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Reconstruction of duties and authority of inheritance certificate-making institution in Indonesia based on justice value

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Abstract
Certificate of Inheritance which distinguishes Indonesian citizens as indigenous people from descendants (mainly chinese-descendants people) is not in accordance with the values of Pancasila unity because all Indonesian citizens have the same position in the field of law and government as explained in accordance with article 27 paragraph 1 and article 28 D paragraph 1. Amendment to the Constitution of the Republic of Indonesia in 1945. This is one form that denies and contradicts the state constitution for an equal position in law against citizens, thus potentially causing division or grouping of people based on race. Therefore, the writer conducts research by raising the main issue of how are the obstacles to the task and authority of the institution making the inheritance certificate at this time and how is the policy reconstruction of the duties and authority of the institution making the certificate of inheritance based on fair value. The approach method in this research is socio legal with the tradition of qualitative research, using the constructivism paradigm. The discussion is carried out comprehensively using a progressive legal approach to achieving social justice.
The results showed that reconstruction in a form of a Rule Breaking was needed and that is to Revoke: - Article 40 Instruction of Indonesian Heritage Halls, Stbl. 1872 Number 166. - Article 42 paragraph (1) Government Regulation No. 24 of 1997 concerning Land Registration in conjunction with the provisions of Article 111 paragraph (1) letter c Regulation of the Head of the National Land Agency No. 8 of 2012 which still requires a Certificate of Inheritance from Lurah & Camat (Village Head) for indigenous people, BPH specifically for foreign eastern citizens, and Notaries for residents of Chinese or eastern descent. Classification of population in the case of institutions that make a Certificate of Inheritance Rights and Making of the distribution of inheritance rights on Article 163 paragraph (4) I.S, Act Number 24 of 2013 concerning Population Administration; clearly confirms the elimination of the applicability of population classification based on the Staatsblad (STB 1917: 129, STB 1924: 556 and STB 1917: 12).

Keywords: reconstruction, inheritance certificate-making institution, justice value

Introduction
One of the essence of Indonesian civil law is that it has a complexity of problems in its inheritance law. With the death of a person, problems begin to arise regarding who is the heir, the distribution and management of his inheritance, whether or not the will is inherited to a heir and so on. All heirs certainly hope that the distribution and management of the inheritance can be carried out peacefully and fairly. But in reality, sometimes family relationships can become messy due to inheritance issues, such as the heirs left or not included as one of the heirs of the Heir.
As one of the main keys to prove who has the right to be the heir of an heir is a certificate of inheritance. This Inheritance Certificate will later be used as a basis for the distribution and management of the inheritance. Both in the form of movable and immovable property, tangible or intangible assets and even debt created by the heirs during his lifetime, all of which are in legal traffic. In the Government's Land Office, an Inheritance Certificate is required as one of the documents used to find out and as a basis for the process of inheritance of immovable property (land and / or buildings) owned by the Heir to his legal heirs. Banks or other financial institutions that store heir assets, whether in the form of savings, deposits, credit facilities, safe deposit boxes and so on, also require a certificate of inheritance to be able to know for certain inheritance inheritance must be handed over to who or to whom the heir's debt can be billed. Inheritance certificate is also needed in insurance institutions, also in the business world if the heir has a share or share in a company.
Based on history, the Certificate of Inheritance is usually made by notaries, because the notary is considered a position of trust and who understands inheritance law. This habit was brought by the Dutch colonial government to the Dutch East Indies based on the principle of concordation [1]. However, because the civil law system prevailing in the Dutch East Indies at that time, especially in the field of inheritance law was pluralistic, in which the population classification and legal classification are known as regulated in article 131 of the Indische Staatsregeling (IS). This pluralistic nature also has an influence in regulating the duties and authorities of the institution making the Certificate of inheritance until now.
Currently in Indonesia, the duties and authorities of the institutions making the Certificate of Inheritance as well as the procedures for making the Certificate of Inheritance are distinguished based on the classification between Indonesian Natives and descendants. Article 111 paragraph

[1] Radjagukguk, Erman. (1978). BEBERAPA MASALAH DALAM HUKUM TANAH INDONESIA. Jurnal Hukum & Pembangunan. 8. 251. 10.21143/jhp.vol8.no3.775.

1 letter c of the Regulation of the Minister of Agrarian Affairs / Head of the National Land Agency Number 3 of 1997 concerning Provisions for Implementing Government Regulation Number 24 of 1997 concerning Land Registration regulates that for Indonesian Citizens of indigenous peoples, the heir certificate is made by the heirs with witnessed by 2 (two) witnesses and strengthened by the Head of the Village where the heir lived at the time of his death. For Indonesian citizens of Chinese descent, the notarial deed of inheritance is notarized. And for other Indonesian citizens of Middle-Eastern descent, a certificate of inheritance from the Probate Court. In addition to the provisions above, the evidence as an heir may also be a will from the heir, or based on a court decision, or the determination of a judge / chairman of the court.

The making of an Inheritance Certificate that still distinguishes Indonesian citizens from indigenous and hereditary populations is clearly not in accordance with the values of Pancasila, considering that Pancasila in the legal field is the source of all sources of national law (Grundnorm), the value of social justice mandating that all citizens have equal rights and that all people are equal before the law. So that with the reconstruction of policies towards the duties and authority of institutions making certificates of inheritance based on justice values, the state is expected to have a strong commitment to eliminate the classification of citizens based on indigenous people and descendants, and there is only one institution that has the duty and authority to make a Certificate of Inheritance.

One Side, constitutionally since the beginning of Indonesian independence all people who meet the provisions of article 26 paragraph 1 of the 1945 Constitution of the Republic of Indonesia as an Indonesian citizen, have the same position in law and government as referred to in article 27 paragraph 1 and article 28 D paragraph 1 Amendment Secondly, the 1945 Constitution of the Republic of Indonesia. If it is related to the policy context of making an Inheritance Certificate in Indonesia, it can be concluded temporarily, that the classification of Indonesian citizens of native and descendants is one form of state denial of equal status in the law of their citizens, thus potentially causing divisions or groupings in societies based on race.

Based on the background provided above, the author conduct a research in which the author formulate several problems discussed in this article as follows:

1. What are the obstacles for Inherintance Certificate-Making Institution in running their duties and authority in Indonesia currently?
2. How is the reconstruction of the policy on the duties and authority of The Inherintance Certificate-Making Institution in Indonesia based on justice values?

Method of Research

The paradigm that is used in the research this is the paradigm of constructivism which is the antithesis of the understanding that lay observation and objectivity in finding a reality or science knowledge [2]. Paradigm also looked at the science of social as an analysis of systematic against *Socially Meaningful Action* through observation directly and in detail to the problem analyzed.

The research in writing this dissertation is a qualitative research. Writing aims to provide a description of a society or a certain group of people or a description of a symptom or between two or more symptoms.

Approach (*approach*) the research is to use the approach *of Socio-Legal* [3], which is based on the norms of law and the theory of the existing legal enforceability of a sociological viewpoint as interpretation or interpretation.

As for the source of research used in this study are:

1. Primary Data, is data obtained from information and information from respondents directly obtained through interviews and literature studies.
2. Secondary Data, is an indirect source that is able to provide additional and reinforcement of research data. Sources of secondary data in the form of: Primary Legal Material and Secondary Legal Materials and Tertiary Legal Material.

In this study, researchers used data collection techniques, namely literature study, interviews and documentation. In this study, the researcher is a key instrument that is the researcher himself who plans, collects, and interprets the data [4]. Qualitative data analysis is the process of searching for, and systematically compiling data obtained from interviews, field notes and documentation by organizing data into categories, describing it into units, synthesizing, compiling into patterns, selecting important names and what will be studied and make conclusions.

Research Result and Discussion

1. Obstacles for Inherintance Certificate-Making Institution in Running Their Duties and Authority in Indonesia Currently

Every position in our country has its own authority. Every authority must have a legal basis. When talking about authority, the authority of any official must be in line and strict in the laws and regulations governing the said official or position. So, if an official commits an act outside his authority is called an illegal act. Therefore, an authority does not just appear as a result of a discussion or discussion behind the table or because of discussions or legislative opinions, but the authority must be stated expressly in the legislation.

The authority of the Village Head/ Lurah to witness and justify the Certificate of Inheritance and the Sub-District Head to strengthen the contents of the Certificate of Inheritance began when the land or agrarian sector (at that time the Directorate General of Agrarian Affairs) was still a part of the Ministry of Internal Affair in 1965. At that time the Minister of Internal Affair has the authority to assign certain tasks to other agencies that are still within the authority of the Minister of the Interior, such as delegating authority to the Head of the Village and Sub-District Head to sign, witness and justify and strengthen the Inheritance Certificate in accordance with the provisions in the Ministry Letter In State Directorate General of Agrarian Directorate of Land Registration (Kadaster), December 20, 1969, Number Dpt / 12/63/12/69 concerning Certificate of Inheritance and Proof of Citizenship. However, with the enactment of Presidential Decree Number 26 of 1998 concerning the National Land Agency, where the status of

[2] Faisal, (2010), Menerobos Positivisme Hukum, Rangkang Education, Yogyakarta.

[3] Johnny Ibrahim, (2005), Teori dan Metodologi Penelitian Hukum Normatif, Bayumedia, Surabaya.

[4] L. Moleong, (2002), Metode Penelitian Kualitatif, PT Remaja Rosdakarya, Bandung.

the Directorate General of Agrarian Affairs was upgraded to become a Non-Departmental Government Agency under the name of the National Land Agency. So since the enactment of the Presidential Decree the basis for the authority of the Village Head/ Lurah and Sub-District Head/ Camat in the making of the Inheritance Certificate has ceased to exist, because structurally the Village Head and Sub-District Head are under the Ministry of Home Affairs, not under the National Land Agency, as regulated in Article 111 paragraph (1) letter c Regulation of the Minister of Agrarian Affairs / Head of National Land Agency Number 3 of 1997 concerning Provisions for Implementing Government Regulation Number 24 of 1997 concerning Land Registration.

Notary, as one of the state officials is also in the same position. Duties and authority of a Notary in making an Inheritance Certificate or Deed of Inheritance are only limited to Chinese Citizens of Chinese descent who are subject to the Civil Code only, because the making of a Notary Certificate for other groups of citizens is not a duty and authority of the Notary Article 111 Paragraph (1) Letter c Regulation of the State Minister for Agrarian Affairs / Head of National Land Agency Number 3 of 1997 concerning Implementation of Government Regulation Number 24 of 1997 concerning Land Registration.

Law Number 30 Year 2004 in conjunction with Law Number 2 Year 2014 concerning the Position of Notary Public Notary as a public official appointed by the Minister of Law and Human Rights of the Republic of Indonesia has the duty and authority attributively by the State to carry out its duties and functions as regulated in article 15 of Law Number 30 of 2004 in conjunction with Law Number 2 of 2014 concerning the Position of Notary Public. But the article does not state explicitly that the notary has the duty and authority to make a Certificate of Inheritance. So the duty and authority of a notary to make a Certificate of Inheritance is another duty and authority regulated in the legislation as referred to in article 15 paragraph (3) of Law Number 30 Year 2004 in conjunction with Law Number 2 of 2014 concerning the Position of Notary.

The notaries have so far based their duties and authorities on the making of inheritance certificates in Article 111 paragraph (1) letter c of the Regulation of the Minister of Agrarian Affairs / Head of the National Land Agency Number 3 of 1997 concerning Implementation of Government Regulation Number 24 of 1997 concerning Land Registration. As for Article 7 paragraph (1) of Law Number 12 of 2011 concerning Formation of Regulations and Regulations, 7 (seven) types and hierarchies of legislation are determined, in which Ministerial Regulations are not included. According to Maria Farida Indrati Soeprapto [5]:

"Not all Ministers have authority in the field of legislation formation, because the Coordinating Minister and the State Minister are not government institutions in the legislation. The Minister who can form general binding regulations is only the Minister of the Department, while the Coordinating Minister and the State Minister can only make regulations that are internal, in their own environment, so they are not authorized to form general binding regulations."

Deed of Testament of the Heirs which has been made by a notary public is a translation from *Verklaring Van Erfrecht*. This term has two meanings: the first means to explain or explain, information, which in English is referred to as information, so it only provides information in a general sense and is not legally binding for anyone, both from those who provide information and those who receive information. The second means to declare, declare or affirm, provide an explanation in a special and legally binding sense for those who receive the statement, and for those who do not accept the statement it is obligatory to prove it legally. So if anyone disagrees with the contents of the Inheritance Certificate, they can file an objection to the heirs concerned, not the institution that made it.

The Making of Deed of Notification of Heirs by the notary at that time have no uniformity, some are made under the hand and some are made in the form of notarial deed. Based on article 15 of Law Number 30 of 2004 in conjunction with Law Number 2 of 2014 concerning the Position of Notary Public, the notary has the authority to make an authentic deed not an official who is authorized to make or issue a statement. Notary as an official, has the right to make evidence as heirs with the party's deed, as a form of statement or statement of the parties' wishes to pour out the rights and composition of the heirs. Deed of Inheritance Certificate is the will (wilsvorming) of the parties to prove themselves as heirs, because it was declared before a Notary, in accordance with the authority stipulated in the Law of Notary Position. Thus the Notary does not copy the statements of the parties, but the will of the parties themselves are formulated in the form of a Deed of Testament to the Heirs. What distinguishes an Inheritance Certificate under the hand and in the form of a notarial deed is the strength of its proof, where the Inheritance Certificate under the hand the proof value is imperfect, the same value as other documents normally issued by a Notary, such as an Internship Certificate, Covernote. In Case if the Deed of Testament of the Heirs turns out to be incorrect, then it is the responsibility of the parties facing the Notary, and there is no need to involve a Notary, and if it will be corrected, the deed must be revoked before those who make it and then make a new deed in accordance with the actual facts desired by the parties. In contrast to if there is an error in the contents of a Certificate of Inheritance under the hand, it is not possible to revoke or cancel it by a notary who has made it himself, but there must be a party submitting an application to the Notary who made it, so that the Inheritance Certificate is canceled. If the Notary does not want to revoke the revocation must be filed with the Notary, and it is possible that the Notary may be sued for compensation because the making of a Notary Certificate in under-hand form actually contains difficulties in practice, because the notary does not have minuta or a sign signed.If the notary makes a copy of the Certificate of Inheritance which is made under the hand, then this copy is not signed.

Currently in practice the notary will copy the Inheritance Certificate made under the hand. Copies or copies of this kind are usually included in Outgoing Letter files, which are finally at the time of closing a notary office (due to retirement or relocation) or if there is a transfer of minuta, the file is not brought along because the new protocol holder usually only wants blessings that are required to save, namely minuta. Conversely, if the Certificate of Inheritance is made in the form of a notarial deed, it will be easier for

[5] Maria Farida Indrati Soeprapto, *(2007), Ilmu Per-Undang-Undangan 1, Jenis, Fungsi dan Materi Muatan*, Yogyakarta, Kanisius, p. 106.

the notary himself or the protocol holder to make copies, if in the future there is a request for Inheritance Certificate made by him.

Based on the above, it can be said that the Obstacles to the Duty and Authority of the Institution Making Inheritance Certificates in Indonesia Currently are as follows:

a. Obstacles from the Understanding of Normative Rules (*Dogmatic Law*) Implementation of Duties and Authorities of the Village Head / Lurah and Sub-District Head/ Camat in the Making of Inheritance Certificates.

Since the enactment of Decree of the basic authority of Head of village and sub-district in the making of the Certificate of Inheritance has already exist no more, because structurally the Head of village and sub-district is located in the bottom of the Ministry in the State, not being in the bottom of the Government's Land Office, as stipulated in Article 111 paragraph (1) letter c Regulation of the Minister of Agrarian Affairs / Head of National Land Agency Number 3 of 1997 concerning Provisions for Implementing Government Regulation Number 24 of 1997 Concerning Land Registration. However, the thing is, it is still in effect today.

b. Obstacles from the Side of Factual Understanding (Sociological) Implementation of the Duties and Authority of Village Heads and Sub-District Heads in the Making of Inheritance Certificates.

Certificate of Inheritance that are made for the heirs that are authorized by village Head is actually not an authentic deed, the form is not determined by law and does not match authenticity. The right thing for the village officials to make is the official report on the information of the heirs and must be based on a family tree family database. The current state of the family tree is not yet available, but according to Law No. 23 of 2006, in conjunction with Law No. 24 of 2013 concerning Population Administration, the data base of the family system can be included in the form of population administration. Moreover, the current technological conditions are very possible. While in the District should not need to be involved in the minutes of making a Certificate of Inheritance Rights, because during this sub-district also did not perform checks the (*cross-checking*), if the letter Description of Inheritance already signed and stamped by the Head of Village, Subdistrict directly provide sign hand, stamp and District agenda number. So that the existence of the sub-district head in knowing the Certificate of Inheritance only extends to the bureaucracy and increases the inefficiency.

c. Obstacles to the Implementation of Duties and Authority of Notaries in the making of an Inheritance Certificate

The problems faced by the Notary in the practice of making of Inheritance Certificate for Indonesian citizens that are Chinese-descendants who are subject to the Civil Code, among others:

1. In the making of Inheritance Certificate Description, notary assign an expert heir of heir on treasure relics, will but in general, the notary did not investigate the attitude of experts heir to the legacy of the testator. They were called as expert beneficiary may take the attitude receive the inheritance as a pure, accept it *beneficiair* or reject heritage, as well as provisions in Article 1023 of the Civil Code. So if there are experts beneficiary who receives it *beneficiair* or reject the legacy of just counting the division of assets heritage, and the number of parts of each expert beneficiary will be different.

2. In practice if the testator left a will, then by a notary entire contents will be written back in Letter Description of inheritance or Deed Description Expert. Furthermore, because the notary wanted to be very careful, in the Letter Description of Inheritance or Deed Description Expert that directly mentioned that the experts heirs sue *Legitimatie portie* it. So, the letter Description of inheritance does not fulfill its function to declare who the expert heir of the testator and how right part *ab- intestato* her on property inheritance heir when they received the treasure heritage [6].

Obstacles to the Implementation of the Duties and Authorities of the Probate Court in the making of an Inheritance Certificate

The Inheritance Hall in basing duties and authority of manufacture Letter Description Rights heir not by regulatory law but on Article 14 paragraph 1 of *Instruction Voor de Gouvernements Landmeters* in Stbl. 1916 No. 517 and changed LN 1931 No. 168 and LN 1937 No. 611, which is a product of law colonial Dutch are not in accordance with the mandate of Pancasila and the Constitution Act Basic Homeland, 1945, and Instruction For The Official Registration of land in Indonesia and the Acting So, Letter of Minister Home Affairs cq Head of the Directorate of Land Registration Directorate General of Agrarian Ministry of Home Affairs cq Head of Directorate of Land Registration Directorate General of Agrarian Ministry of Home Affairs dated December 20, 1969 Number: Dpt / 12/63/12/69 juncto article 111 paragraph (1) letter c Minister Regulation state Agrarian / Head of the Agency Land National Number 3 Year 1997 concerning the Implementation Regulations Government of Number 24 Year 1997 on Registration of land belonging to the rules that apply are internal and do not bind the public, which is basically just as a guide when going to perform registration of transfer of rights for inheritance. By thus rules of law are not to be used as the foundation of the law granting duty and authority to the Hall Hidden Relics in the manufacture of Letter Description Rights heir based on Article 40 on Inheritance Hall in Indonesia Stbl. 1872 No. 166 there are 5 Inheritance Hall in Indonesia with area works include five big cities, is very limited and is not feasible.

e. Obstacles in Implementing the Duties and Authority of the Courts of Religion and the Court of State in the attestation sign hand Letter Description Expert

Peoples many who do not understand that the institutions Court of Religion / Courts of State could make the determination of Experts Inheritance and Inheritance Rights Division. On the other hand, they are reluctant to go through the Court because they think that the conditions are complicated, they must go through a trial so that it takes a long time. Usually they are made Determination Expert in court of Religion or District Court on the advice officer at the Office of Land, Notary / PPAT or from banks. The

[6] Irawaty, Irawaty & Diyantari, Diyantari. (2017). Inheritance Laws in Indonesia. Hayula: Indonesian Journal of Multidisciplinary Islamic Studies. 1. 99. 10.21009/hayula.001.2.05.

community also considers that obtaining a certificate of inheritance in court is expensive and complicated. In the case of the trial only once because the trial was one-sided without a lawsuit so that the actual trial was conducted to meet the conditions for the determination of the trial. P origin 49 of Law Number 3 of 2006 for the application for the determination of heirs (*voluntair* case) states:
"..... the determination of the court on the petition someone concerning the determination of who are becoming experts heir, determining the portion of each expert heir". It is more protective of irregularities because it is integrated with the distribution of inheritance rights.

2. Reconstruction of the Policy on the Duties and Authority of the Inherintance Certificate-Making Institution in Indonesia Based on Justice Values

Based on the fatwa or the determination of heirs issued by the court (District Court or Religious Court). The determination of heirs for Muslims who are made by the Religious Court at the request of the heirs. The legal basis is Article 49 letter b of Law No. 3 of 2006 concerning Amendments to Law No. 7 of 1989 concerning Religious Courts. The determination of heirs who have religion other than Islam is made by the District Court. The legal basis is Article 833 of the Civil Code.

In addition, the certificate of inheritance can also be made under the hand and signed by all heirs, known to the lurah and strengthened by the camat. The rest with a notarial deed in the case of inheritance may mean a will (see Article 16 letter h of Law No. 30 of 2004 concerning Position of Notary) or deed of distribution and separation of inheritance (see Civil Code Chapter XVII concerning Separation of Heritage). In the case of a notary heirs also make a certificate of inheritance which is a deed under the hand and not a notarial deed. The certificate of inheritance (verklaring van erfrecht) made by a notary is an information of the heirs made for the heirs of citizens / groups of chinese-descent. The certificate of inheritance is made under the hand, not with a notarial deed. Making a certificate of inheritance for chinese-descendants by a notary. Referring to the Supreme Court ("MA") letter of the Republic of Indonesia dated May 8, 1991 No. MA / kumdil / 171 / V / K / 1991. The Supreme Court letter referred to Circular Letter dated 20 December 1969 No. Dpt / 12/63/12/69 issued by the Directorate of Agrarian Directorate of Land Registration (Kadaster) in Jakarta, which states that for uniformity and the basis of the classification of the population that has been known since before independence should be a Certificate of Inheritance Rights (Certificate of Inheritance Rights) for the Indonesian citizen:

a. For European (Western) descent group is made by a public Notary;
b. For Indigenous-descend, the inheritance certificate are witnessed by the Head of Village and known by the Camat;
c. for the Chinese-descendant, are done by the Public Notary;
d. The Middle-Eastern descend, by the Heritage Hall (BHP).

The process of resolving inheritance disputes, especially in resolving inheritance issues in general, there are two areas of authority that need to be distinguished [7]: 1. First, Fatwa Territory This section only explains the division of each heir, based on the provisions that have been explained in faraidh / inheritance science. Anyone who understands the science of inheritance and the problem posed, has the right to provide answers, such as religious leaders, or fatwa institutions, or others. 2. Second, qadha region. In this region, it will determine what assets must be distributed, which ones become inheritance, to the complete application of inheritance distribution, after what is explained in inheritance science. The qadha territory is also entitled to decide on any dispute that occurs between heirs. The only ones entitled to enter this area are government agencies that handle inheritance matters, such as religious courts.

The Religious Court has the authority to issue a fatwa or stipulation on the distribution of inheritance of an heir who is Muslim. Meanwhile, if you have a religion other than Islam, then you submit the petition to the District Court (see Article 833 of the Civil Code). This authority is based on Article 49 letter b of Law No. 3 of 2006 concerning Amendments to Law No. 7 of 1989 concerning Religious Courts. The Inheritance Fatwa is issued by the Religious Court based on the request of the heir. Fatwa Inheritance is valid as a statement of who has the right to inherit the inheritance of the heir (heir). Based on the Inheritance Fatwa, the Notary / PPAT can determine who has the right to sell the inherited land. To take care of the application for the determination of heirs not through the district, the application for the determination of heirs submitted to the District Court or Religious Court. The legal product in the form of 'determination' is a legal product that can only be produced by a court institution; thus the sub-district office does not have the authority to issue a determination regarding heirs. b. Terms and Procedure for Submitting Fatwa Inheritance To submit an application to the Religious Court, the process that can be taken is by submitting an Application Letter signed by the applicant or his authorized attorney and addressed to the Chair of the Religious Court where the Applicant lives and applies to assets throughout Indonesia to be inherited. Applicants who cannot read or write can also submit their requests verbally before the Chair of the Religious Court. Then, the Petitioner pays the court fee (see Article 121 paragraph [4] HIR, 145 paragraph [2] of the RBG, Article 89 and Article 91A of Law No. 50 of 2009 concerning Second Amendment to Law No. 7 of 1989 concerning Religious Courts) which reads:
"The religious court has the duty and authority to examine, decide upon, and settle cases at the first level between people who are Muslims in the field of inheritance..."
After that the Judge will examine the case of the petition and against the request the Judge will then issue a determination. The requirements for submitting Wari's Fatwa are: 1) Application letter addressed to the Head of the Religious Court; 2) Paying Case Costs at the Religious Courts Office; 3) Photocopy of Parties' ID; 4) Photocopy of certificate of ownership; 5) Photocopy of other proof of ownership (if any), such as: savings book, notary deed, etc.; 6) Photocopy of deed / death certificate of the owner of the inherited item; 7) Photocopy of deed / birth certificate of the testator; 8) Family tree which is approved by the Village Head; and 9) Certificate / introduction from the Village

[7] Muhammad, Busari. (2018). A concise Primer to Inheritance Law in Islam. Lambert Publishing.

Head. c. Settlement Time and Costs Regarding the time frame of the process and the amount of costs required in court proceedings, in principle this is again based on the principle of justice which is fast, simple, and low cost.

Based on the Supreme Court Circular No. 3 of 1998 concerning Case Settlement, all types of cases in the Court must have been decided or resolved within a period of 6 (six) months. As for fees, you will only be charged administrative fees when registering an application as well as court fees. Case costs are based on the provisions of Article 90 paragraph (1) of the Religious Courts Law which covers: 1) Stamp duty and court fees required for the case; 2) Costs for witnesses, expert witnesses, translators, and the cost of taking oaths required in the case; 3) Costs required to conduct local hearings and other actions required by the court in the case; and 4) Costs for summons, notifications, etc. for court orders relating to the case. Regarding the nominal cost of the case is based on the provisions of Article 90 paragraph (2) of the Religious Courts Act determined by the Supreme Court.

From this existing construction it can be analyzed from progressive legal theory as a knife of analysis. That the law of loading a Certificate of Inheritance is not fair if it is only based on positive legal norms (in a positive way). The competence of the author of the Certificate of Inheritance must arrive at the distribution of inheritance rights or the one that the researcher proposes as an integrated principle between Inheritance Certificate and inheritance rights holders (call it the principle of integration of inheritance rights institutions). Law is a process and continues to process. No matter how good the theory is if the theory does not foster usefulness and does not reach the value of fairness, it is necessary to do rule breaking or fundamental changes. Certificate of Inheritance is not enough to be seen from the normative theory of law but rather it must be reviewed through progressive law. So that law enforcement in granting institutional credibility of the Certificate of Inheritance Rights is truly beneficial and fair.

Satjipto Rahardjo [8] said law enforcement was an attempt to turn ideas and concepts into reality. Law enforcement is a process to make legal wishes come true. Legal desires are the thoughts of the legislature which are formulated in legal regulations. Therefore, the main objective of law enforcement is to guarantee justice without ignoring the legal benefit and certainty aspects of society. Gustav Radbruch [9] called justice, expediency and legal certainty as a pillar supporting law enforcement. All three are needed to arrive at an adequate understanding and implementation of law. Specifically, the purpose of justice or finality is to emphasize and determine the content of the law, because the content of the law is in accordance with the objectives to be achieved. However, Satjipto Rahardjo reminded that the problem of legal certainty is not only a matter of law, but rather a matter of human behavior. Legal certainty has become a big problem since the law was written. Before that, for thousands of years, when we talked about the law, we talked more about justice.

According to Satjipto Rahardjo, legal thinking needs to return to its basic philosophy of law for humans. With this philosophy, humanity becomes the determinant and legal orientation point. The law is in charge of serving humans, not vice versa. Therefore, the law is not an institution that is free from human interests (included in this study is the institution that has the authority to determine the Certificate of Inheritance and at the same time determine the distribution of inheritance).

When the BHP institutions make a Certificate of Inheritance, what happens only shifts the value of legal certainty to the value of legal benefit, but in fact BPH also does not have the ability or competence to calculate the distribution of inheritance, and this will lead to new problems in value. justice of the distribution of inheritance. In the end what happened was a lawsuit over the distribution of inheritance rights. This is where justice for the community is finally trapped, due to institutions that are not competent in the distribution of inheritance rights to do the making of a Certificate of Inheritance. The results of this study illustrate that the importance of making a Certificate of Inheritance is actually not solely for the benefit of the normative Certificate of Inheritance Rights itself. This means that even if the formal requirements are met for the making of a Certificate of Inheritance, the legal implications of the Certificate of Inheritance Rights will have an impact on the implementation of the distribution of inheritance rights that are at risk of irregularities and gaps if not carried out by institutions that have competence for that matter.

Making the Religious Court and State Court in the authority of the Certificate of Inheritance, in fact there has been a mistake in legal reasoning, in fact the Religious Court should have the competence and ability to issue inheritance rights documents at the same time integrated with decisions in the distribution of inheritance rights in Islam. Likewise, the District Court has the competence to publish a certificate of inheritance and at the same time integrates the distribution of inheritance for non-Muslims. And the rest is for the needs of the Customary Law community, the institution that can issue a certificate of inheritance rights while distributing inheritance is the Customary chairman.

Reflecting on the above, the formulator then formulated a reconstruction in the form of rule breaking of several regulations that already applied, namely Article 40 Instruction of the Indonesian Heritage Hall, Stbl. 1872 Number 166 there are 5 Probate Court in Indonesian Territory and Article 42 paragraph (1) of Government Regulation No. 24 of 1997 concerning Land Registration in conjunction with the provisions of Article 111 paragraph (1) letter c Regulation of the Head of the National Land Agency No. 8 of 2012 concerning Amendment to the Regulation of the Minister of Agrarian Affairs / Head of the National Land Agency Number 3 of 1997 concerning Provisions for Implementing Government Regulation No. 24 of 1997 concerning Land Registration (hereinafter referred to as Perkaban Number 3 of 1997), which still requires a Certificate of Inheritance Rights from the Lurah & Camat for native residents, BPH specifically for foreign eastern residents, and Notaries for residents of descendants of Chinese or eastern foreigners.Classification of residents in the case of institutions making Certificate of Inheritance Rights and Drafting of the distribution of inheritance rights to article 163 paragraph (4) IS, which belongs to the Eastern Eastern group are those who are not included in the original European or Indonesian class, namely: 1) Chinese Eastern Foreign Group (China) and 2) Foreign Easterners are not Chinese. With the issuance of Law Number 24 Year 2013

[8] Satjipto Rahardjo, (2012). Ilmu Hukum, Citra Aditya Bakti, Bandung.

[9] Gustav Radbruch in Spaak, Torben. (2008). Meta-Ethics and Legal Theory: The Case of Gustav Radbruch. Law and Philosophy. 28. 261-290. 10.1007/s10982-008-9036-8.

Regarding Population Administration; clearly confirms the elimination of the applicability of population classification based on the Staatsblad (STB 1917: 129, STB 1924: 556 and STB 1917: 12). Following the abolition of Article 163 I.S (Indische Staats Regeling), the Notary as the official in charge of making authentic evidence may have broader authority in making inheritance certificates from the perspective of the Population Administration Act. It must be stressed about the inability of the Notary in making Certificate of Inheritance Rights and the distribution of inheritance rights so as not to cause confusion and refraction of authority duties on Certificate of Inheritance Rights.

Conclusion

1. The obstacles that arise are in terms of understanding the normative rules (Dogmatic Law) Implementation of the Duties and Authorities of the Village Head and Sub-District Head in the Making of Certificate of Inheritance, from the Side of Factual Understanding (Sociological) Implementation of the Task and Authority of the Village Head and Sub-District Head in the Making of Certificate of Inheritance, then there are Obstacles to the Implementation of Duties and Authorities of Notaries in the making of an Inheritance Certificate, Legacy Assets in making an Inheritance Certificate, District Court in ratifying the signature of a Testament of the Heir and a Religious Court in Determination of the Heirs
2. Reconstruction is needed in the form of rule breaking where the classification of the population in the case of the institution making the Certificate of Inheritance Rights and Making the deed of distribution of inheritance rights to article 163 paragraph (4) IS, which includes the Eastern Eastern class are those who are not included in the European or original Indonesian group namely: 1) Foreign Eastern Chinese (Chinese) and 2) Foreign Eastern Chinese not. With the issuance of Law Number 24 Year 2013 Regarding Population Administration; clearly confirms the elimination of the applicability of population classification based on the Staatsblad (STB 1917: 129, STB 1924: 556 and STB 1917: 12). Following the abolition of Article 163 I.S (Indische Staats Regeling), the Notary as the official in charge of making authentic evidence may have broader authority in making inheritance certificates from the perspective of the Population Administration Act. It must be emphasized about the inability of the Notary to make a Certificate of Inheritance Rights and the distribution of inheritance rights so as not to cause confusion and refraction of authority over the Certificate of Inheritance Rights.

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