

Legal Challenges in the Implementation of Change in the Authority to Issue Certificates of Inheritance After Ministry of Agrarian Affairs and Spatial Planning Regulation Number 16 of 2021

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Abstract : *This research discusses legal issues arising in the implementation of changes in the authority to issue a Certificate of Inheritance after the enactment of Regulation of the Minister of Agrarian Affairs and Spatial Planning/ Head of the National Land Agency Number 16 of 2021, which is the third amendment to Regulation of the Minister of Agrarian Affairs and Spatial Planning/ Head of the National Land Agency Number 9 of 1999 on Procedures for Granting and Cancelling State Land Rights and Management Rights. Using sociological juridical approach, this study analyses the implications of the change in authority on the inheritance law system in Indonesia, conflicts of norms arising from dualism of authority, and aspects of legal certainty for the community. The results show that the changes pose significant challenges in harmonising regulations related to the authority to issue Certificate of Inheritance, gaps in implementation in the field, and potential legal uncertainty. Research recommendations include regulatory harmonisation, strengthening inter-agency coordination, and developing an integrated system for inheritance administration.*

Keywords *Certificate of Inheritance, Regulation of the Ministry of Agrarian Affairs and Spatial Planning 16/ 2021, Authority, Inheritance Law, Legal Certainty.*

Abstrak : Penelitian ini membahas permasalahan hukum yang timbul dalam implementasi perubahan kewenangan penerbitan Surat Keterangan Waris (SKW) setelah diberlakukannya Peraturan Menteri Agraria dan Tata Ruang/Kepala Badan Pertanahan Nasional Nomor 16 Tahun 2021, yang merupakan perubahan ketiga atas Peraturan Menteri Agraria dan Tata Ruang/Kepala Badan Pertanahan Nasional Nomor 9 Tahun 1999 tentang Tata Cara Pemberian dan Pembatalan Hak atas Tanah Negara serta Hak Pengelolaan. Dengan menggunakan pendekatan yuridis sosiologis, penelitian ini menganalisis implikasi perubahan kewenangan tersebut terhadap sistem hukum waris di Indonesia, konflik norma yang timbul akibat dualisme kewenangan, serta aspek kepastian hukum bagi masyarakat. Hasil penelitian menunjukkan bahwa perubahan tersebut menimbulkan tantangan signifikan dalam harmonisasi peraturan terkait kewenangan penerbitan SKW, kesenjangan dalam implementasi di lapangan, serta potensi ketidakpastian hukum. Rekomendasi penelitian mencakup perlunya harmonisasi regulasi, penguatan koordinasi antar lembaga, serta pengembangan sistem terpadu untuk administrasi waris.



Kata kunci : Surat Keterangan Waris, Peraturan Menteri ATR/BPN 16/2021, Kewenangan, Hukum Waris, Kepastian Hukum

I. INTRODUCTION

When a person who has passed away, problems will arise with something left behind, which will also have legal consequences on the continuation and transfer of all assets owned to the recipient of the remaining assets, the transfer of property of someone who has died is regulated in the inheritance law that applies in Indonesia. ¹Inheritance law is one of the branches of Civil Law and is the smallest part of the family law structure. From the perspective of Western civil law, which refers to the Civil Code, inheritance law is at the beginning of the discussion of property.²

According to the above definition, inheritance must consist of three components: the testator is the person who dies and leaves property to others; the heir is the person who replaces the testator in his position towards the inheritance, either in whole or in part; and the inherited property is all the property owned by the person who died.³ The issue of inheritance relates to a person's various rights or obligations when they pass away, transferring these rights and obligations to the surviving family.⁴

Inheritance law in Indonesia is dualistic and pluralistic, which is an integral part of the history of the development of civil law in Indonesia. One of the factors influencing the history of civil law in Indonesia is the diversity of ethnic groups, which encouraged the Dutch colonial government to implement a legal policy that divided the population into three groups. Each of these groups has its civil law system. During the Dutch East Indies period, there was legal pluralism, especially in general Civil Law and the Civil Law of Inheritance.

The division of the population into three groups is based on Article 163 paragraph (1) of the Indische Staatsregeling (IS), which stipulates the division of the population into three different civil law groups, namely Pribumi, Europeans, and Foreign Orientals. According to paragraph (2) of the article, the European class includes: (1) all Dutch citizens, (2) Europeans, (3) Japanese citizens, (4) individuals from other countries whose legal systems are similar to Dutch family law, especially those that adhere to the principle of monogamy, and (5) descendants of these groups. Meanwhile, paragraph (3) explains that the Indigenous group consists of: (1) indigenous Indonesians and (2) those who originally belonged to other groups but later merged into the indigenous group. As for paragraph (4), the Foreign Eastern group includes individuals who do not belong to the European or Indigenous groups, which are divided into two subgroups, namely: (1) Chinese, and (2) non-Chinese.⁵

¹ Ita Kristiana, "Surat Keterangan Waris Bagi Warga Negara Indonesia" (Universitas Airlangga, 2004).

² Eman Suparman, *Hukum Waris Indonesia Dalam Perspektif Islam Adat Dan BW* (Bandung: PT. Refika Aditama, 2019).

³ Mulyadi, *Hukum Waris Tanpa Wasiat* (Semarang: Badan Penerbit Universitas Diponegoro, 2008).

⁴ Wirjono Projodikoro, *Hukum Warisan Indonesia* (Jakarta: Sumur Bandung, 1980).

⁵ Simanjuntak P.N.H., *Pokok-Pokok Hukum Perdata Indonesia* (Jakarta: Djambatan, 1999).

The development of legal provisions related to inheritance must be observed when determining the parties with inheritance rights when someone dies. The determination of the heirs can be resolved through deliberation among the prospective heirs while still upholding the principles of inheritance that apply to them.⁶

This classification is still the basis for making inheritance certificates in Indonesia. A Certificate of Inheritance, *Verklaring van Erfrecht*, or *Certificaat van Erfrecht* is formal evidence that a person can prove himself as the heir of his parents/siblings/children or as an heir for other reasons.⁷ As stated in PP No. 24/1997 and National Land Agency Head Regulations No. 8/2012 has an important connection with the Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency (Permen ATR/BPN) No. 16 of 2021 concerning the Third Amendment to the Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency No. 3 of 1997 concerning Provisions for the Implementation of Government Regulation No. 24 of 1997 concerning Land Registration.

The authority to issue a Certificate of Inheritance in Indonesia has not been centralised in one particular institution or official. However, it is spread across several institutions or can even be prepared by the heirs by application, according to legal provisions. The diversity of regulations governing Certificate of Inheritance cannot be separated from the validity of colonial-era legal products that are still maintained based on Article II of the Transitional Rules of the 1945 Constitution, especially the provisions in Article 131 paragraph (2) and Article 163 paragraph (1) of the *Indische Straatsregeling* (IS).⁸ However, with the issuance of Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency (Permen ATR/BPN) Number 16 of 2021 on Rights Determination and Land Registration, there have been significant changes in the authority to issue Certificate of Inheritance.

With the issuance of Regulation of the Ministry of Agrarian Affairs and Spatial Planning No. 16 of 2021, there is a paradigm shift in the issuance of Certificate of Inheritance, especially those related to the registration of transfer of land rights due to inheritance. Article 42 paragraph (2) of Regulation of the Ministry of Agrarian Affairs and Spatial Planning No. 16 of 2021 states that "The inheritance certificate as referred to in paragraph (1) may be made by a Notary", without any distinction between population groups. This change indicates an effort to unify the inheritance law system in Indonesia, especially in the administrative aspects of transferring land rights due to inheritance.

The authority to issue Certificate of Inheritance is regulated by a notary who acts as a party to verify and ensure the validity of the heir's statement. However, with the enactment of Regulation of the Ministry of Agrarian Affairs and Spatial Planning No. 16

⁶ Alwesius, "Keterangan Hak Mewaris Serta Pemisahan Dan Pembagian Harta Warisan Bagi Warga Negara Indonesia Pasca Permen ATR/KA.BPN No.16 Tahun 2021" (Universitas Indonesia, 2022).

⁷ Kurniawan Ade Yaswirman and Syofiarti, "Transferring Rights in Freehold Estate through Inheritance Based on a Certificate of Heirs in Padang Utara District of Padang City.," *International Journal of Multicultural and Multireligious Understanding* 6, no. 3 (2019): 5.

⁸ R.Soepomo, *Sistem Hukum Di Indonesia Sebelum Perang Dunia II* (Jakarta: Pradnya Paramita, 1998).

of 2021 Article 111, there is a significant change in the authority to issue Certificate of Inheritance, where the authority is now transferred to the village head or sub-district head.

This change was made to simplify administrative processes and reduce the burden of bureaucracy. However, this shift in authority raises challenges and potential legal issues, particularly about verifying inheritance, wills, and heir claims that the village head or village head may not fully account for. village head and head of district, who do not have the authority to verify the existence of wills or other relevant legal documents, may cause the Certificate of Inheritance issued to be invalid or even lead to legal disputes in the future. Moreover, if there are parties who feel aggrieved because they are not listed as heirs even though they are listed in the will, it can lead to lawsuits that affect the validity of the inheritance.

Based on this background, this research will comprehensively examine the legal challenges in implementing changes in the authority to issue Certificate of Inheritance after Regulation of the Ministry of Agrarian Affairs and Spatial Planning No. 16 of 2021. Thus, it is important to examine the legal implications of this change in authority and the challenges faced in its implementation to prevent potential disputes in the future.

Based on the background above, the author takes the problem formulation:

1. What are the legal implications of the Head of Districts' authority in issuing a Certificate of Inheritance for Chinese groups after the issuance of Minister of Agrarian Affairs and Spatial Planning Regulation No. 16 of 2021?
2. What are the legal challenges faced in implementing changes in the authority to issue a Certificate of Inheritance by the Head of districts for Chinese groups, especially related to the relevance and validity of the will?

II. RESEARCH METHOD

This research is built on the foundation of the legal constructivism paradigm that views juridical reality as a dynamic social construction. With this orientation, this study adopts a juridical-sociological research design that integrates legal dogmatic methods with limited empirical elements. The juridical-sociological approach is based on norms or regulations with binding force. Through this approach, law is expected to be understood empirically as a social phenomenon that can be analysed as a variable that causes various impacts in people's lives.⁹

The types of data and legal materials used in this article are primary legal materials in the form of related laws and regulations, secondary materials are research results or journals related to this article, and tertiary legal materials in the form of large dictionaries or legal dictionaries and electronic media. The data collection techniques used are literature studies and field studies. In processing and analysing data, the author uses a qualitative method, which is research that uses a qualitative approach.¹⁰ The presentation of data / legal material in this research is a descriptive analysis.

⁹ Ronny Hanitijo Soemitro, *Metodologi Penelitian Hukum Dan Jurimetri* (Jakarta: Ghalia Indonesia, 1990).

¹⁰ Suteki and Galang Taufani, *Metodologi Penelitian Hukum* (Depok: Rajawali Press, 2017).

III. DISCUSSION

1. Legal implications of the authority of the Sub-District Head in issuing a Certificate of Inheritance for Chinese groups after the issuance of Minister of Agrarian Affairs and Spatial Planning Regulation No. 16 of 2021

The dynamics of laws and regulations in Indonesia continue to develop in response to the increasingly complex needs of society. One of the significant changes in the governance of inheritance administration is the issuance of Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency Number 16 of 2021. This regulation is the third amendment to Regulation of the Ministry of Agrarian Affairs and Spatial Planning No. 3/1997 on implementing PP 24/1997 on land registration. This regulation brings about a fundamental transformation in issuing the Certificate of Inheritance that explicitly impacts the Chinese, where the Sub-District Head can now exercise the authority previously held by notaries.

According to R. Soegondo Notodisorjo, a certificate of inheritance made by a notary plays a role in determining who is legally recognised as an heir.¹¹ As such, the letter is an official document that legally contains data on the heirs and fulfils formal requirements, in contrast to a personal statement of inheritance. The primary function of the inheritance certificate is to provide legal certainty to third parties, such as financial institutions and the land office, in transferring land rights due to inheritance.¹²

The main formal juridical implication is creating a new legal basis for sub-district head 's authority to issue Certificate of Inheritance. Article 111 of Minister of Agrarian Affairs and Spatial Planning No. 16 of 2021 states that: 'An application for registration of transfer of Land Rights or Property Rights over a Flat Unit is submitted by the heirs or their proxies by attaching:

- a) Certificate of Land Rights or Certificate of Ownership of a Flat Unit in the name of the inheritor or other evidence of land ownership;
- b) a death certificate in the name of the rightful holder listed in the relevant Sertipikat from the head of the village/lurah where the heir lived at the time of death, hospital, health officer, or other authorised agency;
- c) proof of being an heir can be in the form of:
 1. the will of the testator;
 2. court judgement;
 3. determination of the judge/chairperson of the court;
 4. heirs' statement letter made by the heirs, witnessed by 2 (two) witnesses, and acknowledged by the head of the village/lurah and the sub-district head where the testator lived at the time of death;
 5. certificate of inheritance rights from a Notary domiciled in the place of residence of the testator at the time of death;

¹¹ Aria Duta, "Analisis Yuridis Proses Pembuatan Surat Keterangan Waris Berdasarkan Permen Atr/Bpn Nomor 16 Tahun 2021 Tentang Peralihan Hak Atas Tanah" (Universitas Muhammadiyah Magelang, 2022).

¹² Ana Silviana, "Eksistensi Surat Keterangan Waris Sebagai Dasar Peralihan Hak Atas Tanah Pasca Permenkumham Nomor 7 Tahun 2021" (Semarang: Seminar INI Pengda Kota Semarang: Keterangan Waris Pasca Permenkumham Nomor 7 Tahun 2021., 2021).

6. a certificate of inheritance from the Balai Harta Peninggalan.
- d) Written Power of Attorney from the heir if the person applying for registration of transfer of rights is not the heir;
- e) proof of identity of the heir.

The article explicitly states that the authority to issue Certificate of Inheritance lies with the Village Head for Indonesian citizens who are residents of the local village and the sub-district head for Indonesian citizens who are not residents of the local village/kelurahan. his provision applies without differentiating between population groups, so it includes Chinese groups previously subject to a special provision whereby a Certificate of Inheritance had to be made in the presence of a Notary.

This shift in authority resulted in the transformation of the nature of the Certificate of Inheritance document from an authentic deed to a certificate issued by a government official. This has an impact on the evidentiary value of the Certificate of Inheritance, where a notarial deed has perfect evidentiary power (*volledig bewijs*) by Article 1870 of the Civil Code, The meaning of an authentic deed as perfect evidence confirms that all parties are bound by the document, as long as no court decision with permanent legal force proves otherwise.¹³ Notaries have a crucial function in ensuring legal certainty and protection of the public, due to their authority as public officials to issue authentic deeds that are valuable as perfect evidence in court. Perfect evidence has three aspects of evidentiary power: external evidentiary power (*uitwendige bewijsmacht*), formal evidentiary power (*formele bewijsmacht*), and material evidentiary power (*materiele bewijsmacht*).¹⁴ Meanwhile, a certificate from the sub-district head is only an underhanded deed with more limited evidentiary power.

The change in authority impacts procedural aspects and has implications for legal certainty and the validity of inheritance documents. This change raises crucial questions about the institutional capacity, competence of sub-district officials, and supporting infrastructure required to carry out this new task. In addition, there are concerns about the standardisation of services in different parts of Indonesia, which have diverse demographic characteristics and bureaucratic capacities. This analysis is important given that inheritance documents protect civil rights, particularly the transfer of rights to land, buildings, and other assets in the national legal system.

This change implicitly opens the opportunity to expand the authority of the sub-district head to issue Certificate of Inheritance for Chinese groups, which was previously the authority of the Notaris. This paradigm shift is in line with the spirit of Article 27 paragraph (1) of the 1945 Constitution which guarantees the equal status of citizens in law and government, as well as efforts to eliminate all forms of discrimination based on race and ethnicity as mandated in Law No. 40/2008 on the Elimination of Racial and Ethnic Discrimination.

¹³ Habib Adjie, *Kebatalan Dan Pembatalan Akta Notaris* (Bandung: PT. Refika Aditama, 2017).

¹⁴ Sahdan and Ufran, "Peran Notaris Dalam Pembagian Warisan Berdasarkan Hukum Positif Di Indonesia," *Indonesia Berdaya* 4, no. 3 (2023): 1217–1224.

The expansion of the sub-district head's authority regarding the issuance of a Certificate of Inheritance for Chinese groups based on the Agrarian Affairs and Spatial Planning Ministerial Regulation No. 16 of 2021 creates a norm conflict with the Notary Position Law (UUJN). The expansion of the sub-district head's authority regarding the issuance of a Certificate of Inheritance for Chinese groups based on the Agrarian Affairs and Spatial Planning Ministerial Regulation No. 16 of 2021 creates a norm conflict with the Notary Position Law (UUJN). The explicit provision in Article 15 paragraph (1) of Law No. 2/2014 revising Law No. 30/2004 on the Position of Notary has definitively codified the prerogative of notaries in the production of authentic instruments, including the verification of the status of heirs for segments of society under the jurisdiction of colonial legacy civil law. The historical legislation of *Staatsblad* reinforces this juridical legitimacy. 1913 Number 120 correlated with *Staatsblad* 1917 Number 129, which retains its constitutional validity through the transitional mechanism enshrined in Article I of the Transitional Rules of the 1945 Constitution, where ethnic Chinese are classified as entities within the domain of civil regulation with European characteristics.

Based on the principle of hierarchy of laws and regulations stipulated in Article 7 of Law No. 12/2011, higher laws (norms/legal rules) negate the validity of lower laws (norms/legal rules) (*lex superior derogat legi inferiori*).¹⁵ Directorate General of Legislation Ministry of Law and Human Rights The Regulation of the Ministry of Agrarian Affairs and Spatial Planning as a legal product at the level of ministerial regulations is below the UUJN, so that the expansion of the authority of the sub-district head to issue Certificate of Inheritance for the Chinese group can be seen as violating the hierarchy of laws and regulations and creating legal uncertainty, which is contrary to Article 28D paragraph (1) of the 1945 Constitution.

A Certificate of Inheritance made by a Notary has perfect evidentiary power. Meanwhile, the Certificate of Inheritance issued by the Sub-district Head does not have the same evidentiary power. This shift in authority can potentially reduce the degree of legal certainty of the inheritance certificate document, especially in registering the transfer of land rights. Although Regulation of the Ministry of Agrarian Affairs and Spatial Planning No. 16 of 2021 aims to eliminate discrimination by Law No. 40 of 2008, its implementation creates new problems because it is not preceded by a revision of higher regulations to avoid norm conflicts in the Indonesian legal system

Changes in the authority to issue inheritance certificates also have implications for the legal certainty and validity of the Certificate of Inheritance issued. The issuance of Surat Keterangan Waris for Chinese groups by the sub-district head faces significant challenges in ensuring the validity of the information, given that these groups are historically subject to the Western civil law system, different from customary law. Under the Civil Code, the inheritance system has rules regarding the legitimate portion (absolute

¹⁵ Nurfaqih Irfani, "ASAS LEX SUPERIOR, LEX SPECIALIS, DAN LEX POSTERIOR: PEMAKNAAN, PROBLEMATIKA, DAN PENGGUNAANNYA DALAM PENALARAN DAN ARGUMENTASI HUKUM," *Jurnal Legislasi Indonesia* 16, no. 3 (2020): 307.

share), the classification of heirs, and their respective rights and obligations, which require in-depth legal understanding.

The issuance of Regulation of the Ministry of Agrarian Affairs and Spatial Planning No. 16 of 2021 has significant legal implications for the authority of the sub-district head in issuing inheritance certificates for Chinese groups. This regulation eliminates the distinction of population groups in issuing inheritance certificates, thus expanding the sub-district head's authority to issue inheritance certificates for all Indonesian citizens, including Chinese groups, previously the authority of Notary.

These changes reflect the spirit of legal reform to eliminate colonial legacy discrimination and realise equality before the law. However, the effectiveness of its implementation still depends on the readiness of the government apparatus at the sub-district level to exercise this new authority, as well as the community's acceptance of the changes.

2. Legal challenges faced in implementing changes in the authority to issue a Certificate of Inheritance by the Sub-District Head for Chinese groups, especially related to the relevance and validity of the will.

Inheritance law is also a component of civil law, the smallest element in the scope of family law. There is a close relationship between inheritance law and human existence, considering that every individual will eventually face a legal event in death. The juridical consequences that arise after a person's legal event include the problem of how to manage and continue the rights and obligations of the heir.¹⁶

In this context, the inheritance certificate has a crucial role as a proof document that a person is indeed an heir, as stated in Article 111 paragraph (1) letter c of the Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 16 of 2021 concerning the Third Amendment to the Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency Number 3 of 1997 concerning Provisions for the Implementation of Government Regulation Number 24 of 1997 concerning Land Registration (Regulation of the Ministry of Agrarian Affairs and Spatial Planning Number 16 of 2021). The article mentions several ways to prove someone is a true heir: a will, verdict, determination, and Certificate of Inheritance made by a notary.¹⁷

A will is a statement of one's will regarding managing one's property after death. Generally, the decision to make a will is unilateral, where the will to transfer assets, eliminate debts, or provide benefits from an asset comes from the testator.¹⁸ Therefore, a

¹⁶ Suparman, *Hukum Waris Indonesia* (Bandung: Refika Aditama, 2007).

¹⁷ I Gusti Kade Prabawa Maha Yoga, "Kewenangan Notaris Dalam Pembuatan Surat Keterangan Waris Untuk Warga Negara Indonesia," *Jurnal Ilmiah Pendidikan Pancasila dan Kewarganegaraan* 3, no. 2 (2018): 133.

¹⁸ Putih Nurfitriani Triwahyuni, "Dampak Hukum Terhadap Wasiat Tanpa Akta Notaris," *Jurnal Ilmiah Mahasiswa Hukum* 2, no. 3 (2022): 1–13.

will document is prepared while the testator is still alive, but will only be executed after the testator passes away.

The issuance of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 16 of 2021, especially in Article 111, which changes the authority to make a Certificate of Inheritance for Chinese groups, which was initially only the authority of Notaris, to a broader one, namely the authority of the sub-district head, has created a new paradigm in the inheritance administration system in Indonesia. Although this change is intended to eliminate ethnic-based treatment differences and realise equality before the law, it poses significant legal challenges, especially regarding handling testamentary documents.

The sub-district head's limited access to legal documents required for verification of Chinese family trees is also a serious obstacle. As the authorised official, the Notary has access to the wills database. The Notary has apparent authority to check whether or not a will exists as the basis for issuing an accurate inheritance certificate. This is in line with the provisions in Law No. 30/2004 on the Office of Notary (UUJN) Article 15 paragraph (1) of the UUJN which states: "Notaries are authorised to make authentic Deeds concerning all deeds, agreements, and stipulations required by laws and regulations and/or desired by those concerned to be stated in an authentic Deed, guarantee the certainty of the date of making the Deed, keep the Deed, provide a grosse, copy and quotation of the Deed, all insofar as the making of the Deed is not also assigned or excluded to other officials or other persons stipulated by law."

With the enactment of the online registration of wills based on Permenkumham No. 60/2016, notaries are no longer required to manually send physical documents as proof of reporting the making of wills. Notaries now only need to register to be able to enter the Director General of AHU website and submit reports related to the will deed electronically.¹⁹

According to Notary-PPAT Rita Handajani, SH, a Notary in Semarang City, the preparation of a certificate of inheritance should be preceded by checking the testator's will on the AHU Online system, a database system created by the Ministry of Law to accommodate will reports made by Notaries throughout Indonesia. This is intended to ascertain whether the testator made a will during his lifetime. This is so that the inheritance certificate made by the Notary is accurate and creates legal certainty.²⁰ Meanwhile, the sub-district head does not have the same access to the database, making verifying family trees and the legitimacy of heirs more difficult and potentially causing disputes in the future.

The advantage of the online will registration system through the use of information technology is the increased legal certainty regarding the registered status of the will, because through online registration, the submitted will deed data is directly

¹⁹ Interview with Notary - PPAT Rita Handajani, SH. Wednesday, April 30, 2025 in Semarang

²⁰ Interview with Notary - PPAT Rita Handajani, SH. Wednesday, April 30, 2025 in Semarang

integrated and updated in the Directorate General of AHU online database in real-time, thus minimising the risk of the will deed not being recorded in the Central Register of Wills. However, the first challenge relates to access to the Central Register of Wills managed by the Ministry of Law and Human Rights. Based on Article 16, paragraph (1), letter i of Law No. 2/2014 on the Amendment to Law No. 30/2004 on the Position of Notary (UUJN), notaries must register deeds relating to wills and send reports to the monthly. This system allows the Notary to verify the existence of the will before issuing the Certificate of Inheritance, a mechanism not available to the sub-district head. This lack of access to the DPW leads to a significant risk that Certificate of Inheritance issued by the sub-district head may overlook the existence of a will which could fundamentally change the structure of inheritance distribution. In the AHU Online (General Legal Administration) system, wills notarised are recorded electronically, providing transparency and legal clarity regarding the document's existence.²¹

Giving the sub-district head the authority to issue Certificate of Inheritance without checking the existence of a will will cause significant legal problems, especially if the testator leaves a will unknown to the parties involved in the inheritance process. As a valid legal instrument, a will has the power to determine who is entitled to receive the inherited property. Without scrutiny of the existence of a will, the process of issuing Certificate of Inheritance by the sub-district head could lead to uncertainty as to who should receive the inheritance.

As a result, if a will exists but is not revealed because the sub-district head did not check it first, this can lead to disputes in the future between the heirs who get the Certificate of Inheritance and the party who should have been mentioned in the will. One of the adverse effects is when land rights are transferred due to inheritance. The position of the certificate of heirs issued by the Village Head and Sub-District Head essentially has legal force as an instrument of proof in transferring land rights based on inheritance, provided that applicable legal provisions and lists all legitimate parties as heirs have been made.²²

It is therefore important to reconsider the sub-district head's authority to issue Certificate of Inheritance without checking the existence of the will. Preferably, this authority should be adjusted with provisions that ensure verification of the existence of the will before the Certificate of Inheritance is issued. This can reduce the potential for future inheritance disputes and maintain legal certainty for all interested parties. Stricter supervision and regulation related to this authority are needed to avoid mistakes in managing inherited assets that can harm other parties and cause legal uncertainty.

The purpose of making a deed of inheritance certificate is for legal certainty and protection for the community, as mandated by the UUPA. Legal certainty in the

²¹ Interview with Notary - PPAT Rita Handajani, SH. Wednesday, April 30, 2025 in Semarang

²² Rayhan Isha Mahendra, Dominikus Rato, and Dyah Ochtorina Susanti, "Kewenangan Kepala Desa Dan Lura Dalam Pembuatan Surat Keterangan Ahli Waris," *Mimbar Yustitia: Jurnal Hukum dan Hak Asasi Manusia* 8, no. 1 (2024).

registration of transfer of land rights through inheritance using Deed of distribution of inheritance rights means that there is a clear legal decision that can ensure the rights and obligations of citizens.²³

Legal certainty in the registration of transfer of land rights through inheritance using Deed of distribution of inheritance rights means that there is a clear legal decision that can ensure the rights and obligations of citizens. Legal certainty includes regulations that are determined and announced firmly and logically, without causing doubts or conflicts of norms. Legal uncertainty can lead to multiple interpretations and norm ambiguity in the legal system.²⁴ Gustav Radbruch emphasised that legal certainty is justice, expediency, and certainty itself. These three values are necessary for the law to function clearly and effectively.²⁵

Another factor concerns legal certainty in will validation and inheritance procedures. Article 15, paragraph (1) of the UUJN authorises notaries to make authentic deeds related to all acts, agreements, and provisions required by laws and regulations. The inheritance statement made by a notary as an authentic deed is needed by the community for evidentiary purposes as the strongest and fullest evidence.²⁶ Authentic Deeds have perfect evidentiary power as Article 1870 of the Civil Code stipulated. Meanwhile, the Certificate of Inheritance issued by the Sub-District Head does not have the same evidentiary power, so it has the potential to cause disputes in the future regarding the validity of inheritance distribution, especially if there are parties who feel aggrieved.

Another challenge concerns the implications for property transactions involving Chinese heirs. Banks, creditors and other third parties often see the Certificate of Inheritance as the basis for transferring assets to the heirs. The transfer of land rights due to inheritance must be proven by a certificate of inheritance, which becomes the basis for transferring land rights to the heirs at the Land Office.²⁷ Changes in the authority and format of the Certificate of Inheritance may raise doubts from third parties regarding the validity and legitimacy of the Certificate of Inheritance issued by the Sub-district Head, potentially hampering property transactions and causing economic losses to Chinese heirs.

There are also challenges relating to legal protection for heirs and third parties. In the notarial system, notaries have professional responsibilities and have professional insurance that can provide financial protection in the event of errors in the issuance of Certificate of Inheritance. The sub-district head does not have a similar protection mechanism, which raises questions about the form of liability and compensation in the

²³ Dedi Nurhadi, "Kepastian Hukum Terhadap Pendaftaran Peralihan Hak Atas Tanah Melalui Pewarisan Berdasarkan Akta Pembagian Hak Waris," *JURNAL HUKUM SASANA* 10, no. 2 (2024): 191–204.

²⁴ Peter Mahmud Marzuki, *Pengantar Ilmu Hukum* (Jakarta: Kencana, 2008).

²⁵ E. Utrecht, *Pengantar Hukum Administrasi Indonesia*, (Jakarta: Penerbitan dan Balai Buku Ichtiar, 1963), hlm. 26.

²⁶ Habib Adjie, *Hukum Notaris Indonesia (Tafsir Tematik Terhadap UU No. 30 Tahun 2004 Tentang Jabatan Notaris)* (Refika Aditama, 2009).

²⁷ Ana Silviana and Ariza Fuadi, "Legal Policy on the Use of Heir Certificates (SKAW) for Registration of Land Rights Transfers in Indonesia," *Law Reform* 19, no. 2 (2023): 294–320.

event of errors or omissions in the issuance of Certificate of Inheritance that cause harm to heirs or third parties. This lack of a precise protection mechanism could reduce trust in the Certificate of Inheritance issued by the sub-district head and potentially result in protracted disputes.

Harmonisation of the system is an urgent need, either through granting limited access to the sub-district head to check wills, or requiring coordination between the sub-district head and Notary before the issuance of Certificate of Inheritance. Without synchronisation of the probate reporting system with the authority to issue Certificate of Inheritance, this conflict of authority will continue to create legal uncertainty in the inheritance process, especially for Chinese groups under the dual jurisdiction of the sub-district head and Notary.

The system reform that requires prior Notary validation of the status of the will as a prerequisite for the issuance of Certificate of Inheritance also offers a practical solution. This approach provides legal certainty by placing the verification of the will in the hands of the Notary, who has exclusive authority under UUJN. This solution is in line with applicable legal provisions. It can be implemented through administrative policies without requiring significant technological changes, thereby minimising the potential for duplication or contradiction in the interpretation of wills..

IV. CONCLUSION

The change in the authority to issue a Certificate of Inheritance through Regulation of the Ministry of Agrarian Affairs and Spatial Planning No. 16 of 2021 has shifted the paradigm of inheritance administration in Indonesia by allowing the Sub-District Head to issue Certificate of Inheritance for Chinese groups, which was previously the exclusive authority of Notaris. This shift reflects efforts to eliminate ethnic-based discrimination by the spirit of Article 27, paragraph (1) of the 1945 Constitution and Law No. 40 of 2008. However, it creates norm conflicts with the Notary Position Law (UUJN) based on the hierarchy of laws and regulations (*lex superior derogat legi inferiori*) principle.

The change in authority reduces the degree of proof of the Certificate of Inheritance from being an authentic deed with perfect evidentiary power (*volledig bewijs*) to just a certificate with limited evidentiary power. The main challenges in implementation include the absence of the sub-district head's access to the Central Register of Wills (DPW) and the AHU Online system that allows verification of the existence of wills prior to the issuance of Certificate of Inheritance, potentially overlooking the existence of wills that can change the structure of inheritance distribution.

The limited institutional capacity, competence of sub-district officials, and supporting infrastructure are significant obstacles in implementing this change in authority, given the complexity of the inheritance law system for Chinese groups subject to the Civil Code. Although the aim is to eliminate discrimination, implementing this change can potentially create legal uncertainty that can harm heirs and third parties in

property transactions, especially regarding the validity and legality of Certificate of Inheritance in transferring land rights due to inheritance.

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