

ABSTRAK

Pewarisan hanya dapat berlangsung setelah si pewaris meninggal dunia. Dalam hal ini pewarisan hak atas tanah alm. AM dengan luas tanah 250 m² di Desa Panglegur Kecamatan Tlanakan Kabupaten Pamekasan melalui surat persetujuan pengalihan hak atas tanah waris Dari HRA (10 tahun) dan DR (7 tahun) kepada S sehingga diterbitkan sertifikat atas nama S. Issu hukum dalam penelitian ini adalah terkait dengan status hukum tanah waris karena tindakan yang dilakukan S bertentangan dengan peraturan perundang – undangan yang berlaku. Metode penelitian menggunakan penelitian empiris, pendekatan penelitian menggunakan pendekatan fakta (*fact approach*).

Hasil penelitian menunjukkan bahwa surat persetujuan pengalihan hak atas tanah waris dari HRA dan DR kepada S di Desa Panglegur Kecamatan Tlanakan Kabupaten Pamekasan tidak sesuai dengan Peraturan Perundang – Undangan yakni Pasal 47 UU Perkawinan dan Pasal 98 KHI serta terdapat kesalahan prosedur pada penetapan ahli waris yang belum dilakukan untuk menetapkan bahwa HRA dan DR adalah ahli waris dari alm. AM, sebagaimana dalam Pasal 111 Peraturan Menteri Negara Agraria /Kepala BPN Nomor 3 Tahun 1997, serta melanggar ketentuan maksimal hibah 1/3 pada pasal 210 KHI. Oleh sebab itu, selain kesalahan yang dilakukan oleh S tetapi terdapat kesalahan dari pihak kepala desa karena telah setuju atas surat persetujuan tersebut yang mengakibatkan telah terjadi suatu perbuatan melawan hukum sebagaimana yang tercantum dalam Pasal 1365 KUH Perdata, sehingga mengakibatkan batal demi hukum dan Sertifikat atas nama S dapat dibatalkan sebagaimana dalam Pasal 106 karena telah cacat administratif yang dipertegas dalam Pasal 107 Peraturan Menteri Negara Agraria/ Kepala BPN Nomor 9 Tahun 1999.

Kata Kunci : Pengalihan Hak Milik, Tanah Waris, Sertifikat.

ABSTRACT

Heredity Law is a principal that regulates the movement of ownership rights to the inheritance (tirkah) of the heirs, to determines who entitled to become of heirs and how much of each. Inheritance can only take place after the testator dies. In this case the inheritance land rights of Alm. AM with a land area about 250 m² (two hundred and fifty square meters) located on Jl. Nempan Cangkren, Panglegur, Tlanakan District, which was carried out through a letter of approval regarding the transfer of inheritance rights from HRA (10 y.o) and DR (7 y.o) to S that mistake the certificate published with named S. The legal issue in this study is related to the legal status of the inheritance land because the actions taken by S are contrary to the existing and applicable laws and regulations. This research method uses empirical research. with a research approach using a fact approach which is carried out by reviewing legal events related to the cases raised in the study

The results showed that the approval letter for the transfer of inheritance rights from HRA and DR to S in Panglegur Village, Tlanakan District, Pamekasan Regency was not in accordance with the Legislation - Invitation concerning Article 47 of the Marriage Law and Article 98 KHI and there were procedural errors in determining the heirs who had not carried out to determine that HRA and DR are heirs of the late. AM, as stated in Article 111 of the Regulation of the Minister of State for Agrarian Affairs/Head of BPN Number 3 of 1997 and has violated the provisions of a maximum grant of 1/3 in article 210 of the KHI. Therefore, apart from the mistakes made by S, there was an error on the part of the village head as a public official for having approved the approval letter which resulted in an act against the law as stated in Article 1365 of the Civil Code so that it is null and void and the certificate in the name of S can be canceled as stated in Article 106 because it has administrative defects which are emphasized in Article 107 of the Agrarian State Meter Regulation/Head of BPN Number 9 of 1999.

Keywords: Transfer of Property Rights, Land of Inheritance, Certificate.