consent of the heirs concerned. The land is considered to be privately owned and a new certificate is made with Number 7882 in the name of Ni Nyoman Darwati.

In fact, Ni Nyoman Darwati was entitled to inherit land rights from Men Tape, namely in the form of Pipil Number 164 Persil Number 9 and an area of 2,250 m2 with Notification of Tax Payable Numbers 1247, 1248, 1249 and 1250. However, in 2000, it was discovered that the land belonged to the late Nang Rudia's Letter Of Payment Of Tax Payable publications were not taken down, so Ni Nyoman Darwati issued an acknowledgment of evidence in the form of an Notification of Tax Payable issued by the Tabanan Tax Office where the Letter Of Payment Of Tax Payable number was not based on law. Therefore what Ni Nyoman Darwati did was an illegal act or violated the rights of the heirs of the object of land rights, namely land owned by Nang Rudia with Pipil Number 257 Persil 9 Class II and Notification of Tax Payable Letter Number 1251 covering an area of 1,150 m2 with the desire to own juridically belongs to him.

The SPPT (Surat Pemberitahuan Pajak Terutang) number or called Notification of Tax Payable is a letter given relating to taxes that need to be paid within one year when the SPPT tax is issued (Samudra, 2015). The SPPT stipulation contains information regarding the tax object or subject, including how much and how the value of the tax object is calculated. SPPT is a letter containing the amount of tax payable that is used by the Director General of Taxes to notify taxpayers (Hambani, 2020). Ni Nyoman Darwati has been in power and has occupied other people's land illegally and without rights, which is an unlawful act in accordance with Article 1365 of the Civil Code, which explains, "*What is meant by an unlawful act is an act carried out by a person which causes harm to other parties as a result of that person's negligence*." The heirs who should receive the inheritance suffer material and immaterial losses as a result of these actions (Lubis, 2021).

Tajuddin Noor defines an unlawful conduct as a type of interaction that arose from the Civil Law Act. According to these laws, a legal action must include the following elements (Lubis, 2021):

1. There is an action.. There is a presumption that there are activities done or not done that are not good deeds. An unlawful conduct lacks an element of agreement or consensus, as well as a permissible causal element within the agreement (Fuady, 2022).

2. The act must be unlawful. The illegal act was conducted by breaking the law and violating the legal rights of others.
3. The action resulted in a loss. According to "Article 1365 of the Civil Code," a lawsuit can be filed only if the victim has suffered a loss. The plaintiff's ability to freely govern their own property is limited as a result of this case's loss (Lubis, 2021).
4. The conduct was committed by mistake. Mistakes can arise and are committed as a result of neglect, either intentionally or accidentally. Deliberate action shows that the offender has a certain aim in mind. In this instance, the defendant purposefully occupied land he did not own, although knowing that the freehold land was not an inheritance from the defendant's parents, but rather the property of another person, and yet he created a fresh certificate and recognized it as their own. e) There must be a causal relationship between the conduct and the loss. Loss is produced by or results from an act. If there is a causal (cause-and-effect) relationship between the loss and the activity, it may be assumed that every loss is the result of that action.

An act that utilizes other people's land without rights is one sort of dominion over other people's land. Elements of an unlawful conduct, such as the seizure of another person's land, include (Vernando, 2019): (1) An action by the offender; (2) There is a goal or desire; (3) Enter or exist on other people's property; (4) The victim is the party authorized to control the land; (5) There is a causal correlation; and (6) Without the consent of the victim

This can be proven by the incident in 1992, namely when the disputed land had widened the road, which resulted in the land area becoming 700 m2, but with the conversion registration and land area measurement by the National Land Agency, the resulting size remained at 1,150 m2 and was recorded in the Notification of Tax Payable on DHKP Book ("List of Sets of Stipulations and Payments") of 1999, Number 119 NOP 000-0119.7 Main Number 00009 in the name of Nang Rudia, so that the disputed land was in the name of Ni Nyoman Darwati, which issued a new certificate, namely number 7882, which was made without the knowledge of the heirs. In this verdict, Ni Nyoman Darwati is required to quickly transfer the rights to the land and restore it to Nang Rudia's heirs so that the heirs of Nang Rudia do not feel hurt.

Following an investigation, it was discovered that the disputed land has been held by Nang Rudia since 1969, when coconut palms were planted, and has since been passed down from generation to generation by their heirs. The accuracy of this information serves as the foundation for creating a letter of distribution of joint rights since inheritance information becomes a crucial document at the time of registration of land resulting from the distribution of inheritance (Yulianti, 2020). As a result, the certificate of ownership rights issued in the name of Ni Nyoman Darwati was ruled null and void. Nang Rudia has owned the disputed item since 1977, whereas Ni Nyoman Darwati confessed possessing the land in 2006, and there was no confirmation of a transfer of rights from Nang Rudia to Ni Nyoman Darwati. In this case, the subject of the dispute had a certificate that was created covertly without the knowledge of their heirs and was completed in stages before being registered with the land office. This dispute's subject matter should be passed down to the heirs. The dispute, on the other hand, was filed at the local land office and was made unilaterally and without a solid foundation, Ni Nyoman Darwati had forging supporting documents to register land certificates.

Legal Protection for Heirs in Cases Of Supreme Court Decisions No. 723 PK/Pdt/2013

The deed is assumed to have never existed in the event that a land rights transfer agreement is ruled invalid. The deed was first thought to be in place, but the concerned party sought the court to annul it since it did not adhere to the arbitrary standards of an agreement. Similar to this, if a land transfer agreement is found to be invalid, it is nevertheless regarded as legitimate so long as no one is suing or objecting to it and it hasn't been canceled (Loemandra, 2019). The court verdict explains that in accordance with Article 32 of Government Regulation Number 24 of 1997, *"a certificate is a letter of proof of rights that applies as a strong means of proof for physical and juridical data, as long as the physical and juridical data match the data contained in the measurement document and land book,"* and the regulations described in Article 32 paragraph (2) of Government Regulation Number 24 of 1997 state that if within 5 years of the issuance of the certificate there are no objections from the certificate holder and from

the land office, or no one has filed a lawsuit in court, then the land concerned is deemed to have had its rights waived.

The ownership of Ni Nyoman Darwati's land rights to the subject of this dispute was established not only by written evidence but also by three witnesses who gave statements indicating that they were aware that the subject of the dispute had been Nang Radia's property since 1969 and had been continued by their heirs after their passing. There is proof that the Defendant has violated the lawful heirs and neighbors of the Plaintiffs by taking their property for the following reasons:

1. Publishing a tax payment notification (SPPT) for contested land item 5102040.015.036. 1251.0 class A, which is not its proper class.
2. Issuing Certificate Number 7882 in the name of I Nyoman Darwati and deceiving National Land Agency surveyors and their assistants over the eastern portion belonging to Nyoman Darwati while the eastern portion of AA Anom Atmaja is the disputed land belonging to Nang Rudia to the west of the disputed land.

I Nyoman Darwati was able to deceive the regional BPN staff by employing this tactic. By doing so, the defendant, Ni Nyoman Darwati, created the SPPT as a certificate, and it was amply demonstrated that Sayu Komang Geriya had also been deceived by the defendant. As a result, the evidence of land rights No. 7882 included the following shortcomings: (1) To the north of I Gede Mang Adi; (2) South of BTN Sanggulan Street; (3) East side of Denpasar Street, Tabanan; and (4) West of Sayu Komang Geriya

The Tabanan District Court's ruling was supported by the Denpasar High Court, but because it was not founded on clear legal arguments, it needed to be overturned. While Defendant II (Tabanan National Land Agency) did not appear in court despite the Assembly having the ability to use its authority to bring the Tabanan National Land Agency directly to court, it has been established that the legal considerations of the Tabanan district court only took into account unilateral legal evidence, specifically stating the evidence unilaterally and not disputing the statement made by the Kelian Dinas, declaring it invalid, and the village chief's statement that it was untrue. As a result, the Assembly's deliberations were deemed unjust and against sound legal principles.

At least two witnesses who are qualified to serve as witnesses under the applicable laws and regulations must attest to the making of the PPAT deed. These witnesses must attest to the presence of the parties or their representatives, the existence of the documents displayed during the deed-making process, and the parties' compliance with the legal act. The parties involved (seller and buyer) must be given a copy of the deed of sale and purchase by PPAT, who is also required to explain the purpose and content of the deed as well as the registration process for the transfer of rights. The judge considered convicting Ni Nyoman Darwati and other defendants for assisting in the falsification of land rights certificates that they did not own by returning the Letter of Payment of Tax Payable (SSPT) Identification Numbers all in the name of Nang Rudia, and certificate number 7882 in the name of Ni Nyoman Darwati was declared null and void.

With cases of transfer of inherited land as above, it must be proven that each has legal certainty. Article 32 paragraph (1) of Government Regulation Number 24 of 1997 explains that a certificate is a strong means of proof regarding the physical data and juridical data of land contained therein, as long as the physical data and juridical data are contained in accordance with the data contained in the Measurement Letter and the Land Book. the rights concerned. As long as it cannot be proven otherwise from the physical data and juridical data contained therein, it is considered as accurate data, in carrying out daily legal actions or in court cases. In this context, the data contained in the Measurement Letter and the Land Book are open to the public, so that interested parties can match the data in the certificate with the data in the Measurement Letter and Land Book presented at the Land office.

In the legal actions of land rights, there's Nemo Plus Juris principle is known the principle that protects the actual right holder. The application of this concept protects the actual right-holders, allowing parties who claim they own and can prove their ownership to other parties whose names have been published in the public register at the Land Office to always file cases. Legal protection strategies for heirs are utilized both preventively and repressively. To avoid fraud perpetrated by an heir within six months of the heir's death in order to receive a letter of evidence and legal certainty, preventative protection can be implemented by

distributing the inheritance as soon as possible following the heir's death (Setiyarini, 2014). The form of legal protection for heirs who transfer land rights because their inheritance is not registered at the land office, basically still gets legal protection because materially the rights and obligations of the heir directly transfer to the heir as the holder of land rights.

CONCLUSION

There are two ways to transfer land ownership rights: Switch refers to the legal transfer of land ownership rights from one party to another, second Legal events that transfer land ownership rights to heirs, if the main condition is fulfilled, namely the death of the land owner. Buying and selling, exchanging, granting, income in the business capital, auctioning, and other legal procedures that result in the transfer of property rights over land from owners to other parties. According to Article 1365 of the Civil Code, heirs have the right to file a lawsuit to defend their inheritance rights by demonstrating that they are legitimate heirs. This right is given to heirs whose rights have been impaired over the transfer of rights to inherited land that is controlled and occupied without their consent. So, the defendant was ordered to immediately return the certificate to the legal owner of the land. The society should the first who receive legal protection of transfer land rights, especifically for the heirs this is a type of preventive legal protection because the law is protection provided by the government with the intention of preventing violations before they occur. Author's advice is that it is hoped that the heir of land rights will immediately register the transfer of their rights at the land office by making an authentic deed, namely the "Deed of Sharing of Shared Rights (Akta Pembagian Harta Bersama)," with which various types of changes to the physical or juridical data of the object of land registration can be carried out. Based on legislative requirements, so that holders of land rights receive better legal protection immediately.

DAFTAR PUSTAKA

Dhony, S. 2015. Pengaruh SPPT, Sanki, Pendapatan Wajib Pajak Terhadap Kepatuhan Wajib Pajak Bumi dan Bangunan. Universitas Dian Nuswantoro Semarang.

Firmansa, Fakhrizal Arief. 2020. Legal Review of Selling Land of Inheritance without Approval of All Heirs. *Legality: Jurnal Ilmiah Hukum*. 28(1), 109)

Fuady, M. 2022. *Perbuatan Melawan Hukum : Pendekatan Kontemporer*, Bandung: Citra Aditya Bakti.

Harsono, Priyo. 2020. Registration of Transfer of Property Rights to Land by Buying and Selling and the Problems. *Law Development Journal*. 2(1), 31.

Hambani, S., & Lestari, A. 2020. Pengaruh Penyuluhan Pajak, Surat Pemberitahuan Pajak Terutang (Sppt), Dan Sanksi Pajak Terhadap Kepatuhan Wajib Pajak Bumi Dan Bangunan. *Jurnal Akunida*, 6(1), 1.

Iskandar Syah, M. 2015. *Pembebasan Tanah untuk Pembangunan Kepentingan Umum : Upaya Hukum Masyarakat yang Terkena Pembebasan dan Pencabutan*, Edisi Revisi. Jakarta: Jala Permata Aksara.

Kartasapoetra, G. 1991. *Hukum Tanah : Jaminan UUPA Bagi Keberhasilan Pendayagunaan Tanah*, Cetakan 2, .Jakarta: Rineka Cipta.

Leomandra, Alexander. 2019. Tanggung Jawab Notaris Terhadap Peralihan Hak Atas Tanah Milik Orang Tua yang Berasal dari Warisan Tanpa Persetujuan Ahli Waris (Studi Putusan Mahkamah Agung Nomor 948 K/Pdt/2017). *Premise Law Jurnal.*

Lubis, M. R. 2021. Perbuatan Melawan Hukum Menguasai Tanah Hak Milik Orang Lain (Studi Putusan Mahkamah Agung Nomor 3302 K/Pdt/2018, *Jurnal Hukum Kaidah*, 20(2).

Noor, T. 2019. Tinjauan Yuridis Terhadap Perbuatan Melawan Hukum atas Menempati atau Menguasai Tanah dan Bangunan Hak Orang Lain (Studi Kasus Putusan Nomor 30/Pdt.G/205/PN.Mdn). *Jurnal Hukum Responsif FH UNPAB*, 7(7), 126–136.

Pramukti S, A., Widayanto, E., & Atmojo, T. 2015. *Awas Jangan Beli Tanah Sengketa : Panduan Mengurus Peralihan Hak Atas Tanah Secara Aman*, Cetakan 1. Yogyakarta: Pustaka Yustisia.

Santoso, U. 2010. *Pendaftaran dan peralihan hak atas tanah.* Jakarta: Kencana.

Samudra, Azhari Aziz. 2015. *Perpajakan di Indonesia*: *Keuangan, Pajak dan Retribusi Daerah*. Jakarta: Rajawali Pers

Setiyarini, E. P. 2014. Akibat Hukum Peralihan Hak Atas Tanah Karena Pewarisan Yang Tidak Didaftarkan Pada Kantor Pertahanan Menurut Pasal 42 Peraturan

Pemerintah Nomor 24 Tahun 1997 Tentang Pendaftaran Tanah. *Jurnal Hukum Magister Kenotariatan Universitas Brawijaya*. 1–27.

Vernando. 2019. Analisis Akibat Hukum dari Penguasaan Secara Melawan Hak Atas Tanah Waris Bersertifikat Hak Milik (Studi Kasus Putusan No. 299/Pdt.G/2014/Pn.Jkt.Pst). *Jurnal Ilmu Hukum*, 8(2), 244–269.

Yulianti, Rina. 2020. A Dispute Resolution of Land Sale and Purchase Without the Heirs' Consent. Atlantis Press. 373(688).