



The Making of Inheritance Certificate in The Process of Transferring Right Over Land by Inheritance in Padang

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Abstract

Making a certificate of inheritance in the process of transferring rights over land by inheritance is guided by Article 111 paragraph (1) letter c number 4 of the Regulation of the Minister of Agrarian Affairs / Decree of the Land Agency Number 3 of 1997 concerning Implementing Regulation of Government Regulation Number 24 of 1997 concerning Land Registration. The article divides the authority to make inheritance certificate based on community classification so that it is contrary to the 1945 Constitution, Law Number 12 of 2006 concerning Citizenship, Law Number 40 of 2008 concerning Elimination of Racial and Ethnic Discrimination, Law Number 12 of 2011 concerning Law Enforcement. While this journal method is an Empirical Juridical approach; the types of data used are primary data and secondary data with primary legal materials, secondary legal materials, and tertiary legal materials. Data are analyzed qualitatively. From the results of the study concluded that in the process of transferring rights by inheritance, the heirs must show proof of inheritance certificate from a notary by giving attribution authority by Law Number 12 of 2014 in conjunction with Law Number 30 of 2004 concerning Notary Position, differentiation in the making of inheritance certificate is an urgency of the existence of legal pluralism so that in making the certificate of inheritance according to which law is used by the testator, due to differentiation in the making of inheritance certificate, there will be a deviation from the law itself (pluralism) so that the inheritance dispute will occur.

Keywords: Inheritance Certificate, Dividing Authority based on Population Differentiation

Introduction

The certificate of inheritance is made to prove who deserve to be the heirs because of the death of devisors as the base of inheritance division both who deserve and or how much the portion owned by the heirs based on *legitime portie*¹ and/or will.² The element of inheritance according to inheritance law is:

¹ Legitime portie is the absolute right obtained by certain parties on certain number from inheritance or provision which prohibits the heirs in making the provision like granting certain parts from their inheritance, so that the grantee has an obligation to return the inheritance granted to him to the inheritance in order to fulfill the absolute part (legitime portie) the heirs that have the right. As stipulated in *Anisitus Amanat, Dividing Inheritance based on BW Civil Law Articles*, Raja Grafindo Persada, Jakarta, 2001, p. 1.

the presence of devisor, heirs, and the property left by the devisor.³ However, the practice in the field shows that a heir cannot directly have and do title transfer on the property which becomes his right over the inheritance (the death of devisor), but to be able to conduct legal action on what has been his right, it should be completed with certificate of inheritance.⁴

The Guide of inheritance certificate making is in Article 111 sub-section (1) letter c number 4 on the Regulation of The Minister of Agrarian Affairs and Spatial Planning/National Land Agency Number 3 of 1997 regarding Implementing Rules of Government Regulation about Land Registration. It is divided some groups of community and authorized officials in the making of inheritance certificate such as;

1. For indigenous group, the Inheritance Certificate is made by several parties in Sub-District Office and signed in District Office,
2. For Chinese East Foreign group, the Inheritance Certificate is made by notary,
3. For other Foreign East Group, the Inheritance Certificate is made by Property and Heritage Agency.⁵

The differentiation of community and authorized official groups becomes the problem in the making of inheritance certificate because it is influenced by the presence of law pluralism. Padang as the province capital of West Sumatera has law pluralism by being influenced by customs, tribes, groups, and faiths.

If dispute over inheritance occurs, then which law that will be used by the heir. The non-moslem indigenous group prefers making inheritance certificate conforming Code of Civil Law so that the conformation voluntarily on Code of Civil Law happens as stipulated in Article 131 *Indische Staatregeling* sub-section (2) letter b, mostly non-moslem Indonesian people tend to make Inheritance Certificate conforming on Code of Civil Law.⁶ If a father passed away is a moslem, inheritance certificate will be made by sub-district head and district head; and if a mother passed away is non-moslem, inheritance certificate will be made by a notary, so that principally, the inheritance certificate is made based on the condition of the devisor.⁷

If a devisor is the descendant and a moslem, the heirs must make the certificate of inheritance whether it is in the sub-district/district office or in the notary office. If a descendant conducts a marriage to an indigenous community, whether the child of the devisor still becomes a descendant or not still becomes questionable. Therefore, in this case, there is no special rule where the devisor must make the certificate of inheritance.

Besides, the differentiation of community groups nowadays should not be there. By doing differentiation over community groups, it will hamper the development of life in every aspect. In Article 26 sub-section (1) 1945 Constitution, it is emphasized that the differentiation of community groups on race and ethnics is unknown because the article stipulates that citizens are the original people of Indonesia and other nations' people legitimated by Laws.⁸ Article 1 number 1 and Article 2 of Laws Number 12 of 2006 regarding Citizenship mentions that:

² Herlien Budiono, *Collection of Civil Law Writing in Notary*, Second Book, Citra Aditya Bakti, Bandung, 2013, p 84.

³ Anisitus Amanat., *Op.Cit.*, p 6

⁴ Effendy Perangin, *Inheritance Law, Collection of Notary Department College, Law Facult of Indonesia University*, Jakarta, 2006, p 3.

⁵ Regulation of Agrarian Affairs Minister/National Land Agency Head Number 3 of 1997 regarding Implementing Regulation of Government Regulation Number 24 of 1997 regarding Land Registration, Article 111 sub-district (1) letter c number 4.

⁶ Gultom, *Inheritance Certificate and Authorized Party in Issuing it*, <http://www.gultomlawconsultants.com/> (recently visited on August 8, 2018, at 11.11).

⁷ Irma Devita, *Inheritance Certificate*, <http://irmadevita.com/2012/keterangan-waris/> (recently visited on August 8, 2018, at 19.59).

⁸ M. Solly Lubis, *The Republic of Indonesia's Governance*, Mandar Maju, Bandung, 1993, p 118.

Citizen is the member of a country set based on laws,
Who becomes the citizen of Indonesia is the original people of Indonesia and other nations'
people legitimated by laws as citizens.⁹

Thus, Indonesia grants a protection guarantee to be free from discriminative action as the constitutional right set in Article 28I sub-section (2) in 1945 Constitution.¹⁰ Article 4 letter a Laws Number 40 of 2008 regarding Discrimination on Race and Ethnic mentions that:

Doing differentiation, exception, limitation, or selection based on race and ethnic causing to revocation or reduction of acknowledgment, acquisition, or human right implementation and basic freedom in equality in civil, politics, economy, social, and culture.¹¹

Therefore, Article 111 sub-section (1) letter c number 4 clearly performs group differentiation on race and ethnics. Basically, differentiation of community group will cause discrepancy. Article 27 sub-section (1) of 1945 Constitution mentions that every citizen has equal right before laws and the governance is obliged to enforce laws without exception.¹² The researcher chooses to conduct a research in Padang because it has Law Pluralism such as: Customary Law, Islamic Law, and Civil Law applied in the middle of Padang community life. If dispute over inheritance occurs, which law will be used by the heirs is still questionable.

Research Method

The problem approach that will be used in the present research is judicial-empirical approach meaning that the procedure that will be used to solve the research problems is by examining secondary data first and conducting research on primary data in the field, especially learning and researching "The Making of Inheritance Certificate in the Process of Right over Land Transfer by Inheritance in Padang."

This research is descriptive qualitative which is a type of research aiming to obtain truth built on theories developing from research and controlled on empirical learning existing problems and prevailing working procedures. This descriptive qualitative research is to describe about the making of inheritance certificate in the process of right over land transfer by inheritance in Padang.

Type of data: a. Primary Data is the data obtained directly from research field (field research). The data is in form of interview result with authorized officials in National Land Agency Office of Padang and supported by: 1) Interview Result with authorized officials in Land Agency Office of Bukittinggi. 2) Interview Result with authorized officials in Land Agency Office of Payakumbuh. a. Secondary Data is the data obtained from literary materials (literature data).

Legal materials used to obtain the data related to the research are: a. Primary Legal Material used is laws which have relevance with the title that the research has chosen and other laws which support the completion of this research. b. Primary Legal Material is the legal material which gives information related to the content of primary legal material and its implementation. c. Tertiary Legal Material is the legal material which provides direction and explanation towards primary legal material and secondary legal material such as dictionary and internet.

⁹ The Republic of Indonesia Laws Number 12 of 2006 regarding Citizenship, *The Republic of Indonesia Sheet*, of 2006 Number 63, *Addition of the Republic of Indonesia Sheet*, Number 4634, Article 1 and Article 2.

¹⁰ Hesti Armiwulan, *Ethnic and Racial Discrimination as Law Case and Human Rights*, Journal of Yustika Surabaya, Chapter .44 Number 4, October 2015, Law Faculty of Surabaya, p 493.

¹¹ The Republic of Indonesia Laws Number 40 of 2008 regarding Discrimination Elimination on Race and Ethnic, *The Republic of Indonesia Sheet*, of 2008, Number 107, *Addition of the Republic of Indonesia Sheet* Number 4919., Article 4.

¹² M. Solly Lubis., *Op.Cit.*, p 140.

Data Collection Technique

Data collection is a process of primary data providing which is needed for research by using standard and systematic procedure to obtain the required data. The relation between technique of collecting data and the research problem that is willing to be solved is to formulate the problems in the research. In this research, the technique used to collect data is:

- a. Data collection by document study is the data collection technique which is not addressed directly to the research subject. The documents studied can be various by exploring the literatures of laws and legal materials regarding to the research material or research object. There are two document types used in the documentation study namely: 1) primary document is the document written directly by the people who experience the event; 2) Secondary document is the document re-written by the people who do not directly experience the event based on the information gained from the people who experience the event.
- b. Interview is one of the data collection methods by communication. In this case, interview is done as a medium to obtain information. The interview technique used is open or semi-structured interview meaning that the interviewer has prepared questions given to the speaker or respondent. To obtain the data, the researcher conducts interview with one of the parties from National Land Agency of Padang and the results are compared to one of the parties from Land Agency of Bukittinggi and from Land Agency of Payakumbuh.

Data Analysis and Data Processing

Data analysis is a very essential part in scientific method because by data analysis, it can be given useful meaning in solving the research problem. Data analysis is the process which never ends. Analysis data process is done after the researcher leaves the field aiming to find themes and to formulate hypothesis.

Research Data Processing of sociological law views law as social phenomenon with structural approach. Data analysis and processing depends on the data nature which is collected by the researcher. Data processing is the process of re-research towards notes, documents, and information collected by the researcher.

Result And Discussion

In the making of inheritance certificate for native group, the requirements that need to be brought to the District office are as follows:

- 1) The appellant or the heirs come directly to the village head office by bringing companion letter from neighborhood/hamlet head or from environment head where the heirs domicile.
- 2) Bringing Family Card for each heir.
- 3) Bringing Identity Card for each heir.
- 4) Bringing payment receipt of Land and Building Tax.
- 5) Bringing the proof certificate of right over land ownership that will be inherited and legalized by authorized parties.
- 6) The appellant/the heirs need to come with the witnesses to the Sub-District Office by bring data as mentioned above to be able to proceed to investigation by village head about the data truth of the heirs and ensure that the heirs are the legal heirs of the devisors by checking the documents from the heirs like Family Card, Identity Card, proof certificate of right over land

ownership that will be inherited and payment receipt of land and Building Tax from the land that will be inherited.¹³

For Chinese Foreign East group, the requirements that must be brought or completed to the Notary Office are such as:¹⁴

1. Showing Identity Card of each heir and Identity Card of each witness who knows the devisor position and legal heirs both those who are still alive and those who have passed away as well as the heirs respectively.
2. Submitting statement letter of each heir as the requirement in making inheritance certificate because the notary will not know the problems and the position of the heirs if there is no statement letter from each heir.
3. The notary is obliged to do investigation firstly on Inheritance Center List of Human Rights and Law Department of the Republic of Indonesia in Jakarta regarding to whether the inheritance on behalf of the listed devisors is there or not.
4. If the notary has obtained writer answers from Inheritance Center List of Human Rights and Law Department of the Republic of Indonesia in Jakarta, then the notary can make the Certificate of Inheritance.

In addition, the requirements to make inheritance certificate for other foreign east group (Arabian, Pakistan, Egypt, India, etc.) addressed to Property and Heritage Agency are as follows:

1. Proposal Letter
2. Death Certificate
3. Marriage Certificate
4. Identity of each heir and appellant (Identity Card)
5. Family Card
6. Birth Certificate of Child
7. Title Transfer Certificate (If any)
8. The Certificate of Inheritance issued by General Directorate of General Law Administration, and
9. General Power of Attorney Certificate.

With note that the copy of those certificates are legalized by the notary.¹⁵

In Article 1868, it is mentioned that a certificate made in such form set by laws is made before general and authorized officials in the place where the certificate is made. Therefore, in order to make uniformity in the making of inheritance certificate, even if the pluralism still exists in the middle of community, then this is the attribution authority of notary which is instructed in Article 15 of Laws Number 2 of 2014 regarding Notary Position.

In the matter of proving, authentic certificate and notary certificate contain authentic remarks in the relation of group functioning as the proof for the parties that give information and stipulated to the Notary certificate so that it becomes authentic notary. The making power of Notary certificate, based on Article 165 of Code of Civil Law in Article 285 of Code of Civil Law out of Java Island, *partij* certificate, is made by or before general official who has proving power values as follows:

¹³ Husein Ali Sofyan, *The Administration of Inheritance Certificate for Native Group in Village Head/Sub-District Head Office*, Rineka Cipta, Jakarta, 2012, p 96.

¹⁴ University of North Sumatera, *Inheritance System*, <http://repository.usu.ac.id/bitstream/> (recently visited on May 22, 2018 at 16.46) .

¹⁵ *Ibid.*

1. As the proving tool which has perfect proving power and has binding proving power.
2. As a perfect proof of everything mentioned in the certificate.
3. Is a power as official remark from the official who makes the certificate.¹⁶

The differentiation of inheritance certificate making refers to legal pluralism so that the making of inheritance certificate will be also different. Besides, Article 111 sub-section (1) PMNA/KBPN Number 3 of 1997 is the guide in making inheritance certificate. In the article, the authorities of making inheritance certificate are based on community groups. If it is related to Laws theory, the differentiation on community group is no longer there.

The content and the material of Article 111 are not in line with what is expected by community in general for the sake of human rights fulfillment. Indonesia is a law country; not a power country, so that every action has been set in the written law namely Laws. In the level theory, lower law is based on higher law; therefore, the article must be removed, change, replace without showing any differentiation in the community group even if the pluralism still exists in the middle of community of Padang.

The making of inheritance certificate in the process of right transfer by inheritance is referred to Article 111 sub-section (1) letter c number 4 of the Regulation of The Minister of Agrarian Affairs and Spatial Planning/National Land Agency, is initiated to be done; if it is not in line with the provision of the article, the process of right transfer by inheritance will be hampered. If legal deviation occurs, it means that it still relies on community group, then inheritance dispute will also occur. Thus, the article is better to be removed or revoked because it shows differentiation on community group which could cause conflict.

M. Ishaq assumes that if a moslem native person makes inheritance certificate to Notary office, then the problem is not there, and then he requests to ask for fulfillment to the District Court that the person is the legal heir because inheritance law is choice of law. If the native person group divides the inheritance based on civil law, Islamic law. And customary law, then it will be okay. Thus, before inheritance is divided, the heirs must agree and deal regarding to which laws that will be beneficial for them in terms of inheritance division.¹⁷ If the deal cannot be made, inheritance dispute will occur; if the heirs are from native group, Chinese foreign east group, and other foreign east group, then based on personality principle, it should be solved in Religious Court,¹⁸ if the heirs are non-moslem and native group related to property, then it is the responsibility of District Court to solve inheritance dispute.

Law enforcement should be able to guarantee peace and legal certainty which become the main mission of law enforcement as well as become the objective of law which is to make a community that maintains common interest, that preserves human rights, and that creates a fair and indiscriminative living. Law enforcement must be able to fulfill justice for community. Based on *fiktie* theory, all people are considered knowing about laws or regulations since the norm is set and has prevailing power.¹⁹

The ignorance of someone related to the presence of laws or other regulations cannot free him from legal demand. Based on *fiktie* theory, poor people, remote places in small islands all over Indonesia in line with the equality principle before the law (*equality before the law*) must be treated equally by law with the educated, rich, and people who live in cities.

Afterwards, Jimly Asshiddiqie, with the fact, besides the presence of law making and law enforcing, an activity namely law socialization is needed. This activity cannot be ignored because law

¹⁶ Rahmawati Boty, *The Proving Power of Notary Certificate in Guaranteeing Civil Right*, Law Intellectual Journal, Vol 3, Number 1, Law Institute of Putri Maharaja, Payakumbuh, 2017, p 90.

¹⁷ Interview with M. Ishaq, Notary/Official Certifier of Title Deeds of Padang, October 8, 2018.

¹⁸ The court absolute power related to the type of certain case and special case, through the power of investigating, deciding, and solving certain case, which is the moslem group. The provision of the principle is the absolute power of Religious Court in handling, deciding Moslem cases, as stipulated in the Republic of Indonesia Laws Number 3 of 2006 regarding Religious Court, *The Republic of Indonesia Cases*, of 2006, Number 22, Article 2.

¹⁹ Website of Medianeleti: <https://www.media.neliti.com/> (recently visited on July 6, 2018 at 19.37).

socialization is the key of enforcing law. Without social base, any laws made cannot be effective, cannot be enforced, and cannot be obeyed seriously.²⁰

Law certainty enables the effort of law setting in laws which are made by authorized parties, so that these laws have judicial aspect. This aspect later can guarantee the presence of certainty that law functions as a set of rules that must be obeyed. Law must be strict in the community which contain openness so that everyone can understand the meaning of a legal provision. Statement letter of a heir is made by a notary and its law base is Article 15 Laws Number 2 of 2014. The legal provisions do not regulate the authority of making the heir's inheritance certificate by a notary specifically.

In Laws Number 32 of 2004 regarding Local Governance, the authority of Sub-district/District Head is not found in the making of the heir's inheritance certificate. Moreover, their actions like knowing, justifying, and signing the remarks of the heir's inheritance are also not found. Regarding to the authority of village official, sub-district official, and district official in the making of the heir's inheritance certificate, it should be a serious attention because in the daily practice, the heir's statement letter made by community puts their signs, whereas their authorities are not there according to laws. In other words, it could be stated that the actions done by Sub-district/District head like knowing, justifying, an signing the certificate of the heirs are out of their authorities.

On the other hand, Property and Heritage Agency is also one of the institutions involving in the making of the heir's inheritance certificate for Foreign East group. In the research, the legal base of this institution's authority in making the heir's inheritance certificate is in fact inconsistent and various. Property and Heritage Agency which is the governance institution under Human Rights and Law Ministry cannot also be justified for its authority in issuing the heir's statement letter because the government agency or the government officials is not right to issue the heir's inheritance certificate which is the civil right of a person.

Even though the condition of Indonesian community which is plural and has different inheritance law, it should not be the obstacle for a notary in making a uniform heir's law for native group or it is known Indonesian Citizen. The authority of a notary for that is in line with the notary's authority given by laws in making authentic certificate. Therefore, the making of the heir's inheritance certificate can be done by the notary as long as the making formality in form of authentic certificate.

While, the inheritance law itself is in line with the willingness of the heirs. From the side of government's policy, to make a unification of national inheritance law especially in the making of the heir's inheritance certificate, it is better for the country to provide a policy to emphasize that Laws Number 2 of 2014 is the legal base of the heir's certificate inheritance certificate for all Indonesian citizens.

Afterwards, the government is expected to do amendment towards the laws which place a notary as the only authorized institution in making the heir's inheritance certificate so that the formal requirement of making the heir's inheritance certificate is made by an official that has adequate competence that is an official who makes authentic certificate. Besides, from material side, certificate product made by the notary can be accounted for in accordance with his education. Eventually, legal uniformity and legal certainty can be made in the making of the heir's inheritance certificate.

By providing authorities for a notary, besides his authorities are guaranteed by laws, the research on supporting documents in the process of the inheritance certificate making is also made carefully from law viewpoint. It is different from the inheritance certificate made privately and signed by sub-district/district head. The certificate contains weaknesses; one of the weaknesses is there is no checking on inheritance list.

The other weakness from the inheritance certificate made privately is that the official who signs the certificate is not certain yet that the heir written on that is right or not. It can happen when the parties who make the certificate cannot attach the supporting data. The notary runs most of country power, the notary is considered as the part of head. The position of this public authority is the base of the notary's

²⁰ *Ibid.*

job which his position is in the context of private law. The position of a notary has two essential characteristics and essential natures namely, impartiality and independency in giving help to the clients.

In more complex life, law certainty frequently becomes the foundation from mechanism of community life. Many legal actions done by a person related the presence of guarantee on legal certainty so that it needs the strongest proving tools namely the legal action is stipulated in the notary certificate. Besides as proving tool, the notary certificate has a function as the absolute requirement for doing certain legal actions.

Conclusion

- a. The making of inheritance certificate in Padang is based on Article 111 sub-district (1) letter c number 4 of PMNA/KBPN Number 3 of 1997 which divides three community groups and authorized officials. The inheritance in form of right over land which is according to inheritance division certificate must be divided together between some heirs or in the moment of registration, the inheritance division certificate is not made yet, the right transfer is listed to the heirs who deserve the joint rights based on the proof as the heirs and/or the inheritance certificate. In the implementation of inheritance on land in Padang, inheritance as in line with the provision and/or the form set by Municipality Land Agency. It is better that the making of inheritance certificate is no longer differentiating the community groups and the authorized officials for that. Based on the authority theory, the notary better makes the inheritance certificate because the notary is given a trust by laws Number 2 of 2014 regarding Notary Position to make authentic certificate that can be accounted for and enable it to make uniform inheritance certificate.
- b. The differentiation of inheritance certificate making as explained aforementioned is because the presence of law pluralism existing in the life of community in Padang. Therefore, in the making of inheritance certificate is based on which laws that will be used by the community in which the guide in the making of inheritance certificate as explained are ignored. If the guide of making inheritance certificate is included into Laws, judicial review is better to do towards higher laws. If the guide is not law, then it can be replaced with the choice of law, which law that will be beneficial for them (the heirs).

Legal consequence of the inheritance certificate making which has difference on its making process, then it will enable the possibility of deviation towards the law itself, meaning that the heirs choose which law that will be used to benefit them as the heirs in dividing the inheritance so that the dispute is possible to occur. In order that it runs as it is, the government must do Bureaucrat Reformation in the aspect of community service meaning that it does not make the community difficult in the matter of obtaining inheritance right. If the guide is not possible to have in the making of inheritance certificate to obtain judicial review, the heirs can use which laws that benefit them.

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