

## VALIDITY OF INHERITANCE CERTIFICATE MADE BY A NOTARY

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### ABSTRACT

*The validity of an Inheritance Certificate made by a notary is investigated in this normative legal study. This study used primary and secondary sources. The legal materials were analyzed using a syllogism of deduction and interpretation, supported by Article 111 paragraph 1 letter c of the Minister of Agrarian Affairs/Head of the National Land Agency Regulation Number 16 of 2021 concerning the Third Amendment to their Regulation Number 3 of 1997 concerning the Implementation of Government Regulation Number 24 of 1997 regarding Land Registration. The amendment to the Article was done to eliminate any population classification for the creation of a Certificate of Inheritance and enables the heirs to choose where they can make an Inheritance Certificate (at the Village Head or District Head, Notary, and Heritage Hall). A Deed of Statement of Heirs will prove certain parties as heirs and are made before a Notary. Therefore, a Notary must formulate this Statement of Heirs as a Notary deed. An Inheritance Certificate is essential for the registration of a land transfer ownership which is obtained through inheritance. The certificate proves the legality of the new right holder(s) and is the best evidence of how its contents are related to the heirs. As an authentic deed, the certificate also has legal force and perfect evidentiary value.*

Keywords: Validity, Inheritance Certificate, Notary

### INTRODUCTION

Policy regulation (*beleidsregel*) is defined as a general regulation on how the government implements its authority over citizens through authorized government agencies. The *beleidsregel* is established by government officials. However, later in its development, it was then realized that the *beleidsregel* is *is niet anders* (cannot be differentiated) from *Freies Ermessen*. Therefore, *Beleidsregel* has the same meaning as *freies Ermessen* or discretionary power in written form and published to the outside. It is labeled as “regulation” because the *beleidsregel* binds like a legal norm. The scope of the use of *beleidsregel* is only limited to *bestuur gebied* or administrative law. Thus, the government is required to act both quickly and dynamically as well as have a broad and far-sighted view and consider the consequences of these actions. In Indonesia, this principle of wisdom is in line with inner wisdom, which according to Notohamidjojo as quoted by Kuntjoro Purbopranoto, implies three elements, namely firm knowledge and analysis of the situation at hand; next, the draft settlement based on “*staatsidee*” or “*rechtsidee*” which is mutually agreed upon; and third, realizing a settlement plan to overcome the situation with appropriate actions and explanations which are demanded by the situation at hand.

Validity is the legal certainty of the existence of a specific norm. A norm has a binding force on the person whose behavior is regulated. Rules are laws, and valid laws are norms. Thus, the law is a norm that provides sanctions.

Before the establishment of Article 111 paragraph 1 letter c ATR/BPN Ministerial Regulation Number 16 of 2021, Inheritance Certificates were subject to:

1. The Letter of the Ministry of Home Affairs, Directorate General of Agrarian Affairs, Directorate of Land Registration (cadaster), dated December 20, 1969, Number Dpt/12/63/12/69 concerning Proof of Citizenship and Inheritance Certificates;
2. Article 111 paragraph 1 letter c PMNA/Head of BPN Number 3/1997 regarding the Government Regulation (PP) Number 24 of 1997 regarding Land Registration.

These two legal regulations stipulate that it was the heirs who are capable of proposing Inheritance Certificates for Indigenous Indonesian Citizens. In addition, the proposal process should present two witnesses who have been verified by the District Head or Village Head. Whereas the Inheritance Certificates for Eastern-descent Indonesian are made by the Heritage Hall, Chinese Indonesian is made by a Notary. However, the differences in the making of Inheritance Certificates according to population groups in Indonesia are no longer maintained, and there is no legal certainty about this.

Article 111 paragraph 1 letter c of the Ministerial Regulation of ATR/KBPN Number 16 of 2021 states that:  
Proof of legal heirs may take the following form:

1. The testator’s testament;
2. Adjudication;
3. Judicial Determination of the Court;
4. An Inheritance Certificate created by the heirs, attended by 2 (two) witnesses, and verified by the district and village heads of the testator’s residence at the time of death;

5. An Inheritance Certificate from a Notary with the same domicile as the testator at the time of death;
6. An Inheritance Certificate from Heritage Hall.

Based on the article above, it can be seen that there is no difference in the classification of the population. Thus, people can choose to make an Inheritance Certificate (SKW).

With this change, population/ethnicity/race is no longer used as the basis to issue the Inheritance Certificate because if such regulation remains applied, it will be contrary to:

- a. The Instruction of the Cabinet Presidium Number 31/U/IN/12/1966, dated December 27, 1966, has stipulated the abolition of the distinction of Indonesian population groups in consideration of achieving a homogeneous and unified Indonesian nation, as well as equality among fellow Indonesians;
- b. Law Number 29 of 1999 concerning the Ratification of the International Convention on the Elimination of All Forms of Racial Discrimination 1965/CERD;
- c. Law Number 39 of 1999 concerning Human Rights;
- d. Law Number 12 of 2006 concerning Citizenship;
- e. Law Number 23 concerning Population Administration;
- f. Law Number 40 of 2008 concerning the Elimination of Racial and Ethnic Discrimination.

Making an Inheritance Certificate is an option (see letter c), meaning that every Indonesian citizen is free to decide whether or not to make the Certificate, depending on whether the agency concerned is willing to make and provide it.

In the Great Indonesian Dictionary, a notary is defined as a person who is authorized by the government to ratify and witness various agreements, wills, deeds, and more. Due to their authority to make deeds, notaries, as public officials, have a very important role in civil law.

Article 1 point 1 and Article 15 of the Law on Notary Positions define notaries as public employees with the power to create authentic deeds. Therefore, they could never delegate their authority to other officials. Additionally, the Notary has power over actions that are necessary to create valid deeds that do not fall under the purview of other officials.

Besides Article 15 of the Law on Notary Positions, other laws and regulations also regulate notaries' authorities. This indicates that relevant legislation states that notaries are needed for the creation of certain legal acts.

Based on Article 2 of the Law Number 30 of 2004 regarding the Notary Position, Notaries are appointed by the Minister. Nevertheless, according to this Article, the duties of Notaries would need to be conducted freely and without the influence of the executive body and/or other bodies. They must also act objectively and independently. The subjects of inheritance law are the testator and heir(s). Inheritance Certificates serve as evidence for parties who claim to be heirs and serve as a basis for claiming particular objects or material rights as objects of inheritance. Based on the findings mentioned above, the author aims to further investigate the "Validity in Inheritance Certificates Made by a Notary."

## RESEARCH PROBLEM

How are Inheritance Certificates made by a Notary validated?

## RESEARCH METHOD

Normative legal research is a scientific process that uses logic from the normative perspective to find the truth. This procedure was used to investigate "Validity of Inheritance Certificates Made by a Notary." This study also applied a conceptual and statutory approach. The legal materials were collected through a literature study. The legal issues were analyzed using a syllogism of deduction and interpretation.

## DISCUSSION

The administration of government affairs is conducted based on law. Bahsan Mustafa stated that discretion (*freies ermessen*) is given to the government due to their public welfare organization function, which differs from the judiciary's function in resolving disputes between residents. Nevertheless, the government's decision prioritizes the achievement of its objectives (*doelmatigheid*) compared to the applicable law (*rechmatigheid*).

Governmental administrations show how state administrative bodies or officials often apply certain policies, including creating so-called policy rules (*bleidsregel*). Policy regulation cannot be separated from the use of *freis ermessen*, namely the relevant state administrative body or official that formulates its policies in various forms of "*juridische regels*," such as regulations, guidelines, announcements, circulars, and policies. A product of state administrative actions which is intended to "*naar buiten gebracht schriftelijk beleid* (generate a written policy)" is called a policy regulation. However, it does not have the regulation-making

authority of the agency or state administrative official who created the policy regulation. Policy regulations have been included as a part of governmental activities (*bestuuren*) today.

Notaries, as officials who were given authority by the government to create evidence through authentic deeds with the passing of the Law on Population Administration, have a very important role in the creation of Inheritance Certificates. UUJN strengthens that Notaries have a certain authority and the authority is currently regulated by Law Number 30 of 2004 about the position of the Notary, as provided in Article 15 paragraphs (1) and (2) of the Law on Notary Positions. It mentions that:

1. If the establishment of the deed is not precluded or entrusted to any other official required by law or by any other person, a notary has the power to create authentic deeds regarding all agreements, actions, and provisions required by the laws and/or by parties interested in keeping the deed, quotations of the deed, provide copies, and grosses.
2. Notaries have the authority to:
  - a. Determine the accuracy of the letter's date and verify the hand's signature by logging it in a specific book;
  - b. Registering letters in a special book to book them under the hand;
  - c. Create original copies of the letters under the hand as copies that include the written description of the letters;
  - d. Validate the original and copy of the letter;
  - e. Dispense legal advice about the creation of deeds ;
  - f. Create a deed concerning land; or
  - g. Create a deed of auction minutes.
3. Notaries have additional powers that are governed by laws besides the authority mentioned in paragraphs (1) and (2).

Article 15 of the Law on Notary Positions mentions that a Notary has 2 (two) authorities, namely:

- a. Making an authentic deed.
- b. Making a non-authentic deed.

Paragraph (1) of the Law on Notary Position above, regarding acts, provisions, and agreements required by laws and agreed by those who have interests or appearer(s) states that the authentic deed can only be stated in the deed made before a Notary or deed of *relaas* (court summon) or deed of parties made by a Notary (Article 58 paragraph (2) of Law on the Notary Position). Thus, there are only 2 types of deeds made under the authority of a Notary, namely:

- 1) A party deed (*partij deed*) or a deed made before (**ten overstaan**) a Notary
- 2) A deed made by a Notary (**door**) or a *relaas* deed (official deed).

Thus, the Law allows the Notary to make an Inheritance Certificate for all Indonesians who need it, without being based on a Dutch legal basis that uses the principle of distinction or population classification. Article 111 paragraph (1) letter c of Ministerial Regulation of ATR/KBPN Number 16 of 2021 also mentions that the proof of legal heirs can be in the following forms:

1. Testament of the testator;
2. Adjudication;
3. Determination of Chairman of the Court/Judge;
4. Inheritance Certificate created by the heirs, attended by 2 (two) witnesses, and acknowledged by the district and village heads of the testator's residence at the time of death;
5. Inheritance Certificate from a Notary with the same domicile of the testator at the time of death; or
6. Inheritance Certificate from Heritage Hall.

Inheritance certificates are often used to record the transfer of property rights through inheritance. Based on Article 42 paragraph (1) of Government Regulation Number 24 of 1997 on Land Registration, the transfer of rights through inheritance is conducted based on the laws applicable following the right holder's demise. Therefore, since the moment of the owner's passing, the heirs are automatically perceived to hold the rights. The Civil Law that applies to the testator would regulate who becomes the heir(s). For the heirs' legal protection and administration matters, the rights transfer through inheritance needs to be registered; thus, the data presented and stored are always updated. Heirs can prove their heirship through an Inheritance Deed, a Determination of Heirship Letter, or an Inheritance Certificate. Therefore, an Inheritance Certificate is essential for registering the transfer of land ownership through inheritance and as proof of the legality of the new right holder.

Government agencies also have the right to manage the issuance of Inheritance Certificates. Neither party, the government nor notaries, is stronger than the other; in other words, no one document is more powerful than another. Therefore, the three agencies that made Inheritance Certificates, such as the village and district offices, Notary, and Heritage Hall, are passive, so the document can only be used as strong evidence, and the Certificate is still issued following the heirs' statements.

A Notary's authority to create an Inheritance Certificate for Indonesian citizens must be analyzed through the theory of authority and with a systematic interpretation method. This is done by interpreting statutory regulations and connecting them with legal regulations or other laws or legal systems.

According to the theory of authority, every action taken by public officials and/or government must be based on legitimate authority from 2 sources: attribution and handover.

- a. Attribution is the authority given or assigned to a particular position. Thus, attribution is the authority attached to a position.
- b. Handover is divided into 2:
  - 1) Delegation is an authority given by another agency based on statutory regulations.
  - 2) Mandate is an authority that comes from the process or procedure of a handover from a higher official or agency to lower officials (between superiors and subordinates).

When conducting an extensive interpretation analysis, the Inheritance Certificate plays a vital role to prove land activities. Besides, it has the following functions:

- 1) An Inheritance Certificate enables heirs to pledge the inherited assets by the testator to other parties or creditors;
- 2) An Inheritance Certificate functions to transfer the inherited assets by the testator to another party;
- 3) An Inheritance Certificate functions to change the status of joint ownership through a deed of distribution that separates the inheritance from the testator before a notary;
- 4) An Inheritance Certificate functions as evidence for heirs to take or withdraw money from the testator saved in a bank or claim insurance.

As the existence of Inheritance Certificates are fundamental, they must be created according to the law (authentic) to have perfect legal force. Thus, based on the systematic interpretation method, inheritance certificates that are made as authentic deeds would meet Article 1870 of the Civil Code, which states:

"For parties who have interests and their heirs, or for people who get rights from them, an authentic deed provides the best evidence of its contents."

Article 1870 of the Civil Code reveals that the best evidence of what concerns the heirs is an authentic deed. This is also related to authentic deeds in Article 1868 of the Civil Code, which states:

"An authentic deed is a deed made as enacted by the law and made by and before a public official authorized for that action at the location of the deed's creation."

The made by and before a public official element of Article 1868 of the Civil Code includes a Notary. Article 1 of the UUJN states, "Notaries are public officials who are authorized to make authentic deeds and other authorities as referred to in this Law,". Article 15 of the UUJN also emphasis what a Notary can and cannot do regarding their profession.

Through the correlation between all the described regulations, attribution authority allows a Notary to create an Inheritance Certificate authentically. The granting of new authority to a position based on a statutory regulation or rule of law is called attribution Notary. Notaries are granted their authority through Article 15 of Law Number 2 of 2014 regarding Amendments to Law Number 30 of 2004 regarding the UUJN. Moreover, the Inheritance Certificates made by Notaries are authentic deeds based on Article 1868 of the Civil Code. Therefore, the deed of inheritance rights in its authentic form also has excellent evidentiary value since it is made before an authorized official (the notary).

With the issuance of Article 111 paragraph 1 letter c of the Regulation of the State Minister of Agrarian Affairs/Head of the National Land Agency Number 16 of 2021 concerning the Third Amendment to their Regulation Number 3 of 1997 regarding the Implementation of Government Regulation Number 24 of 1997 regarding Land Registration, the government has made a new regulation that aims to eliminate the categorization of the population in Indonesia. This is done to eliminate discrimination in society and create legal certainty regarding the Deed of Inheritance Rights. However, in the regulations mentioned above, there are still differences in how the population is classified for the creation of an Inheritance Certificate, but it is expected that these regulations will not overlap. The regulation was issued by the government considering that there were still problems that arise in the making of Inheritance Certificates. Nevertheless, for good governance to be effective and realized, as well as for the discretion of government officials, their actions and decisions must be in the interests of the population.

The Deed of Statement of Heirs would be made by the will of the parties who wish to prove themselves as heirs. These deeds would be made before the Notary and obligatorily formulated as a Notarial Deed per the authority of a Notary stated in Article 15 paragraph (1) of the UUJN. The Notary also does not copy the parties' statements, but rather the parties' wishes themselves which would then be formulated as a Deed of Inheritance Rights. The Deed of Inheritance Rights is an authentic deed that provides the best evidence of what is contained in it. However, in cases where the truth in the authentic deed is denied, the parties who refuse must prove the untruth. Since the Notary does not have the will to make a deed for other people, and the Notary will not make any deed if there is no request or wish from the parties, and the Notary is not a party to the deed, thus the Notary will never make a Deed of Inheritance Rights if there are no requests and wishes from the parties.

Nevertheless, Notaries should be one step ahead in anticipating progress and conducting renewals. A Notary is one institution with the right to make formal evidence of an Inheritance Certificate as a party deed for all Indonesian citizens regardless of ethnicity, ethnicity, and religion.

The update in Article 111 paragraph 1 letter c of the Regulation of the State Minister of Agrarian Affairs/Head of the National Land Agency Number 16 of 2021 concerning the Third Amendment to their Regulation Number 3 of 1997 concerning the Implementation of Government Regulation Number 24 of 1997 regarding Land Registration has granted greater freedom and is expected to solve the population classification issue in its creation of Inheritance Certificates. Due to the ethnic mixing through marriage in society along with the development of the current era, issuing the Certificate according to population classification remains challenging.

## CLOSING

The government made a policy by issuing Article 111 paragraph 1 letter c of the Regulation of the State Minister of Agrarian Affairs/Head of the National Land Agency Number 16 of 2021 regarding the Third Amendment to their Regulation Number 3 of 1997 concerning the Implementation of Government Regulation Number 24 of 1997 regarding Land Registration. With the issuance of this regulation, the Notary has the authority to make Inheritance Certificates in their authentic form for all Indonesian citizens regardless of ethnicity or religion. Thus, these Inheritance Certificates are valid.

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