

Legal Certainty and Substantive Justice in Inherited Land Disputes: Legal Certainty and Substantive Justice in Inherited Land Disputes

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Abstract

This study analyzes the legal status of inherited land ownership after title transfer and the legitimacy of tax payment claims by other heirs. Despite the formal transfer and registration of inherited land providing legal certainty through certificates, disputes often arise when other heirs demand tax payments, highlighting a tension between administrative law and perceived fairness. This research fills a gap in understanding how Indonesian land law, civil inheritance law, and tax regulations intersect in post-transfer inheritance disputes. Using a normative juridical method with a qualitative approach, the study applies statutory, case, and conceptual analyses. Primary sources include UU No. 5 of 1960, KUHPerdata, PP No. 24 of 1997, and tax provisions on PBB and BPHTB, while secondary sources comprise literature and court decisions. Analysis interprets legal norms and connects them to social practices, emphasizing how legal certainty, substantive justice, and social utility can be balanced. The findings demonstrate that inherited land ownership post-transfer is legally valid and protected by certificates, whereas tax claims by other heirs are justified only for undivided obligations proportionate to each heir's share, consistent with KUHPerdata principles. Applying Gustav Radbruch's theory of legal certainty and Philipus M. Hadjon's legal protection framework, the study highlights the need for integrated approaches combining litigation, mediation, and efficient tax administration under PER-8/PJ/2025. The study contributes academically by clarifying the interaction between inheritance law and tax obligations in Indonesia and offers practical guidance for heirs, notaries, BPN, and tax authorities to prevent disputes and ensure equitable distribution.

INTRODUCTION

Inherited land refers to land originating from the estate of a deceased person (parents) and subsequently distributed to the legitimate heirs.¹ According to Prodjodikoro's explanation regarding the elements of inheritance in the Civil Code (BW/KUH Perdata), it can be concluded that inheritance constitutes a legal provision governing the transfer of ownership of a deceased's estate to the heirs.² The principle of inheritance is regulated under Article 830 of the Civil Code, which states that inheritance occurs only due to death. This emphasizes that inheritance can only be discussed upon a person's death. In legal studies, death has three interpretations: natural death according to medical science, death based on a court ruling declaring that a person is presumed deceased, and civil death, which occurs when a person loses their civil rights due to a court decision and is no longer recognized as a legal subject.³

One of the common inheritance disputes in Indonesia arises when an heir sells the estate or inherited land without the knowledge or consent of the other heirs. Such unilateral sale of inherited property is categorized as an unlawful act. Therefore, referring to Article 1365 KUH Perdata jo. Article 834 KUH Perdata, the other heirs have a legal basis to claim restitution of the inherited land. Consequently, the unilateral sale of inherited property by an heir is still considered an act contrary to the law.⁴ Furthermore, Article 42 paragraph (4) of PP No. 24 of 1997 stipulates that the transfer of land rights due to inheritance must be accompanied by a deed of inheritance division (Akta Pembagian Hak Bersama/ APHB). This provision indicates a difference in requirements between the regulations regarding name transfer at the Land Office and the provisions in PP 24 of 1997. If the transfer of land rights is based solely on a private statement letter from the heirs, it has a high potential to cause disputes in the future. This is because the transfer of rights should provide legal certainty in accordance with the objectives of land registration, whereas documents made privately contradict Article 37 of PP 24 of 1997. Moreover, private documents are not guaranteed for their authenticity by the authorized officials, making them susceptible to forgery or denial by interested parties.⁵

¹ Klaudius Ilkam Hulu and Dalinama Telaumbanua, "Kepemilikan Hak Atas Tanah Warisan Yang Diperoleh Melalui Harta Peninggalan Orang Tua," *Jurnal Panah Keadilan* 1, no. 2 (2022): 52-61.

² Zainal Arifin Haji Munir, *Kewarisan Dan Problematikanya Di Indonesia* (Tangerang Selatan: Lembaga Kajian Dialektika Anggota IKAPI, 2023).

³ Dwi Ratna Kartikawati, *Hukum Waris Perdata Sinergi Hukum Waris Perdata Dengan Hukum Waris Islam* (Tasikmalaya: CV. Elvaretta Buana, 2021).

⁴ Ari Rahmatsyah Sinaga, "Penyelesaian Sengketa Tanah Waris Yang Telah Terjual Tanpa Persetujuan Seluruh Ahli Waris," *Jurnal Notarius* 1, no. 2 (2022): 162-72.

⁵ Kukuh Derajat Takarub et al., "Pendaftaran Peralihan Hak Atas Tanah Yang Bersumber Dari Kesepakatan Ahli Waris Yang Dibuat Dihadapan Notaris," *Journal of Law & Policy Review* 3, no. 1 (2025): 221-32.

The transfer of land rights using a statement letter from the heirs can serve as the basis for registration in the name of one of the heirs without requiring a deed issued by the Land Deed Official (Pejabat Pembuat Akta Tanah/PPAT).⁶ Thus, the primary objective of land registration is to provide legal certainty regarding land rights. This provision underscores the relationship of rights and obligations between the government, as the responsible party in administering land registration, and the right holders as legal subjects. This is reflected in the UUPA, notably Article 23, which stipulates that ownership rights, along with their transfer, extinction, and encumbrance, must be registered, and such registration serves as valid evidence. Article 32 affirms a similar principle concerning the right to cultivate (*hak guna usaha*), while Article 38 regulates the right to build (*hak guna bangunan*) with the requirement of registration as a strong evidentiary instrument for both transfer and extinction of these rights. Therefore, upon completion of the name transfer process, right holders obtain clear legal certainty and possess authentic proof in the form of a certificate, serving as the basis for protection of their land rights.⁷

Notaries play a crucial role in the open inheritance process, both administratively and as mediators in disputes. Their primary duties include drafting inheritance deeds, which serve as legal evidence of heirs' rights, contingent upon supporting documents such as death certificates, proof of familial relationships, and proof of asset ownership. Notaries verify the legitimacy of heirs before preparing deeds that specify each heir's name and share. According to Law No. 2 of 2014, notaries are obliged to create authentic deeds, which constitute valid evidence and possess higher legal authority compared to ordinary documents, thereby providing legal certainty in the distribution of inherited assets.⁸ On the other hand, the authority of the Land Deed Official (Pejabat Pembuat Akta Tanah, PPAT) is also highly crucial, particularly concerning inheritance involving immovable property. PPATs are only authorized to create authentic deeds for Land Rights and Ownership Rights over Strata Units, within the jurisdiction of the relevant Regency/City Land Office. For temporary PPATs, such as sub-district heads (Camat) or village heads (Lurah), their authority is limited to their respective administrative areas. This authority is determined by the location of the land or strata unit object, rather than the domicile of the parties involved. This contrasts with notaries, whose authority is based on the presence of the parties at the notary's office, regardless of the location of the contractual

⁶ Habibah, "Pendaftaran Peralihan Hak Atas Tanah Karena Pewarisan," *Jurnal Jass* 1, No. 1 (2022): 85–100.

⁷ Ridho Afrianedi, "Kepastian Hukum Bagi Tanah Adat Setelah Adanya Undang-Undang Nomor 5 Tahun 1960 Tentang Peraturan Dasar Pokok-Pokok Agraria," <https://www.pa-cilegon.go.id/>, September 26, 2025.

⁸ Henny Saida Flora et al., *Hukum Waris Kuh Perdata* (Batam: CV. Rey Media Grafika, 2025).

object. Thus, the roles of notaries and PPATs in the context of inheritance are complementary: notaries ensure legal certainty regarding the status of heirs through inheritance deeds, while PPATs validate the legitimacy of the transfer of land or strata rights through land deeds created according to their territorial authority.⁹

Although the name transfer procedure provides legal certainty to the new right holders, in practice, issues still arise when other heirs file claims for the payment of inheritance land taxes. Such claims are typically based on contributions made toward Land and Building Tax (PBB) payments prior to the name transfer process, or on unwritten family agreements. However, from the perspective of positive law, the obligation to pay PBB is explicitly attached to the party whose name is recorded as the taxpayer according to the certificate and relevant statutory provisions.

This phenomenon generates a tension between legal certainty and the sense of justice within family relationships. On one hand, post-name-transfer land certificates grant full juridical legitimacy to the right holders, as affirmed in Articles 23, 32, and 38 of the UUPA and Article 32(1) of Government Regulation No. 24 of 1997. On the other hand, there remains a misperception among some heirs who consider the tax obligation to be a shared burden, even after ownership rights have been transferred. This often results in demands for compensation or financial claims that lack a solid legal basis.

Such conditions reveal a gap between the applicable legal framework and social practices in the community. Inheritance disputes are no longer limited to questions of ownership rights but have expanded to include tax obligations whose legal status should be clear. Consequently, legitimate right holders often find themselves in a dilemma: legally, they are not obliged to provide compensation, yet socially, they face pressure from other family members. Therefore, a juridical analysis is necessary to address three key issues: first, the legal status of inherited land ownership after the name transfer; second, whether claims for tax payment submitted by other heirs are legally justifiable; and third, possible solutions for resolving such disputes from the perspective of Indonesian land law. This study is essential not only to strengthen understanding of legal certainty in land matters but also to provide proper guidance for resolving family disputes before they escalate into protracted legal conflicts.

⁹ Akur Nurasa and Dian Aries Mujiburohman, *Tuntunan Pembuatan Akta Tanah* (STPN Press: Yogyakarta, 2020).

METHOD

This study employs a normative juridical method with a qualitative approach, focusing on legal analysis of the norms enshrined in statutory regulations, court decisions, and legal principles that have developed within society.¹⁰ This method was chosen because the issue under investigation pertains to the legal certainty of inherited land ownership following the name transfer, as well as the legitimacy of tax payment claims made by other heirs. Accordingly, the focus of this study is directed toward the analysis of statutory regulations, legal doctrines, and relevant court decisions. The approaches employed in this study include the statute approach, the case approach, and the conceptual approach. The statute approach involves examining UUPA No. 5 of 1960, the Civil Code (KUHPPerdata), the Compilation of Islamic Law, Government Regulation No. 24 of 1997 on Land Registration, as well as land taxation provisions such as PBB and BPHTB. The case approach is used to analyze court decisions related to inheritance and tax disputes, while the conceptual approach draws upon Gustav Radbruch's theory of legal certainty, theories of land ownership rights, and Philipus M. Hadjon's theory of legal protection.

The types and sources of legal materials utilized consist of primary, secondary, and tertiary sources. Primary legal materials include relevant statutory regulations and court decisions. Secondary legal materials encompass literature, articles, journals, and previous research findings. Tertiary legal materials comprise legal dictionaries, encyclopedias, and other supporting sources that enhance understanding of the legal issues under study. Data collection was conducted through a library research method by gathering, reviewing, and analyzing both print and electronic legal sources. Subsequently, the analysis was performed qualitatively and normatively by interpreting and constructing existing legal norms, and then linking them to the concrete issues under investigation. This analysis produces conclusions that are logical, systematic, and scientifically accountable.

RESULTS AND DISCUSSION

1. The Legal Status of Inherited Land Ownership Following Name Transfer

The transfer of ownership rights over inherited land can occur through two mechanisms: intestate succession or through legal acts involving the transfer of rights. Intestate succession refers to the transfer of land rights from a deceased right holder to

¹⁰ Gunardi, *Buku Ajar Metode Penelitian Hukum* (Jakarta Selatan: Damera Press, 2022).

their heirs, commonly recognized as the inheritance process.¹¹ Land plays a vital role as a source of livelihood directly related to human life, necessitating clear regulations regarding its ownership. The prevalence of land disputes within society has prompted the government to enhance outreach programs emphasizing the importance of land certificates as valid proof of ownership.¹² This aligns with the provisions of Article 3(1) of Government Regulation No. 24 of 1997 on Land Registration, which states that the primary objective of land registration is to provide legal certainty and protection for holders of land rights, strata units, or other registered rights. Through registration, right holders obtain authentic proof in the form of a certificate, which can be used to demonstrate and substantiate their ownership status. This is crucial, as the certificate serves as valid evidence in the event of disputes or claims from third parties, thereby ensuring that right holders are legally protected and not disadvantaged.¹³

According to UUPA No. 5 of 1960, the legal status of inherited land ownership following a name transfer only attains certainty after the registration of the transfer of land rights. This is affirmed in Articles 23(1) and (2) of UUPA No. 5 of 1960, which stipulate that every transfer of ownership, including through inheritance, must be registered to serve as strong evidence of the validity of such transfer. Accordingly, heirs receiving inherited land are required to complete the name transfer process at the land office so that ownership rights officially pass from the deceased to the heirs.

However, Article 21(3) emphasizes that only Indonesian citizens are entitled to hold land under ownership rights. If inherited land is acquired by a party who does not meet this requirement, such as a foreign national, they are obliged to relinquish the right within one year. Failure to do so results in the automatic nullification of ownership, and the land reverts to the state. Therefore, the name transfer is not merely an administrative formality but a crucial requirement to ensure legal certainty and the continuity of rights over inherited land in accordance with national agrarian regulations.¹⁴

Land certificates play a crucial role as evidence of legitimate ownership, providing legal certainty and facilitating owners in proving the status of their land. Additionally, certificates enable other interested parties to obtain reliable information regarding the

¹¹ Siti Maghfirotn Nimah, "Peralihan Hak Milik Tanah Waris Dalam Hukum Islam," *Media Iuris* 2, no. 2 (2019): 217.

¹² Sulasningsih, "Peralihan Hak Atas Sertipikat Tanah Hak Milik Eks Transmigrasi yang Dilakukan Dengan Jual Beli Bawah Tangan (Studi Kasus Para Petani Sawit Di Kabupaten Kampar)," *Lex Librum : Jurnal Ilmu Hukum* 6, no. 1 (2019): 57-76.

¹³ Presiden Republik Indonesia, *Peraturan Pemerintah Republik Indonesia Nomor 24 Tahun 1997 Tentang Pendaftaran Tanah*, n.d.

¹⁴ Presiden Republik Indonesia, "Undang-Undang Republik Indonesia Nomor 5 Tahun 1960 Tentang Peraturan Dasar Pokok-Pokok Agraria" (1960).

land. Although the Basic Agrarian Law (UUPA) and Government Regulation No. 24 of 1997 mandate land registration to ensure legal certainty, in practice, many people still hold land without certificates due to the lack of registration, resulting in unclear ownership status.¹⁵ Thus, other heirs not listed on the certificate lose legal legitimacy to claim ownership rights over the land, unless they can demonstrate a legal defect in the name transfer process.

The transfer of ownership rights over inherited land under Indonesian agrarian law occurs through two mechanisms: intestate succession or the transfer of rights through legal acts. In the context of inheritance, land rights automatically pass to the heirs upon the death of the decedent. However, legal certainty regarding such transfer only arises after the name transfer and registration at the land office, as affirmed in Articles 23(1) and (2) of UUPA No. 5 of 1960 and Article 3(1) of Government Regulation No. 24 of 1997. Consequently, the legal status of inherited land ownership following a name transfer is valid, as the reissued certificate serves as authentic evidence of ownership. This means that heirs listed on the certificate have full legitimacy to act as the landowners, both in terms of use, transfer, and legal protection against claims from third parties.

Problems arise, however, when other heirs not listed on the certificate file claims, for instance, based on the payment of Land and Building Tax (PBB). In this context, tax payment cannot automatically serve as a basis for ownership, as taxation constitutes an administrative obligation rather than proof of rights. Therefore, even if another heir regularly pays PBB, ownership remains vested in the name recorded on the post-transfer certificate. Furthermore, Article 21(3) of the UUPA emphasizes that only Indonesian citizens may hold land under ownership rights. If inherited land falls to a party who does not meet this requirement, the land must be relinquished within one year. This further underscores that the name transfer is not merely an administrative procedure but a substantive requirement to ensure that land rights remain valid and protected.

2. The Legal Status of Tax Payment Claims by Other Heirs

The obligation to pay taxes on inherited assets arises essentially when the inheritance remains a single entity and has not yet been distributed among the heirs. Under such circumstances, the inheritance is treated as a substitute taxpayer on behalf of the decedent, in accordance with the provisions of the Income Tax Law. However, once the inheritance has been distributed, the tax obligations transfer to each heir in proportion to their respective shares, and the decedent's Tax Identification Number (NPWP) may be

¹⁵ Diana Lubis, "Peralihan Hak Atas Tanah Yang Tidak Diketahui Keberadaan Pemiliknya," *Recital Review* 3, no. 1 (2021): 105-19.

cancelled as regulated in Article 9(4)(g) of PER-20/PJ/2013. Accordingly, tax payment claims by other heirs are only valid while the inheritance remains undivided.¹⁶

Tax collection in Indonesia is grounded in Article 23A of the 1945 Constitution, which affirms that taxes and other compulsory levies for state purposes must be regulated by law. Accordingly, any form of tax collection lacking a legal basis in legislation can be deemed invalid. One of the tax instruments in the land sector is the Duty on Acquisition of Land and Building Rights (BPHTB). This tax is relatively new within the Indonesian taxation system. Historically, the concept of BPHTB was already known during the Dutch colonial administration, but it was abolished following the enactment of Law No. 5 of 1960 concerning the Basic Agrarian Principles (UUPA), which reestablished the fundamental principles of land control in Indonesia.¹⁷

According to Law No. 12 of 1985 concerning Land and Building Tax (PBB), as amended by Law No. 12 of 1994 and reinforced by Law No. 28 of 2009, tax constitutes a compulsory obligation without direct compensation, levied based on the value of specific objects to enhance societal welfare. PBB is classified as a property tax imposed on land and/or buildings, meaning that the amount of tax payable is determined by the condition of the object rather than the taxpayer. This tax is collected through an official assessment system, in which the assessment is entirely determined by the government. In general, PBB is divided into PBB-P3, applicable in the plantation, fisheries, and mining sectors, and PBB-P2, imposed in rural and urban areas. PBB plays a crucial role both as a source of state and regional revenue and in ensuring legal certainty regarding the obligations of owners, users, or controllers of land and buildings within the territory of the Republic of Indonesia.¹⁸

The legal status of tax payment claims by other heirs is closely related to the inheritance's position as a substitute taxpayer for the decedent. According to the Income Tax Law, as reinforced by findings in the study by Vonny Kristanti Kusumo (2023), undivided inheritance is regarded as a single tax subject, meaning that tax obligations remain in effect until the assets are distributed. Once the inheritance has been divided, the tax obligations transfer to each heir in proportion to their respective shares. This is also stipulated in the Minister of Finance Regulation No. 189/PMK.03/2020, which states that one of the heirs or the executor of the will is responsible for tax debts up to the value

¹⁶ Shanti Wulandari and Alicia Choiri Alfiana, "Kemaknagandaan Pembebanan Pajak Penghasilan Atas Harta Warisan Yang Diperoleh Ahli Waris," *Perspektif* 29, no. 1 (2024): 29–35.

¹⁷ Fauzan Arwi and Budi Ispriyarso, "Pemungutan BPHTB (Bea Perolehan Hak Atas Tanah Dan Bangunan) Secara Online Di Kabupaten Tangerang," *NOTARIUS* 16, no. 3 (2023): 1471–82.

¹⁸ Nurbudiwati, Ade Purnawan, and Helmi Achmad Fauzi, "Analisis Faktor Penghambat Pencapaian Pajak Bumi Dan Bangunan," *Jurnal Publik* 16, no. 02 (2022): 91–103.

of the undivided inheritance, whereas after division, each heir is liable only up to the portion received. The same principle is reflected in Articles 1100 and 1032 of the Civil Code (KUHPerdara), which provide that heirs bear the decedent's debt obligations proportionally to their share, without exceeding the value of the inheritance. Accordingly, tax payment claims by other heirs remain possible; however, their liability is limited to the value of the inherited assets.¹⁹

Tax payment claims by heirs not listed on the certificate often become a source of conflict. According to Article 77(1) of Law No. 28 of 2009 concerning Regional Taxes, the objects of the Rural and Urban Land and Building Tax (PBB-P2) are land and/or buildings that are owned, controlled, and/or utilized by individuals or legal entities, excluding areas used for plantation, forestry, and mining business activities.²⁰ Therefore, if the inherited object consists of land or buildings, the obligation to pay Land and Building Tax (PBB) remains attached to the property even after the decedent's death. Consequently, heirs who control or receive rights to the inherited land and buildings automatically assume responsibility for PBB payment. This demonstrates that tax payment claims by other heirs are relevant not only in the context of transferring income tax liabilities but also in relation to obligations under regional taxes such as PBB, ensuring that tax obligations continue to be upheld despite the transfer of ownership due to inheritance.

The death of an individual results in the transfer of their rights and obligations to the heirs. This is consistent with Article 833 of the Civil Code (KUHPerdara), which stipulates that all heirs automatically acquire ownership of all the decedent's property, rights, and receivables by law. However, this transfer extends not only to assets but also to obligations. Article 1100 of the Civil Code explicitly provides that heirs who have received an inheritance are required to bear their proportionate share of debts, gifts, bequests, and other encumbrances in accordance with the portion they receive. Accordingly, outstanding taxes that remain the decedent's obligation fall under the category of debts to be borne by the heirs. Unlike personal rights (*hoogstpersoonlijkrechten*), which extinguish upon death, the obligation to pay taxes is classified as a property-related right (*vermögensrechtlich*) and therefore transfers to the

¹⁹ Vonny Kristanti Kusumo, "Kewajiban Pembayaran Atas Pelimpahan Utang Pajak Pewaris Kepada Ahli Waris Dipandang Dari Aspek Hukum Perdata," *Jurnal Hukum To-Ra: Hukum Untuk Mengatur Dan Melindungi Masyarakat* 9, no. 1 (2023): 58–68.

²⁰ Presiden Republik Indonesia, "Undang-Undang Republik Indonesia Nomor 28 Tahun 2009 Tentang Pajak Daerah Dan Retribusi Daerah" (2009).

heirs. Consequently, if an heir has settled the decedent's tax obligations in advance, they have a legal basis to claim proportional reimbursement from the other heirs.²¹

The tax payment claims by other heirs are fundamentally related to the status of the inheritance as a substitute taxpayer for the decedent. According to the Income Tax Law, reinforced by Article 9(4)(g) of PER-20/PJ/2013, tax obligations on an inheritance exist only while the inheritance remains a single entity and has not yet been distributed. Under this condition, the inheritance is treated as an independent tax entity. However, once the inheritance is divided, the tax responsibilities transfer to each heir in proportion to their respective shares, and the decedent's Tax Identification Number (NPWP) may be cancelled. Accordingly, tax payment claims by other heirs are legally justifiable as long as the tax obligation arises while the inheritance remains undivided. Such claims do not imply a transfer of land ownership, but rather affirm that the tax burden constitutes a shared obligation among the heirs, to be borne proportionally according to each heir's portion of the inheritance. This principle is reinforced in Articles 1100 and 1032 of the Civil Code (KUHPperdata), which stipulate that heirs must bear the decedent's debts proportionally to their inherited shares.

On the other hand, land-related tax obligations, such as Land and Building Tax (PBB) and Duty on Acquisition of Land and Building Rights (BPHTB), remain attached to the inherited land or building, as regulated in Article 77(1) of Law No. 28 of 2009. This means that even after land ownership has been transferred through the name change process, the tax obligation does not automatically disappear. Heirs who control or are recorded in the land certificate as the new owners remain responsible for paying these taxes. If one heir settles the PBB in advance, they have a legal basis to claim reimbursement from the other heirs to ensure equitable payment.

From the perspective of civil inheritance law, as stipulated in Article 833 of the Civil Code, the transfer of inheritance encompasses both the rights and obligations of the decedent. Outstanding taxes fall under the category of the decedent's debts, which must be settled by the heirs. This obligation differs from personal rights or obligations (*hoogstpersoonlijkrechten*) that extinguish upon death. Since taxes are property-related rights (*vermögensrechtlich*), they remain attached to the inheritance and transfer to the heirs.

²¹ Syuhada Syuhada, "Pelimpahan Hutang Terhadap Ahli Waris Menurut Pasal 833 Ayat (1) KUHPperdata," *Minhaj: Jurnal Ilmu Syariah* 2, no. 2 (2021): 183–204.

3. The Implications of Legal Theory on Inheritance Disputes

According to Gustav Radbruch, legal certainty is one of the fundamental values in law that must be analyzed in relation to legal positivist reasoning.²² Radbruch emphasizes that law has three main objectives: justice (*Gerechtigkeit*), legal certainty (*Rechtssicherheit*), and utility (*Zweckmäßigkeit*). Although these concepts are frequently discussed in academic and judicial contexts, their meanings and essence are not always universally agreed upon. The relationship between justice and legal certainty is often viewed as contradictory; however, the two can complement each other. For instance, the concept of procedural justice, as proposed by Nonet and Selznick, is actually oriented toward legal certainty in order to uphold the rule of law.²³ Thus, justice and legal certainty are not antagonistic but coexist alongside each other. Initially, Radbruch emphasized legal certainty as a priority over justice and utility. However, in the development of his theory, he revised this view, asserting that the three objectives of law hold equal standing and cannot be hierarchically prioritized.²⁴

The value of legal certainty emphasizes the existence of and adherence to regulations themselves, without considering whether such regulations are just or beneficial to society. Conversely, if law prioritizes utility, it tends to disregard legal certainty and justice, as the focus is on the extent to which the law provides benefits to society. The same applies when law focuses solely on justice, where legal certainty and utility may be neglected, because what is perceived as just may not necessarily align with certainty or the practical usefulness of the law. Therefore, a proportional, harmonious, and balanced compromise among these three values is required. Consequently, the ideal purpose of law or a judicial decision inherently incorporates all three fundamental values simultaneously, whereas a less optimal decision typically emphasizes only one value while neglecting the others.²⁵

In the National Land Law as regulated in the Basic Agrarian Law (UUPA), several types of land rights are recognized. First, the Rights of the Indonesian Nation, as stipulated in Article 1 of the UUPA, represent the highest form of land rights and encompass both civil and public aspects. Second, the State Control Rights, as provided in

²² Mario Julyano and Aditya Yuli Sulistyawan, "Pemahaman Terhadap Asas Kepastian Hukum Melalui Konstruksi Penalaran Positivisme Hukum," *Jurnal Creado Jurnal Mengenai Dasar-Dasar Pemikiran Hukum: Filsafat Dan Ilmu Hukum* 1, no. 1 (2019): 13-22.

²³ Sidharta, *Reformasi Peradilan Dan Tanggung Jawab Negara, Bunga Rampai Komisi Yudisial, Putusan Hakim: Antara Keadilan, Kepastian Hukum, Dan Kemanfaatan* (Jakarta: Komisi Yudisial Republik Indonesia, 2010).

²⁴ Nur Agus Susanto, "Dimensi Aksiologis Dari Putusan Kasus 'ST' Kajian Putusan Peninjauan Kembali Nomor 97 PK/Pid.Sus/2012," *Jurnal Yudisial* 7, no. 3 (2014).

²⁵ Abdul Aziz Nasihuddin et al., *Teori Hukum Pancasila* (Tasikmalaya: CV. Elvaretta Buana, 2024).

Article 2 of the UUPA, are purely public in nature, granting the state authority to regulate, manage, and supervise the allocation and use of land. Third, the Customary Rights of Indigenous Communities, as regulated in Article 3 of the UUPA, remain valid as long as they are acknowledged, encompassing both civil and public aspects. Fourth, Individual or Personal Rights, which are entirely civil in nature, include individual land rights derived from national rights (Articles 16 and 53 of the UUPA), Waqf Rights, representing ownership rights that have been endowed (Article 49 of the UUPA), and Land Security Rights in the form of mortgage rights as stipulated in Articles 25, 33, 39, and 51 of the UUPA.²⁶

According to Philipus M. Hadjon, legal protection is an effort to safeguard human dignity and ensure the recognition of human rights against arbitrary actions, grounded in Pancasila and the principles of a state governed by law. Legal protection can be distinguished into two forms. First, preventive legal protection, which provides mechanisms for legal subjects to express objections or opinions before government decisions become definitive. Its purpose is to prevent disputes and encourage the government to exercise discretion more cautiously. However, the regulatory framework for preventive instruments remains relatively limited in Indonesia. Second, repressive legal protection is aimed at resolving disputes through judicial channels, whether in General Courts or Administrative Courts. Repressive legal protection is rooted in the principles of human rights recognition and protection, as well as the rule of law, which both restrict government power and guarantee the rights of citizens.²⁷

The Compilation of Islamic Law (KHI) was developed through a state initiative led by the Chief Justice of the Supreme Court and the Minister of Religious Affairs, subsequently obtaining legitimacy from Islamic scholars via a national workshop. Its substance refers to the Qur'an, Sunnah, statutory regulations, and also takes into account customary and Western law, making KHI a form of Indonesian-style Islamic law. KHI was enacted through Presidential Instruction No. 1 of 1991, reinforced by the Minister of Religious Affairs' Decrees and various circulars, positioning it below national laws and government regulations in the legal hierarchy. Substantively, KHI covers marriage law, inheritance, and waqf, which have long been practiced by Indonesian Muslims. In the practice of religious courts, KHI serves as positive Islamic law and as a guideline for dispute resolution to fill legal gaps. Regarding inheritance law, KHI stipulates that inheritance occurs after the death of the testator (principle of death). According to Article

²⁶ Muwahid, *Pokok-Pokok Hukum Agraria Di Indonesia* (Surabaya: UIN Sunan Ampel Press, 2016).

²⁷ Muhamad Sadi, *Perlindungan Hukum - Konsep Perlindungan Hukum Dalam Hukum Positif Indonesia* (Sumatera Selatan: CV. Doki Course and Training, 2022).

171(d), the estate comprises all property and rights legitimately owned by the deceased. Articles 176–182 of KHI regulate heirs' shares—for instance, a wife as *dzawil furudh* is entitled to 1/8 if the deceased leaves children, while sons and daughters, categorized as *ashabah*, inherit based on the principle that a male receives twice the share of a female. This system demonstrates a balance of financial responsibility and preserves family harmony. However, inheritance distribution often leads to prolonged disputes due to human tendencies to desire wealth, resulting in frequent conflicts among heirs over the estate.²⁸

Based on Gustav Radbruch's theory, post-name-change inheritance disputes over land and tax payment claims by other heirs can be understood as a form of tension between legal certainty and substantive justice. Legal certainty is reflected in formal documents such as land certificates that have undergone the name-change process, which administratively confirm the lawful owner according to land law. However, claims by other heirs who feel they have contributed—for example, through tax payments or land maintenance—demonstrate demands for justice that are not always accommodated by formal instruments. In this context, dispute resolution cannot rely solely on administrative legal certainty but must also consider justice and utility, as emphasized by Radbruch.

The concept of legal protection according to Philipus M. Hadjon is also relevant. Ideally, disputes could be minimized through preventive legal protection mechanisms, such as family deliberations, recording inheritance division agreements, or court-based determination of heirs in religious courts before the name-change process. However, since these mechanisms are often neglected, resolution usually falls under repressive legal protection through litigation. In such cases, courts play a crucial role in enforcing the principle of non-arbitrariness and ensuring that all heirs' rights are not infringed by unilateral actions.

Meanwhile, the Compilation of Islamic Law (KHI) serves as a normative guideline in resolving inheritance disputes. According to Article 171(d) of KHI, the estate encompasses all assets of the deceased, including land, which must be distributed in accordance with Sharia provisions. Articles 176–182 of KHI regulate the proportional shares of each heir, indicating that unilateral name-change actions without the consent of other heirs may contradict Islamic inheritance principles. Similarly, tax payment claims do not automatically nullify other heirs' inheritance rights; rather, they may serve as a consideration in equitable distribution or reimbursement (*ta'widh*). Thus, post-name-

²⁸ Ibid.

change land inheritance disputes and tax payment claims illustrate the need to balance administrative legal certainty (land certificate name-change), substantive justice (rights of all heirs according to KHI), and social utility (preventing prolonged family conflict). An ideal judicial decision not only upholds formal legal certainty but also integrates the principles of justice and utility, thereby providing comprehensive legal protection for all heirs.

4. Resolution of Inheritance Ownership and Tax Disputes

Inheritance distribution disputes should ideally be resolved through appropriate mechanisms to prevent family fragmentation and future conflicts over the estate. Within the context of Indonesian positive law, such disputes can be addressed through two main channels: litigation in courts or non-litigation mechanisms outside the judicial system.²⁹ Dispute resolution through litigation has the advantage that court decisions are final, definitive, and provide legal certainty by clearly establishing the positions of the prevailing and losing parties. Furthermore, enforcement can be compelled through execution if the losing party fails to comply. According to Sudikno Mertokusumo (1993), court decisions possess three main powers: binding force, evidentiary force, and executorial force. The binding force means that the judge's ruling applies to the parties involved in the case, both positively (the decision is deemed correct) and negatively (the same case cannot be adjudicated again, i.e., *nebis in idem*). The evidentiary force is reflected in the written decision as an authentic deed that can be used as evidence in subsequent legal actions or for the execution of the ruling. The executorial force grants the state authority to compel the implementation of the decision's content, ensuring that the ruling not only determines rights but also guarantees their legal realization.³⁰

Mediation is a form of non-litigation dispute resolution regulated under PERMA No. 1 of 2016, which replaces PERMA No. 1 of 2008. This process is mandatory prior to court proceedings to achieve an amicable settlement through negotiations assisted by a mediator, who may be a judge or a non-judge. Mediation costs are relatively low and are borne according to the agreement of the parties. Civil disputes are generally required to undergo mediation, except for specific cases as stipulated by law. The mediation process consists of pre-mediation, negotiation, and either reaching an agreement or issuing a declaration of mediation failure. Its advantages include informality, speed, low cost, confidentiality, and the preservation of good relations between the parties. Parties are

²⁹ Khozanah Ilma Terok, Zaini Munawir, and Anggreni Atmei Lubis, "Pengaruh Mediasi Dalam Penyelesaian Sengketa Waris," *JUNCTO: Jurnal Ilmiah Hukum* 3, no. 1 (2021): 12-23.

³⁰ Rosita, "Alternatif Dalam Penyelesaian Sengketa (Litigasi Dan Non Litigasi)," *Al-Bayyinah: Journal of Islamic Law* VI, no. 2 (2017): 99-113.

also free to select their mediator and may involve experts or community figures. If successful, the settlement can be formalized through a court-certified deed of peace.³¹

It is important to understand that inheritance received by heirs is not considered a subject of Income Tax (PPh), as stipulated in Article 4 paragraph (3) letter b of the Income Tax Law (UU PPh), most recently amended by the HPP Law of 2021. However, when heirs process the transfer of land certificate ownership at the National Land Agency (BPN), tax obligations arise in the form of Final Income Tax under Article 4 paragraph (2) and the Land and Building Acquisition Duty (BPHTB). The Final Income Tax is a central government tax that is essentially payable by the deceased, whereas BPHTB is a regional tax owed by the heirs as the recipients of the rights. To prove that the inheritance is not subject to PPh, heirs must obtain a Certificate of Tax Exemption (Surat Keterangan Bebas, SKB). Without the SKB, the Land Deed Official (PPAT) or BPN cannot proceed with the transfer of the certificate. The Director General of Taxes Regulation No. PER-8/PJ/2025 simplifies the procedure for applying for the SKB by removing the requirement for validation of the deceased's Annual Tax Return (SPT), which previously often posed an obstacle. The administrative focus now shifts to the compliance of the heirs themselves, including annual tax reporting and ensuring there are no outstanding tax liabilities.³²

The application for the Certificate of Tax Exemption (SKB) is conducted online through the DJP Coretax system using the heir's National Identification Number (NIK). In cases involving multiple heirs, the application may be submitted by one representative, provided that written consent from all heirs is attached. The validation process is performed automatically by the system, and the SKB is issued within a maximum of three working days once all documents are complete. Accordingly, PER-8/PJ/2025 introduces both efficiency and legal certainty in the exemption of Income Tax (PPh) on inheritance, in line with the national tax administration reform.³³ In the context of inheritance land ownership disputes, choosing between litigation and non-litigation pathways serves as an essential instrument for resolving conflicts among heirs. Litigation provides legal certainty because court decisions are final, binding, and enforceable, as elaborated by Sudikno Mertokusumo regarding the three powers of judicial decisions (binding, evidentiary, and executorial). This is particularly relevant when serious disputes arise concerning ownership rights following the transfer of land certificates, for

³¹ Rifqani Nur Fauziah Hanif, "Penyelesaian Sengketa Non-Litigasi Melalui Proses Mediasi," <https://www.djkn.kemenkeu.go.id/kpknl-manado/baca-artikel/13448/penyelesaian-sengketa-non-litigasi-melalui-proses-mediasi.html>, November 14, 2020.

³² Muh. Rahmatullah Barkat, "Membongkar Mitos 'Pajak Warisan,'" <https://www.pajak.go.id/id/artikel/membongkar-mitos-pajak-warisan>, December 9, 2025.

³³ Ibid.

instance, when an heir feels excluded from the division or objects to tax payment claims settled by other heirs. However, prior to litigation, mediation regulated under PERMA No. 1 of 2016 serves as a non-litigation mechanism that is more expedient, cost-effective, and preserves familial relationships. Mediation can be employed to reach agreements on the division of inheritance assets as well as the allocation of tax obligations, such as determining who is responsible for the Land and Building Acquisition Duty (BPHTB) or whether reimbursement should be made by heirs who did not participate in payment. If successful, the settlement can be formalized in a peace deed, thereby preventing prolonged disputes.

From a taxation perspective, inheritance itself is not considered a subject of Income Tax (PPh) as regulated under Article 4 paragraph (3) letter b of the Income Tax Law in conjunction with the 2021 Tax Harmonization Law (UU HPP). However, in administrative practice, the transfer of rights over land and buildings due to inheritance still gives rise to obligations such as Final Income Tax under Article 4 paragraph (2) and the Land and Building Acquisition Duty (BPHTB). This is where potential disputes emerge, particularly when one heir bears the tax burden for the name transfer while another heir claims ownership without contributing to the fiscal obligations. Director General of Taxes Regulation No. PER-8/PJ/2025 simplifies the issuance of the Tax Clearance Certificate (Surat Keterangan Bebas, SKB) as administrative evidence that the inheritance is not subject to PPh. By eliminating the requirement for the deceased's tax return validation, technical obstacles are mitigated, but the emphasis shifts to the compliance of the heirs themselves. This condition becomes critical in ownership disputes because non-compliant heirs can hinder the name transfer process. Consequently, disputes extend beyond mere ownership rights to encompass questions of who is responsible for settling taxes or entitled to reimbursement if payments were made in advance.

Therefore, resolving inheritance land ownership and tax disputes post-name transfer requires a holistic understanding:

- a. Procedural law aspects (litigation and mediation) ensure justice and legal certainty in the distribution of rights.
- b. Tax administrative aspects (SKB, BPHTB, Final PPh) constitute technical factors that can trigger new disputes, particularly concerning the allocation of tax burdens among heirs.
- c. PER-8/PJ/2025 highlights administrative reform aimed at efficiency while still requiring heirs' compliance, which may directly affect the legitimacy of ownership claims following the name transfer.

CONCLUSION

Based on the research findings, the post-name transfer ownership of inherited land holds legally valid and formally recognized status, as the reissued land certificate serves as authentic proof of ownership. The legal certainty provided by the certificate ensures that heirs listed on it have full legitimacy to exercise their rights, including use, transfer, and legal protection against third-party claims. Nevertheless, claims for tax payments by other heirs remain legally permissible on a proportional basis, limited to obligations arising prior to the division of the inheritance. The study also highlights a tension between administrative legal certainty, substantive justice for all heirs, and social utility in preserving family harmony. From a theoretical perspective, Gustav Radbruch's concept of legal certainty and Philipus M. Hadjon's principle of legal protection underscore that the ideal resolution of inheritance disputes must balance these three values, integrating formal legality, equitable justice, and societal benefit.

For practical implementation, heirs are advised to complete the name transfer and land registration procedures promptly to ensure full legal certainty over inherited land. Dispute resolution through family mediation or notarized settlement agreements prior to court proceedings is recommended to prevent protracted conflicts. Policymakers and the National Land Agency (BPN) should enhance outreach programs to educate the public about inheritance procedures, tax obligations, and the use of PER-8/PJ/2025 to simplify administrative processes. The Directorate General of Taxes may further streamline the issuance of Tax Clearance Certificates (SKB) and provide guidance on proportional responsibility for BPHTB and Final PPh among multiple heirs. Establishing clear written agreements among heirs before initiating name transfers strengthens legal legitimacy, reduces potential conflicts, and preserves family harmony.

This study contributes to both theory and practice by demonstrating that legal certainty, substantive justice, and social utility must be considered jointly in inheritance disputes. Administratively, it reinforces the importance of land registration and tax compliance, while theoretically, it illustrates how normative legal principles and jurisprudence can guide equitable resolution. By integrating formal legal mechanisms with family-based mediation, the findings offer a comprehensive framework for minimizing inheritance conflicts and promoting orderly management of inherited land in Indonesia.

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