

Reconstruction Policy Against Development Authority Tasks And Inheritance Certificate Submitted To The Court Based On Social Justice Value

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Abstract. As is well known, at the moment there are three (3) form and three (3) agencies that can make the evidence as heir adjusted or ethnic groups resident or citizen of Indonesia. Classification of the population based on ethnicity and law that applies to every segment of the population is a legacy of the Dutch colonial government in Indonesia, which until now is considered a sacred rule that can not be changed by anyone, even by the state. Whereas in the framework of legal reform and build a socially just nation that such an arrangement should be reconstructed, because it is no longer compatible with our own independent nation. Classification of Indonesia's population contained in the rules on the manufacture evidence can be seen as heir historical factors of the Indonesian nation. Dutch East Indies government then run political divide et impera or divisive politics. Divide et impera is done by dividing the population of the archipelago within 3 (three) segments of the population, namely: Group Europe, Group Foreign Easterners (such as Chinese, Indian, Arab, Pakistani), and Group of the Indigenous, as stipulated in Article 163 Indische Staatsregeling (hereinafter called IS). The separation of the population with the population of groups based on ethnicity or race under Article 163 IS This resulted in a difference between the legal system applicable to each of these groups. Three population groups are subject to civil law that is different as stipulated in Article 131 and Article 75 RR IS. The distinction in this class brought with it differences in the civil law of each of these groups.

Keywords: Authority; Certificate of Inheritance; Court; Social Justice.

1. Introduction

The legal basis is still provisions of Article 163 and Article 131 IS IS in Indonesia, which is a product of the Dutch East Indies government is a transitional regulation of Article 2 of the Constitution of 1945, which states: "All state agencies and direct existing regulations still apply, during the new has not been established under the Act Dasarini". Documents used to prove one's position as heir to the group Europe, China or the Chinese, Foreign Orientals (except the Arabs who are Muslims), use the Certificate of Inheritance Notary, in the form of a Certificate. Eastern Group foreign (non-Chinese / Chinese), has been proving them as heirs by the Certificate of Inheritance created by the Center for Heritage (hereinafter referred to as BHP).

Group Natives (Bumiputera), has been proving them as heirs by the Certificate Heritageyang made under the hands, stamped, by the heirs themselves and known or justified by the village chief and sub-district in accordance with the last place of the testator. Group Europe, China or the Chinese, Foreign Orientals (except the Arabs who are Muslims), during this verification as heir by the Certificate of Inheritance Notary, in the form of a Certificate.

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The certificate of inheritance for Indonesian citizens of Chinese descent (Non Natives) Notary not be in the form minuta (copy), but in the form in originali (Article 41 paragraph (1) of Law Notary Netherlands followed in Indonesia). That is a statement in the original form and signed by a Notary concerned. Heir statement made during the translation of Verklaring Van Erfrecht. The issue is among the notary, not all notaries are willing to make the certificate of inheritance for Indonesian citizens of Chinese descent (Non Natives). Besides the absence of the rules are clear regulating heir statement and also in the absence of special rules in terms of legal protection for a notary who made the certificate of inheritance of Chinese descent (Non Natives), but also because there is doubt among the Notary, if heirs did not provide information that is actually or hide heir others, because since the heir statement was made and issued by the notary, always open the possibility for a notary to request accountability, both moral, ethical and legal framework applicable to the legal consequences of the toughest notary dismissed from office in disgrace.

2. Research Methods

This type of research is the study of juridical and sociological law⁴namely a method of research conducted by scrutinizing two normative and social dimensions, through the study of literature as well as the direct study of the field. Literature study done by studying various legislations, literature, journals and other support materials such as papers and seminars related to the problems studied. While a field study conducted by collecting and analyzing primary data and secondary data obtained directly from the field about the object of research.⁵

3. Results And Discussion

3.1. Statement of Inheritance Rights or Certificate of Inheritance

In the State of Indonesia, for people who are subject to the Code of Civil Code hereinafter referred to as the Civil Code, heir statement was widely published by the notary. The author here uses the term certificate of inheritance, because the shape of the letter inheritance itself there are two opinions among the notary, namely in the form of a certificate of heir issued by the notary in its original form (in originali) and a letter of inheritance in the form of certificates statement heir before a notary public in minuta (notarial deed).

The notion of inheritance letter in the opinion of the author himself is a statement made by or before a notary based on particulars, evidence (documents) and any witnesses whose contents explain about anyone to become heirs of the testator. In the legislation in force in Indonesia until there is currently no specific rules regarding a certificate of inheritance. In the absence of an Act or legislation regarding the certificate of inheritance in Indonesia, then it becomes food for thought for the notary⁶,

⁴ Altherton & Klemmack dalam Irawan Soehartono, 1999, *Metode Penelitian Social Suatu Teknik Penelitian Bidang Kesejahteraan Social Lainnya*, Bandung, Remaja Rosda Karya, p. 63

⁵ *Ibid.*, p. 23-24.

⁶ Mochtar Kusumaatmadja, 2002, *Konsep-konsep Hukum Dalam Pembangunan Nasional*, Bandung, p.

Because there is no clear and strict regulation of the letter heirs, the notary among themselves are no two opinions about the form and terms of manufacture heir statement by a notary, namely⁷:

a. First opinion:

- 1) Heirs came to the notary's asked for a notary certificate of inheritance on the death of the testator;
- 2) Notary request to the beneficiary to make a statement that the contents testimony heir tell where the testator during his lifetime. Generally, the make and sign a statement is at least two witnesses whose age more or less the same as the heir and the affidavit of the witness could participate heirs and sign a statement knowing it. Affidavit testimony heirs are generally two forms, namely the statements made by the witnesses themselves (under hand and certified by a Notary) and deed of statements by witnesses before a notary (notary deed);
- 3) Then notary inquire at the Center List Wills Ministry of Justice and Human Rights in essence asking whether or not there testator to make a will;
- 4) On the basis of these things, then notary made heir certificate or certificate of the right to inherit.
- 5) The nature of the heir statement in this regard is a letter from the notary issued by the notary in its original form (in originali).

b. Second Opinion:

Heirs came to the notary to make a statement about the heir accompanied by two witnesses and a notary deed put it in the previous statement in advance notary inquire at the Center List Probate Department of Justice and Human Rights on the presence or testator to make a will. As for the nature of this letter is a deed of inheritance heir statement, made in the form of minutes of a deed issued by the notary in the form of a copy of the deed of declaration heir (deed party / Partij acte)⁸,

In the legislation in force in Indonesia until there is currently no provision expressly and specifically governing notaries in making heir statement. Likewise in Act No. 30 of 2004 as amended by Act No. 2 of 2014 concerning Notary (hereinafter called Law Notary, abbreviated UUJN) can not be found setting about creating a certificate of inheritance, as well as Regulation Notary (hereinafter referred PJN) not found a notary authority in creating a certificate of inheritance. Until now, the notary made heir statement followed by the habit of Dutch notary.

⁷ Munir Fuady, 2009, *Teori Negara Hukum Modern (Rechtstaat)*, Refika Aditama, Bandung, p.33

⁸ Satjipto Rahardjo, 2000, *Ilmu Hukum*, Citra Aditya Bakti, Bandung see Soerojo Wongsowidjojo, *Inventarisasi Masalah Hukum Waris Dalam Praktek*, Paper in "Simposium Hukum Waris Nasional", BPHN, 1989, p. 53

Certificate of Inheritance Notary lasted until now has been the enactment of Law Notary (UUJN). UUJN is the main legislation regulating the Notary. UUJN determine the number of Notaries authority, in Article 15 paragraph (1) UUJN arranged Notary public authority as follows:

Notary authorized to make the deed authenticity of all deeds, agreements, and determination required by legislation and / or desired by the stakeholders to be stated in the Deed authentic, guaranteeing the creation date of the Deed, save deed, giving grosse, copy and quote Deed all of it along the Deed of making it not also be assigned or excluded to other officials or any other person specified by law.

Notary public authority as referred to in Article 15 paragraph (2) other authorities determined UUJN notary as follows:

- a. certify the signatures and set a firm date in the letter under the hand by enrolling in special books;
- b. posted a letter under the hand by enrolling in special books;
- c. make a copy of the original letter under the hand in the form of a copy that contains a description as written and illustrated in the letter in question;
- d. approve their compatibility with a photocopy of the original letter;
- e. provide legal counseling in connection with the manufacture of the Deed;
- f. make Deed relating to land; or
- g. make treatise deed auction.

Article 15 paragraph (3) UUJN regulates the authority to owned Notary outside of UUJN as follows, "In addition to the authority referred to in paragraph (1) and (2), a notary has other powers stipulated in the legislation." The authority under Article 15 paragraph (3) provides the possibility for Notary UUJN to have some other authorities which will be set later in the legal product in the form of legislation.

Article 15 (1) and (2) UUJN if observed did not set any explicit reference to the authority of the Notary to create a Certificate of Heritage, including also the nature of the Certificate of Inheritance, there is no explanation is included as an authentic deed or letter under the hand?

However, as already mentioned in Article 15 paragraph (3) UUJN possible for Notaries to have any other authority outside UUJN. The authorization pursuant to Article 15 paragraph (3) UUJN must be set in legislation.

Article 111 paragraph (1) letter c Minister of State for Agrarian Affairs / Head of National Land Agency Number 3 of 1997 on the Implementation of Government Regulation No. 24 of 1997 on Land Registration, said that the letter of proof as beneficiary can be:

- a. Testament of the testator, or
- b. The court ruling, or
- c. Determination judge / President of the Court, or

- d. - For a native Indonesian citizen: a statement made by the heirs of the heirs, witnessed by two (2) witnesses and corroborated by the village chief / village and sub-district residence testator at the time of death;
- For Indonesian citizens of Chinese descent (Non Natives): deed of Notary heir rights statement.
- For Indonesian Citizens of other foreign Asian descent: a certificate from the Institute for Heritage.

Basically, the provision of Article 111 paragraph (1) letter c Regulation of the State Minister of Agrarian Affairs / Head of National Land Agency Number 3 of 1997 on the Implementation of Government Regulation No. 24 of 1997 on Land Registration tersebutdi on a peraturanbagi inheritance hanyayang concerns on land, but in reality many widely applied to other areas such as inheritance banking and insurance.

Referring to the provisions of Article 19 of Act No. 5 of 1960 on Agrarian (BAL) states that:

- a. In order to ensure legal certainty by the Government held land registration throughout the territory of the Republic of Indonesia in accordance with the provisions stipulated in Government Regulations
- b. The registration under subsection (1) of this article include:
 - 1) Measurement, mapping and soil bookkeeping
 - 2) Registration of rights to land and transfer of such rights
 - 3) Award letters proof of rights, which serves as a powerful verification tool
- c. Registration of land held by the state and given the state of society, traffic purposes socio-economic as well as the possibility of its implementation, according to Minister of Agrarian consideration
- d. Regulated in Government Regulation the costs concerned with the registration under subsection (1) above, provided that the people are not able to exempt from the payment of these costs.

Under the provisions of article 19 of the BAL mentioned above can be seen that to ensure legal certainty it is necessary to land registration. The land registration papers include providing proof of rights, which serves as a powerful tool for the verification of the parties concerned, in terms of land registration is required heir statement that made by the competent authorities.

3.2. Type Description Heritage

In practice, there are three types of inheritance information, ie information under the hand of inheritance, deed of Notary heir statement, and statement of inheritance from Heritage Hall. Description inheritance handed down only explained that the names in the description of this heir is the heir entitled to the inheritance of the heir to the absence of the amount of each part to the heirs. Justification heir statement under the

hand is usually done by RT, RW, Village up to the District. While the heir statement made by Notary and Heritage Hall of the amounts or the amount of each part of the heirs.

Explanation of the Instruction of the Cabinet Presidium No. 31 / U / IN / 12/1966 which instructed the Minister of Justice of the Republic Indonesia and the Civil Registry Office in Indonesia that the offices of the Civil Registry in Indonesia is open to the entire population of Indonesia and only distinguished between Indonesian Citizens and People Foreign. The provision is without prejudice to the provisions regarding marriage, inheritance and the provisions of the Civil Code more.

On the other hand, the process of making the evidence as heirs divided into three population groups in this case are not in line with the provisions of Act No. 40 of 2008 on the Elimination of Racial and Ethnic Discrimination (Law on the Elimination of Racial and Ethnic Discrimination). In this case, Indonesia has ratified the International Convention on the Elimination of all forms of racial discrimination (International Convention on the Elimination of All Forms of Racial Discrimination 1965 / CERD).

Section 5 subsection of the Act states that the elimination of racial and ethnic discrimination must be done by providing:

- a. Protection, certainty and equality within the law to all citizens to live free from racial and ethnic discrimination;
- b. Guarantee the absence of barriers to the initiative of individuals, groups or institutions that require protection and equality guarantees use rights as citizens; and
- c. Understanding to the public about the importance of pluralism and respect for human rights through the implementation of national education.

The provision shows clearly that the position of all citizens in the law is equal and free from discrimination of race or ethnicity. Based on the provisions of the proof-making process should be heirs for all citizens apply equally without distinction based on race or ethnicity.

In addition to these provisions, Article 9 of the Law on Elimination of Racial Discrimination dan Etnis juga providing protection for equal treatment for all citizens mention " Every citizen entitled to the same treatment to obtain civil rights, political, economic, social, and cultural in accordance with the provisions of law, without distinction of race and ethnicity ".

The provisions in Article 9 of the Law on Elimination of Racial and Ethnic Discrimination aforesaid again showed clearly that the civil rights of all citizens in various fields are equal and without distinction based on race or ethnicity. Based on a variety of these provisions, it can be said that basically the Law on the Elimination of Racial and Ethnic Discrimination has clear provisions regarding the protection of every citizen of racial and ethnic discrimination. Supposedly these implementations can also be implemented in the manufacture of evidence as heir.

3.3. Role And Function Description Heritage

There are three important events in human life, namely birth, marriage and death. Of the three events, which are vulnerable to the emergence of the problem is the death⁹, Because it is not only related to the heirs and property but also legal relations made during his lifetime, which would raise the question of how it goes and what the legal consequences.

Legal relations does not vanish with the death of a person, because it is generally left behind not only human beings or goods but it can also be the interests associated with other community members are in need of maintenance and completion, because if it does not do the maintenance and completion will cause imbalance in the society.

The death of someone related to inheritance law issues that are part of family law. Inheritance law is closely related to issues of wealth left by the heir of the deceased, which is named as inheritance. In social life, the inheritance is sensitive and often a problem in the family. It is therefore required careful arrangements and meet the elements of the rule of law as a written document explaining the position of the heirs of the deceased and leave inheritance (heir), known as heir statement¹⁰,

Along with the changing times and needs of the community legal certainty, which requires every event (law) an important need to be listed, then the important events in human life such as marriage should be listed with documentary evidence of mating, death listed with proof of a death certificate, and inheritance in terms of this is a description of the heirs were listed in order to establish who is entitled to inheritance related to the death of the testator. With the certificate of inheritance, if there is a question of who is entitled to inherit from a deceased, the heirs can show heir statement as evidence¹¹,

New inheritance problems will arise if it meets the following three requirements:

- a. The death of a person so that it appears the heir;
- b. Their wealth left by the testator, which is called inheritance (inheritance);
- c. Their heirs are entitled to the treasure peninggalan heir.

Testator is dead and give (divert) wealth to those who still bidup persons with rights and obligations, in this case the heirs. Heirs must already exist at the time of the testator dies. Heir is a group of people or a person or relatives or family have any family relationship with the person who died and is entitled to inherit or receive inheritance bereaved by heir¹²,

⁹ M.J.A. Van Mourik , 1993 (disadur oleh F. Tengker), *Studi Kasus Hukum Waris*, First Edition, Eresco, Bandung, p. 2.

¹⁰ Ali Afandi, 1977, *Hukum Waris, Hukum Keluarga dan Hukum Pembuktian*, Rineka Cipta, Jakarta, p.56

¹¹ Carl Joachim Friedrich, 2010, *Filsafat Hukum Perspektif Historis*, Nusa Media, Bandung, p. 98

¹² Ali Afandi, op.cit, p. 7.

Inheritance or legacy is a treasure that is a relic of the heir that can be divided individually to the beneficiary, ie after deducting the whole legacy innate property of husband / wife, again minus debts and testamentary heir.

Inheritance law in force in Indonesia today still depend on inheritance law which applies to the heir of the deceased, so diverse. Diversity system applicable inheritance law in Indonesia because the Indonesian nation consists of various ethnicities and religions with a variety of habits. In addition, also because the classification of the population which cause differences in laws that apply to each segment of the population, and the diversity of this law is still valid¹³.

3.4. Making Legal classification Certificate of Inheritance In Indonesia

If we read the history of the origin of the Indonesian nation, then we will find a wide range of race or ethnicity in Indonesia, which are scattered throughout the territory of the Republic of Indonesia. It shows that Indonesia is not inhabited and built by one ethnicity alone, but all ethnic groups in Indonesia have contributed in the course of the Indonesian nation to become what it is today. Even further than that before the colonists came (Portuguese and Dutch and Japanese) the existing population at that time was not segmented or segregated by ethnicity or class, they live side by side and do not question where they came from. Separation of the Indonesian population by ethnicity and social class emerged after the Dutch colonial rule to the Indonesian occupation, for political ends has issued a rule that divides the 3 (three) segments of the population¹⁴ and the laws that apply to each of these groups. Actually at that time Indonesia is not an area that does not have a law, customary law was the one who at the time effect. The customary law exists and which regulates people's behavior.

Classification of the population of Indonesia (the Dutch East Indies at that time) based on the provisions of Article 163 IS (Indische Staatregeling) and Article 109 RR (Regerings Reglement) and the laws that apply to each segment of the population under Article 131 IS and 75 RR are derived from the legacy of colonial government Indies Netherlands. Regerings Reglement are basic rules that made jointly by the king and parliament to set up a colony in the Indonesian local governments that are perceived as the Dutch colonial government constitution, while Indische Staatregeling is a replacement of the Reglement Regering.¹⁵ Their classification of the population and the law that applies to every segment of the population is a political law of the Dutch colonial government to monitor citizens who were in the area jajahannya and in an effort to duping and politically divisive (divide et impera) for residents in the Dutch East Indies at that time.

Article 131 IS and 75 RR 3 Group held a law that applies to every segment of the population, as mentioned above, and are defined as follows¹⁶:

¹³ Eman Suparman, 2005, *Hukum Perselisihan*, Refika Aditama, Bandung, p. 30

¹⁴ Eman Suparman, 2007, *Hukum Waris Indonesia Dalam Perspektif Islam*, Adat dan BW, Refika Aditama, Bandung, p. 71

¹⁵ Hartono Hadisoeparto, 1988, *Pengantar Tata Hukum Indonesia*, Liberty Yogyakarta, p. 48.

¹⁶ Fatchur Rahman, 1975, *Ilmu Waris*, Al-Ma'arif, Bandung, p. 106

- a. For a group of Europeans to be adopted (emulated) legislation in force in the Netherlands (principle of concordance);
- b. For groups of Indonesia and East First Foreign if it turns out that the needs of the people they want to, it can be rules for Europeans declared applicable to them, either completely or with changes, and also allowed to create a new rule together; for others must heed the rules that apply among them, of the rules of which should be held lapses if requested by the public interest or the needs of their community;
- c. First Indonesian people and the Foreign East, so long as they have not been humbled under a rule along with the Europeans, allowed to submit to the law applicable to the Europeans, the subordination may be made either entirely or only on a particular act.

Prior to the Indonesian law is written in the law, then they will remain valid for the present law applies to them, customary law is a native of Indonesia¹⁷, According to the Cabinet Presidium Instruction No. 31 / U / IN / 12/1966 dated December 27, 1966, addressed to the Civil Registry Office in Indonesia, has set the elimination of the distinction segment of the population in Indonesia (Europe, Middle Foreign and Bumiputera). As a basic consideration mentioned that in order to achieve the unity of the Indonesian nation coaching round and homogeneous, and their sense of common destiny among the Indonesian people, it is necessary immediately abolishing practices and based on the classification¹⁸,

Cabinet Presidium Instruction No. 31 / U / IN / 12/1966 also states that the abolition of classes of the population Without prejudice to the provisions regarding marriage, inheritance and provisions of other civil law. In other words, the instruction said that regarding marriage, inheritance and other civil law provisions for classes of the population in question still remains valid¹⁹, Among others have been used as legal basis for the establishment of the rule of law after Indonesia's independence to manufacture evidence as heir or heirs are often referred to information as contained in²⁰:

- a. Letters Department of Internal Affairs Directorate of the Directorate General of Agrarian Land Registry (Cadastre), dated December 20, 1969, No. Dpt / 12/63/12/69 on the Certificate of Heritage and Citizenship Proof;

¹⁷ Subekti, 1975, *Pembinaan Hukum Nasional*, Alumni, Bandung, p. 11.

¹⁸ Habib Adjie, 2008, *Pembuktian Sebagai Ahli Waris Dengan Akta Notaris (Dalam Bentuk Akta Keterangan Waris)*, Mandar Maju, Bandung, p. 51

¹⁹ Sunarjati Hartono, 1991, *Dari Hukum Antar Golongan ke Hukum Antar Adat*, Citra Aditya Bakti, Bandung, p. 44.

²⁰ I Nyoman Nurjaya, "Perkembangan Pemikiran Konsep Pluralisme Hukum", paper presentation in *Penguasaan Tanah Dan Kekayaan Alam Di Indonesia Yang Sedang Berubah*, Hotel Santika Jakarta, 11-13 Oktober 2004

- b. Article 111 paragraph 1 letter c Minister of State for Agrarian Affairs / Head of National Land Agency No. 3 of 1997 on the Implementation of Government Regulation No. 24 of 1997 on Land Registration.

Both of these laws determine, that for the class of Europe, China / Chinese, Foreign Orientals (except the Arabs who are Muslims), has been proving them as heirs by the Certificate of Inheritance Notary, in the form of a Certificate, Group Orientals (Non-Chinese / Chinese), has been proving them as heirs by the Certificate of inheritance created by the Center for Heritage (BHP), Indigenous (Bumiputera), has been proving them as heirs by the Certificate of inheritance, created under the hands, stamped, by the heirs themselves and known or justified by the village chief and sub-district in accordance with the last place of the testator²¹,

In the symposium Inheritance Law National held in Jakarta, on February 10 until February 12, 1983 which is one of the efforts towards the need for a regulation concerning the inheritance laws nationwide have actually been recommended should be established regarding the institution that is authorized to issue certificate of heir, but these recommendations up to now has never taken the form of legislation²²,

The reality in practice provision of proof (proof) as heir and institutions that make it must be based on ethnicity still maintained up to now. Such an action is also still maintained and carried out by the Notary and Land Deed Official (PPAT), National Land Agency / All Indonesian Land Office and the National Banking and other agencies, both government and private²³,

National Land Agency / Office Land will only accept the transition of land rights derived from legacy to their heirs, if proof beneficiary under ethnic or population groups. In banking circles will only dilute or savings deposits because the owner died, if the heirs bring proof beneficiary under the ethnic question.

Article 26 and Article 27 of the Law of 1945 and its amendments did not create stratification or classification of the population based on ethnicity. Classification of the population by ethnicity, according to Article 1 paragraph 3 of Act No. 39 on Human Rights, stated: "Discrimination is every restriction, harassment, or isolation, either directly or indirectly based on human differentiation on the basis of religion, race, ethnicity, group, class social status, economic status, gender, language, beliefs, politics, resulting in the reduction, distortion or deletion, recognition, implementation or use of the human rights and fundamental freedoms in the life both individually and collectively in the political, economic, legal, social, cultural and other aspects of life", is prohibited²⁴.

Indonesia today composition of citizens not based on ethnic anymore, and ethnic groups in our country is a national cultural treasures, it is seen from Act No. 12 of 2006

²¹ J. Satrio, *Hukum Waris, tentang Pemisahan Boedel*, Citra Aditya Bakti, Bandung, 1986, p. 38

²² John Griffiths, "What is Legal Pluralism", dalam *Journal of Legal Pluralism an Unofficial Law Number 24/1986, The Foundation for Journal of Legal Pluralism*, p. 55

²³ Eman Suparman, Op.cit, p. 123.

²⁴ Eman Suparman, 2007, *Hukum Waris Indonesia Dalam Perspektif Islam, Adat dan BW*, Refika Aditama, Bandung, p. 123.

on Citizenship which replaced the Law of Citizenship No. 62 of 1958 (then called Law of Citizenship), and the birth of the Law of Citizenship has placed Indonesia to assess and look at each other on an equal footing and dignity, so that ethnic or tribes in Indonesia is a national cultural treasures that became the pride together with the nation, and There should be no longer, but must be cultivated and nurtured, and developed to progress together²⁵.

Likewise with the distinction of making the evidence as heir by the segment of the population as is now true in Indonesia have been untenable, as it as it has been understood that kosep similarity of treatment in law (equal protection of law) is an important tool in the theory of state law²⁶. Despite the fact that this theory is a theory that is ideal but difficult to be implemented consistently.

Efforts to end or make the manufacture evidence heir uniform throughout Indonesia, because in relation to the problems transition possessions of the heir to the heir, either in the form of objects moving or not moving, an agency, both private institutions and government agencies must require the presence of a grip ensure that they deliver or pay (in the broad sense) to those who really deserve it, so too should the agency is entitled and authorized to issue statements heir is a party that has guaranteed its authority in issuing statements this heir, whose goal the main is to provide legal certainty and security of rights for the parties involved.

3.5. Reconstruction of Legal Policy Making Of Duty and Authority Certificate of Inheritance To Turned Into Court Based On Social Justice Value

To prove that a person is an heir of the heir to the heir change name registration process on the ground, based on Article 111 paragraph 1 C point 4 Regulation of the State Minister of Agrarian Affairs / Head of National Land Agency No. 3/1997 concerning Provisions on the Implementation of Government Regulation No. 24 of 1997 on Land Registration (hereinafter: " PMNA 3/1997 "), stated that the letter of proof of the rights which form consists of:

- a. Testament of the testator, or
- b. The court ruling, or
- c. Determination judge / President of the Court, or
- d. The certificate of inheritance

Please note that the Certificate of inheritance are securities created by / in the presence of officials, which it explains about anyone heir of someone who has died. Based on the information Heritagelah heir can get their rights, especially for legacy heir. Namunpada fact stout parties authorized to make the certificate of inheritance, based on the classification of the current inhabitants of the colonial occupation.

²⁵ LM Gandhi, L.M. Gandhi, 1995, Harmonisasi Hukum Menuju Hukum Yang Responsif, paper presented at the Inaugural speech Stay FH-UI

²⁶ Munir Fuady, 2009, *Teori Negara Hukum Modern (Rechtstaat)*, Refika Aditama, Bandung, p. 205.

Their classification of the population of Indonesia since the Dutch time ago leads to the distinction of the forms and the officials who authorized to make a statement heir. Based on the Decree of the Ministry of Internal Affairs Directorate of Land Registry No.DPT / 12/63/12/69 in conjunction with Article 111 paragraph 1 C point 4 PMNA No. 3/1997, differentiated on who is authorized to make a statement heir. The division of authority is as follows:

- a. For residents of the European groups and citizen of Chinese descent, the next of kin information Notary
- b. For natives, enough heir statement made under hand, witnessed and confirmed (approved) by the village chief and confirmed by the local sub-district.
- c. For foreign citizen Eastern descent (Indian, Arabic), which is authorized to make statements of kin is the Heritage Hall (BHP).

But becoming the main problem is, we are an independent country and all citizens are equal before the law is. However munculah Heritage's Remarks Regarding the problem of inheritance in Islam, before the 1990s were made by the Religious Courts in the form of Fatwa Heritage. However, in early 1990 there was a circular from the Supreme Court banned the Islamic Court to make Fatwa beneficiary for citizens who are Muslims, in the event that a dispute of inheritance. Since then it is authorized to make statements heir to the heir to the Moslems were quite prepared under the hand with legalized by Head of village and empowered by the sub-district head (hereinafter: authorized ravine-head of sub district). Unlike the heir statement made by the Notary or made by BHP, heir statement made under the hand and passed the head of sub district headman did not specify how many / part of the heirs. It is often the case, the heir statement made without any research at all. So it is not known exactly how much the actual number of beneficiaries of an heir. For example like this: an heir who has more than one wife could make their own statement of kin. So that each sell their own property without involving the heirs of the other heirs. Such conditions lead to frequent disputes of inheritance as heir statement that these overlaps. As a result of frequent lawsuits heir statement false problem, lately Village and Subdistrict busy to reject the version Statement of the heirs where head of village seharusnya these heirs endorsed the statement. So the sentence should read: Head of village " witness and justify "and at the sub-district toughen the sentence is " " (The headman statement), changed to: " know " or " certifying that the heir is a citizen of our No. 3 ". This means that here, the village chief and district head position only register the letter has been signed earlier by the heirs. Here is the beginning of a blunder " " The.

Other Problems in the making for indigenous heir statement is: do not do checks will advance by heirs before the statement made heirs under hand.

Therefore, if the testator was never made a will tacitly or overtly Notary, but did not notify his heirs or others, then the will never be known by the heirs or others who will do transfer of rights to inheritance heir. It could be land sold by the heirs according to information actually heir to others at all (outside the heirs according to law). So the

inheritance by heir statement to the natives almost always based on the laws without questioning whether or not the will of the testator.

Such conditions are sometimes dragged Notary / PPAT makes the transition deed disinherited of an heir to those whose names are listed in the Statement heirs become co-defendant in cases of transfer of right for inheritance. Since the position of the notary really depends on the honesty of the heirs who attend and transfer of rights.

I personally believe, that the right to make indigenous heir statement should indeed be returned to its jurisdiction in the form of Fatwa Heritage. Because it does at least provide an entry barrier or barriers for people who simply claim as heir to acquire the rights to an inheritance.

For example adalalah case Meylanie, whose father is a citizen of Chinese descent, while his mother is indigenous derived from Banyumas. By the time his mother died, he was puzzled to be made where the heir statement. Should he make a statement on the deed or sufficient heir in Head of village " Head of sub district?

In principle, the heir statement made in accordance with the conditions of the testator. That is, the heir statement made to his father or to his mother's descent citizen whose natives. If for the father, of course, notaries who are entitled to make the heir statement. But if the heir statement made to his mother, although the heir is a citizen Shinta and his father's descendants, who are authorized to make a statement of inheritance remains Head of village or head of sub district.

Problems arising from natural Meylanie cases is if his father who is a citizen Descendants and his mother who is indigenous, whether he is considered a citizen or has become indigenous descent? Continue until the descent degrees to how citizen descendant considered to remain as a citizen offspring? Yet despite his father was citizen descent, but since his grandfather's grandfather, all Indonesian citizens. Why after decades twenty years of Indonesian independence classification and discrimination still exist like this and until when people like Meylanie always considered citizen Descendants?

This problem should not be taken lightly and trivial, because it concerns legal certainty. Now we return it to the main functions of the Institute of Justice, which provides legal certainty and justice for truth researcher. Should the government provide a solution or settlement of the issue of the Certificate of Inheritance fully established and issued by the Court. For the Muslim population in the Religious, whereas for residents of religion of non-Muslims in the District Court. Certainly with the introduction of the village first. Because judges will know and wise decision regarding the issuance of a Certificate of Inheritance. The court is an active role to deal with the problem as described above.

4. Closing

4.1. Conclusion

- a. Based on the Decree of the Ministry of Internal Affairs Directorate of Land Registry No.DPT / 12/63/12/69 in conjunction with Article 111 paragraph 1 C

point 4 PMNA No. 3/1997, differentiated on who is authorized to make a statement heir. The division of authority is as follows:

- 1) For residents of the European groups and citizen of Chinese descent, the next of kin information Notary
 - 2) For natives, enough heir statement made under hand, witnessed and confirmed (approved) by the village chief and confirmed by the local sub-district.
 - 3) For foreign citizen Eastern descent (Indian, Arabic), which is authorized to make statements of kin is the Heritage Hall (BHP).
- b. The problems arrangement heir statement appears when the family heir is a mixed breed, it will be difficult to determine where the person entitled to make the heir statement because it involves legal certainty.
- c. The main function of the Institute of Justice, which provides legal certainty for the truth researcher. The Court is an active role to deal with the problem as described above.

4.2. Suggestion

Should the government provide a solution or settlement of the issue of the Certificate of Inheritance fully established and issued by the Court. For the Muslim population in the Religious, whereas for residents of religion of non-Muslims in the District Court. Certainly with the introduction of the village first. Because judges will know and wise decision regarding the issuance of a Certificate of Inheritance. The court is an active role to deal with the problem as described above.

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