

Settlement of Disputes over Inherited Land Rights in Tana Toraja, South Sulawesi



I Ketut Suweca¹, I Made Suwitra², I Nyoman Alit Puspadma³

Master of Law, Universitas Warmadewa, Indonesia^{1,2,3}

Email: ketutsuweca9@gmail.com

KEY WORDS

Land Disputes, Inherited Land, Customary Law.

ABSTRACT

Inheritance disputes in Indonesia, especially in Tana Toraja, South Sulawesi, reflect the complexity of customary law and legal certainty that often trigger family conflicts. In this context, the land of Tongkonan has unique customary and spiritual values, which makes it a source of disputes if not managed properly. This study aims to analyze the legal protection of inheritance rights to land and dispute resolution mechanisms in Tana Toraja with an empirical legal approach. The research method uses a combination of primary data through interviews and secondary data in the form of legal documents and academic literature. The results of the study show that family deliberations in Tongkonan traditional houses are an important element in dispute resolution, but often fail to provide legal certainty due to the lack of formal documentation. Formal legal procedures, such as land certification by the BPN, help provide legal certainty but still face administrative constraints and compliance with customary values. Integration between customary law and state law is necessary to prevent future conflicts. This research emphasizes the importance of deeds of inheritance distribution and land registration that support customary harmony and legal certainty.

1. INTRODUCTION

The high population density and indigenous peoples consisting of various tribes have different diversity in each region, especially in the field of inheritance. In Indonesia, the inheritance law is still diverse, where each group of the population, including the head of law, each has its own pattern, some are subject to civil inheritance law, Islamic inheritance law and customary inheritance law. Western civil inheritance law applies to those who belong to the Foreign East class and also to indigenous peoples who submit themselves to the provisions of the *Burgelijk Wetboek*. The last is the Customary Inheritance Law, which applies to those who are sons where each region or origin

has its own stipulations and customs according to their customs. Thus, from these three inheritance laws, there are differences that apply according to the law of the heir himself (Sari & Santoso, 2023). In Indonesia, it is getting bigger and the need for land is increasing, while the land area is fixed and even decreasing, so it can cause conflicts in indigenous peoples throughout Indonesia. In a land dispute, both customary land does not always stem from the demands of indigenous people and residents whose land is seized or occupied by others who do not have rights, but it is not uncommon for those who feel entitled and those who speculate also claim other people's land or inheritance belonging to others that they want to control because they know very well that "the owner" of someone who



grabs/controls does not have strong evidence or evidence of clues On the land, in addition to that, there are also often inherited land disputes which are based on the lack of evidence of clues and guarantees of legal certainty from the evidence owned by the landowner or heirs, including land certificates issued by the National Land Agency (BPN) in the form of certificates.

Disputes over customary land and inherited land also occur in relation to various "land transactions" and land registrations that arise in various business transaction models that can allow the transfer of ownership or control of land from one hand to another without the knowledge or knowledge of those who actually have the right or heir to the land in question. Land ownership and control still do not have strong guarantees from the government and applicable legal instruments. There are also land disputes where land owners and heirs or those who control land deal with government agencies or companies under the auspices of the government. On the other hand, it can also be distinguished between individual land disputes and structural land disputes.

Various settlements of customary land and inherited land disputes are quite widely offered, both litigation and non-litigation, but in many cases the results are unsatisfactory. Mediation settlements, both traditional and through various modern Alternative Dispute Resolution (ADR) institutions, although for one or two specific cases can be resolved well, but in most cases do not provide satisfactory and complete resolutions. Even settlements through the courts are sometimes felt by the community to be unsatisfactory. Not a few of those who have occupied the land for many years have been rejected by their lawsuits to defend their rights or get rights because there are other parties who control the land in question. On the other hand,

a person's lawsuit against certain land ownership is granted by the court even though for the party who controls the land, the evidence is not strong enough or the lawsuit is not reasonable (Nugroho, 2009). Many cases that enter the Court that are often felt to be unsatisfactory are because many Courts decide by declaring the lawsuit unacceptable or "niet ontvankelijke verklaard" which is commonly known as "NO" because the plaintiff filed a lawsuit (Kalo, 2007). In a land case, a plaintiff is lucky to always "win" his lawsuit is granted.

The appeal and cassation application from the defendant was rejected, but he had difficulties when requesting the execution of the verdict containing his victory because the situation for execution was impossible to carry out because on the land to be executed there were many people occupying including those who were not sued. When requested for execution, the court stated that the judgment that won the plaintiff could not be executed (non-executable) so that the plaintiff only got victory on paper (in the judgment) but could not control the land he sued.

The decision of the Makassar State Administrative Court (PTUN) Number 02/P/FP/2019/PTUN/MKS dated January 18, 2005 attracted attention because it involved a complex inheritance land dispute. This case began with the issuance of a land rights certificate by the Tana Toraja Land Office, which allegedly did not go through legal agrarian procedures. The certificate was issued for the object of inherited land that was in dispute between siblings, where the plaintiff, Yusup Pakan, claimed to be the legal owner of the land. In this case, the defendant, who is the plaintiff's younger brother, allegedly manipulated so that the portion of the inheritance that had been previously divided became registered in his

name. Surprisingly, the National Land Agency (BPN) as the party that issued the certificate was not made a party to this dispute.

In its ruling, the Makassar PTUN granted the plaintiff's application in its entirety and required the defendant to issue a certificate of ownership of the disputed land in the name of the plaintiff, Yusup Pakan. However, the amar did not give an order regarding the name change process to the Tana Toraja Land Office. The court also sentenced the defendant to pay a case fee of Rp1,641,000. This case reflects the problems of agrarian administration and the handling of inheritance disputes that are often complex in Indonesia.

Status HM 816 land area of approximately 47000 m² located in Pa, tengko Village (Lembang Pa, tengko, Mangkendek District, Tana Toraja City; In the Minutes of the Execution of the MARI Decision No. 807.K/Pdt/2006 which has been legally valid dated May 22, 2008, the Makassar PTUN Court requested the Head of the Tana Toraja Land Office to issue/reprocess the certificate of ownership in the name of Mr. Yusuf Pakan because the Defendant I was not willing to prove the basis of inheritance, to the Plaintiff as the executor of the execution of the decision No. 02/P/FP/2019/PTUN/MKS, January 18, 2005. Regarding the request, the Tana Toraja Land Office (BPN) could not fulfill it because in the decision, the Makassar State Administrative Court (PTUN) ordered the Tana Toraja Land Office BPN (National Land Agency) to implement the decision to issue a Certificate in the name of Yusuf Pakan In general, the Tana Toraja Land Office (BPN (National Land Agency) must be subject to the decision of the PTUN (Administrative Court) court Makassar which has permanent legal force.

This research aims to make a scientific

contribution related to the settlement of disputes over inherited land rights in Tana Toraja, South Sulawesi, by examining theories, principles, and legal rules that can ensure justice for the parties. In particular, this study aims to analyze the legal protection of inheritance of land rights and the mechanism for resolving inherited land disputes in order to ensure the certainty of inheritance rights in the region.

2. METHOD

This study uses empirical legal methods to analyze the gap between necessity and reality related to the registration of customary land and inherited land in the PTSL program in Tana Toraja, South Sulawesi. The focus is to review the implementation of land registration at the Tana Toraja BPN Office and the conflicts that arise, especially the inheritance land dispute in Makendek Village (Lembang).

This research uses an approach of facts, cases, legislation, concepts, legal sociology, and customary law. The factual and case approach is used to analyze concrete legal events, while the legislative approach examines related regulations. The conceptual approach builds a legal framework from existing doctrines and theories, as well as the sociology approach of law examines the interaction of society with norms. Tana Toraja customary law is used to analyze conflicts in the registration of inherited and customary land in the PTSL program in Tana Toraja Regency (Marzuki, 2017; Mukti Fajar & Achmad, 2010).

This study uses primary and secondary data. Primary data was obtained directly from informants or respondents, such as BPN Tana Toraja and Yusuf Pakan related to inheritance land disputes. Secondary data includes primary legal materials, such as the 1945 Constitution,

the Agrarian Law, Government Regulation No. 24 of 1997, and regulations related to PTSL, as well as secondary legal materials in the form of books, articles, journals, and other relevant legal literature (Diantha, 2016; Soerjono & Sri, 2004).

The data collection techniques in this study include primary and secondary data. Primary data was collected through face-to-face interviews with BPN Tana Toraja officials and local traditional leaders to explore information about the registration of inherited land, customary land, and related conflicts in the PTSL program. Secondary data was obtained through the study of primary legal material documentation and the recording of secondary legal material from relevant literature.

The data were analyzed descriptively and hermeneutic to understand the meaning and context of inheritance and customary land registration in the PTSL program at BPN Tana Toraja, including the implications of the conflict. This analysis is complemented by an analysis of the content of the interview, carried out on an ongoing basis, and the results are presented qualitatively and systematically (Ibrahim, 2006).

3. RESULT AND DISCUSSION

Legal Certainty of Inherited Land Rights

Land inheritance occurs due to the death of the right holder, where the rights and obligations are transferred to the heirs according to the principle of "le mort saisit le vif" in Articles 830 and 833 of the Civil Code. The creation of an Inheritance Certificate (SKW) now no longer distinguishes between population groups based on the latest regulation of the Minister of ATR/BPN Regulation No. 16 of 2021, providing flexibility in choosing the type of inheritance document. The purpose of land registration, as stipulated in Government Regulation No. 24 of 1997, is to

ensure legal certainty, provide information to interested parties, and maintain land administration (Rahmasari et al., 2022).

An interview with the Head of the Tana Toraja Land Office emphasized the need for legal certainty for the Tongkonan land, which is often a source of family conflict. Tongkonan land, according to custom, is common property and should not be certified, but the Head of BPN suggested that the land be registered to avoid disputes and provide legal clarity, although it retains customary values.

The Legality of the Transfer of Inherited Land Rights in Tana Toraja

The validity of the transfer of inheritance land rights in Tana Toraja involves family deliberation at the Tongkonan traditional house, with the distribution agreed upon before registration with BPN. In accordance with Articles 23 and 39 of Government Regulation No. 24 of 1997, the transfer of rights must be registered to ensure legal certainty. Ministerial Regulation No. 14 of 2024 provides clear guidelines regarding the transfer of rights, document requirements, and registration of inherited and customary land, including solutions for land that has not been registered. The Ministerial Regulation also facilitates the recognition of customary lands and the legal settlement of disputes, both through mediation and courts, to ensure a legal and orderly process.

Inheritance Distribution Model

In Tana Toraja, the distribution of inheritance is greatly influenced by customs and traditions, including the parental or bilateral system, which allows children to inherit from both parents. Inheritance can be given in two ways: Ditekkenni, a direct gift while the heir is still alive, and Marinding, a gift after the heir dies with traditional rituals such as Rambu Solo and

Badong (Wijaya & Besari, 2023).

The distribution of inheritance also considers the sacrifices of heirs in the form of animal sacrifices, social position, and contributions to the family. Customary norms, guided by traditional leaders, govern the distribution of inheritance, covering land, livestock, and other assets. This system includes individual inheritance, majorat (the right of the eldest child), and involves the extended family through deliberation in the Tongkonan traditional house to maintain harmony and tradition.

1. The Process of Identifying Heirs in the Toraja Traditional Inheritance Distribution System
The process of identifying heirs in the Tana Toraja customary inheritance system is based on the cultural values, traditions, and belief system of Aluk To Dolo. Starting with the announcement of death, traditional leaders determine heirs based on lineage, contributions to the community, and customary norms. This process is influenced by spirituality and considers justice in the context of the family and community.

Ministerial Regulation No. 14 of 2024 integrates customary and state law by regulating customary land registration procedures, ensuring that the transfer of rights is carried out legally and documented at BPN. This prevents disputes and provides formal legality for customary land heritage. The decision to identify heirs reflects local wisdom, spirituality, and individual contributions to the sustainability of Toraja culture.

2. The Process of Identification of Inheritance in the Tana Toraja Traditional Inheritance Distribution System
The process of identifying inheritance in the Tana Toraja tradition involves traditional

leaders, elders, and families to observe all the assets of the deceased, including land, livestock, agricultural products, and other valuable objects. Heritage is seen not only as a material, but also a spiritual responsibility to the ancestors. Asset allocation decisions are made collaboratively with the principles of justice and family solidarity, reflecting local wisdom and the harmony of culture, traditions, and the environment of the Tana Toraja community.

3. The Concept of Distribution of Traditional Inheritance of the Toraja Tribe

The concept of the distribution of Tana Toraja customary inheritance is based on customary values, lineage, social status, and common rights in a large family or clan. The process involves customary deliberations to determine heirs and the allocation of assets such as customary land, livestock, and other assets (Lumentut, 2019). Heritage is not only material, but also includes social and spiritual roles, such as through the traditional ceremony of Rambu Solo'. Some of the key principles include:

- a. Extended Family Kinship: Inheritance based on lineage and extended family common rights.
- b. Customary land: The common rights of indigenous communities, not inherited to specific individuals.
- c. Customary Deliberation: The decision on the division is made collectively through family or clan deliberation.
- d. Traditional Ceremonies: Heritage is often formalized through traditional rituals.
- e. Social Status: Position in society affects the distribution of inheritance.
- f. Dispute Resolution: Disputes are resolved through customary deliberation.

4. Kasus dan Analisis



a. The position of the case

Dispute case at the PTUN with Number 02/P/FP/2019/PTUN. MKS involved Yusuf Pakan as the plaintiff and the Head of the Tana Toraja Land Office as the defendant, related to the certification of 3,651 m² of inherited land by Dina Pakan, Yusuf Pakan's younger brother, without permission or valid evidence. The certificate was allegedly issued based on a fake genealogy document with the help of BPN staff. This dispute triggered a rift in the family, so Yusuf Pakan filed a lawsuit with the Makassar Administrative Court to cancel the certificate, with the support of evidence and testimony of traditional and village leaders.

b. Analysis

The plaintiff, Yusuf Pakan, won the inheritance land dispute case at the Makassar State Administrative Court Number 02/P/FP/2019/PTUN. MKS. The court granted all of the plaintiff's applications, requiring BPN Tana Toraja to revoke the certificate in the name of Dina Pakan and issue a new certificate in the name of Yusuf Pakan, and sentenced the defendant to pay the case fee.

The panel of judges based the verdict on evidence, customary witnesses, and village heads, in accordance with Article 110 of Law No. 5 of 1986 concerning the State Administrative Court and Article 107 of the same Law, as well as Perma No. 8 of 2017. The judge stated that the plaintiff's application was relevant, while the defendant's exclusion was rejected. This decision provides legal certainty to the plaintiff in accordance with Sudikno Mertokusumo's legal theory and Soerjono Soekanto's legal protection, guaranteeing the right to own inherited land free from

future disputes.

4. CONCLUSION

Legal protection of ownership rights over inherited land in Tana Toraja aims to provide security and peace in the distribution of inherited land, especially in the environment of Tongkonan traditional houses. In order to avoid disputes, the distribution of inheritance must be based on the agreement of the extended family, thus providing comfort for descendants living in Tongkonan.

The settlement of inherited land disputes in Tana Toraja is carried out through legal protection and deliberation of extended families in Tongkonan. The division of inherited land is determined based on mutual agreement in a family meeting held in Tongkonan, with the aim of maintaining harmony and preventing conflicts between family members. This process reflects customary values that emphasize the importance of deliberation and togetherness in resolving disputes.

It is recommended that Tongkonan lands be officially registered and supported by a notary deed to provide legal certainty, avoid disputes, and maintain Tana Toraja customary values. The issue of inherited land should be resolved through non-litigation at the customary, village, or sub-district level with a fast, cheap, and supportive process of family reconciliation. To prevent future conflicts, it is necessary to make a deed of inheritance distribution based on mutual agreement while the heirs are still alive, as well as hold traditional ceremonies as a form of gratitude and respect for the inheritance given.

5. REFERENCES

Diantha, I. M. P. (2016). *Metodologi penelitian*



- hukum normatif dalam justifikasi teori hukum*. Jakarta: Prenada Media.
- Ibrahim, J. (2006). Teori dan metodologi penelitian hukum normatif. *Malang: Bayumedia Publishing*, 57(11).
- Kalo, S. (2007). Aspek dan Implikasi Hukum dalam Pendaftaran Tanah dan Penertiban Sertipikat Hak-Hak atas Tanah. *Medan, Makalah Pertemuan Koordinasi Teknis Kuasa Hukum Pemda Untuk Penanganan Perkara Di Peradilan Pada*, 28.
- Lumentut, L. (2019). Hak Anak dalam Sistem Kewarisan Adat Masyarakat Sangla'boran Kabupaten Toraja Utara. *Paulus Law Journal*, 1(1).
- Marzuki, M. (2017). *Penelitian Hukum: Edisi Revisi*. Jakarta: Prenada Media.
- Mukti Fajar, N. D., & Achmad, Y. (2010). *Dualisme penelitian hukum: normatif & empiris*. Pustaka pelajar.
- Nugroho, S. A. (2009). *Mediasi Sebagai Alternatif Penyelesaian Sengketa*. Telaga Ilmu Indonesia.
- Rahmasari, E. E., Handayani, I. G. A. K. R., & Karjoko, L. (2022). Kepastian Hukum Pengaturan Surat Keterangan Waris Dalam Pendaftaran Peralihan Hak Atas Tanah Karena Warisan. *PROSIDING*, 102–111.
- Sari, I. P., & Santoso, B. (2023). Penyelesaian Sengketa Kedudukan Ahli Waris Pa'rinding Dalam Mewaris Berdasarkan Hukum Waris Adat Toraja. *Notarius*, 16(3), 1175–1186.
- Soerjono, S., & Sri, M. (2004). *Penelitian Hukum Normatif, Cetakan Ke-8*,. Jakarta: PT Raja Grafindo Persada.
- Wijaya, D. P., & Besari, S. R. N. (2023). Analisis Sistem Pembagian Waris Adat Suku Toraja. *Causa: Jurnal Hukum Dan Kewarganegaraan*, 1(12), 91–100.