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“Legal Reconstruction in Indonesia Based on Human Right”

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PREFACE

First of all, let's say Thanks to Allah, who has been giving us guidance, happiness, healthy, and mercy, so we can finish this conference proceeding without any obstacles. Praise and salutation upon our prophet Muhammad saw the last messenger, the best figure of this universe; the person who was able to save us from Jahiliyah era.

We would like to extend our thanks to the invited speakers: Prof. Henning Glaser from Thammasat University, Prof. Shimada Yuzuru from Nagoya University, Hilaire Tegnau, Ph.D from Sorbone University, Prof. Topo Santoso From Indonesian University, and Dr. Sri Endah Wahyuningsih, S.H., M.H from Sultan Agung Islamic University.

This was our fourth International conference and call for paper held by Faculty of Law, Sultan Agung Islamic University. This annual conference tries to gain any information and studies done by academician and practitioner in the concerned field to be discussed as guidelines to exchange and talk about views on the most important recent on Legal Construction and Development focusing on The Role of Indigenous and Global Community in Constructing National Law happens in both developed and developing countries and its role in shaping a good future, and to discuss the challenges and practical aspects in integrating competition law enforcement and guidelines to develop legal state in accordance with the diversity of all countries around the world. We hope this conference brings benefit for both participants and our faculty.

We are pleased to have your critique, suggestion and correction in order to make us better. Finally, we do thanks to all who helped this conference. May Allah guide us to always develop useful knowledge for human being.

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Harmonization In Regulation Of Heritage Certificate By Notary In Sociolegal Perspective

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Abstract

This article attempts to answer the following questions: 1. Why there is a difference in the arrangement of a certificate of inheritance by a Notary based on the Letter of the Directorate of Land Registration of the Directorate General of Agrarian Affairs, Ministry of Home Affairs Number: Dpt / 12/63/12/69, 2. What is the ideal concept for the arrangement of a certificate of inheritance by a Notary based on the Letter of the Directorate of Land Registration, Directorate General of Agrarian Affairs, Ministry of Home Affairs Number: Dpt / 12/63/12/69. The sociolegal approach method. Based on the research, it is concluded that the making of the Inheritance Certificate still occurs discrimination and weaknesses because the Minister of Agrarian Regulation cannot give authority only to the Notary for making the Certificate of Inheritance even though the Notary is more understanding about and the Notary does more research first before acting.

Key words: Inheritance Certificate, Notary, legal certainty

A. PRELIMINARY

Notary is a public official who is appointed for the first time on 27 August 1620 in Jakarta. In 1860, the Rules for the Position of Notary came into effect on 1 July 1860¹. Law No.2 of 2014 (UUJN) concerning amendments to Law no. 30 of 2004 concerning the Position of Notary. Every authority must have a law. So that if an official commits an action outside of authority, it is called an act against the law². In this case, the Notary's relationship with issues regarding inheritance. The certificate of inheritance itself is a letter made by or in front of the competent authority, which explains the parties who are the heirs of a person who has passed away³.

Making inheritance information in Indonesia is based on two regulations, namely the Letter of the Directorate of Land

Registration of the Directorate General of Agrarian Affairs Number Dpt / 12/63/12/69 regarding the Certificate of Inheritance and Proof of Citizenship⁴ as well as Regulation of the State Minister for Agrarian Affairs / Head of the National Land Agency Number 3 of 1997.

The heir is a group of people or a person or relatives or family who are related to the deceased and have the right to inherit or receive the inheritance left by the heir.⁵ Before the law for Indonesians was written into the law, for them the law that currently applies to them will still apply, namely the indigenous customary law of the Indonesian people.⁶

According to Cabinet Presidium Instruction Number 31 / U / IN / 12/1966

¹ G.H.S. Lumban Tobing, "Peraturan Jabatan Notaris", Erlangga, Jakarta. 1992. Pg 15.

² Notary / PPAT Monthly News Magazine, RENVOI No.28 / Th.III / September 2005, PT Jurnal Renvoi Mediatama, Jakarta. 2005. p. 39

³ Irma Devita, "Keterangan Waris", <http://www.firmadevita.com/2012/keterangan-waris/>

⁴ Proof of citizenship is no longer valid because it has been revoked as stated in the Elucidation of Law Number 12 of 2006 concerning Citizenship. State Gazette of the Republic of Indonesia Year 2006 Number 63, and Supplement to State Gazette of the Republic of Indonesia Number 4634.

⁵ Ali Afandi, *Hukum Waris, Hukum Keluarga dan Hukum Pembuktian*, Rineka Cipta, Jakarta, 1977, p. 7.

⁶ Subekti, *Pembinaan Hukum Nasional*, Alumni, Bandung, 1975, p. 11.

dated December 27, 1966, which was addressed to Civil Registry Offices throughout Indonesia, it has been stipulated that the elimination of segregation of population groups in Indonesia (Europe, East Foreign and Bumiputera) has been determined. In practice, the provisions of evidence (letters of evidence) as heirs and the institutions that make them must be based on ethnicity are still maintained today.

Likewise, the differentiation of evidence making as heirs based on population groups as is currently valid in Indonesia is no longer tenable, meanwhile it is understood that the concept of equal treatment in law (equal protection of law) is an important tool in rule of law theory.⁷

The land office, as the agency that manages land registration due to land transfer due to inheritance. The law provides legitimacy for the implementation of public policy, and as a statutory law it has presented its figure as a means of implementing policy.⁸ LoGA is a basic regulation for achieving welfare where it can safely carry out the rights and obligations it has obtained in accordance with regulations that have guaranteed certainty of protection of these rights and obligations.⁹ As stated in Article 2 of Government Regulation Number 24 of 1997 that land registration is carried out based on simple, safe, affordable, up-to-date and open principles.

The first thing to understand is socio-legal studies. The word 'socio' does not refer to sociology or social science. Academics have limited contact with sociologists. In principle, socio-legal studies are legal studies, which use a social science methodology approach in a broad sense.^[1] The word 'socio' in socio-legal studies represents the

relationship between the context in which law exists (an interface with a context within which law exists).

Based on this, the question can be asked why there are differences in the arrangement of a certificate of inheritance by a Notary based on the Letter of the Directorate of Land Registration, Directorate General of Agrarian Affairs, Ministry of Home Affairs Number: Dpt / 12/63/12/69, in a sociolegal perspective? What is the ideal concept for the arrangement of a certificate of inheritance by a Notary based on the Letter of the Directorate of Land Registration, Directorate General of Agrarian Affairs, Ministry of Home Affairs / Number: Dpt / 12/63/12/69, from a sociolegal perspective?

B. RESEARCH RESULTS AND DISCUSSION

Differences in the Regulations for Inheritance Certificate in Indonesia based on the Letter of the Directorate of Land Registration, Directorate General of Agrarian Affairs, Ministry of Home Affairs Number: Dpt / 12/63/12/69.

For indigenous people Evidence as an heir is made under the hand, stamped by the heirs themselves with 2 (two) witnesses and is known or confirmed by the Lurah / Village Head and the local Camat according to the last residence of the heir.¹⁰ The authority to make a certificate of inheritance for those Chinese groups who are subject to the inheritance law regulated in the Criminal Code is based on the concordance principle with Article 14 paragraphs 1 and 3 Wet op de Grootboeken der Nationale Schuld (S.I931-105) in the Netherlands which was later accepted as a doctrine. and jurisprudence in Indonesia and is considered customary law.

According to Tan Thong Kie so far

⁷ Munir Fuady, *Teori Negara Hukum Modern (Rechtstaat)*, Refika Aditama, Bandung, 2009, p. 205.

⁸ Esmi Warassih, 2005, *Pranata Hukum: Sebuah Telaah Sosiologis*, PT Suryandaru Utama, Semarang, p. 131.

⁹ Bachtiar Efendi, 1983, *Pendaftaran Tanah di Indonesia dan Peraturan-Peraturan Pelaksanaannya*, Cetak Satu, Bandung: Alumni Bandung, p. 16.

¹⁰ Gede Purwaka, *Keterangan Hak Mewaris yang Dibuat Oleh Notaris Berdasarkan Ketentuan Kitab Undang Undang Hukum Perdata (Burgerlijke Wetboek)*, Program Spesialis Notariat dan Pertanahan Fakultas Hukum Universitas Indonesia, Jakarta, 1999, p. 3.

"The making of an inheritance statement by a notary in Indonesia has no basis in the law in Indonesia"¹¹. Likewise the opinion of Ting Swan Tiong¹² and Oe Siang Djie, as a result, in practice there are various forms of KHW. The notary must be more careful in examining the documents and taking care to receive the files submitted for making a certificate of inheritance and see whether they are in accordance with the correct steps and the authenticity of the supporting documents.¹³

The duties of the Balai Harta Peninggalan represent and manage the interests of people who are subject to the law or the judges' decisions cannot carry out their own interests based on the applicable laws and regulations. In accordance with article 4 (1) of the Warde Gouvernement Land Mates Instruction, Stb 1916 No.517 of the Heritage Hall Instruction mentioned above, that a Certificate of Inheritance from the Heritage Hall is required for groups of residents of the Foreign East for the process of transferring the names of the heirs.

The legal basis used by Balai Harta Peninggalan in addition to the provisions of Stb 1916 in relation to the land registration process is a letter from the Supreme Court of the Republic of Indonesia dated 8 May 1991 number MA / Kumdil / 171 / V / K / 1991 which is addressed to the Heads of the High Court, the Chair of the High Religious Court, Chairman of District Courts and Head of Religious Courts throughout Indonesia in connection with the letter of the Supreme Court of the Republic of Indonesia dated March 25, 1991 Number KMA / 041 / III / 1991, have appointed Circular Letter dated December 20, 1969 Number Dpt / 2/63/12/69 issued by the Directorate Agraria Directorate of Land Registration (Kadaster) in Jakarta.

The ideal concept for regulating a certificate of inheritance by a Notary is based on the Letter of the Directorate of Land Registration, Directorate General of Agrarian Affairs, Ministry of Home Affairs / Number: Dpt / 12/63/12/69.

Referring to the Transitional Regulations in the 1945 Constitution, this dualism and pluralism has continued until now, even until the enactment of statutory provisions concerning Law No.12 / 2006 and Law No.26 / 2006 which have explicitly eliminated differences in population groups. In the provisions of Article 1866 and Article 1867 of the Criminal Code, written evidence shall be carried out in writing, both authentic and under hand. Actually, heir evidence which is civil evidence is not appropriate if it is issued by an official who is subject to Administrative Law.¹⁴

Authority of Making Inheritance Certificate by the Village Head / District Head. The authority of the Village Head / Lurah and Camat according to Law Number 32 Year 2004 concerning Regional Government (Regional Government Law) is strictly regulated in Article 126 (Camat) and Article 127 (Lurah). The Regulation of the State Minister for Agrarian Affairs actually cannot authorize the notary as the basis for making Inheritance Rights Statements that are generally applicable to all inherited assets. The main notary's authority is to make an authentic deed as stated in Article 15 paragraph 1 UUJN. Apart from these powers, the notary according to Article 15 paragraph (3) UUJN "Apart from the authority as referred to in paragraph (1) and paragraph (2), the Notary has other powers which are regulated in statutory regulations".

C. CLOSING

Differences in the arrangement of a certificate of inheritance by a notary based on the letter from the Directorate of Land

¹¹ Tan Thong Cie, *Studi Notarial dan Scrba-Serbi Praktek Notaris*, Jakarta, P.T. Ichtiar, 1994. p. 362

¹² Ting Swan Tiong, *Pembuklian Hak atas Harta Peninggalan*, Media Notarial, No.6-7, April 1988, p.11

¹³ Fitika Supratmo, 2009, "Perbedaan golongan Penduduk Dalam Proses Pendaftaran Hak Atas Tanah Karena Pewarisan". Tesis Fakultas Hukum Universitas Diponegoro, p. 7.

¹⁴ Habib Adjie, *Pembuktian Sebagai Ahliwaris dengan Akta Notaris*, (Bandung : C.V.Mandar Maju 2008), p. 12.

Registration of the Directorate General of Agrarian Affairs of the Ministry of Home Affairs / Number: Dpt / 12/63/12/69, from a sociolegal perspective for the indigenous group, an inheritance certificate is in the form of a certificate made in the village with the knowledge of the sub-district and sub-district head while for groups of Chinese descent, the authentic deed is made in a notary and then legalized at the District Court and foreign eastern groups are made and registered at the Heritage Hall. The ideal concept for the arrangement of an inheritance certificate by a Notary is based on the Letter of the Directorate of Land Registration, Directorate General of Agrarian Affairs, Ministry of Home Affairs / Number: Dpt / 12/63/12/69, in a sociolegal perspective, it is the harmonization of the making of the Inheritance Certificate for all population

groups and efforts towards unification so that there are no differences in population groups in Indonesia in the land registration process so that at least this Inheritance Certificate has the same function and purpose of making it.

The classification of the population in the making of the Inheritance Certificate based on the Circular Letter of DITJEN AGRARIA DEP DAGRI NUMBER: Dpt / 12/63/12/69 is still considered discriminatory. So it is better if the manufacture is justified by an official considering that our country is a National Unitary State based on Law Number 12 of 2006 concerning Citizenship. For the ideal concept, a notary is more appropriately appointed as an official who makes a certificate of inheritance for all groups of people, both natives. maupaun descent because the Notary has knowledge of the field of Notary.

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