

# Role of the village head in handling inheritance disputes outside the court in the customary inheritance law of the Osing Tribe (Blambangan) (Study in Kemiren Village, Glagah District, Banyuwangi Regency)

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## ABSTRACT

The approach method used is sociological juridical, namely research that analyzes the role of the village head in society in relation to the applicable customary inheritance law. Research specifications using descriptive qualitative data analysis method, namely analytical methods based on field data and studies of problems in the literature. Based on the results of the research, the answers to the existing problems were obtained: (1) Efforts made by the Village Head were to find family trees from the parties, collect information regarding the origins of disputed assets, initiate deliberation meetings, propose alternative solutions to problems, provide necessary suggestions. (2) Inhibiting factors in dispute resolution, namely: it is difficult to know the status of the inheritance, constraints regarding limited witnesses, the human factor, the transfer of ownership rights to land without being recorded. Supporting factors in dispute resolution are: the Village Head has very strong influence, the attitude of the village community that views inheritance disputes as a disgrace, deliberations are conducted in a spirit of kinship, disputes in the District Court are considered more complicated, cost a lot and take a long time. In response to this, if in the distribution of inheritance there is a dispute, deliberations should always be held in the spirit of kinship and harmony to find the best solution that can be accepted by all parties. Counseling and cooperation with NGOs or with official institutions related to land disputes should continue to be pursued, so that people's knowledge will increase and therefore it is hoped that it can minimize inheritance disputes.

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## 1. INTRODUCTION

Development in the field of law with the existing legal system is also encouraged to continue, so that it does not lead to a situation where physical development moves quickly and on the other hand development in the field of law moves slowly. Every country has its own legal system that is different from one another. The positive law system in Indonesia applies three legal systems namely, customary law, Western law and Islamic law. Customary law is one of the important sources of formal

law for the development of national law towards legal unification which will be implemented through the making of statutory regulations. One of the elements forming national law is customary law.

The background that makes the Customary Inheritance Law different from other legal systems is the thought of the Indonesian nation which prioritizes kinship and brotherhood so as to create harmony and harmony and peace in life. The similarities between the three legal systems are that there are both heirs who pass on their assets, both have heirs as subjects entitled to inheritance, and both have inherited assets as objects to be distributed.

Customary Inheritance Law divides the inheritance to several parties either before the heir dies, or can also distribute the inheritance after the heir dies. The heirs referred to in this case are all people who will receive the distribution of inheritance, both as heirs, namely people who have the right to inherit and people who are not heirs but receive inheritance.

Likewise, in the context of fostering the National Inheritance Law, there are elements of Customary Inheritance Law. Therefore, materials on customary inheritance law need to be explored by conducting research on existing literature and field research to obtain and find out whether the various systems and principles of customary inheritance law found throughout the archipelago can be drawn into conformity and reach common ground. Customary law has developed under the influence of several factors, namely the horizontal process factor, this factor can be caused by economic pressure or to break away from the backwardness of the communal community, towards the development of a freer individual identity, the vertical process factor is a symptom that destroys the boundaries of "social stratification" (social stratification), the process factor of modernization and emancipation is a factor that coincides with economic, political, scientific, and technology. Customary law is a living law, because it embodies the real legal feelings of its people. Mochtar Kusumaatmadja stated that the function of law is as a development tool.

According to him, good law is law that is in accordance with the living law in society, which of course is also appropriate and is a reflection of the values prevailing in society. Customary Inheritance Law contains rules governing the process of forwarding and transferring goods -property and intangible goods from a generation of humans to their descendants. This often causes disputes within a family which is caused either by the inheritance factor or by the heirs, as well as the influence of different customs, so that the procedures for distributing inheritance are different.

The Indonesian nation in its mind is based on the principle of kinship, which prioritizes living in harmony and peace over material and self-serving traits. There is a phenomenon in our society that there has been a tendency for families to be more concerned with material possessions by neglecting and destroying harmony in life and kinship or brotherhood, ignoring the legal principles in the Indonesian Customary Inheritance Law, so this cause discord. The principles of customary inheritance law are: Principles of Godhead and self-control; The principle of equal rights and collective rights; The principle of harmony and kinship; The principle of deliberation and consensus; The principle of justice and *parimirma*.

The division that is felt to be unfair because it uses the "sepikul segendong" distribution system or the distribution with a ratio of two to one for men causes problems in the distribution of inheritance. On a small scale, customary law usually applies in villages that still follow the customary rules that are still. The highest leader in customary law is the village elder or village head. The village head as a leader who is respected and respected in a village community plays a major role in maintaining the continuity and existence of the customs of the local community he leads. The measure of justice used to decide on the distribution of inheritance for all heirs is also not the same in all regions, depending on what inheritance system is used in that area, and its application by the village head.

## 2. METHOD

In compiling this research, the authors used a research method approach. The approach used in this research is the sociological juridical method, which is a method intended to determine the relationship between juridical factors and sociological factors from the problems to be analyzed. Location of the research to be carried out in this research is in Kemiren village, Taman Sari sub-district with the consideration that Kemiren village is a village in Banyuwangi Regency which is used as a cultural tourism village and is a traditional village of the Osing tribe with residents who still adhere to and carry out customary law provisions.

Kemiren Village is a village where an inheritance dispute has occurred, involving the Village Head as a mediator in its settlement. The types of data sources obtained are secondary and primary data sources and the population used are all elements that are related and have an interest in relation to Customary Inheritance Law in the village of Kemiren, in this case the Village Head, Village officials (such as Kaur Kesra), Kemiren community leaders such as Kyai. The determination of the sample was carried out based on a non-random technique, namely purposive sampling, in which the authors chose subjects from members of the population, namely representative parties, including: Village head; Village Administration Devices; like Kaur Kesra; Indigenous community leaders, such as Kyai.

The analytical method used in this study is a qualitative descriptive method, namely analyzing data that has been obtained from respondents orally and in writing, as well as their real actions. From the data collected, it is then presented in order to obtain an overview of the problem being discussed, then looks for a solution and draws conclusions according to the problems in the research.

### 3. RESULTS AND DISCUSSION

The results of this study began with a detailed introduction to the location, such as the area of Kemiren village which is approximately 177,052 m<sup>2</sup>. Kemiren village has 2 hamlets, namely Kedaleman hamlet and Krajan hamlet. Kedaleman Hamlet has 4 RW and 15 RT with a total of 488 families, with a male population of 629 people and a female population of 689 people with a total of 1,318 residents in Kedaleman Hamlet.

**Table 1.** Number of Population by Gender

Male type	hamlet		Total	
	kingdom	Depth	Amount	Percent
Man	619	629	1248	47,6
Woman	685	689	1374	52,4
Total	1304	1318	2622	100.0

The population of Kemiren village from the table above is more female than male, namely 52.4% and the population of Kemiren is male by 47.6%. Most of the residents of Kemiren village live and live in the Kedaleman hamlet. The level of education in Kemiren village is quite low. There are only two elementary school buildings in the Kemiren village, namely SDN Kemiren I. Some of the residents of Kemiren Village who are financially able can continue their studies in the city of Banyuwangi. The following table shows the level of education in Kemiren Village.

**Table 2.** Population Composition by Education Level

No	Type of livelihood	Amount	
		Soul	%
1	civil servant	36	1,4
2	TNI/POLRI	5	2.0
3	PRIVATE	316	12,7
4	ENTREPRENEUR / TRADERS	193	7,7
5	FARMER	563	22,7
6	carpentry	267	10,7
7	FARM WORKERS	528	21,3
8	RETIRED	8	0.3
9	NURSE/MIDWIVE	2	0.1
10	TBABA BABY	2	0.1
11	SERVICE	123	4,9
12	AND OTHERS	448	17,9
	TOTAL	2941	100.0

Disputes regarding land boundaries owned by the community that could not be resolved by both parties, with the assistance of the village head, were finally resolved peacefully by producing evidence of a land boundary agreement signed by both parties. In 2005, there were 2 disputes regarding inheritance disputes that were requested for settlement assistance from the Village Head during 2005.

**Table 3.** Number of Population by Type of Livelihood

No	Graduated education	Amount	Percent
1	SD/MI	1121	46,4
2	SLTP/MTs	506	20,9
3	SLTA/MA	414	17,1

4	ACADEMY/D1-D3	9	0.4
5	BACHELOR	13	0.5
6	Islamic boarding school	9	0.4
7	COURSES/Skills	59	2,4
8	NO SCHOOL	289	11,9
TOTAL		2416	100.0

### 3.1 Description of the Kemiren Village Inheritance System

Harmony and mutual respect are still held firmly in the life of the Kemiren village community. All kinds of disputes as much as possible can be resolved peacefully and amicably. Likewise the problem of inheritance disputes, as much as possible can be resolved in the family deliberation. The model for dividing inheritance in Kemiren village until now has been varied, there are times when an equal distribution is given to male heirs and female heirs. The use of the "sepikul-sesuwunan" system is the same as in Javanese inheritance, namely giving a larger share to male heirs and giving half of the male share to female heirs is also found in the life system of the Osing Kemiren community.

If the division is carried out according to the provisions of "sepikul-sesuwunan", then the decision received by each heir sincerely and with full respect for the heir. Harmony and a sense of brotherhood are prioritized in the distribution of inherited assets so as to avoid disputes as much as possible. Disputes cannot be resolved by deliberation between families and brought before the Village Head. The report submitted by one of the parties, namely Sutris, was then followed up by the Village Head amicably. The Village Head then assists in formal/official dispute resolution because the family deliberation does not reach an agreement between the two parties.

### 3.2 Efforts by the Village Head in resolving disputes

Settlement in peace is also intended to eliminate feelings of resentment due to disputes that arise. Disputes in terms of inheritance in general have several alternative solutions with the stages of being resolved among the heirs themselves by holding a meeting or deliberation between the parties concerned. the intervention of the elders or close relatives and family members who have influence as intermediaries. The village head's actions are an obligation and a form of responsibility of the village head for the maintenance of order and peace in the village community. So far, based on the information from the Head of Kemiren Village, Mr. Bambang Sugiharto, the problem of disputes over inherited assets brought to the Kemiren village hall can always be resolved peacefully in a family manner. The Village Head generally intervenes in the resolution of inheritance disputes between heirs which are limited in nature when reports are received by the Village Head. Look for the family tree of the parties; Collect information regarding the origin of the disputed assets; Initiating deliberative meetings; Proposing alternative solutions to problems; Provide the necessary suggestions.

### 3.3 Inhibiting Factors and Supporting Factors for the Village Head's Efforts to Resolve Inheritance Disputes

The Head of Kemiren Village, in his efforts to provide services to his community, faces various obstacles which often make it longer to resolve disputes. The inhibiting factors that make it difficult to resolve disputes and are faced by the Village Head in handling inheritance disputes in the village of Kemiren are as follows: It is difficult to know the position of the inherited assets; Constraints regarding limited number of witnesses; The human factor; Transfer of ownership rights to land without being recorded.

It is difficult to know the position of the inheritance. To determine whether the inheritance is the original property or the joint property of the husband and wife which they produced during their marriage, the constraints regarding the witnesses required to make it clear that the inheritance case is minimal. This situation makes it difficult to prove that the disputing parties are entitled or not to receive the disputed inheritance because most of the witnesses are old or have died. Constraints regarding the witnesses needed to make clear inheritance cases were minimal. This situation makes it difficult to prove that the disputing parties are entitled or not to receive the disputed inheritance because most of the witnesses are old or have died. The transfer of ownership rights to property in the form of land has become a habit of the village community until now without being accompanied by registration. A case that is not settled through a court is a peace trial.<sup>51</sup> This kind of peace does not only apply to rural communities, but also to advanced communities such as cities. This shows that the principle of kinship and harmony in people's lives is still maintained to create harmony and peace in life. <sup>51</sup> This kind of peace does not only apply to rural communities, but also to advanced

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#### 4. CONCLUSION

From the discussion that has been described, it is consistent with the results of the study that has been done, at the end of this paper it can be stated that the Head of Kemiren Village in resolving inheritance disputes made efforts to reconcile it by seeking family trees from the parties, gathering information about the origins of the disputed assets, initiating deliberation meetings, proposing alternatives solving problems, providing necessary suggestions. Settlement of inheritance disputes by the Village Head often encounters obstacles due to factors that make it difficult to know the position of inherited assets, constraints regarding limited witnesses, the human factor, transfers of ownership rights to land that are not accompanied by records. Factors that make it easier for the Kemiren Village Head to resolve inheritance disputes are that the Village Head has very strong influence and the attitude of the village community that views inheritance disputes as a disgrace, deliberations are conducted in a spirit of kinship, disputes in the District Court which are considered more complicated, cost a lot and took a long time.

#### ACKNOWLEDGEMENTS

Based on the results of the discussion and research results, it is still relevant to recommend an idea as a suggestion which can be explained as follows: if there is a dispute in the distribution of inherited assets, then deliberations should always be carried out in a spirit of kinship and harmony to find the best solution that can be accepted by all parties and counseling and cooperation with NGOs or with official institutions related to land disputes to continue to be pursued, so that people's knowledge increases and therefore it is hoped that it can minimize inheritance disputes.

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