

The New Role of Notaries in Making Information on Inheritance Rights after the New Enactment

Soni Hana Fika^{*)} & Dahniarti Hasana^{**)}

^{*)} Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, E-mail: sonihanafika@gmail.com

^{**)} Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, E-mail: dahniarti@unissula.ac.id

Abstract. *This study aims to determine and analyze the authority of the Balai Harta Peninggalan in making information on inheritance rights after the enactment of Permenkumham No. 7 of 2021, the roles and responsibilities of Notaries in the implementation of making inheritance rights after the enactment of Permenkumham No. 7 of 2021. The use of the sociological juridical approach in legal research is caused by problems that are closely studied with juridical and sociological factors. The analytical knife in answering the problem formulation uses the theory of certainty and the theory of authority. The results of the study indicate that the authority of the Balai Harta Peninggalan in making a certificate of inheritance after the enactment of Permenkumham No. 7 of 2021 has been regulated in Article 3 letter c, in carrying out BHP's obligations to carry out the function of making an inheritance certificate. However, in Permenkumham No. 7 of 2021, it is not explained who can make a certificate of inheritance at the BHP. The role of the Notary in the implementation of making inheritance rights after the enactment of Permenkumham No. 7 of 2021, namely making inheritance rights in accordance with the stipulated requirements and procedures for making inheritance certificates. Notaries must ensure the process of inheritance distribution for the use of groups and parties involved in the distribution of inheritance. The notary in making the certificate of inheritance is responsible for the village and sub-district if the SKWH does not appear in the deed. However, there are SKWHs of Chinese descent which are the obligation of a notary, because they use a Notary SKHW. And depending on the request or the needs of the client itself. Do you want SKWH or take a notary deed.*

Keywords: Declaration; Inheritance; New; Role.

1. Introduction

Humans are living beings with unlimited needs. To meet these needs, humans must work. All living things in this world are not immortal because one day they

will experience death. Death is an example of a legal event. Legal events are ordinary events or events in life that have consequences that are regulated by law.

One of the consequences of human death regulated by law is the transfer of ownership of the property left by the deceased. This transition process is known as inheritance. If a person dies from then on, there will be a process of inheritance of his inheritance and this is regulated in Article 830 of the Civil Code.¹

Inheritance is governed by inheritance law. Inheritance law is a series of provisions governing the transfer of the assets of a person who dies to one or more persons. Inheritance law that applies in Indonesia varies (pluralism in the field of inheritance law). This was due to the division of population groups since the reign of the Dutch East Indies. The population in Indonesia is divided into 3 (three) groups which are subject to different civil laws as stipulated in Article 131 jo. Article 163 *Indische Staatsregeling*. The classification of the population in Indonesia is the European group, the Foreign Eastern group, and the Indigenous or native Indonesian group.²

The issuance of a certificate of inheritance for European, Chinese or Chinese and Foreign Eastern population groups except Arabs who are Muslim by a Notary continues until the enactment of Act No. 30 of 2004 concerning Notary Positions (hereinafter referred to as UUJN). In general, the authority of a notary is regulated in Article 15 paragraph 1 of the UUJN. Article 15 paragraph (3) of the UUJN also stipulates the authority that a notary can have outside of the UUJN as follows, "In addition to the authority as referred to in paragraph (1) and paragraph (2), a notary has other powers as regulated in laws and regulations". The authority in Article 15 paragraph (3) of the UUJN provides the possibility for a notary to have other powers which will be regulated later in legal products in the form of statutory regulations³.

If observed in Article 15 paragraphs (1) and (2) UUJN is not explicitly regulated regarding the authority of a notary to make a Certificate of Inheritance. However, as stated above in Article 15 paragraph (3) of the UUJN, it is possible for a notary to have other powers outside the UUJN. This authority according to

¹ Gede Purwaka, (1999). *Keterangan Hak Mewaris yang Dibuak Oleh Notaris*, UI Press, Jakarta, p.1

²Wilyanto, (2008). "Taggung Jawab Notaris dalam Membuat Surat Keterangan Hak Mewaris", *Tesis*, Universitas Indonesia, p. 2-3

³ Deen, Thaufiq., Ong Argo Victoria & Sumain. (2018). *Public Notary Services In Malaysia*. *JURNAL AKTA*: Vol. 5, No. 4, 1017-1026. Retrieved from <http://jurnal.unissula.ac.id/index.php/akta/article/view/4135>

Article 15 paragraph (3) of the UUJN must be regulated in laws and regulations.⁴

The position of a notary⁵ is held or its presence is required by the rule of law with a view to assisting and serving the community who need authentic written evidence regarding legal circumstances, events or actions. Notaries play a role in carrying out some duties in the field of civil law, and notaries are qualified as public officials who are authorized to make authentic deeds.⁶The authority of a notary in making a certificate of inheritance is not specifically regulated in Article 15 of the UUJN. Regulations regarding certificates of inheritance are contained in the Regulation of the State 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. Article 111 paragraph 1 letter c of this Ministerial Regulation states that for Indonesian citizens of Chinese descent, the certificate of inheritance is made by a notary.⁷

The emergence of the Minister of Law and Human Rights Regulation Number 7 of 2021 concerning the Organization and Work Procedure of the *Balai Harta Peninggalan* (hereinafter referred to as *Permenkumham* No. 7 of 2021) confirms that the *Balai Harta Peninggalan* (BHP) carries out its duties and carries out its function as a maker of inheritance rights certificates. . This is stated in Article 3 of the Minister of Law and Human Rights No. 7 of 2021.

The practice of making inheritance certificates is carried out by different officials, based on population groups, there are three officials who are authorized to make inheritance certificates, namely Notaries, *Balai Harta Peninggalan* (BHP), or made by the heirs on paper and witnessed by the Village Head and strengthened by the District Head.

Based on the background description explaining inheritance rights, the authors are interested in studying and researching further about making an inheritance certificate by taking the title "Role and Responsibilities of Notaries in Making Inheritance Rights Statements After the Enforcement of *Permenkumham* Number 7 of 2021".

Based on the description above, this research aims to know and analyze the

⁴Gede Afriliana, dkk, "Dasar Hukum Notaris dalam Pembuatan Surat Keterangan Waris", *Jurnal Acta Comitatus*, Vol. 2, 2016, p. 218

⁵ Ong Argo Victoria, Ade Riusma Ariyana, Devina Arifani. (2020). *Code of Ethics and Position of Notary in Indonesia*. *Sultan Agung Notary Law Review* 2 (4), 397-407, <http://lppm-unissula.com/jurnal.unissula.ac.id/index.php/SANLaR/article/view/13536>

⁶Habib Adjie, (2006), *Hukum Notaris Indonesia (Tafsir Tematik terhadap UU No. 30 Tahun 2004 tentang Jabatan Notaris)*, Refika Aditama, Bandung, p. 14

⁷Amalia Putri Vairus, dkk, "Kewenangan Notaris dalam Membuat Surat Keterangan Hak Waris Bagi Anak Yang Dilahirkan Pada Hubungan Sedarah", *Jurnal Rechtsens*, Vol. 10 No. 1, June 2021.

authority of the *Balai Harta Peninggalan* in making information on inheritance rights after the enactment of *Permenkumham* No. 7 of 2021 and the role of Notaries in the implementation of making inheritance rights after the enactment of *Permenkumham* No. 7 of 2021.

2. Research Methods

This research method uses a sociological juridical approach. Sociological juridical research is legal research conducted by examining how reactions and interactions occur because legal expectations are often different from the reality that occurs in society, or it can be called a gap between *Das Sein* (facts/reality) and *Das Sollen* (norms/expectations). . The specification of this research is descriptive analysis, namely research that aims to provide an overview of the problems that occur in connection with the use of applicable laws and regulations. Sources of data and data collection methods using primary data obtained by means of interviews with resource persons who are considered to understand the research topic and secondary data obtained by reviewing the literature related to the research topic. The data that has been obtained is analyzed qualitatively which is described with quality in the form of coherent, orderly, logical, and non-overlapping sentences so as to facilitate understanding of the results of the analysis.

3. Results and Discussion

3.1. Authority of the Heritage Office in Making Information on Inheritance Rights after the Enactment of *Permenkumham* No. 7 of 2021

Balai Harta Peninggalan (BHP) is a technical implementation unit of government agencies which is structurally under the Directorate of Civil Affairs, Directorate of General Legal Administration, Ministry of Law and Human Rights of the Republic of Indonesia. During the Dutch colonial era, it was known as "*Wees-en Boedelkamer*" or "*Weeskamer*", which was first formed based in Jakarta, on October 1, 1624, to meet the needs of members of the VOC (*Vereenigde Oost Indische Compagnie*) specifically in managing the assets left behind by them for them the heirs residing in the Netherlands, orphans and so on. As a guide in carrying out their daily duties, an instruction is given.

In essence, BHP tasks can be divided into 4 (four) classifications, namely:

- Support for those who are not capable of acting in the field of property rights, namely:
 - Protect the interests of minors;
 - Supervisory Supervisor.

- Third party money managers because the owner is not known, namely:
 - Money that comes from people who are not present (afwezigheid);
 - Money originating from unauthorized property (onbeheerde);
 - Money originating from the transfer of funds;
 - Money that comes from Jamsostek.
- The field of inheritance rights, namely:
 - Make a certificate of inheritance rights;
 - Register an open will;
 - Opening a closed will;
 - Division and division of inheritance (boedelsheiding).
- Bankruptcy areas, namely:
 - By law as State Curator;
 - Management of Suspension of Debt Payment Obligations;
 - Liquidator PT.

In inheritance law in Indonesia, there are classifications of descendants to manage inheritance. The classification is regulated in Article 14 paragraph 1 of the *Instructie voor de Gouvernements Landmeters* Stbl. 1916 No. 517. This rule is a relic of the Dutch era which is still being enforced as the basis for administering an inheritance certificate.

The authority granted by the Heritage Center on the basis of Article 14 paragraph 1 *Instructie voor de Gouvernements Landmeters* Stbl. 1916 No. 517 and a letter from the Minister of Home Affairs cq the Head of the Directorate of Land Registration, Directorate General of Agrarian Affairs, Ministry of Home Affairs Number: may/12/63/12/69 dated December 20, 1969 regarding the authority to make Certificate of Inheritance for Citizens of the Republic of Indonesia and Regulation of the Minister of State for Agrarian Affairs. National Land Agency No. 3 of 1997, often exceeded by *Balai Harta Peninggalan*, often *Balai Harta Peninggalan* issues an inheritance certificate containing the amount of each heir's share. This is clearly a form of expansion of authority carried out by *Balai Harta Peninggalan* but without a solid basis.

The latest legislation governing BHP is *Permenkumham* Number 7 of 2021 concerning the Organization and Work Procedure of the Heritage Office. Article 3 letter c clearly states that the task of BHP is to carry out the making of a certificate of inheritance. However, it is not explained in detail who can make a certificate of inheritance through BHP. Therefore, it is possible that all groups can make a certificate of inheritance at the BHP. In the inheritance certificate issued by the *Balai Harta Peninggalan* for foreign eastern groups who are Muslim, it must be based on a compilation of Islamic law. The determination of who has the right to inherit or who becomes the heir must be guided by the compilation of Islamic law.

The *Balai Harta Peninggalan* in applying its law in issuing certificates of inheritance for foreign eastern groups who are Muslim must be based on the Compilation of Islamic Law. For example, in the position of substitute heirs, Article 185 of the Compilation of Islamic Law states that heirs who die earlier than the heirs can be replaced by their children, except those mentioned in Article 173.

Often in inheritance certificates issued by *Balai Harta Peninggalan* for foreign eastern groups who are Muslim, they do not include the rights of substitute heirs. In the issuance of inheritance certificates, *Fara'id* is often used, but the *Fara'id* applied by the Heritage Center is not in accordance with the Compilation of Islamic Law. This is a problem that often occurs when *Balai Harta Peninggalan* issues inheritance certificates for foreign eastern groups who are Muslim. If indeed the Heritage Center is authorized to issue a certificate of inheritance for foreign eastern groups, including those who are Muslim. So it should be that the *Balai Harta Peninggalan* as the bearer of authority must be very understanding of Islamic law, moreover it must master the Compilation of Islamic Law.⁸

The authority given to the *Balai Harta Peninggalan* in issuing a certificate of inheritance, it is necessary to have a harmonization of laws carried out by the *Balai Harta Peninggalan*. Especially for foreign eastern groups who are Muslim, the harmonization of law that must be carried out by the Heritage Center is the Compilation of Islamic Law. In accordance with Islamic law in force in Indonesia, the inheritance certificate issued by the *Balai Harta Peninggalan* is also bound by the Compilation of Islamic Law.

Harmonization of laws and regulations can be interpreted as a process of harmonization or harmonization of laws and regulations that are about to be or are being drafted, so that the laws and regulations produced are in accordance with the principles of law and good laws and regulations. With the establishment of legal harmonization or harmonization of regulations applied by the Heritage Hall, it will achieve legal certainty. The disharmony of laws and regulations results in:

- There is a difference of interpretation in its implementation;
- The emergence of legal uncertainty;
- The laws and regulations are not implemented effectively and efficiently;
- Legal dysfunction, meaning that the law cannot function to provide guidelines for behavior to the community, social control, dispute resolution and as a means of social change in an orderly and regular manner.

⁸Result of interview with Notary and PPAT Maulana Fachrurrozi, SH, M.Kn., on 20 April 2022

As a result of disharmony of regulations or disharmony of law, one of which is the emergence of legal uncertainty. This is very dangerous because the purpose of law is one of them is legal certainty. The disharmony of law by the *Balai Harta Peninggalan* is a very serious problem, because one of its effects is the creation of legal uncertainty.

The disharmony carried out by the Heritage Hall has created legal uncertainty. On the other hand, legal certainty is very important for a legal state like Indonesia. Legal certainty refers to the application of a clear, permanent, consistent and consequent law whose implementation cannot be influenced by subjective circumstances. Certainty and justice are not merely moral demands, but factually characterize the law.

Legal certainty is realized by law with its nature which only makes a general rule of law. The general nature of the rule of law proves that the law does not aim to achieve justice or benefit, but rather for certainty. Legal certainty is very important, which is none other than the purpose of law. If there is no legal certainty then there is no use for rules and there is no use in enforcing laws in Indonesia.

The failure to achieve legal certainty in inheritance in Indonesia is not only due to the legal disharmony factor carried out by the Heritage Center for inheritance certificates issued for foreign eastern groups. However, because there are also many parties who can make statements of heirs, it does not reflect the achievement of legal certainty through the statements of the heirs which are expected to be used as evidence of the status of the heirs as parties entitled to the inheritance and all the rights and obligations of the heirs. Because the legal force of each form of inheritance statement is not the same, that is, some are only private deeds, and some are authentic deeds with binding evidence. With the number of agencies or the number of parties who are given the authority to issue a certificate of inheritance, the standardization in proving heirs is also different. The difference in proving the heirs is also an example of the lack of legal certainty, especially because of the lack of legal harmonization. This difference in standardization results in the emergence of legal uncertainty which leads to the non-realization of order. Often there is abuse of authority because of this.

The authority of BHP in making certificates of inheritance is in line with the theory of authority put forward by Philipus M. Hadjon, namely that authority must be based on existing legal provisions (the constitution), so that authority is a legitimate authority. Officials (organs) in issuing decisions are supported by the source of that authority. BHP has been based on existing legal provisions through *Permenkumham* Number 7 of 2021 so that its decisions are recognized and supported.

3.2. The Role of Notaries in the Implementation of Making Inheritance Rights After the Enactment of the Minister of Law and Human Rights No. 7 of 2021

The distribution of inheritance using a notarial deed is an alternative method of inheritance distribution in addition to using court institutions which are commonly used by Indonesian people in inheritance distribution. Similar to court decisions, the deed made by a notary is intended to explain the distribution of inheritance to anticipate problems that may arise in the future. Based on positive Indonesian law, there are several ways to obtain a determination of the distribution of inheritance. The first as already mentioned is through a court decision, the second is through a notary through the distribution of the deed of separation and distribution of inheritance. Both have the same legal force so that if a family already has only one or uses only one method, then the legal force is already strong.⁹

The involvement of a notary in the implementation of inheritance law can be seen from the provisions currently in force regarding notaries. Provisions specifically regarding notaries are regulated in Act No. 2 of 2014 concerning Notary Positions. The Law on Notary Positions can be said to be a mandate of the Civil Code, especially in Article 1868.

For the implementation of Article 1868 of the Civil Code, legislators must make laws and regulations to appoint public officials who are authorized to make authentic deeds and therefore notaries are appointed as such officials based on the Notary Position Act.

The authority of a notary, according to Article 15 paragraph (1) of the UUJN, a notary is a public official who is authorized to make an authentic deed regarding all acts, agreements and provisions required by legislation and/or desired by the interested parties to be stated in an authentic deed guaranteeing certainty. the date of making the deed, keeping the deed, providing grosse, copies and quotations of the deed, all of this as long as the making of the deed is not assigned or excluded to other officials as stipulated by law.¹⁰In the explanation of the Law on Notary Positions, it is explained the importance of the notary profession, which is related to the making of authentic deeds. Making an authentic deed is required by legislation in the context of certainty, order and legal protection.

The notary in making the certificate of inheritance is responsible for the village and sub-district if the SKWH does not appear in the deed. However, there are

⁹Result of interview with Notary and PPAT Maulana Fachrurrozi, SH, M.Kn., on 20 April 2022

¹⁰Habib Adjie. (2012), *Bernas – Bernas Pemikiran Di Bidang Notaris Dan PPAT*, Mandar Maju, Bandung, p. 14

SKHWs of Chinese descent which are the responsibility of a notary, because they use a Notary SKHW. And depending on the request or the needs of the client itself. Do you want SKWH or take a notary deed.

The results obtained regarding the Deed of Distribution of Inheritance which are made authentically made by a Notary as a public official authorized to make the authentic deed is a deed of partij (deed of the parties) made before a Notary. From the research results, it can be described regarding the beginning of the deed, the body of the deed (contents) and the end of the deed (closing the deed) of the Deed of Separation and Division of Inheritance made before a Notary are as follows¹¹:

- The beginning of the deed of the head of the deed, contains:
 - title of deed
 - Deed number
 - Hour, day, date, month and year
 - Full name and position of Notary: Notary in Kudus Regency
- The body of the deed or the contents of the deed
 - Full name, place and date of birth, nationality, occupation,
 - Position, full name, place and date of birth, citizenship, occupation, position, position, residence of the appearers, and/or the person they represent, as well as information regarding the position of acting in the appearers.
- Premise deed. The premise of the deed states that the appearers (the heirs) together have the intention of dividing the inheritance of the heirs.
- Contents of the deed

The contents of the deed are an agreement in the distribution of inheritance in a peaceful manner based on the mutual will of the heirs

- End of deed

The role of the Notary in making a certificate is clearly regulated in the UUJN. If it is related to the theory of legal certainty according to Gustav Radbruch, the Notary in making an inheritance certificate already has legal certainty. Gustav Radbruch put forward 4 (four) basic things related to the meaning of legal certainty, namely:

- First, that the law is positive, meaning that positive law is legislation.
- Second, that the law is based on facts, meaning that it is based on reality.

¹¹ Yaya Kareng, Ong Argo Victoria, R. Juli Moertiyono. (2019). How Notary's Service in Thailand. Sultan Agung Notary Law Review, 1 (1), 46-56, <http://jurnal.unissula.ac.id/index.php/SANLaR/article/view/4435>

- Third, that the facts must be formulated in a clear way so as to avoid mistakes in meaning, as well as being easy to implement.
- Fourth, positive law should not be easily changed.

4. Conclusion

The authority of the *Balai Harta Peninggalan* in making information on inheritance rights after the enactment of *Permenkumham* No. 7 of 2021 has been regulated in Article 3 letter c, in carrying out its duties BHP carries out the function of making an inheritance certificate. However, in *Permenkumham* No. 7 of 2021, it is not explained who can make a certificate of inheritance at the BHP. So that there are often errors in interpretation, especially for the makers of heir certificates for foreign eastern groups who are Muslim. In addition, with the number of agencies or the number of parties who are given the authority to issue a certificate of inheritance, the standardization in proving heirs is also different. The difference in proving the heirs is also an example of the lack of legal certainty, especially due to the lack of legal harmonization. The role of the Notary in the implementation of making inheritance rights after the enactment of *Permenkumham* No. 7 of 2021, namely making inheritance rights in accordance with the stipulated requirements and procedures for making inheritance certificates. Notaries must ensure the process of inheritance distribution for the use of groups and parties involved in the distribution of inheritance. The notary in making the certificate of inheritance is responsible for the village and sub-district if the SKWH does not appear in the deed.

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