



## Juridical Analysis on the Elimination of Race and Ethnic Discrimination in Making Certificate of Inheritance in the Land Registration Process Based on Law Number 40 of 2008

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### Abstract

The classification of the population in Indonesia has occurred since the days of the Dutch East Indies, which is regulated in Article 163 IS. The regulation of population classification is still applied in the making of the Inheritance Certificate for Indonesian citizens, which is now regulated in the Regulation of the State Minister for Agrarian Affairs / Head of the National Land Agency No. 3 of 1997 concerning the Implementation of Government Regulation no. 24 of 1997 concerning Land Registration. The existence of these regulations creates acts of discrimination that are against Pancasila, legal principles, and laws. This research uses a normative juridical approach, namely by reviewing or analyzing secondary data in the form of literature, journals, and laws and regulations. Based on the results of research in the making of an inheritance certificate, there is still discrimination because it is based on the division of 3 (three) population groups, namely the European group, the Bumiputera group, and the Foreign Eastern group, thus this is not in line with the provisions of Law Number 40 of 2008 concerning the Elimination of Racial Discrimination and ethnicity because Indonesian citizens are entitled to equal positions before the law.

**Keywords:** Classification, Inheritance Certificate, Discrimination

### Abstrak

*Penggolongan penduduk di Indonesia terjadi sejak zaman Hindia Belanda, yang diatur pada Pasal 163 IS. Peraturan penggolongan penduduk masih diterapkan dalam pembuatan Surat Keterangan Waris bagi WNI, yang sekarang diatur dalam Peraturan Menteri Negara Agraria/Kepala Badan Pertanahan Nasional No. 3 Tahun 1997 tentang Pelaksanaan Peraturan Pemerintah No. 24 Tahun 1997 tentang Pendaftaran Tanah. Adanya peraturan tersebut menimbulkan tindakan diskriminasi yang bertentangan dengan Pancasila, asas-asas hukum serta undang-undang. Penelitian ini menggunakan pendekatan yuridis normatif, yaitu dengan mengkaji atau menganalisis data sekunder yang berupa literatur, jurnal, dan peraturan perundang-undangan. Berdasarkan hasil penelitian dalam pembuatan surat keterangan waris masih terdapat diskriminasi karena didasarkan pada pembagian 3 (tiga) golongan penduduk yaitu golongan Eropa, golongan Bumiputera dan golongan Timur Asing dengan demikian hal tersebut tidak sejalan dengan ketentuan Undang-Undang Nomor 40 Tahun 2008 tentang Penghapusan Diskriminasi Ras dan Etnis karena WNI berhak mendapatkan kedudukan yang sama di hadapan hukum.*

**Kata Kunci :** Penggolongan, Surat Keterangan Waris, Diskriminasi

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## I. Introduction

The Indonesian nation is a nation consisting of various ethnic or ethnic groups. The state of Indonesia is not inhabited and built by one ethnicity alone, but all ethnic groups in Indonesia have contributed to the journey of the Indonesian nation. The separation of the Indonesian population based on ethnicity and class emerged during the Dutch colonial period. This was enforced for political purposes during the Dutch colonial period in Indonesia, namely by issuing population classification rules and laws that apply to each group

based on the provisions of Article 131 Indische Staatregeling and 163 Indische Staatregeling which divides 3 (three) population groups and the laws that govern it. applies to each group.

At that time the citizens were divided into 3 (three) groups, each of which had its own legal rules. Inheritance law regulated in the Civil Code or abbreviated as BW inheritance law does not apply to all population groups. The BW inheritance law only applies to:

- a. The European class of people and those who are equated with those people;
- b. Chinese Foreign Easterners; and
- c. Other factions of the Foreign Easterners and the subjugated Natives.<sup>1</sup>

Unwittingly by Indonesian citizens in terms of inheritance, legal politics in the country participates in encouraging the changes that occur in it. The Indonesian people who have become independent are still using the classifications of the population that were formerly enforced during the Dutch colonial period. Although in its development Article 131 and Article 163 IS have been revoked through the Ampera Cabinet Presidium Instruction Number 31/U/IN/12/1966 dated December 27, 1966, and took effect January 1, 1967, intending to achieve a unified and homogeneous Indonesian nation<sup>2</sup>, but in reality, discrimination continues in terms of making documents or proofs as heirs or so-called heir certificates. There is a stipulation that every transfer of rights or registration of rights due to inheritance must be accompanied by a letter of evidence as an heir because an heir cannot automatically control and change the name of the inheritance to which he is entitled after the death of the testator, but to take legal action. against what has become his right must be accompanied by a certificate of inheritance.

The heir certificate is strong evidence of the existence of a transfer of rights to an inheritance from the heir to the case of inheritance, meaning that there has been a transfer of ownership of the inheritance from the ownership of the heir to joint ownership of the heirs under the number of heirs.<sup>3</sup> A certificate of inheritance is required in the process of land registration, especially because of inheritance, as explained in Article 42 Paragraph (1) of the Government Regulation of the Republic of Indonesia Number 24 of 1997 concerning Land Registration, namely: "The transfer of rights due to inheritance occurs by law when the right-holder in question dies. . In the sense that since then the heirs have become the new right holders. Regarding who becomes the heir, it is regulated in the Civil Law that applies to the heir. Registration of the transfer of rights due to inheritance is also required, to provide legal protection to the heirs and for the sake of order in the administration of land registration, so that the data stored and presented always shows the current state. Evidence as an heir can be in the form of a Deed of Inheritance Rights or a Letter of Determination of Heirs or a Certificate of Inheritance."

The provisions for making certificates of inheritance in Indonesia are still based on the division of population groups, as explained in Article 42 paragraph (1) Government Regulation no. 24 of 1997 concerning Land Registration in conjunction with the provisions of Article 111 paragraph (1) letter c Regulation of the Head of the National Land Agency no. 8 of 2012 concerning Amendments to the Regulation of the Minister of State for Agrarian Affairs/Head of the National Land Agency Number 3 of 1997 concerning Provisions for the Implementation of Government Regulation no. 24 of 1997 concerning Land Registration (hereinafter referred to as Perkaban No. 3 of 1997)<sup>4</sup>, there is a provision that every transfer of rights or registration of rights due to inheritance must be accompanied by a letter of evidence as an heir because an heir cannot automatically control and change the name of the inheritance to which he is entitled after the death of the testator, but to take legal action.

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<sup>1</sup> Pambudi, Galih Satya. "Pluralisme Hukum Waris di Indonesia". *Justice94*. 2012. <https://justice94.wordpress.com/pluralisme-hukum-waris-di-indonesia>. Accessed 8 June 2020.

<sup>2</sup> Herlien Budiono, *Kumpulan Tulisan Hukum Perdata di Bidang Kenotariatan*, (Bandung: Citra Aditya Bakti, 2013), 84.

<sup>3</sup> I Gede Purwaka, *Keterangan Hak Mewaris Yang Dibuot Oleh Notaris Berdasarkan Ketetapan Undang-Undang Hukum Perdata*, (Jakarta: Program Spesialis Notariat dan Pertahanan FH UI, 1999), 50.

<sup>4</sup> I Gusti Kade Prabawa Maha Yoga, Afifah Kusumadara, & Endang Sri Kawuryan, "Kewenangan Notaris dalam Pembuatan Surat Keterangan Waris Untuk Warga Negara Indonesia", *Jurnal Ilmiah Pendidikan Pancasila dan Kewarganegaraan*, Vol. 3, No 2, (2018.): 133.

against what has become his right must be accompanied by a certificate of inheritance. With the certificate of inheritance, the heirs can take legal action against the inheritance of the heirs together.<sup>5</sup> The making of evidence as an heir is made based on the population group under the provisions of Article 111 paragraph (1) letter c number 4 concerning the Regulation of the State Minister of Agrarian Affairs/Head of the National Land Office Number 3 of 1997 concerning the Implementation of Government Regulation Number 24 of 1997 concerning Land Registration, namely:

- a. For Indonesian Citizens who are original residents: certificate of heirs made by the heirs witnessed by two witnesses and confirmed by the Head of the Village/Sub-district and the Camat where the heir resides at the time of death;
- b. For Indonesian Citizens of Chinese descent: deed of inheritance rights from a Notary;
- c. For Indonesian Citizens of other Foreign Eastern descent, a certificate of inheritance from the Heritage Hall.<sup>6</sup>

Every authority must have a legal basis so that the authority of any office must be clear and firm in the laws and regulations governing the official or position. In addition, proof with an authentic deed made by a notary has the advantage of having perfect proof power. An authentic deed is a piece of evidence that cannot be denied unless the opposing party submits other evidence stating otherwise. In addition, its contents can be accounted for because it is an authentic deed. In the form of an authentic deed, the legal basis of a notary makes it the basis for clear authority and under legal certainty. By being made by a notary, a check will be made to the list of the Inheritance Center.

Various provisions that are discriminatory in nature should be perfected because they are contrary to Pancasila, the legal principles of descendants of citizens born and raised in Indonesia should no longer be treated as foreigners. In this regard, we no longer need to use the terms indigenous people or native Indonesians. Racial and ethnic discrimination in making Certificate of Inheritance (SKW) with the provisions of Article 111 paragraph (1) letter c number 4 concerning Regulation of the State Minister of Agrarian Affairs/Head of National Land Office Number 3 of 1997 concerning Implementation of Government Regulation Number 24 of 1997 concerning Land Registration), also contradicts Law Number 40 of 2008 concerning the Elimination of Race and Ethnic Discrimination. Discrimination, according to Article 1 point 1 of Law Number 40 of 2008 is any form of distinction, exclusion, limitation, or election based on race and ethnicity, which results in the revocation or reduction of recognition, acquisition, or implementation of human rights and basic freedoms in an equal way. in the civil, political, economic, social, and cultural fields.<sup>7</sup>

## II. Research Problems

1. How is the analysis of racial and ethnic discrimination in making a Certificate of Inheritance (*Surat Keterangan Waris*, SKW) based on the Regulation of the State Minister of Agrarian Affairs Number 3 of 1997 concerning the Implementation of Government Regulation Number 24 of 1997 concerning Land Registration?
2. How is the analysis of the elimination of racial and ethnic discrimination in the making of a Certificate of Inheritance (*Surat Certificate of Inheritance*, SKW) based on Law Number 40 of 2008 concerning the Elimination of Racial and Ethnic Discrimination?

## III. Research Methods

The approach method used in this research is normative juridical, namely legal research carried out by examining library materials or secondary data as the basis for research by

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<sup>5</sup> Ni Ketut Novita Sari, Sihabudin, & Bambang Sutjito, "Penggolongan Penduduk Dalam Pembuatan Surat Keterangan Waris Terkait Pendaftaran Hak Atas Tanah Setelah Berlakunya Undang-Undang Nomor 12 Tahun 2006 Tentang Kewarganegaraan Republik Indonesia," *Jurnal RechtsIde*, Vol. 14, No. 2 (2019): 220.

<sup>6</sup> *Ibid*, 208-209.

<sup>7</sup> *Ibid*, 222.

searching for regulations and literature related to the problems studied.<sup>8</sup> Data collection is carried out by library research, namely collecting data by reading, understanding, quoting, summarizing, and making notes as well as analyzing laws and regulations, documents, scientific literature, and research by experts. Secondary data is the main data used in this writing. Secondary data includes primary legal materials, secondary legal materials, tertiary legal materials.<sup>9</sup> Primary legal material is binding legal material, which comes from statutory regulations. Secondary legal materials are legal materials that explain primary legal materials, which consist of literature, books related to the elimination of racial and ethnic discrimination. Tertiary legal materials are legal materials that provide additional explanation or support for existing data on primary and secondary legal materials. The tertiary legal materials used are searches on the internet.<sup>10</sup> Data analysis, using qualitative analysis by describing the data obtained in the form of explanations and descriptions of sentences. Methods The presentation of data is carried out in the form of narrative descriptions, relationships between categories, flow charts, and others.<sup>11</sup>

#### **IV. Research Results And Discussion**

##### **1. Race and Ethnic Discrimination in Making Certificate of Inheritance (*Surat Keterangan Waris, SKW*)**

The definition of discrimination according to the Big Indonesian Dictionary is the difference in treatment of fellow citizens (based on skin color, class, ethnicity, economy, religion, and so on). Discrimination in society is motivated by history, socio-cultural and situational developments, personality factors, and differences in beliefs, beliefs, and religions of an individual or group in society.<sup>12</sup>

The practice of making a Certificate of Inheritance (*Surat Keterangan Waris, SKW*) is made based on the population group under the provisions of Article 111 paragraph (1) letter c number 4 concerning Regulation of the State Minister of Agrarian Affairs/Head of National Land Office Number 3 of 1997 concerning Implementation of Government Regulation Number 24 of 1997 concerning Land Registration causes discrimination because the regulation states that:

- a. For Indonesian Citizens who are original residents: a statement of heirs made by the heirs witnessed by two witnesses and confirmed by the Head of the Village/Sub-District and the Camat where the heir lives at the time of death;
- b. For Indonesian Citizens of Chinese descent: deed of inheritance rights from a Notary; and
- c. For Indonesian Citizens of Foreign Eastern descent, another statement of inheritance from the Property and Heritage Agency (*Balai Harta Peninggalan*).

Under the provisions of the article above, that the beneficiary (heir) must register his land with the Land Office. But it must be considered first whether the land has been recorded or not. For land that has been recorded, what needs to be submitted to the Land Office is:

- a. Heir certificate;
- b. Certificate of death from the Village Head or Lurah. To obtain the letter, the heirs or heirs request a letter that is legalized by the Head of the Neighborhood Association (*Rukun Tetangga, RT*) and known by the Head of the Residents Association (*Rukun Warga, RW*) and two witnesses, attached with a funeral certificate from the local Cemetery Office.;
- c. Certificate of inheritance; and

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<sup>8</sup> Soerjono Soekanto & Sri Mamudji. *Penelitian Hukum Normatif (Suatu Tinjauan Singkat)*, (Jakarta: Rajawali Pers, 2001),14.

<sup>9</sup> Ronny Hanitijo Soemitro, *Metodologi Penelitian Hukum dan Jurimetri*, (Jakarta: Ghalia Indonesia,2001), 10.

<sup>10</sup> *Ibid*, 12.

<sup>11</sup> Humas LPMN UNM. "Penyajian Data dalam Penelitian Kualitatif". *LPMN UNM*. November 13, 2016. <https://penalaran-unm.org/penyajian-data-dalam-penelitian-kualitatif/>. Accessed 7 August 2020.

<sup>12</sup> Anonim. "5 Pengertian Diskriminasi Menurut Para Ahli, Penyebab, Jenis, Bentuk, Cara Menghindari dan Contohnya "Seputar Pengetahuan. <https://www.seputarpengetahuan.co.id/2017/07/5-pengertian-diskriminasi-menurut-para-ahli-penyebab-jenis-bentuk-cara-menghindari-dan-contoh-diskriminasi.html>. Accessed 19 August 2020.

d. Latest Land and Building Tax (*Pajak Bumi dan Bangunan*, PBB) certificate.

If the land has not been recorded under the provisions of Article 42 paragraph (2) of Government Regulation Number 24 of 1997 which reads as follows: "If the parcel of land which is an inheritance has not been registered, the documents as referred to in Article 39 paragraph (1) letter must also be submitted. b". Documents that prove the existence of land rights to the beneficiary are required after the first registration of the right in question in the name of the beneficiary. This is explained in the Elucidation of Article 42 paragraph (2) of Government Regulation Number 24 of 1997. From the provisions of Article 42 paragraph (2) of Government Regulation Number 24 of 1997 above:

- a. The heirs must show proof of rights in the form of written evidence, witness statements, and or statements in question, the content of which is deemed sufficient by the Adjudication Committee or the Head of the Land Office to register the rights, rights holders, and rights of other parties that burden them.
- b. A certificate stating that the land parcel in question has not been certified from the Land Office, or for land located in an area far from the Land office's domicile, from the right holder concerned with confirmation by the Village/Urban Head.
- c. Based on the data in points 1 and 2 above, an inheritance deed is then made by the Land Deed Making Officer. Then the applicant (heir) registers with the National Land Agency office with the following requirements:
  - 1) Fill out the application form
  - 2) Proof of heir identity
  - 3) Power of attorney and photocopy of KTP of the power of attorney if authorized.
  - 4) Inherited Land Rights Certificate.
  - 5) Death Certificate on behalf of the right holder.
  - 6) Proof as an Heir:
    - a) Will of the testator; or
    - b) Court decisions; or
    - c) Certificate of heirs made by the heirs witnessed by 2 (two) witnesses and confirmed by the Lurah or Camat.
    - d) Deed of Shared Rights (if directly divided by inheritance)
    - e) Land and Building Tax last year.

For the distribution of joint rights, Article 51 paragraph (1) of Government Regulation Number 24 of 1997 states: "The distribution of joint rights to land or property rights to flat units becomes the right of each joint right holder to be registered based on a deed made by the authorized Land Titles Registrar (*Pejabat Pembuat Akta Tanah*, PPAT) according to regulations. applicable law which proves the agreement between the joint rights holders regarding the distribution of the joint rights".

In time a common right, whether acquired as an inheritance or for other reasons, needs to be divided so that it becomes an individual right. For this reason, the agreement between the joint rights holders needs to be stated in the Land Titles Registrar (*Pejabat Pembuat Akta Tanah*, PPAT) which will be the basis for registration. In this distribution, all joint rights holders do not need to get a share. In the distribution of inheritance, the individual rights holders are often only part of the total inheritance, as long as this is agreed upon by all beneficiaries as joint rights holders.

Furthermore, after the heirs register the transfer of ownership rights over their land to the Land Office, an announcement will be issued at the Land Office and the Village/District Head office where the land in question is located. This announcement is carried out for 60 days to provide an opportunity for interested parties to file objections. The certificate will be issued according to the physical data and juridical data that have been registered in the land book.<sup>13</sup>

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<sup>13</sup> Denny Widi Anggoro & Miya Savitri, "Tinjauan Yuridis Normatif Terhadap Peralihan Hak Atas Tanah Karena Pewarisan Menurut Peraturan Pemerintah Nomor 24 Tahun 1997 Tentang Pendaftaran Tanah", *Jurnal Panorama Hukum*, Vol. 1 No. 1, (Juni 2016): 77-79.

Racial discrimination in making inheritance certificates is contrary to the spirit of nation-building, that by classifying the population, especially in making inheritance certificates, there is an action and/or policy that is contrary to the law, namely Law Number 40 of 2008 concerning the Elimination of Racial and Ethnic Discrimination in the form of differentiating and/or restricting certain groups in order to obtain basic freedoms and/or the implementation of human rights in the form of their need to obtain authentic evidence that explains themselves as the party entitled to the inheritance left for them and also contradicts the theory of the rule of law which today requires the existence of several principles, as stated by Jimly Asshiddiqie, which in principle is to guarantee the protection of the rights of every individual to freedom, anti-discrimination and equality, especially Persam in law (Equality Before The Law) law enforcement in a way that does not conflict with the law (Due Process of law); Protection of Human Rights.<sup>14</sup>

## **2. Certificate of Inheritance**

A certificate of inheritance is a letter that is used as the basis for the right of the heir to take legal action on an inheritance left by the heir. With the certificate of inheritance, the heirs can take legal action against the inheritance of the heir together, both regarding management actions and own actions over the inheritance. In this case, it is in the form of assets inherited from the heirs in the form of land which if you want to change the name, you can apply to the local Land Office, namely by:

- a. register the transfer of rights (transfer of name) to land that has been registered (certified).
- b. apply for new rights (certificates) on unregistered land such as *girik* land, ex-western land rights, state land.<sup>15</sup>

The certificate of inheritance which is divided into several population groups is only related to land management because the legal basis is in the regulations regarding land. However, this is used as a reference basis for any actions outside the land because there are no rules that specifically regulate inheritance certificates.

The heir certificate also has a function for the heirs to pawn or pledge the assets inherited by the heir to another party or creditor if the heir wants to borrow money or apply for credit. In addition, the heir certificate also serves to transfer the assets of the heir to other parties, for example, selling, granting, relinquishing rights, binding sale and purchase before a notary and others in the form of a transfer of rights, and also changing the status of joint ownership of the inheritance of the testator becomes the property of each heir by making or making a deed of distribution and separation of the inheritance of the heir before a notary.<sup>16</sup>

To implement this Government Regulation No. 24/1997, a Regulation of the State Minister of Agrarian Affairs/Head of the National Land Agency No. 3/1997 on Provisions for the Implementation of Government Regulation No. 24/1997 on Land Registration was made. In Article 42 of Government Regulation Number 24 of 1997, it is ordered that there is a certificate of inheritance as the basis for the transfer of rights due to inheritance, which in essence is that if there is only one beneficiary, the proof of the transfer of rights is a letter of evidence as an heir. The registration of the transfer of rights is accompanied by a certificate of death of the testator and a certificate for the land that has been registered. If it has not been registered, a certificate of title or a certificate from the village/*kelurahan* head stating that the

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<sup>14</sup> Fardatul Iaili & Masruchin Ruba'I, "Analisis Pembuatan Surat Keterangan Waris Yang Didasarkan Pada Penggolongan Penduduk (Berdasarkan Undang-Undang Nomor 40 Tahun 2008 Tentang Penghapusan Diskriminasi Ras Dan Etnis)", *Jurnal Mahasiswa Fakultas Hukum*, Vol 1 No 1, (2015): 12

<sup>15</sup> Arsyad Harun, *Tinjauan Yuridis Surat Keterangan Hak Waris bagi Penduduk di Indonesia* (Bandung: Refika Aditama, 2010), 32.

<sup>16</sup> Rahmad Oesman Ali, *Perbedaan Surat Keterangan Hak Waris dan Akta Keterangan Hak Waris* (Bandung: Remaja Rosdakarya, 2012), 70.

person concerned controls the parcel of land and a certificate stating that the land parcel in question has not been certified from the Land Office. However, if the beneficiary is more than one person, then the proof of the transfer of rights in addition to having a letter of proof as an heir must have a deed of inheritance distribution, but if there is no deed of distribution of inheritance, the transfer of rights can be registered as a joint right.<sup>17</sup>

### 3. Classification of Population in Making Certificate of Inheritance

Article 131 *Indische Staatsregeling* (IS) and Article 163 IS are some of the causes of legal pluralism in the civil sector, especially in terms of rights in the transfer of rights due to inheritance. In the provisions of Article 163 IS, the population of the Dutch East Indies was divided into 3 (three) groups, namely the European group, the *Bumiputera* group, and the Foreign Eastern group. The division of these groups is followed by the distribution of legal power for each of these groups based on Article 131 IS. The classification of the population in making certificates of inheritance in Indonesia still exists because it is the legal politics of the Dutch colonial government, the current law is a product of the Dutch East Indies government that applies in Indonesia based on the principle of concordance, meaning that the law in force in Indonesia is the same as legal provisions in force in the Netherlands. The application of these provisions is solely to fill a legal vacuum (*rechtvacuum*). The classification of the population in making certificates of inheritance is under the provisions of Article 111 paragraph (1) letter c number 4 concerning Regulation of the State Minister of Agrarian Affairs/Head of National Land Office Number 3 of 1997 concerning the Implementation of Government Regulation Number 24 of 1997 concerning Land Registration as follows.<sup>18</sup>

Distinguishing the Authorized Party to Make Proof as Heirs in Article 111 paragraph (1) letter c number 4 PMNA/Head of National BPN 3 of 1997 concerning the Implementation of Government Regulation no. 24 of 1997 concerning Land Registration in Ensuring Legal Certainty/Legal Power for Heirs:

a. Certificate of inheritance confirmed by the Village Head/Lurah and Camat

Inheritance Certificates are made by the heirs themselves which are the civil rights of the heirs, but the Village Head/Lurah and Camat also have a role in strengthening the heir certificate. Strengthening, in this case, means adding an element of strength to the heir certificate as a means of civil evidence. The presence or testimony of a public official against a piece of evidence can increase the strength of the evidence. This is categorized into the formal elements of a deed. The participation of the Village Head/Lurah and Camat in strengthening heir certificates creates a problem, namely whether the Village Head/Lurah and Camat have the authority to strengthen heir certificates which are civil evidence. In terms of Article 126 paragraphs 2 and 3, Article 127 paragraphs 2 and 3, Article 206 and Article 207 of Law Number 32 of 2004 concerning Regional Government. So based on the description above, the Camat, Lurah, and Village are not authorized to strengthen the certificate of heirs because the Camat, Lurah, and Village are within the scope of Administrative Law (State) with a position as a State Administration Agency or Officer who carries out government authority. Thus, the heir certificate made by the heirs is an underhand deed, has the power of proof as long as the

<sup>17</sup> Upik Hamidah, "Pembaharuan Standar Prosedure Operasi Pengaturan (SOP) Pelayanan Pendaftaran Peralihan Hak Milik Atas Tanah Karena Hibah Wasiat Berdasarkan Alat Bukti Peralihan Hak", *Fiat Justitia Jurnal Ilmu Hukum*, Vol. 6 No, 2 (Mei-Agustus 2012): 335.

<sup>18</sup> Monika Ardia Ningsi Massora & Victoria Pasari Putri "Kekuatan Hukum Surat Keterangan Ahli Waris bagi Golongan Bumiputera yang Dikuatkan oleh Camat", *Jurnal Notarie*, Vol. 2 No. 3, (Oktober 2019): 392.

parties admit it or there is no denial from one of the parties, if the parties admit it, then the private deed has perfect evidentiary power. as with an authentic deed, if one of the parties does not acknowledge it, the burden of proof is handed over to the party who denies the deed, and the assessment of the denial of the evidence is left to the judge.<sup>19</sup>

b. Certificate of inheritance made by a Notary

Article 15 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of a Notary determines the authority of a notary that the making of a deed of the statement of heirs is not mentioned in the article, but the authority of a notary to make a deed of the statement of heirs is only based on Article 42 paragraph (1) Government Regulation no. 24 of 1997 concerning Land Registration in conjunction with Article 111 paragraph (1) letter c number 4 Perkaban No. 3 of 1997, including:

In Article 42 paragraph (1) Government Regulation no. 24 of 1997 concerning Land Registration regulates the registration of the transfer of rights due to inheritance, explains the need for requirements in the form of documents, one of which is a letter of proof as an heir, and Article 111 paragraph (1) letter c number 4 Regulation of the Minister of State for Agrarian Affairs/Head of BPN No. 3 of 1997 which mentions the authority of a notary to make inheritance statements for Indonesian citizens of Chinese descent with a certificate of inheritance rights from a notary. So the deed of inheritance rights made by a notary is an authentic deed based on Article 1868 of the Civil Code, in terms of proving the deed of inheritance in the form of an authentic deed has perfect evidentiary value because it is made before a notary authorized official. contained therein, as long as the authentic deed can still be used, and the agreement contained therein has not expired, then even if the parties have died, the heirs must still and must comply with all the provisions contained in the deed. The superiority of the statement of heirs in the form of an authentic deed, if the contents are to be corrected, the previous deed of a statement of heirs must be revoked by those who made it, and then a new deed is made according to the facts desired by the parties.<sup>20</sup>

c. Certificate of heirs confirmed by the Property and Heritage Agency (*Balai Harta Peninggalan*, BHP)

Property and Heritage Agency is part of the organizational structure of the Ministry of Law and Human Rights, under the Directorate of Civil Affairs. Structurally, the *Balai Harta Peninggalan* is a government agency (executive) that carries out government affairs. Institutions within the executive or government scope that carry out government affairs are categorized as State Administrative Officials (Article 1 point 2 of Law Number 5 of 1986 concerning State Administrative Courts) as State Administrative Entities are given the authority to issue decrees or stipulations. which are concrete, individual, and final (Article 1 paragraph (3) of Law Number 5 of 1986 concerning State Administrative Courts). A certificate of inheritance is a piece of evidence in the realm of civil law. This becomes an ambiguity if the inheritance certificate issued by the Property and Heritage Agency (*Balai Harta Peninggalan*, BHP) is intended for other foreign Eastern groups causing a problem, where is the inheritance certificate which is the determination of the *Balai Harta Peninggalan* this should be disputed or canceled. Is it to the state administrative court environment because it is a written determination issued by a state administrative body or official, or to the general court

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<sup>19</sup> Hanum Latifah, "Kekuatan Hukum Surat Keterangan Ahli Waris Yang Dikeluarkan Kepala Desa Sebagai Alas Hak Dalam Pembuatan Akta Pengikatan Jual Beli (PJB) Oleh Notaris Bagi WNI Bumiputera", *Premise Law Jurnal*, Vol. 7 (2016.): 231.

<sup>20</sup> Ni ketut Novita Sari, Sihabudin, ed. *Op.Cit.*, 219.



environment because it is a piece of evidence in the realm of civil law. This kind of inheritance certificate has permanent legal force, but a lawsuit can still be filed if there are problems in making the inheritance certificate, almost the same legal force as the heir certificate made by the Lurah/Camat.<sup>21</sup>

#### 4. Elimination of Discrimination in making Certificate of Inheritance (*Surat Keterangan Waris, SKW*)

According to Article 1 point 1 of Law Number 40 of 2008 concerning the Elimination of Racial and Ethnic Discrimination, discrimination is any form of distinction, exclusion, restriction, or election based on race and ethnicity, which results in the revocation or reduction of recognition, acquisition, or exercise of human rights. human rights and basic freedoms inequality in the civil, political, economic, social, and cultural fields. Law Number 40 of 2008 recognizes two types of discrimination, namely racial discrimination and ethnic discrimination. Race according to Article 1 point 2 of Law Number 40 of 2008 is a group of nations based on physical characteristics and lineage, this definition is not much different from Race according to the Big Indonesian Dictionary, which is defined as a group of nations based on the physical characteristics of a family.<sup>22</sup>

Discrimination is an act that becomes a matter of law and human rights, human rights as a value and/or norm guarantees and recognizes that everyone has the right to enjoy basic rights and freedoms inherent in human nature and existence. Article 2 paragraph 1 Chapter II Principles and Objectives in Law Number 40 of 2008 affirms that the elimination of racial and ethnic discrimination is carried out based on the principles of equality, freedom, justice, and universal human values. The application of the principle of equality in Law Number 40 of 2008 concerning the Elimination of Racial and Ethnic Discrimination is in line with Article 3 and Article 26 of the International Covenant on Civil and Political Rights (ICCPR).<sup>23</sup>

Article 4 Chapter III concerning Discriminatory Actions, Law Number 40 of 2008 concerning the Elimination of Race and Ethnic Discrimination, explains that: "treating distinctions, exceptions, restrictions, or elections based on race and ethnicity, which results in the revocation or reduction of recognition, acquisition, or the implementation of human rights and basic freedoms in an equal manner in the civil, political, economic, social and cultural fields."

Even with the violation of the provisions of Article 4 letter a of Law Number 40 of 2008 concerning the Elimination of Race and Ethnic Discrimination, it also violates Law Number 39 of 1999 concerning Human Rights, which in principle prohibits any form of discrimination, as regulated in Article 28I paragraph 2 of the 1945 Constitution of the Republic of Indonesia:

"Everyone has the right to be free from discriminatory treatment on any basis and is entitled to protection against discriminatory treatment".

The values in Pancasila are believed to be true by the Indonesian people as a way of life, in the second precept contains just and civilized humanity, often the values in Pancasila are ignored by some people who think that justice is equality, all are divided equally. Justice is the most importantly good value in human life because this value cannot be

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<sup>21</sup> Upik Hamidah, *Op. Cit.*, 335.

<sup>22</sup> Departemen Pendidikan Nasional, *Kamus Besar Bahasa Indonesia Pusat Bahasa*, (Jakarta: Gramedia Pustaka Utama, 2011), 1145.

<sup>23</sup> Armiwulan Sochmawardiah Hesti, *Diskriminasi Rasial dalam Hukum HAM Studi Tentang Diskriminasi Terhadap Etnis Tionghoa*, (Yogyakarta: Genta, 2013), 123-124

exchanged/compromised with any value. Concerning the principle of justice in the Making of Certificate of Inheritance based on the population group, it is not in line with the provisions of Law Number 40 of 2008 concerning the Elimination of Racial and Ethnic Discrimination, Article 5 letter a, that the elimination of racial and ethnic discrimination must be carried out by providing "Protection, certainty, and equal status under the law for all citizens to live free from racial and ethnic discrimination" The provision clearly emphasizes the recognition of the existence of humanity, human justice in humane ways.<sup>24</sup>

The classification of the population in Article 111 of the Regulation of the State Minister of Agrarian Affairs/Head of BPN No. 3 of 1997 concerning Provisions for the Implementation of Government Regulation no. 24 of 1997 concerning Land Registration creates confusion because Law no. 40 of 2008 concerning the Elimination of Racial and Ethnic Discrimination requires the abolition of racial and ethnic discrimination and in providing fair legal certainty for every citizen who will provide such provisions seems discriminatory because it must be based on population classification as the law applied during the Dutch colonial period.<sup>25</sup>

In a state of law, the position of citizens, as well as government officials are the same, and there is no difference before the law. Thus, the principle of equality before the law or Equality Before The Law is one of the most important and influential principles in the legal system in Indonesia. The Constitution of the Republic of Indonesia has explicitly regulated the guarantee of protection and enforcement of human rights, one of which is regarding equality before the law. In Article 27 paragraph (1), Article 28D paragraph (1), and Article 28I paragraph (2) of the Constitution of the Republic of Indonesia that:

Article 27 paragraph (1):

"All citizens have the same position in law and government and are obliged to uphold the law and government with no exceptions"

Article 28D paragraph (1):

"Everyone has the right to recognition, guarantees, protection, and fair legal certainty and equal treatment before the law"

Article 28I paragraph (2):

"Everyone has the right to be free from discriminatory treatment on any basis and is entitled to protection against such discriminatory treatment."

This article implies that every citizen without having to look at racial, ethnic, and religious backgrounds, whether citizens who are natives or natives or non-natives, differences in education or financial ability and other factors, as long as he is an Indonesian citizen, then treated equally before the law.<sup>26</sup>

Post-Independence on August 17, 1945, the legislation regarding citizenship in Indonesia underwent at least three changes. Namely, the Citizenship Law Number 3 of 1946, which was later replaced by the issuance of the Citizenship Law Number 62 of 1968, and finally, Law Number 12 of 2006 which is still valid today. Law Number 12 of 2006 was issued to replace the previous citizenship law because it was considered from various perspectives to

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<sup>24</sup> Fadilla Dwi Lailawati, "Penghapusan Diskriminasi, Ras, dan Etnis Pembuatan Surat Keterangan Waris yang Didasarkan Pada Penggolongan Penduduk", *Jurnal Cakrawala Hukum*, Volume 11 No. 1, (April 2020): 19.

<sup>25</sup> Priyanti, Sari Elsy. "Perlindungan Hukum Keselamatan Dan Kesehatan Kerja terhadap Sopir Bus Pariwisata Pada Perusahaan Transportasi PT. Angkutan Wisata Seruni". *dspace.uui.ac.id*. 2019." <https://dspace.uui.ac.id/bitstream/handle/123456789/17030/05.1%20bab%201.pdf?sequence=1>. Accessed 24 July 2020.

<sup>26</sup> Frans Sayogi, *Perlindungan Negara Terhadap Hak Kebebasan Beragama dalam Islam dan Hak Asasi Manusia Universal*, (Tangerang: Trans Pustaka, 2003), 130.

be very contrary to the equality of Indonesian citizens. This law includes many new policies to eliminate discrimination and prevent violations of the rights of Indonesian citizens. Indonesian citizens according to Article 4 of Law Number 12 of 2006 concerning Citizenship are;

- a. Every person who based on laws and/or based on an agreement between the government of the Republic of Indonesia and another country before the enactment of this Law has become an Indonesian citizen;
- b. Children born from a legal marriage of a father and mother are Indonesian citizens;
- c. Children born from legal marriages of an Indonesian citizen father and a foreign mother;
- d. A child born from a legal marriage of a foreign national father and an Indonesian mother;
- e. A child born from a legal marriage of an Indonesian citizen mother but whose father does not have citizenship or the laws of the country of origin of the father do not grant citizenship to the child;
- f. A child born within a period of 300 (three hundred) days after his father died from a legal marriage and his father is an Indonesian citizen;
- g. Children born out of legal marriage to an Indonesian mother;
- h. A child born out of legal marriage to a foreign mother who is recognized by an Indonesian father as his child and the acknowledgment is made before the child is 18 (eighteen) years old and/or unmarried;
- i. Children born in the territory of the Republic of Indonesia whose citizenship status is unclear at the time of birth;
- j. A newborn child found in the territory of the Republic of Indonesia as long as the father and mother are unknown;
- k. Children born in the territory of the Republic of Indonesia if the father and mother do not have citizenship or their whereabouts are unknown;
- l. Children born outside the territory of the Republic of Indonesia from a father and mother who are Indonesian citizens who due to the provisions of the country where the child was born give citizenship to the child concerned;
- m. The child of a father or mother whose citizenship application has been granted, then the father or mother dies before taking the oath or swearing allegiance.

In addition to these provisions, citizenship of the Republic of Indonesia can also be obtained through citizenship, namely the procedure for foreigners to obtain citizenship of the Republic of Indonesia through an application. Provisions regarding citizenship in Indonesia are regulated by relying on the principles of general or universal citizenship, namely the *ius sanguinis* principle (determining citizenship based on descent) and the *ius soli* principle (determining citizenship based on place of birth). And also based on special principles, some of which are:

- a. The principle of equality in law and government is the principle that determines that every Indonesian citizen gets the same treatment in law and government.
- b. The principle of non-discrimination is the principle that does not differentiate treatment in all matters relating to citizens based on ethnicity, race, religion, gender, and gender.
- c. The principle of recognition and respect for human rights is the principle that in all matters relating to citizens, citizens must guarantee, protect and honor human rights in general and the rights of citizens in particular.

The Citizenship Law regulates and stipulates who can be classified as citizens regardless of race and ethnicity, as long as they fulfill the requirements stipulated by law. This is an implementation of the purpose of the Citizenship Law, which is to provide legal protection and certainty for citizens.

During the Dutch East Indies era, the Indonesian population (Dutch East Indies) was divided into 3 (three) groups under Article 163 IS of 1925 which came into force on January 1, 1926, namely, the European group, the Foreign Eastern group, and the *Bumiputera* group. However, at this time the Indonesian population has been regulated based on the Indonesian Citizenship Law Number 12 of 2006 which in essence stipulates that the Indonesian population is only differentiated into first, Indonesian citizens, and second, foreigners (residents who are not Indonesian citizens). With this law, it means that in Indonesia today there is no longer any classification of citizens as before the law was enacted. Whereas with the enactment of the Citizenship Law Number 12 of 2006 it is hoped that in the future, this division of population groups will no longer be known.<sup>27</sup>

Making evidence as an heir is a civil right of every citizen. So article 111 paragraph (1) letter c number 4 concerning Regulation of the State Minister of Agrarian Affairs/Head of the National Land Agency Number 3 of 1997 concerning the Implementation of Government Regulation Number 24 of 1997 concerning Land Registration is substantially flawed and does not fulfill the legal purpose, namely justice, because it regulates regarding the classification of the population that is no longer relevant to use today and is contrary to other laws and regulations and until now in Indonesia, there has not been a legal unification that can refer to an official or special agency that makes inheritance statements. The granting of such authority to an official or agency becomes very necessary because it can make efforts to eliminate acts of discrimination in making evidence as an heir. In essence, the position of humans is equal before God Almighty humans are not born with the right to choose whom to be born from, as part of a certain race and ethnicity. Therefore, humans are born with differences, including differences in race and ethnicity. However, the differences between race and ethnicity do not result in differences in individual rights and obligations attached to certain races and ethnicities.<sup>28</sup>

## **V. Conclusions**

Until now, there is still discrimination in the process of registering land because when they become the beneficiary (heir) they must register their land with the Land Office. For land to be recorded, one that needs to be submitted to the Land Office is a Certificate of Inheritance (SKW). No. 3 of 1997 concerning Provisions for the Implementation of Government Regulation no. 24 of 1997 concerning Land Registration, which is divided into 3 (three) groups. This still exists because it is a legal policy of the Dutch colonial government, namely in the provisions of Article 163 IS which causes legal pluralism in the civil sector, especially in terms of rights in the transfer of rights due to inheritance. The current law is a product of the Dutch East Indies government that applies in Indonesia based on the principle of concordance, meaning that the law that applies in Indonesia is the same as the legal

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<sup>27</sup> Henney, "Undang-Undang Kewarganegaraan Terbaru", *GuruPPKN.com*, November 2, 2016. <http://guruppkn.com/undang-undang-kewarganegaraan>. Accessed 24 July 2020

<sup>28</sup> M. Arif Rokhman, *Surat Keterangan Waris Ditinjau Dari Undang-Undang Nomor 12 Tahun 2006 Tentang Kewarganegaraan Republik Indonesia*, Tesis, (Yogyakarta: Program Studi Magister Kenotariatan Fakultas Hukum UGM, 2012), 3.

provisions that apply in the Netherlands. The application of these provisions is solely to fill a legal vacuum (*rechtvacuum*).

Making a Certificate of Inheritance (*Surat Keterangan Waris*, SKW) based on the population group is not in line with the provisions of Law Number 40 of 2008 concerning the Elimination of Racial and Ethnic Discrimination. In a legal state, the position of citizens, as well as government officials is the same, and there is no difference in advance. Thus, the principle of equality before the law or Equality Before The Law is one of the most important and influential principles in the legal system in Indonesia. The 1945 Constitution of the Republic of Indonesia in principle prohibits any form of discrimination, as regulated in Article 27 paragraph (1), Article 28D paragraph (1), and Article 28I paragraph (2). The Citizenship Law of the Republic of Indonesia Number 12 of 2006 which in essence also stipulates that Indonesian residents are only differentiated into first, Indonesian citizens, and second, foreigners (residents who are not Indonesian citizens). So Article 111 paragraph (1) letter c number 4 concerning Regulation of the State Minister of Agrarian Affairs/Head of the National Land Agency Number 3 of 1997 concerning the Implementation of Government Regulation Number 24 of 1997 concerning Land Registration must substantially be replaced or abolished due to various discriminatory provisions. In the land registration process, namely the making of a Certificate of Inheritance (*Surat Keterangan Waris*, SKW) which is divided into 3 (three) groups, namely the European group, the Bumiputera group, and the Foreign Eastern group. This rule should be perfected because it is contrary to Pancasila, the legal principles of descendants born and raised in Indonesia are no longer appropriate to be treated as foreigners.

## VI. Suggestions

To eliminate the practice of racial and ethnic discrimination in making a Certificate of Inheritance for the party authorized to make an inheritance statement, it should only be carried out by one official, namely the Notary because it has the authority to make an authentic deed based on the Law and the Notary deed has the strongest and most complete evidentiary power. Carried out so that citizens are treated fairly and equally before the law and do not conflict with Law Number 40 of 2008 concerning the Elimination of Racial and Ethnic Discrimination. If these rules continue to apply in Indonesia, which is clear in the 1945 Constitution in Article 27 paragraph (1), Article 28D paragraph (1) and Article 28I paragraph (2) and the Indonesian Citizenship Law Number 12 of 2006 which essentially stressed that it is no longer necessary to use the term indigenous people or native Indonesians, so Indonesian citizens who are treated discriminatively can file a Judicial Review.

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