

VILLAGE CHIEF AUTHORITY IN MAKING INHERITANCE INFORMATION FOR INDONESIAN CITIZENS OF CHINESE DESCENT

Hanifah, Gunawan Djajaputra

Faculty of Law, Universitas Tarumanagara, Indonesia

Email: ipeh292@gmail.com, gunawandjayaputra@gmail.com

ABSTRACT

Inheritance Certificate is a document that proves who is entitled to inherit from the heir, so that there is no doubt or dispute over the inheritance information, it is important to know who is authorized to make the Inheritance Statement. The mechanism of the certificate of inheritance issued by the Lurah based on the Regulation of the Minister of Agrarian Affairs Number 3 of 1997 concerning the Provisions of PP No: 24 of 1997 concerning Land Registration Article 111 paragraph (1) letter c of Making Inheritance Certificate (SKW). This type of research is normative legal research that uses legal and conceptual approaches. This study used primary and secondary legal sources. This is also written and considered to answer questions to clarify the authority of the Lurah in making the inheritance of Indonesian citizens of Chinese descent. The results show that the authority of the Lurah in making SKW for Indonesian citizens of Chinese descent is only regulated in the Implementation of Article 111 paragraph 1 letter c number 4. the legal consequences of the inheritance certificate made by the Lurah against Indonesian citizens of Chinese descent are null and void, and in making SKW in Kelurahan Indonesian citizens of descent, they must refer to Article 111 paragraph 1 letter c number 4 of the Regulation of the Minister of Agrarian Affairs and Spatial Planning.

KEYWORDS *Inheritance Information; Village Chief; Chinese descent*



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INTRODUCTION

Inheritance is a legal event that occurs after death, the inheritance of the heir becomes open and a statement of inheritance is needed to determine who are the

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legal heirs and are entitled to inherit from the heir (Yoga et al., 2018). Inheritance of the heir, according to the law falls to the heir, not only the property but includes the debts and burdens of the deceased (Kohar, 2000). Disputes and inheritance disputes often occur in society. For this reason, a certificate of inheritance as proof must be made by an authorized party and have legal certainty so that there is no doubt in the implementation of the distribution of inheritance and related parties who use the certificate of inheritance as the basis for determining who is entitled to the heir's inheritance (Ahmad et al., 2018).

In the practice of making inheritance certificates carried out by different officials, there are three officials who have the authority to make inheritance certificates, namely Notaries, Probate Court (BHP), or made by the heirs on paper witnessed by the Lurah/Village Head and strengthened by the Camat as contained in the third Amendment to Article 111 paragraph 1 letter c of the Regulation of the State Minister for Agrarian Affairs/Head of the National Land Agency Number 16 of 2021 on 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 which is the reference in making inheritance certificates (Simarmata & Wiryomartani, 2021).

By removing the words for the population classification in the third amendment in Article 111, Indonesian citizens are free to choose to make a statement on the inheritance of the three officials. Prior to this change, Indonesian citizens of Chinese descent made a statement of inheritance before a Notary, after these changes they could make a statement of inheritance at the Lurah, whereas in Article 26 of Law Number 6 of 2014 concerning Villages there is no mention of the authority of the Village Head/Lurah in making inheritance statements. for Indonesian citizens of Chinese descent (Yustisia, 2015). The legal consequences of the inheritance statement made by the Lurah against Indonesian citizens of Chinese descent are null and void. In the amendments to the three regulations, the mechanism for the certificate of inheritance issued by the Lurah is a statement of heirs made by the heirs witnessed by 2 (two) witnesses and known by the village head/lurah and sub-district head where the heir lived at the time of death (Sustainable, 2020).

A matter that is very ambiguous in terms of language and substance of the letter, if the heirs themselves make a known underhand certificate, it is justified to be approved or legalized by the village head/lurah and sub-district head, or a notary based on Article 15 of Law Number 30 of 2004 jo Law Number 2 of 2014 concerning the Office of a Notary, has the authority to make deeds not to make letters and notaries are not officials who are authorized to make or issue certificates (Sari et al., 2018). Likewise with the Probate Court which was or was approved by the village head/lurah and sub-district head, or a notary based on Article 15 of Law Number 30 of 2004 in conjunction with Law Number 2 of 2014 concerning the Position of Notary, has the authority to make deeds not to make letters and notaries not an official authorized to make or issue a statement. Likewise, the Balai Harta Peninggalan, which is an institutional structure, is a government (executive)

institution within the scope of the Ministry of Justice and Human Rights (Adjie, 2012).

In practice, the certificate of inheritance issued by Lurah as a basis for the right to determine who are the heirs who are entitled to an inheritance (Hanum, 2016). However, it often causes problems and disputes between heirs, because the Certificate of Heirs is legally defective due to the absence of legal arrangements so that there is no uniformity such as the manufacture is not checked for the presence or absence of wills, made in each village where the heirs are domiciled, instead of the domicile of the heirs, so that one heir can have more than one heir information not to mention not to mention not made based on the verification of the correct supporting data whether the heirs are legal heirs therefore allows for heirs who are actually not entitled or who are entitled but not contained in the SKW, this makes the SKW legally defective. Legal Force The Certificate of Inheritance made by the Lurah as the basis for the distribution of inheritance is valid as long as it contains all the names of the heirs entitled to the inheritance of the heir, but if the certificate of inheritance does not contain all the heirs who are entitled then the certificate of inheritance rights contains legal defects and can be canceled by the court. This also causes the SKW of Indonesian citizens of Chinese descent made in Lurah in practice to be rejected by related parties such as banks which for prudence prefer a Certificate of Inheritance deed made by a Notary, as well as the National Land Agency still requires a SKW made by a Notary for land management. Based on the background above, the authors formulate the problem are; (1) does the Lurah have the authority to issue inheritance certificates for Indonesian citizens of Chinese descent? (2) what are the legal consequences of the inheritance certificate made by the Lurah for Indonesian citizens of Chinese descent? And (3) what is the mechanism for a certificate of inheritance issued by the Lurah?

This journal aims to analyze the authority of the Lurah in making Inheritance Statements for Indonesian citizens of Chinese descent. This type of research is normative juridical research, using a legal and conceptual approach. This research uses primary and secondary legal sources. Furthermore, this research aims to described and analyzed the authority of the Lurah in making SKW for Indonesian citizens of Chinese descent.

RESEARCH METHOD

This study will examine the role and responsibility of the Lurah in issuing inheritance information and look at the factors that affect the implementation of this authority. The method used in this study is a qualitative approach by conducting in-depth interviews with Lurah, people of Chinese descent, as well as other related parties such as legal experts and representatives of community organizations. In addition, secondary data such as laws and related policies will also be analyzed to gain a comprehensive understanding. The research steps include:

Literature Review

- 1) Analyze the concept of inheritance law in the Indonesian context
- 2) Explain the authority of the Lurah in making inheritance information
- 3) Reviewing developments related to the rights of Indonesian citizens of Chinese descent

Respondent Determination

- 1) Choose some Lurah who have experience in making inheritance statements
- 2) Involving people of Chinese descent who have taken care of inheritance information
- 3) Conduct interviews with legal experts and representatives of relevant community organizations

Data Collection

- 1) Conducted in-depth interviews with Lurah, people of Chinese descent, legal experts, and representatives of community organizations
- 2) Collect secondary data such as laws and related policies

Data Analysis

- 1) Analyze qualitative data from interviews to identify the roles and responsibilities of Lurah in making inheritance information
- 2) Conduct content analysis of secondary data to understand the legal framework governing the authority of the Lurah

Research Findings

- 1) Presenting the results of in-depth data analysis regarding the authority of the Lurah in making inheritance information
- 2) Highlighting the factors affecting the exercise of the Lurah's authority

Conclusions and Recommendations

- 1) Summing up overall research findings
- 2) Provide relevant policy recommendations to improve the effectiveness of Lurah's authority in making inheritance information for Indonesian citizens of Chinese descent

This study aims to provide a deeper understanding of the authority of the Lurah in making inheritance information, especially for its citizens

RESULT AND DISCUSSION

Making a Certificate of Inheritance of Indonesian Citizens of Chinese descent Before and After the Elimination of Population Classification

In general, the provisions of the laws and regulations governing the authority of officials and procedures as well as forms and formats for Heir Certificates for Indonesian citizens of Chinese descent do not exist at all. So far, to make a statement of inheritance referred to the Minister of Agrarian Regulation regarding land registration. Prior to the third amendment to the regulation, there was still a population classification as contained in Article 111 paragraph (1) letter c of the Regulation of the Minister of Agrarian Affairs / Head of the National Land Agency No. 3 of 1997 concerning Provisions for Implementing Government Regulation No. 24 of 1997 concerning Land Registration which contains guidelines for making a Certificate of Heirs in terms of implementing the transfer of land rights which states that c. Letters of proof as heirs can be in the form of (Agrarian, nd):

- 1) Will from the heir
- 2) Court ruling
- 3) Determination of the judge / chairman of the court

- 4) For Indonesian citizens who are indigenous people (natives), a certificate of inheritance drawn up by the heirs witnessed by 2 (two) witnesses and confirmed by the head of the village/kelurahan and subdistrict head where the heir lives at the time of death. For Indonesian citizens of Chinese descent, a certificate of inheritance rights is drawn up by a notary and for Indonesian citizens of other foreign eastern descent, a certificate of inheritance from the Probate Court (Ali, 2011).

As mentioned before there was a third amendment, although the Population Administration Law and Law No. 40 of 2008 concerning the elimination of racial and ethnic discrimination has abolished population categorization, but when the SKW was made the population categorization still occurred. The cause of the classification still exists because of the reference in making the Certificate of Inheritance is Article 111 paragraph (1) letter c Regulation of the Minister of Agrarian Affairs / Head of the National Land Agency No. 3 of 1997 concerning Provisions for Implementing Government Regulation No. 24 of 1997 concerning Land Registration is based on population classification based on Article 131 and Article 163 IS (Indische Staatregeling), which regulates the population of the Dutch East Indies into 3 groups, among others, European Group, Bumiputera Group and Foreign East Group (Idris, 2012).

Rules for creating inheritance information for Indonesian citizens of Chinese descent which has been made by the Notary has changed with it Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 16 of 2021 concerning the Third Amendment to Article 111 paragraph (1) letter c. Land Registration that contains

c. a letter of proof as an heir can be in the form of:

- 1) testament from the heir;
- 2) court ruling;
- 3) determination of the judge/chairman of the court;
- 4) statement of heirs made by the heirs witnessed by 2 (two) witnesses and known by the head of the village/lurah and subdistrict head where the heir lives at the time of death;
- 5) certificate of inheritance rights from a Notary who is domiciled at the heir's residence at the time of death; or
- 6) certificate of inheritance from the Probate Court.

Eliminating the population classification has consequences if every citizen who is going to make a Certificate of Inheritance is free to choose, will make a statement of inheritance according to his wish, either at the Lurah, Notary or at the Heritage Treasure Hall.

Lurah Authority in Making Certificates of Inheritance for Indonesian Citizens of Chinese Descent.

Regarding inheritance certificates with the question of who is authorized to make them, in fact there is no specific regulation regarding in what form the inheritance certificate (certificate of inheritance) is made and who is the party authorized to make it. However, based on the RI Supreme Court ("MA") letter dated May 8, 1991 No. MA/kumdil/171/V/K/1991 (Adiasih, 2018).

The MA letter has referred to Circular Letter dated 20 December 1969 No. Dpt/12/63/12/69 issued by the Directorate of Agrarian Affairs of the Directorate of Land Registration (Kadaster) in Jakarta, which stated that for uniformity and basic principles of population classification that had been known since before independence, a Certificate of Inheritance Rights (SKHW) for Citizens The Indonesian state:

The European (Western) Descent group is drawn up by a Notary. Indigenous population, certificate by heirs, witnessed by the village head/lurah and known by the sub-district head. Groups of Chinese descent, by Notaries, Non-Chinese Eastern Foreign Group, by the Heritage Treasure Hall (BHP). After the formation of Law no. 3 of 2006 concerning Amendments to Law no. 7 of 1989 concerning the Religious Courts, it is determined that for Indonesian residents who are Muslim, in issuing a Certificate of Heirs, the party authorized to issue a stipulation regarding the distribution of inheritance of a Muslim heir is the Religious Court. This authority is based on the provisions of Article 49 letter b of Law no. 3 of 2006 concerning Amendments to Law no. 7 of 1989 concerning the Religious Courts (Satriya, 2016).

In its development, there were additional parties authorized to issue certificates of inheritance rights, this was contained in the Letter of the Director General of Agrarian Affairs on behalf of the Minister of Home Affairs dated December 20, 1969 No. Dpt/12/63/12/69 regarding certificate of inheritance and proof of citizenship in conjunction with Article 111 paragraph 1 letter c of the Regulation of the State Minister for Agrarian Affairs/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, which explains that a letter of proof as an heir can be in the form of (Massora & Putri, 2019):

Will from the heir, or Court Decision, or Determination of the Judge/Chairman of the Court, or for native Indonesian citizens: a certificate of heir made by the heirs witnessed by 2 (two) witnesses and confirmed by the Head of the Village/Kelurahan and The subdistrict head where the heir lived at the time of death, for Indonesian citizens of Chinese descent: Deed of inheritance rights from a Notary, for other Indonesian citizens of Foreign Eastern descent, Certificate of inheritance from the Probate Court. So that based on these two regulations the Court can also determine the Deed of Inheritance Right / Certificate of Inheritance. Even so, the object of the two regulations is in the form of land, so the Deed of Inheritance Right here is only intended for assets in the form of land, with the issuance of the third amending regulation, the making of inheritance information is no longer contrary to Law No. 40 of 2008 concerning elimination of racial and ethnic discrimination and the Population Administration Law No. 23 of 2006 juncto Population Administration Law No. 24 of 2013 (Laili, 2015).

Lurah's authority regarding the making of inheritance information

Making a statement of inheritance is no longer differentiated based on population classification, so Indonesian citizens of Chinese descent can make a statement of inheritance not only at a notary but can also be made at the Lurah. In order to ensure legal certainty of inheritance information made at the Lurah so that

there are no different understandings in its implementation, it is necessary to be certain whether the lurah has the authority to make inheritance statements, whereas in Article 26 of Law Number 6 of 2014 concerning Villages there is no mention of the authority of the Head. Village in making a certificate of inheritance (Yuliyana et al., 2021).

However, based on the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 16 of 2021 concerning the Third Amendment to 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 Provisions for Implementing Government Regulation Number 24 1997 concerning Land Registration gave the lurah authority to make inheritance statements, especially for land registration.

The Lurah's authority in making the inheritance statement requires the Lurah to understand inheritance law in Indonesia while not all Lurah understand the inheritance law and finally the inheritance statement made by the Lurang often causes conflicts and disputes, even related parties who need SKW such as Banks, Insurance and even the Land Office want more certificate of inheritance made before a Notary. Making inheritance statements at the Lurah in the spirit of justice without discriminating between groups and to make it easier for the community with the aim of being cheap and fast instead causes a long and expensive time because the community has to make another inheritance statement at the Notary. The inheritance statement made at the Notary must also match the working area of the notary and the final domicile of the testator.

As a result of the inheritance law made by the Lurah for Indonesian citizens of Chinese descent.

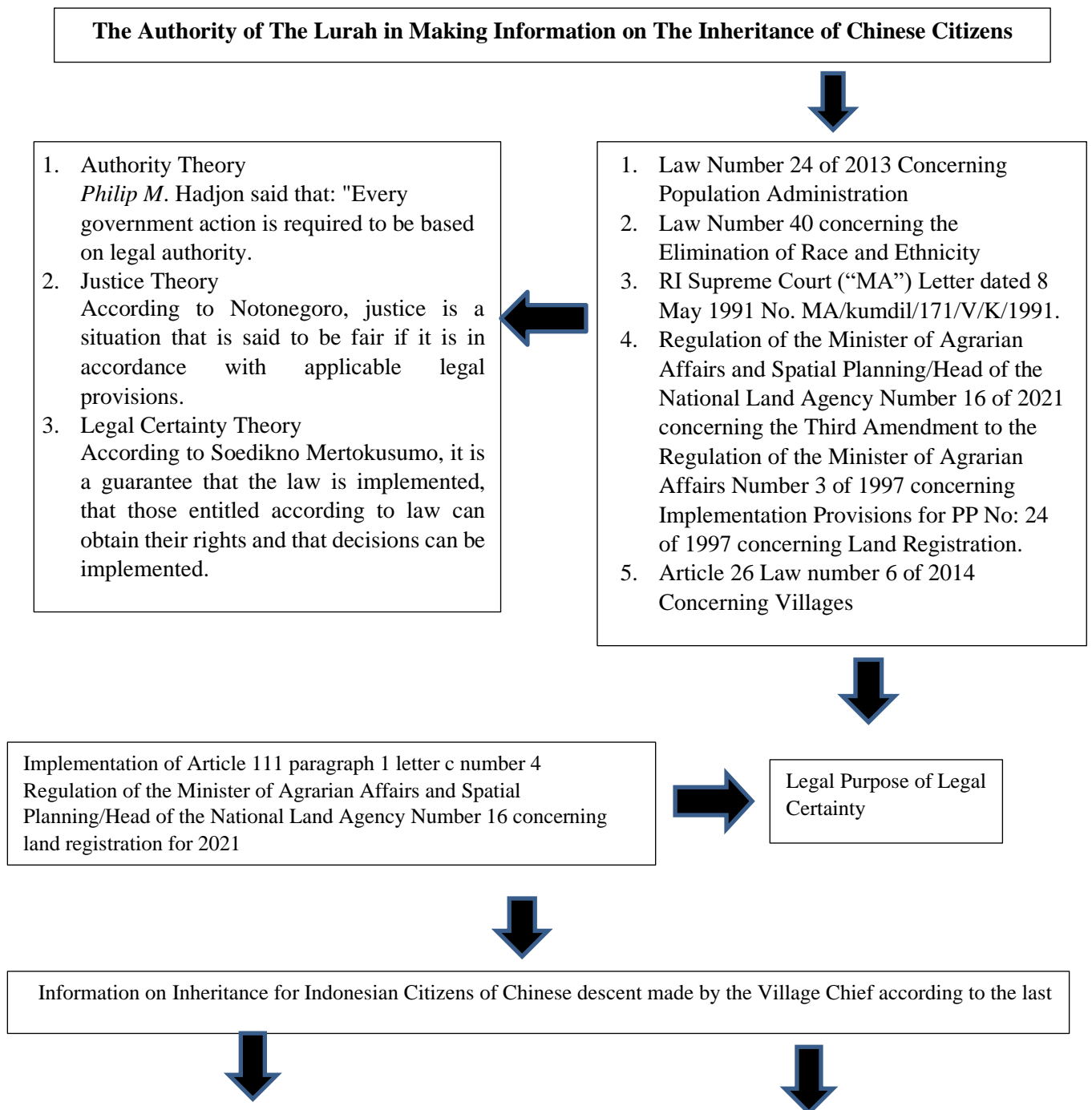
The legal consequences of the inheritance certificate made by the Lurah against Indonesian citizens of Chinese descent are null and void, because the Lurah/Village Head according to Article 26 of Law number 6 of 2014 concerning villages does not have the authority to make inheritance certificates, including inheritance statements for Indonesian citizens of descent Chinese. For this reason, in its creation, the lurah no longer issues inheritance statements, but only parties who are aware of the existence of underhanded letters in the form of statements from the heirs that they are the ones entitled to inherit the heir's assets. The inheritance statement made underhand, sufficiently stamped and witnessed by 2 witnesses known to the lurah and sub-district head as long as it includes all legal heirs, can be legally justified.

Mechanism of certificate of inheritance issued by the Lurah/ Village Head

In making a certificate of inheritance issued by the Lurah/Village Head based on the Land, Article 111 paragraph (1) letter c Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 16 of 2021 concerning the Third Amendment to Regulation of the Minister of Agrarian Affairs Number 3 of 1997 concerning Implementation Provisions for Government Regulation No: 24 of 1997 concerning Land Registration, Making a Certificate of Inheritance (SKW) are 1) statement of heirs made by the heirs witnessed by 2 (two) witnesses and known by the head of the village/lurah and subdistrict head where the heir lives at the time of death;

It takes 2 (two) witnesses who know for sure that the heirs described in the SKW are legal heirs and it is true that there are no other heirs other than those listed in the SKW, with the village head/lurah and sub-district head as the party that corroborates, examines and verifying the inheritance relationship before signing it, this should be done with care in inspection and verification so that later to avoid disputes from heirs and the SKW includes all heirs without exception so that the SKW can be legally accountable, and has legal certainty.

Conceptual Framework Diagram



APPROPRIATE

INAPPROPRIATE

CONCLUSION

Based on the explanation in the discussion above, it can be concluded that; (1) the authority of the Lurah in making SKW for Indonesian citizens of Chinese descent is only regulated in the Implementation of Article 111 paragraph 1 letter c number 4 Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 16 concerning land registration in 2021 while in article 26 of Law number 6 of 2014 the village regulation was missing, (2) the legal consequences of the inheritance certificate made by the Lurah against Indonesian citizens of Chinese descent are null and void, but if the Lurah only knows from the inheritance statement made underhand from the heirs as long as the statement contains all the heirs who are entitled, then the inheritance statement can be legally responsible, and (3) in making SKW in Kelurahan Indonesian citizens of descent, they must refer to Article 111 paragraph 1 letter c number 4 of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 16 concerning land registration for 2021.

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