Volume 17. Number 1. June 2022 Page 91-103

Pandecta

http://journal.unnes.ac.id/nju/index.php/pandecta

Ontological Study of The Classification of People in The Transfer of Land Rights in Realizing Legal Certainty

Rahadi Wasi Bintoro[1]*, Noor Dzuhaidah Binti Osman[2], Antonius Sidik Maryono[1], Sanyoto[1], and Weda Kupita[1]

[1]Faculty Of Law Universitas Jenderal Soedirman

[2] Faculty of Syariah and Law, Universiti Sains Islam Malaysia

DOI: http://dx.doi.org/10.15294/pandecta.v17i1.34806

Article Info

Article History:
Received : January 29th 2022
Accepted: March 19th 2022
Published: June 29th 2022

Keywords:
classification of people; transfer of land rights; legal certainty

Abstract

Regulation of the Minister of State for Agrarian Affairs/ Head of the National Land Agency No. 3 of 1997 concerning Provisions for the Implementation of Government Regulation Number 24 of 1997 concerning Land Registration containsregulations regarding the classification of the population in the preparation of a certificate of inheritance. At present, such arrangements are considered irrelevant, especially since there are already regulations concerning citizenship and population administration in a law. Therefore, this article discusses the ontological basis for regulating population classification in Indonesia. In order to answer these problems, three normative research approaches are used, in the form of a statutory approach, a historical approach and a conceptual approach. This study uses primary and secondary sources of legal material, which after an inventory has been processed and analyzed using a qualitative approach. The classification of the Indonesian population, when viewed from an ontological study, was a policy of the Dutch East Indies government to divide the Indonesian nation and reduce the power of customary law and Islamic law that developed in society. However, if judging from the existence of the Regulation of the State Minister of Agrarian Affairs/Head of the National Land Agency Number 3 of 1997, the classification of the population which has implications for the institution authorized to make certificates of inheritance is not due to the politics of dividing the Indonesian nation. This rule exists because it is still possible for people to submit to the law of inheritance of Burgelik Wetboek. This regulation in the statutory system is hierarchically positioned lower than the law. Even though this regulation is inferior and contradicts the Citizenship Law and the Population Administration Law, and therefore contradicts the principle of lex superior derogate legi inferiori, but to prevent a legal vacuum this Ministerial regulation is still in effect.

A. Introduction

Inheritance disputes are complicated,[1] because they involve many parties who control the inheritance. This is not infrequently caused by the existence of a certificate of an heir made by the *Lurah*/Urban Village Head, Property and Heritage Agency, or Notary which does not involve all the heirs. Information on inheritance is required for the transfer of land rights or transfer of other rights such as savings, deposits and, other securities.

1 Anita Kamilah and M Rendy Aridhayandi, "study of Settlement of Disputes on the Distribution of Inherited Assets on Land Due to Not Execution of Wills by Heirs Connected with Book II of the Civil Code concerning property (van Zaken), Wawasan Hukum Journal, 32 No.1 (Februari 2015) 22

✉
Address : Jl. HR Bunyamin No.708 Purwokerto Utara Banyumas Indonesia
E-mail : rahadi.bintoro@unsoed.ac.id

ISSN 1907-8919 (Cetak)
ISSN 2337-5418 (Online)

Before the Law no. 3 of 2006, the regulation governing the statement of heirs is the Regulation of the State Minister of Agrarian Affairs/Head of the National Land Agency No. 3 of 1997 concerning Provisions for the Implementation of Government Regulation Number 24 of 1997 concerning Land Registration, Article 111 paragraph (1) letter c which regulates:

a Letter of proof as an heir which can be in the form of:

1) will of the testator, or
2) Court decision, or
3) the determination of the judge/Chairman of the Court, or
4) - for Indonesian citizens who are original residents: certificate of heirs made by the heirs witnessed by 2 (two) witnesses and confirmed by the Urban Village Head/*Urban Villag*eand Subdistrict Head where the heir resides at the time of death;
   - for Indonesian citizens of Chinese descent: deed of inheritance rights from a Notary,
   - for other Indonesian citizens of Foreign Eastern descent: a certificate of inheritance from the Property and Heritage Agency.

Certificate of inheritance is a document of proof from the heirs about the truth that they are the right person and have the right to inherit from the heir.[2] This is the basis for the transfer of rights from the heir.[3]

This arrangement, if observed, actually still refers to the classification of the population as regulated in Article 163 of the *Indische Staatsregeling* (I.S.- *Staatsblad* 1925 Number 415) which still uses the classification of the population into male natives, foreign east and European groups. This can be seen from the terminology used to distinguish the population by using the terminology of indigenous people, Chinese descendants and foreign eastern descendants, each of which is legalized by different institutions, from the *Lurah*/Urban Village Head, notary public and Property and Heritage Agency. Problems arise when there are mixed marriages of native Indonesians with Chinese descendants or foreign eastern descendants, some cases also arise as a result of embracing Islam by people of Chinese or foreign eastern descent, then who does have the authority to legalize the heir certificate?

The regulation in Article 111 paragraph (1) letter c Regulation of the Minister of State for Agrarian Affairs/Head of the National Land Agency Number 3 of 1997 is indeed devoted to fixed objects in the form of land, but such arrangement is of course contradictory to the Law on Religious Courts which has given authority in the field of inheritance to Religious courts. In addition, based on Law Number 24 of 2013 concerning Amendments to Law Number 23 of 2006 concerning Population Administration, it is emphasized that Indonesia only recognizes residents as Indonesian citizens and foreigners residing in Indonesia. The uncertainty of land ownership will hinder the government's agrarian reforms. Based on this explanation, the legal issue raised in this article is the ontological basis for regulating the classification of people in Indonesia.

B. Method

In order to answer legal issues to test the applicability of the classification of people in the Regulation of the Minister of State for Agrarian Affairs/Head of the National Land Agency No. 3 of 1997 and the authority of the institution that issues heir certificates for people who are Muslim, legal research[4] will be carried out with two approaches, that are the statutory approach and the conceptual approach. The statutory approach is carried out by examining all laws and regulations related to legal issues, so that it can be analyzed regarding the applicability of population classification in the Regulation of the State Minister of Agrarian Affairs/Head of the National Land Agency Number 3 of 1997 and the authority of the institution that issues certificate

2 Samson Aprinaldi Situmorang and Winoto Joyokusumo, "Legalitas Bentuk Akta Keterangan Hak Mewaris Bagi Warga Negara Indonesia Keturunan Tionghoa Dalam Turun Waris", Pertanahan Journal, 10 No. 2 (2020) 80

3 GHS. Lumban Tobing, Peraturan Jabatan Notarris, (Jakarta: Erlangga, 1999) 53

4 Peter Machmud Marzuki. Penelitian Hukum. (Jakarta: Kencana-Prenada Media, 2005) 59

of heir for a Muslim. This statutory approach will open up opportunities for researchers to study whether there is consistency and conformity between one law and other laws or between laws and the Constitution or between regulations and laws. The results of the study are an argument for solving the legal issues raised. This approach needs to be carried out in this study in order to find the ratio legis and the ontological basis for the origin of the law. This ratio legis and ontological basis can reveal the philosophical content behind the laws and regulations governing the applicability of population classification in the Regulation of the State Minister of Agrarian Affairs/Head of the National Land Agency Number 3 of 1997 and the authority of the institution that issues certificates of heirs for people who are Muslim.

Conceptual approach departs from the doctrines that developed in the science of law. Researchers will find ideas to produce legal notions, legal concepts, and legal principles that are relevant to legal issues relating to the applicability of population classification in the Regulation of the State Minister of Agrarian Affairs/Head of the National Land Agency Number 3 of 1997 and the authority of the institution responsible for this. issue a certificate of heir for people who are Muslim. In addition, these views and doctrines can later be used as a basis for researchers in building a legal argument in solving the legal issues raised.

The collection of legal materials is carried out through the library method and the documentary method on primary, secondary and non-legal materials related to the object under study, then linked to one another according to the subject matter being studied so that they become a unified whole. The method of collecting legal materials uses a card system, where legal materials related to the issues discussed are presented, systematized and then analyzed in order to interpret the applicable law.

This study uses qualitative analysis methods. The analysis method is carried out by interpreting and discussing research results based on legal principles, legal theories, legal understanding, legal norms, and concepts related to the subject matter. The analysis is carried out deductively, that is drawing conclusions from a general problem to the concrete problems faced. Scientific writing has a logical systematic character, so that research is carried out through coherent and orderly stages. In this research, the stages carried out include: inventory, identification, systematization, and analysis of legal materials, as well as design and writing. The series of stages begin with an inventory and identification of relevant sources of legal material and is continued by systematizing all existing legal materials, including legal principles, theories, concepts, doctrines and other reference materials.

C. Discussion

1. Historical Study of Classification of People in Indonesia

The history of the Indonesian nation cannot be separated from the dark period of colonialism, from the Dutch to the Japanese occupation. The archipelago has natural wealth, thus attracting foreign nations to dominate it. Various ways are done, ranging from occupation and colonization. Various legal policies were issued, considering that the Indonesian nation consists of various ethnic groups, cultures and religions.

Legal politics carried out during the Dutch East Indies period, one of which was carried out by dividing the population in Indonesia into several groups. The legal politics has been implanted as seen in Article 131 IS *(Indische Staatsregeling)* which took over Article 75 RR *(Regering Reglement)*. Article 131 IS which is the "Guidelines for Legal Politics" of the Dutch government contains provisions including:[5]

1. Civil law, commercial law, criminal law, civil procedural law, criminal procedural law, must be placed in the law book or codified (paragraph 1)
2. For the European group, the existing legislation in the Netherlands in the field of Civil Law and Commercial Law must

5 Ansori Ahmad, *Sejarah dan Kedudukan BW di Indonesia*, (Jakarta: Rajawali, 1986) 26-27

be treated (paragraph 2 sub a).

3. For native Indonesians and Foreign Easterners, the provisions of European Law in the field of Civil Law and Commercial Law can be treated if their needs so require (paragraph 2 sub b).
4. Indigenous Indonesians and foreigners are allowed to submit themselves to the laws that apply to Europeans, either partially or wholly (paragraph 4).
5. Customary law that is still valid for native Indonesians and Foreign Easterners remains valid as long as it has not been written down in the Act (paragraph 6).

During the Dutch East Indies government, the Indonesian population was divided into three groups and each population group had its own civil law. In the field of Civil Law in general and Civil Inheritance Law in particular, legal pluralism is encountered. Article 163 paragraph (1) I.S divides the Indonesian population into 3 population groups, that are:[6]

1. The European group includes all Dutch people, all people who come from Europe but not from the Netherlands, all Japanese people, all people who come from other places, but not including Dutch people, whose country is subject to family law and its principles are the same with Dutch law. Legitimate children or those recognized by law and subsequent descendants of people from non-Dutch Europe or Europe who were born in the Dutch East Indies;
2. The *Bumiputera* group includes all people who belong to the original people of the Dutch East Indies and have never moved into another population group from the *Bumiputera* group, other population groups who have merged into the *Bumiputera* group by imitating or following the daily life of the *Bumiputera* group and leave the law or because of marriage;
3. Foreign Eastern Group, including residents who are not included in the European group and the *Bumiputera* group. This group is divided into Chinese Foreign East and Non-Chinese Foreign East such as Arab and Indian.

The classification is presented in detail as follows:

1. The original Indonesian people *(bumiputera)*. *Bumiputera* applies customary law, which is a law that has been in effect among the community for a long time, but this law still varies according to their respective regions. In addition, there are several laws and regulations specifically made by the Dutch government for the Bumi Putera group, including:
    a. Indonesian Christian Marriage Ordinance (Stb 1933 No. 74)
    b. Ordinance on Indonesian Andie Airline or IMA (Stb 1939 No. 509 jo 717)
    c. Ordinance concerning the Association of the Indonesian Nation (Stb 1939 No. 570 jo 717)
2. Europeans. For European groups, the Civil Code and Commercial Law Codes apply which are harmonized with *the Burgelijk Wetbook* and *Van Koophandel Wetbook* applicable in the Netherlands.
3. Chinese. For the Chinese, the Civil Code and the Civil Code apply with a few exceptions, that is regarding civil registration, methods of marriage, and adoption
4. Foreign Easterners who are not from China or Europe. For foreign eastern groups who are not from China or Europe (such as: Arab, Indian, Pakistani, Egyptian and others) apply part of the Civil Code and the Commercial Code, namely regarding property law, while inheritance law (without a will, personality law and family law apply to the laws of their own country.

The 1945 Constitution of the Republic of Indonesia contains Article II transitional

6 PNH Simanjuntak, Pokok-Pokok Hukum Perdata Indonesia, (Jakarta: Djambatan. 1999) 1-2.

rules. This transitional regulation aims to overcome so that there is no legal vacuum so that after independence Indonesia still recognizes Article 131 IS. According to article 131 IS the population groups consist of: Europeans and their equivalents; Chinese and non-Chinese Foreign Easterners; and the Bumiputera group.

Indische Staatsregeling (I.S), S. 1855-2 is a continuation of the *Reglement op het beleid der Regeering van Nederland Indie* which distinguishes the Indonesian people into three population groups. Based on the arrangements in IS, it is clear that these articles show a divisive policy from the Dutch East Indies government, that are:

1. Distinguish between the laws that apply to Europeans, Mother Earth and Foreign East that existed in the Dutch East Indies at that time.
2. Divide the population in the Dutch East Indies into groups of Europeans, Mother Earth and Foreign East.

In 1966, with the issuance of Presidential Instruction No. 31/UI/IN/12/1966 on December 27 of 1966 regarding the Civil Registration, ended the application of Articles 131 and 163 IS in matters of civil registration, but it is unfortunate that the abolition of this population classification only stopped here and was not carried out against other fields.

In 1966, Presidential Instruction Number 31/UI/IN/12/1966 was issued on December 27, 1966 regarding the Civil Registration, thus ending the application of Articles 131 and 163 IS in civil registration matters, but the abolition of this classification of people only stopped here and not carried out on other fields.

From the description above, it is clear that the Civil Law that applies in Indonesia is still diverse. This is a consequence of Article 11 of the transitional rules for the 1945 Constitution of the Republic of Indonesia which states "All existing state bodies and regulations will take effect immediately as long as there is no new one according to this law".

The current Indonesian legal system still discriminates between the parties who must serve the making of the Inheritance Certificate. The authority to make a Certificate of Inheritance For parties who are subject to customary law, it is handed over to the traditional leader/head as a substitute for the urban village head/subdistrict head. The authority to make a Certificate of Inheritance for parties who are subject to Islamic Law is submitted to the Urban Village Head/ subdistrict head, and for parties who are subject to Western Civil Law, a Certificate of Inheritance is made by a Notary.

The relevance of the classification of people can still be felt in the Dutch colonial era because of certain interests from the Dutch government itself, but this is not the case with the life of the Indonesian people today. Ideally, along with the independence of Indonesia, the classification of the population should disappear, because basically Indonesian citizens are one and there should be no classification of citizens in it as regulated in the regulation.

The Existence of Classification of People in the Legal System in Indonesia

Each classification of people in Article 131 and Article 163 IS apply different laws, but then its enforcement was revoked through the Ampera Cabinet Presidium Instruction Number 31/U/IN/12/1966 dated 27 December 1966 and came into force on 1 January 1967, the purpose is to achieve the establishment of a unified and homogeneous Indonesian nation. But that's only in the field of civil registration, not in the other fields.

The classification of people apart from having been revoked through the Presidential Instruction, various statutory regulations in Indonesia have subsequently affirmed equality before the law, including those that have been confirmed in the 1945 Constitution of the Republic of Indonesia Article 26 paragraph (1) and Article 27 paragraph (1). Article 26 paragraph (1) stipulates that: "Those who become citizens are native Indonesians and people of other nations who are ratified by law as citizens and Article 27 paragraph (1) stipulates that: "All citizens are equal in position, in law and

government and must uphold the law and government with no exceptions. It is further regulated regarding citizens in Law Number 12 of 2006 concerning Citizenship. The law also stipulates that citizenship can also be obtained through citizenship, that is the procedure for foreigners to obtain Indonesian citizenship through an application. The application for citizenship is submitted based on the conditions as referred to in the law.

However, the classification of people is still found in the Regulation of the State Minister of Agrarian Affairs/Head of the National Land Agency Number 3 of 1997 in Article 111 paragraph (1) letter c of the Regulation of the State Minister of Agrarian Affairs/Head of the National Land Agency Number 3 of 1997 thus still distinguishing Indonesians into three, that are native Indonesians, Indonesian citizens of Chinese descent and Indonesian citizens of Foreign Eastern descent.

Whereas various laws and regulations in Indonesia have affirmed equality before the law, including those that have been confirmed in the 1945 Constitution of the Republic of Indonesia Article 26 paragraph (1) and Article 27 paragraph (1) and Article 28B paragraph (2), Article 28D paragraphs (1) and (4), Article 28I paragraph (2). The principle of equal legal standing is upheld by the constitution. This is broken down in Law Number 12 of 2006 concerning Citizenship. Provisions regarding citizenship in Indonesia are regulated by relying on the principles of universal citizenship, namely the *ius sanguinis* principle (determining citizenship based on descent) and the *ius soli* principle (determining citizenship based on place of birth). This law clearly regulates and stipulates who can be classified as citizens regardless of race and ethnicity, as long as they fulfil the requirements regulated by law. This needs to be done because Indonesia is a legal state that upholds human rights. [7] In this concept, the state is obliged to respect, protect, enforce, and promote efforts to protect and enforce the human rights of citizens or the community by making effective and concrete implementation efforts of legal instruments that apply in the field of human rights in terms of law, politics, economics, social, cultural, defence and security.

Different treatment before the law is not tolerated, so that several legal rules in the form of laws also emphasize the prohibition of discrimination, whether race, ethnicity, or religion. These laws include Article 1 paragraph 3 of Law Number 39 of 1999 concerning Human Rights, Article 1 paragraph (1) Article 4, Article 5, Article 7 of Law Number 40 of 2008 concerning the Elimination of Racial and Ethnic Discrimination. Law Number 40 of 2008 emphasizes that protection from racial and ethnic discrimination is aimed at citizens, and the government and society as the parties that provide protection from all forms of racial and ethnic discrimination by involving the participation of all citizens carried out in accordance with the provisions of laws and regulations.[8] Even the efforts to strengthen these rules, in implementing the elimination of racial and ethnic discrimination, the rules for sanctions, both criminal and civil, are contained in Articles 13 to 21. The provisions regarding these sanctions bring everyone who feels aggrieved and becomes a victim of the practice of racial and ethnic discrimination to get their rights. Affirmation regarding the Indonesian population is found in Law Number 24 of 2013 concerning Amendments to Law Number 23 of 2006 concerning Population Administration. Article 1 point 2 of this law qualifies that Residents are Indonesian Citizens and Foreigners residing in Indonesia. Then in the next regulation it is explained that Indonesian Citizens are people of the original Indonesian nation and people of other nationalities ratified by law as Indonesian Citizens and Foreigners are people who are not Indonesian Citizens. Even Article 106 of the Population Administration Law explains, when this law comes into force, the following rules:

7 Frans Sayogi, *Perlindungan Negara Terhadap Hak Kebebasan Beragama dalam Islam dan Hak Asasi Manusia Universal* (Tanggerang: Trans Pustaka, 2013) 130

8 Hesti Armiwulan S., Diskriminasi Rasial Dalam Hukum HAM, , Study on Discrimination Against Ethnic Chinese (Yogyakarta: Genta Publishing, 2013) 271

1. Book One, Second Chapter, Second Part and Third Chapter of the Civil Code *(Burgerlijk Wetboek voor Indonesie, Staatsblad* 1847:23);
2. Regulations of Civil Registration for the European Class *(Reglement op het Holden der Registers van den Burgerlijken Stand voor Europeanen, Staatsblad* 1849:25 as last amended by *Staatsblad* 1946:136);
3. Regulations of Civil Registration for the Chinese Group *(Bepalingen voor Geheel Indonesie Betreffende het Burgerlijken Handelsrecht van de Chinezean, Staatsblad* 1917:129 jo. *Staatsblad* 1939:288 as last modified by *Staatsblad* 1946:136);
4. Regulations of Civil Registration for the Indonesian Group *(Reglement op het Holden van de Registers van den Burgerlijeken Stand voor Eenigle Groepen v.d nit tot de Onderhoringer van een Zelfbestuur, behoorende Ind. Bevolking van Java en Madura, Staatsblad* 1920:751 jo. *Staatsblad* 1927: 564);
5. Regulations of Civil Registration for Indonesian Christians *(Huwelijksordonantie voor Christenen Indonesiers Java, Minahasa en Amboiena, Staatsblad* 1933:74 jo. *Staatsblad* 1936:607 as last modified by *Staatsblad* 1939:288);
6. Law Number 4 of 1961 concerning Change or Addition of Family Names (State Gazette of 1961 Number 15, Supplement to State Gazette Number 2154).

declared null and void. Thus, it is clear that Indonesians are only qualified into two, that are Indonesian citizens and foreigners.

Based on the description above, it can be seen that Indonesian legal instruments do not require racial and ethnic discrimination in any form and domain. However, 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 is contrary to the principle of equality before the law and anti-discrimination.

The classification of people in the process of transferring land rights due to inheritance is regulated in the Minister of Agrarian Affairs/Head of BPN concerning Registration of Land Article 111 paragraph (1) letter c number 4 directly makes a qualification of Indonesians into three. In addition, this provision has also given different treatment to the three groups of people, especially when submitting a certificate of inheritance. Such treatment clearly constitutes discrimination against Indonesian citizens and is very much against the spirit and principles of equality before the law and non-discrimination which are part of human rights which are upheld by the constitution.

This Regulation of the Minister of State for Agrarian Affairs/Head of the National Land Agency Number 3 of 1997 is an implementation of Government Regulation Number 24 of 1997 concerning Land Registration as the implementing regulation of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles; Law Number 16 of 1985 concerning Flats; and Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land. This Government Regulation was later amended in 2021 through Government Regulation of the Republic of Indonesia Number 18 of 2021 concerning Management Rights, Land Rights, Flat Units, and Land Registration which implements Law Number 11 of 2020 concerning Job Creation. In the Government Regulation of the Republic of Indonesia Number 18 of 2021, in fact Government Regulation Number 24 of 1997 has been revoked, but it is only limited to regulating the period of systematic announcement of Land Registration and the period of sporadic announcement of Land Registration in Article 26 paragraph (1) and the provisions of Article 45 paragraph (1) letter e Government Regulation Number 24 of 1997.

The Ministry of Agrarian and Spatial Planning/National Land Agency has actually made changes to the Regulation of the State Minister of Agrarian Affairs/Head of the National Land Agency Number 3 of 1997, that is in 2019 by issuing the Regulation of the Minister of Agrarian and Spatial Planning/ Head of the National Land Agency of the Republic of Indonesia Number 7 of 2019 Regarding the Second Amendment to 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. In 2021, there are provisions in the Regulation of the State Minister of Agrarian Affairs/Head of the National Land Agency Number 7 of 2019 which are declared revoked and invalid, that is the provisions of Article 163A, Article 178A and Article 192A. This provision is regarding the change of land registration into electronic. The existing changes thus still focus on the change of land certificates into electronic, which is one of the goals of agrarian reform in order to create legal certainty.

Based on this analysis, the Regulation of the State Minister of Agrarian Affairs/Head of the National Land Agency Number 3 of 1997, specifically regarding the classification of people in making certificates of inheritance for land management is still valid. This regulation authorizes the urban village head/ *lurah* or sub-district head to make a certificate of inheritance for indigenous Indonesian citizens. Such authority is not found in Law 23 of 2014 concerning Regional Government and Government Regulation of the Republic of Indonesia Number 17 of 2018 concerning Districts. Thus, the authority to make a certificate of inheritance is obtained only on the basis of the Regulation of the State Minister of Agrarian Affairs/Head of the National Land Agency Number 3 of 1997.

Property and heritage agency is a technical implementing unit or work unit within the Ministry of Law and Human Rights of the Republic of Indonesia which is technically under and responsible to the Directorate General of General Legal Administration through the Civil Directorate.[9] Based on the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 7 of 2021 concerning the Organization and Work Procedure of the Heritage Office, the Heritage Office is given the authority to issue an inheritance certificate (Article 3 letter c). However, there is no further explanation of legal subjects who can apply for a certificate of inheritance at the Property and Heritage Agency. It can be interpreted that the authority regulated in the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 7 of 2021 is given to utilize the authority of the Property and Heritage Agency granted by the Regulation of the State Minister of Agrarian Affairs/Head of the National Land Agency Number 3 of 1997 to make a certificate. inheritance for Indonesian citizens of Foreign Eastern descent.

Regulation of the Minister of State for Agrarian Affairs/Head of the National Land Agency Number 3 of 1997, in addition to give authority to the urban village head/*lurah* or sub-district head of property and heritage agency, as well as to give the authority to make a deed of inheritance rights for land management to a notary which applies to Indonesian citizens of Chinese descent. There is no further regulation regarding the form of this deed of inheritance rights. Meanwhile, the deed, when linked to Law Number 2 of 2014 concerning the Position of a Notary, can be qualified into two, that are an authentic deed and a private deed. An authentic deed, in Dutch, is called *authentieke akte van*.[10] Article 1868 of the Civil Code states that an authentic deed is a deed in the form determined by law by or before a public official who is authorized for that at the place where the deed was made, while in Article 1 number 7 of Law Number 2

9 Imaniar Putri Novianti, "Kedudukan dan Kewenangan Balai Harta Peninggalan dalam Pengelolaan Harta Peninggalan Tak Terurus", Pandecta, 10. No.1. (2015): 126

10 Salim HS., Teknik Pembuatan Akta Satu "Konsep Teoritis, Kewenangan Notaris Bentuk dan Minuta Akta", Edition 1, (Mataram: PT. Raja Grafindo Perasada, 2015) 17

of 2014 an authentic deed is: a notarial deed hereinafter referred to as deed is an authentic deed made by or before a notary according to the form and procedure stipulated in this law. Underhanded Deed Based on Article 1874 of the Civil Code stipulates that what is considered to be written under the hand is a deed signed under the hand, letters, lists, household affairs and other writings made without the intermediary of a public official, while in terms of the Law Number 2 of 2014 private deed can be divided into two, that is legalized underhand deed and *waarmeken akte*.

Authentic deeds based on the parties who made them are divided into two, that is the parties' deeds *(partij akte)* and the official deed *(Ambtelijke Akte* or *Relaas akte)*. The deed of the parties *(partij akte)* is a deed that contains information what is desired by the parties concerned. For example, the parties concerned say that they sell/buy, then the notary will formulate the will of the parties in a deed. This *partij akte* has perfect evidentiary power for the parties concerned, including their heirs and those who receive rights from them. The provisions of Article 1870 of the Civil Code are deemed to apply to this party deed. Regarding the strength of evidence against third parties, it is not regulated, so the initiative for making *partij akte* is with the parties concerned and contains information from the parties. Official Deed (*Ambtelijke akte* or *Relaas akte*) Deed containing official information from the authorized official. So this deed only contains information from one party, that isthe official who made it. This certificate is considered to have the power of proof against everyone, for example a birth certificate. So *Ambtelijke akte* or *Relaas akte* is an initiative on the part of the official and contains a written statement from the official who made the deed.

This deed of inheritance rights is related to the type of deed made by a notary. So, it cannot be qualified as an underhand deed in the form of a legalized underhand deed and an underhanded deed *diwaarmeken*. It is because in making a deed of inheritance rights the notary does not only sign and stipulate certainty of the date of the private letter by registering it in a special book as regulated in Article 15 paragraph (2) letter a, but also checking at the Center for the List of Wills at the Ministry of Law and Human Rights of the Republic of Indonesia. Thus the deed of inheritance rights is more accurately qualified as an authentic deed in the form of a *partij* deed. The notary thus has a big responsibility for the deed he made. Therefore, according to the researcher, in addition to conduc an examination of the Will Register Center at the Ministry of Law and Human Rights of the Republic of Indonesia, a notary must also examine all documents needed to determine heirs, such as family cards, ID cards and birth certificates. This must be done so that the notary will not be dragged into a legal case if there are documents that are not true. This is also a point of attention in the Regulation of the Minister of Law and Human Rights Number 9 of 2017 concerning the Application of the Principle of Recognizing the clients for Notaries which requires notaries to know very well the clients, including identification , verificationof the clients, even including monitoring of the clients' transactions.

Notaries in the Civil Code are indeed given the authority to make a deed of inheritance,[11] but in *Burgelik Wetboek* they do not give the authority to make a deed of inheritance rights. Thus, this authority is purely given by the Regulation of the State Minister of Agrarian Affairs/Head of the National Land Agency Number 3 of 1997.

The discussion on inheritance law will never be finished, because Indonesia is known for its Pluralism of Inheritance Law, including Western Civil Inheritance Law, Islamic Inheritance Law and Customary Inheritance Law. Is it true that way? It is necessary to analyze regarding the revolution carried out on the competence of religious courts in Indonesia. The provisions of Article 2 of Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning Re-

11 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, 3 No. 2 (2018): 134

ligious Courts, stipulates that the Religious Courts are one of the actors of judicial power for people seeking justice who are Muslim regarding certain cases as referred to in the Act. this. This arrangement shows that the Religious Courts are courts for people who are Muslim in certain cases.

Certain cases are as regulated in Article 49 of Law Number 3 of 2006, covering the fields of marriage, inheritance, wills, grants, waqf, zakat, infaq, shadaqah and Sharia Economics. Sharia economy according to the explanation of letter (i) Article 49 is an act or business activity carried out according to sharia principles, including but not limited to: Islamic banks, sharia microfinance institutions, sharia insurance, sharia reinsurance, sharia mutual funds, sharia bonds and medium term securities, sharia securities, sharia financing, sharia pawnshops, sharia financial institution pension funds, sharia business.

The two arrangements have identified subjects and objects that are the competence of the Religious Courts. The subject is a person, however, it is necessary to understand that legal subjects as holders of rights and obligations under the law can be qualified as persons and legal entities. Therefore, it can be interpreted that the subject in this case does not only include people, but also legal entities.

Being Muslim, according to the explanation of Article 49 of Law Number 3 of 2006 includes a person or legal entity which automatically submits itself voluntarily to Islamic law regarding matters that are the authority of the Religious Courts in accordance with the provisions of this article. This provision confirms that being Muslim is not only attached to legal subjects in the form of individuals, but also legal entities.[12]

This provision also emphasizes the existence of Islamic law as the basis for legal relations that occur between legal subjects. It should be emphasized here, that the foundation of human activity in the world is the Al-Qur'an and As-Sunnah which is a system that leads mankind on a path that is blessed by Allah SWT. This system is based on the religion of Islam, because Islam is a *"rahmatan lil alamin"* which is a mercy for the universe. It means that Islam is not only for Muslims, but also for all God's creatures on this earth. The phrase being Muslim can therefore be interpreted that non-Muslims can also litigate in religious courts, as long as they are subject to Islamic law or in other terms as long as their legal relationship is based on Islamic law, then they are the competence of the Religious Courts. In relation to the absolute competence of the Religious Courts on inheritance, it is regulated in Article 49 letter b. The option right to choose whether to use Islamic inheritance law or customary inheritance law as regulated in the explanation of Law Number 7 of 1989 in Law Number 3 of 1989 has also been removed.

The provisional conclusion is that the subject of case law that is the competence of the Religious Courts is First, people who are Muslim; Second, people who are non-Muslims, but who submit themselves to Islamic law through the use of sharia principles in their legal relationship. It can happen in *muamalat* that uses Sharia principles such as in sharia economic law relations; Third, Islamic legal entities; and Fourth, a non-Islamic legal entity, but it submits itself to Islamic law. The four criterias for legal subjects can be litigated in the Religious Courts in cases as stated in Article 49 of Law Number 3 of 2006. For people who are Muslim, Islamic law applies and becomes the competence of the Religious Courts. It is then referred to as the principle of Islamic personality. Parties who are subject to authority within the Religious Courts are those who are "Muslims". Islam is the basis for the competence of the court in the religious court environment regardless of the degree of faith. This concept of Islamic personality applies to the competence of the Religious Courts before the enactment of Law Number 3 of 2006.[13]

Inheritance for Indonesian citizens who are Muslim is the competence of the

12 Rahadi Wasi Bintoro, Abd Shomad, Masruhan, "Islamic Personalization as The Basis of right Calaim Submission in Religious Court", Jurnal Dinamika Hukum, 17 No. 2 (2017): 193

13 Rahadi Wasi Bintoro, "Paradigama Peradilan Agama Sebagai Peradilan Bagi Umat Muslim Di Indonesia", *Pena Justisia,* 17 No. 2 (2017): 17-28

Religious Courts. Thus, through Law Number 3 of 2006 it has actually led to the unification of inheritance law, but it is still limited to those who are Muslim, because the option to choose customary inheritance law or Islamic inheritance law has been removed.

The inheritance in the Civil Code is only applied to those who submit themselves to the Civil Code. This can happen if the marriage was carried out prior to Law Number 1 of 1974 concerning Marriage and they submit to western inheritance law in the *Burgelik Wetboek*. However, are those who were married prior to Law No. 1 of 1974 still alive? Sure it requires further investigation, because at least their current marriage age is 53 years. People who submit to western inheritance law (KUH Perdata), may still exist.

This condition must be understood, so it is not surprising that the Regulation of the State Minister of Agrarian Affairs/Head of the National Land Agency Number 3 of 1997 still accommodates the classification of the population that animates Articles 131 and 161 IS. However, the dynamics of citizenship that developed in Indonesia when linked to the principle of lex superior derogate *legi inferiori* Regulation of the State Minister of Agrarian Affairs/Head of the National Land Agency Number 3 of 1997 contradicts Law Number 12 of 2006 concerning Citizenship and Law Number 24 of 2013 concerning Amendments to Law No. 23 of 2006 concerning Population Administration.

Moreover, this regulation on the classification of people clearly contradicts the principles of equality before the law and non-discrimination in the 1945 Constitution of the Republic of Indonesia. Thus, the regulation regarding population groups in Article 111 paragraph (1) letter c number 4 is no longer relevant. Even though it is possible that there are still people who are subject to the inheritance law in the *Burgelik Wetboek*, Article 111 paragraph (1) letter c numbers 1, 2 and 3 are sufficient where proof of inheritance is obtained through a will from the testator, or a court decision, or a stipulation. Judge/Chairman of the Court. The classification of the population in Article 111 paragraph (1) letter c number 4 Regulation of the State Minister of Agrarian Affairs/Head of the National Land Agency Number 3 of 1997 will only create legal uncertainty when faced with heirs of mixed marriages.

D. Conclusion

The classification of Indonesians, when viewed from an ontological study, was a policy of the Dutch East Indies government to divide the Indonesian nation and reduce the power of customary law and Islamic law that developed in society. However, if judging from the existence of the Regulation of the State Minister of Agrarian Affairs/Head of the National Land Agency Number 3 of 1997, the classification of the population which has implications for the institution authorized to make certificates of inheritance is not due to the politics of dividing the Indonesian nation, but solely because there is still the possibility of people who submit to the inheritance law of the Civil Code.

Regulation of the Minister of State for Agrarian Affairs/Head of the National Land Agency Number 3 of 1997 in the hierarchical system of laws and regulations has a lower position than the law. This regulation, although inferior and contrary to Law Number 12 of 2006 concerning Citizenship and Law Number 24 of 2013 concerning Amendments to Law Number 23 of 2006 concerning Population Administration, and therefore contradicts the principle of *lex superior derogate legi inferiori*. However, to prevent the occurrence of a legal vacuum this Ministerial regulation remains in effect.

The classification of the Indonesian population as regulated in the Regulation of the Minister of State for Agrarian Affairs/Head of the National Land Agency Number 3 of 1997 is no longer in accordance with the development of citizenship and population administration, moreover such an arrangement is contrary to the principles of equality before the law and non-discrimination as upheld by the constitution. Therefore, it is time for the classification of the population, which has implications for the delegation of authority to different institutions for each population

group in the preparation of a certificate of inheritance, which is no longer relevant to be maintained. The existence of wills and court institutions is enough to be appointed as the authorized institution to make them. Thus, the researchers suggest that changes should be made immediately by revoking the regulation regarding population classification.

E. Acknowledgement

This paper is part of a research entitled *Kepastian Hukum Pembuatan Keterangan Ahli Waris Dalam Peralihan Hak Harta Warisan Dalam Sistem Hukum di Indonesia*. The author would like to thank the Institute for The Institute of Research and Community Services at Universitas Jenderal Soedirman which has provided the opportunity to conduct research in an institutional research scheme funded from Unsoed BLU funds in 2021. This research is important because in practice there are still legal problems regarding who is authorized to issue a certificate inheritance, especially if there has been a mixed marriage.

F. References

Ahmad, Ansori, *Sejarah dan Kedudukan BW di Indonesia,* Jakarta: Rajawali, 1986.

Aripin, Jaenal. *Peradilan Agama dalam Bingkai Reformasi Hukum di Indonesia*. Jakarta: Kencana. 2008.

Bintoro, Rahadi Wasi. "Paradigama Peradilan Agama Sebagai Peradilan Bagi Umat Muslim Di Indonesia", *Pena Justisia*, 17 No. 2 (2017): 17-28. http://dx.doi.org/10.31941/pj.v17i2.547

-----. Abd Shomad. Masruhan. "Islamic Personalization as The Basis of right Calaim Submission in Religious Court", Jurnal Dinamika Hukum, 17 No. 2 (2017): 188-194, http://dx.doi.org/10.20884/1.jdh.2019.19.2.2373

Fakhriah, Efa Laela dan Yusrizal. "Kewenangan Mahkamah Syar'iyah Di Aceh Dihubungkan Dengan Sistem Peridia Di Indonesia", *Jurnal Ilmu Hukum*, 2 No. 3 (2013): 112-133

Kamilah, Anita dan M Rendy Aridhayandi, "kajian terhadap Penyelesaian sengketa Pembagian Harta Warisan atas Tanah Akibat Tidak Dilaksanakannya Wasiat oleh Ahli waris Dihunungkan dengan Buku II Kitab Undang-undang Hukum Perdata tentang Benda (van Zaken), Jurnal Wawasan Hukum, 32 No.1 (Februari 2015): 22-37

Marzuki, Peter Machmud. *Penelitian Hukum*. Jakarta: Kencana-Prenada Media. 2005.

Novianti, Imaniar Putri. "Kedudukan dan Kewenangan Balai Harta Peninggalan dalam Pengelolaan Harta Peninggalan Tak Terurus", Pandecta, 10. No.1. (2015): 123-133, https://doi.org/10.15294/pandecta.v10i1.4198

Salim HS, Teknik Pembuatan Akta Satu "Konsep Teoritis, Kewenangan Notaris Bentuk dan Minuta Akta", Cetakan ke-1. Mataram: PT. Raja Grafindo Perasada. 2015.

Sayogi, Frans. Perlindungan Negara Terhadap Hak Kebebasan Beragama dalam Islam dan Hak Asasi Manusia Universal, Tanggerang: Trans Pustaka. 2013.

Simanjuntak, PNH. Pokok-Pokok Hukum Perdata Indonesia, Jakarta: Djambatan. 1999.

Situmorang, Samson Aprinaldi dan Winoto Joyokusumo. "Legalitas Bentuk Akta Keterangan Hak Mewaris Bagi Warga Negara Indonesia Keturunan Tionghoa Dalam Turun Waris", Jurnal Pertanahan, 10 No. 2 (2020) 79-89

Tobing, GHS. Lumban. *Peraturan Jabatan Notaris,* Jakarta: Erlangga, 1999.

Yoga, I Gusti Kade Prabawa Maha. Afifah Kusumadara. Endang Sri Kawuryan. "Kewenangan Notaris Dalam Pembuatan Surat Keterangan Waris Untuk Warga Negara Indonesia", Jurnal Ilmiah Pendidikan Pancasila dan Kewarganegaraan, 3 No. 2 (2018): 132-143