

## PROVING AS AN HEIR WITH A NOTARIAL DEED

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### Abstract

Proving proof of heirship is a civil right of every citizen, to be able to eradicate prejudice in official documents and between authorities and institutions that provide proof of heirship to the Indonesian government and its citizens. The purpose of writing this journal article is to find out how to prove heirship through a notarial deed (in the form of a deed of inheritance). The research method used in compiling this journal article is Normative juridical law. The results in the journal article research are that there is discrimination in legal regulations in proving to be an heir and what is required by the only institution/official authorized to make proof of being an heir.

**Keywords:** proof; heir; Notarial Deed

## INTRODUCTION

The Important events since a person is born into this world are when they are born, when they get married and when they die. These three important events in human life will go through various processes which are called life Processes. The processes of human life Carried out using different Methods and thoughts, not every human being has the same thoughts in carrying out the process of life.

In practice, provisions in a proof (letter of proof) to become an heir and an institution in a creation process still need to be based on ethnicity and are still strongly maintained to this day. This kind of activity still exists and can be completed by Notaries, Land Offices / National Land Agency, Land Deed Making Officials (PPAT), Banking. For example, in banking circles, deposits will only be paid after the owner (depositor) dies; The Land Office/BPN will only accept the transfer of rights to a plot of land originating from inheritance to the heirs, if with proof of inheritance based on ethnicity or demographic group, within the realm of the Notary/PPAT in certain transactions, if the heir shows proof that he is the heir according to the interest rate in question. For example, when selling land that has been inherited, the Notary/PPAT will ask for documentation that proves the heirs according to their ethnicity. If this documentation does not match the ethnicity of the maker or the institution that made it, the Land Office/National Land Agency and Notary/PPAT will not be able to assist the seller. Despite the fact that the land office or land agency cannot provide certificate files or transfer of rights that can be documented individually according to race or ethnicity.

Until now there are parties/entities (including Notaries/PPAT) who still want and can determine proof of inheritance which must be based on ethnicity, which will certainly show that the person concerned has the Dutch colonial spirit, and if the Indonesian state continues enforcing and implementing the legal rules mentioned above based on race, it is possible that the current Dutch government will laugh at it (Rizky & Dianti, 2022).

Currently, proving heirs based on ethnicity is difficult, both in terms of physical appearance and name. This difficulty even extends to the practice of paying attention to how the three demographic categories are applied when creating documents or other evidence proving heirship, thereby making the situation even more absurd. funny from true comics, for example by looking at physical characteristics such as skin color, eye shape (narrow or slanted), and names that suggest a certain race but are actually a combination of several tribes due to marriage. It is very difficult to determine whether members of these three groups are truly ethnic Europeans, Chinese or Chinese, or Easterners of foreign and indigenous heritage due to the frequency of such ethnic mixing through marriage. Naturally, in such an era, such population classifications would have been abandoned at the will of all Indonesians; So, what happens if proof of heirship still has to be based on an individual's ethnicity.

In Indonesia, there are three inheritance law systems which are still in force today, namely the western civil inheritance law system, the customary inheritance law system and the Islamic inheritance law system. Islamic law and custom both state that a deceased person's assets will pass away, but only after any debts or obligations incurred by the testator are deducted from the remaining amount of the inherited assets. In contrast to Islamic law with customary law inherited by a budel, civil law states in the Civil Code (hereinafter referred to as the "Civil Code") that an inheritance will be transferred in its entirety, including the debts or obligations of the heirs according to Code of Civil law. On the other hand, inheritance that can be inherited is in the form of assets and liabilities. Thus, according to the previous description, each of the three heirs can adopt one of the following attitudes:

- a. receive everything, so all the heir's debts. In the event that the heir is entitled to all of the inherited assets, he or she will be responsible for all of their assets, including debts or responsibilities owed to other parties.
- b. accept with a condition: The heir's debts will be settled based on the assets deemed acceptable to the successor, even though the inheritance can be received in its entirety. If the inheritance is recognized as having a balance that may be dangerous (Nadelig Balance), in the event of receiving conditional or beneficial acceptance, the heirs will only pay off the inheritance debt to the extent of the value of the assets of the inheritance.
- c. in the event that the heirs do not want to learn how the inheritance is managed or settled. If the heir refuses in this situation, he will not be compensated.

The inheritance system that will be examined and used as a source of information for this research can come from the Civil Code. Article 131 Jo. Article 163 of the ISIS provisions regulates the division of the Indonesian people into three categories:

- a. European group;
- b. Bumiputera group; as well as

c. Foreign Eastern Group.

In 2004, Law Number 30 of 2004 concerning the Position of Notaries (UUJN) was promulgated, which based on the provisions of Article 15 regulates that the authority of Notaries. Based on the provisions of Article 15 of the Law on the Position of Notaries in paragraph (1) and Article 58 paragraph (2) of the Law on the Position of Notaries, it can be concluded that the Notary's authority can make party deeds (party deeds) which can be made by Notaries and Reelas Deeds. where a Notary can make it. In a condition, these two types of deeds have been determined based on article 38 of the Notary Position Law. With the authority of the Notary, then, every Indonesian has the option to make proof of heirship through a Notarial Deed, which is in the form of a party deed, in accordance with the Notary's power to make authentic deeds requested by interested parties.

So, since the enactment of the Law on the Position of Notaries, Notaries no longer have the authority to make There is absolutely no legal basis for Certificates of Inheritance Rights which are given to some Indonesians, because Certificates of Inheritance Rights which can be in the form of certificates cannot fulfill certain requirements. becomes a deed which can be made before a Notary or made by a Notary, and also does not fulfill the requirements for the form and nature of a deed as regulated in Article 38 of the Law on the Position of Notaries. And regarding this certificate, it does not have perfect evidentiary value as with a notarial deed.

A notary can make a deed of heir information in the form of a party deed as proof of heirship by excluding clauses or items included in the Inheritance Certificate, such as : statement or statement of death, statement of the heir's marriage, statement of the existence or absence of adopted children, statement of the number of the heir's biological children, statement that there is no agreement in marriage, and a statement of the heir's will from a recognized institution.

With a solution like the one above, it has ended or eliminated discrimination in making evidence as an heir. With this, it is in accordance with the aim and objective of creating the Notary Position Law, which is a unification of regulations for Notaries who, in carrying out their official duties, can provide legal protection and certainty. If this can be done by all Notaries in Indonesia, then Notaries have demonstrated a real effort to eliminate or end one form of discrimination, and Notaries can position themselves as agents for legal reform.

The idea of legal certainty is used to formulate the topics to be discussed in this article. The most important element in legal administration is legal clarity. Legal certainty, as defined by Sudikno Mertokusumo, is a guarantee that the law has been implemented, that people who have the right to it can exercise that right, and that decisions can be implemented. While law is universal, mandatory for all parties, and generalized, Gustav Radbruch believes that legal certainty is certainty about the law itself (Rahardjo, 2012) . One of the results of legislation, or more precisely statutes, is legal certainty.

The author will discuss some of the current research related to the subject of the journal in a literature review to determine the legitimacy of publishing this journal. This research includes:

Journal article written by Ketut Nindy Rahayu Sugitha and Cokorda Dalem Dahana in their research article entitled "The Urgency of Regulations for Making Inheritance Certificates Regarding the Division of Population Groups in Indonesia." This article discusses concerns regarding the law governing inheritance certificates in relation to demographic divisions in Indonesia and the urgent need to authorize notaries to create inheritance certificates (Sugitha & Dahana, 2021) . Then there was a journal article also written by Octavia Dewi Indrawati entitled "The Applicability of the Civil Code and the Function of Notaries in Making Inheritance Deeds for Chinese Muslims of Chinese descent". The journal article discusses the Applicability of the Civil Code and the Function of Notaries in Making Inheritance Deeds for Chinese People of Islamic Descent (Dewi & Putra, 2022).

From several articles presented above, this article is different. This research article focuses more on proving that you are an heir with a notarial deed (in the form of a certificate of inheritance). The aim of the research is to find out the discrimination of legal rules in making evidence to become an heir and what is required of the only institution/authorized official in making evidence to become an heir.

## RESEARCH METHOD

Writing articles based on literature studies, which include primary and secondary legal sources in the form of literary novels, laws and regulations, is one writing approach that can be used based on research objectives. This type of writing is known as normative legal research. Secondary data sources are sources that can be used in this work. This includes data collected from books, articles, and library resources in the form of laws and regulations. Writers can choose to use qualitative data when writing articles.

This shows that the author collects, analyzes and connects facts with theories related to the problem being researched. A descriptive compilation of the data analysis study findings will be created. Descriptive data refers to findings that can be organized methodically into an article by providing a detailed description in relation to the subsequent research object.

## RESULTS AND DISCUSSION

### Legal Discrimination in Making Evidence as an Heir

Based on the provisions of the Letter of the Department of Home Affairs of the Directorate General of Agrarian Land Registration (cadastre), dated 20 December 1969, Number Dpt/12/63/12/69 concerning proof of citizenship, inheritance certificates, and Article 111 paragraph (1) letter c Head National Land Agency/Minister of Agrarian Affairs State Regulation Number 3 of 1997 concerning Provisions for Implementing Government Regulation Number 24 of 1997 concerning Land Registration, which now has 3 (three) forms of formal proof of inheritance and 3 (three) institutions that can provide evidence as heirs. can be adapted to the ethnic group of the Indonesian population or society. The laws governing each population group and the way the population is classified based on ethnicity are remnants of the Dutch colonial government in Indonesia. This law is still considered sacred and cannot be changed by anyone, even the State or government. Indeed, we must immediately abandon such regulations to change the laws and create a dignified and civilized society, because they are incompatible with our autonomous state.

The third is a formal form of proof of heirs and their institutions, namely a population group which can be explained below:

- a. Based on the inheritance certificate (SKW) obtained by a notary in the form of a certificate (deed), European, Chinese/Chinese, Eastern Foreign Affairs (other than Arabs who follow the Islamic religion).
- b. According to the Letter of Inheritance Rights that can be prepared by the Heritage Property Hall, foreign easterners (not Chinese or Chinese-speaking people).
- c. According to the Certificate of Inheritance Rights, which has been made privately, stamped and recognized by the heirs themselves, as well as by the sub-district and sub-district authorities according to the heirs' last place of residence, the Indigenous Community Group (BumiPutera).

Third, official evidence in the form of letters from heirs and institutions which requires further research and may be related to current legal regulations.

Every human being is required to have a legal relationship with another, and death is one of those relationships. However, even after a resident dies, his or her relationship with this law and others does not cease as there are still duties and rights to be fulfilled for the various people and organizations who may be left behind. As a result, a set of legally mandatory guidelines may be necessary to achieve balance for everyone, even in situations involving inheritance after death. When someone dies, there may be problems with their belongings that may impact the legal process and the way various types of property are transferred to surviving family. The continuation and transfer of a person's assets after their death, as regulated by inheritance law. Under inheritance law, a person who has died and is called an "heir" can transfer his rights to another individual who is still alive and is also called an "heir". In his argument, Wirjono discussed inheritance which is related to a person's rights and obligations after death as well as the transfer of these rights and obligations to other people who are still alive.

The assets in question consist of loan receivables until the individual has died and real estate. In proof, there are three parties involved: the party who has the right to be the beneficiary of the heir's inheritance, the party who has the right to be the beneficiary of the heir's inheritance based on Legitieme Portie and/or a will, and the party who has rights related to the inheritance that has been left behind which can be shown by inheritance certificate (SKW) as the basis for how to distribute the inheritance. The Certificate of Inheritance states that they are the legal heirs and identifies the appropriate heirs. Referring to the request made by Skw to be allowed to transfer certain types of property which are included in the movable category, the category which does not include movable property is also a condition in the transfer of his rights to land due to inheritance. Regarding proof of inheritance by heirs against deceased heirs, Indonesia still has various inheritance laws, including those based on the Civil Code and can be linked to western civil law, within the framework of regulations relating to customs and systems in Islamic inheritance for religious individuals. Islam, with a system in the process of inheritance based on customs which can refer to culture and also the tribal customs of a region. Regarding discrepancies that have the potential to result in discrepancies from the organization authorized to provide Inheritance Letters. As stated in Article 111 paragraph (1) letter c number 4 concerning regulation of the Minister of State 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, in proving inheritance, this can be done based on groups, that is:

- a. "For native Indonesian citizens, the heir's inheritance certificate must be verified by two witnesses, the village or ship village, and the sub-district where the heir lived at the time of death;
- b. For Chinese-American citizens in Indonesia: public notary document transferring inheritance rights;
- c. Inheritance Center for Inheritance Certificates for Indonesian Citizens of Other Foreign Eastern Descent."

By referring to the previous clause, parties including certain groups of Chinese-born Indonesian citizens can complete inheritance letters in front of a notary. As stated in Article 15 paragraph (1) of Law Number 2 of 2014 concerning amendments to Law Number 30 of 2004 concerning the Position of Notaries (hereinafter referred to as UUJN), notaries function as officials in the public sector with attributive authority based on provisions in statutory regulations. -invitation as an authentic deed. As said previously, the original deed is one type of written evidence that can be accepted by the court as absolute evidence. However, it can also be moot to the point of dismissal if any testimony from current witnesses contradicts it. When making a deed of inheritance rights, the notary still considers the relevant provisions and materials, such as the heir's deed yesterday, their marriage certificate, the number of their biological children, whether they have adopted children or not, and whether they have a will or marriage agreement made by authority body. Regarding inheritance arrangements that have been regulated, it is more appropriate to use Islamic law based on the Al-Quran, Sunnah and Ijtihad of the ulama, in Indonesian society whose main faith is Islam. Regarding making an inheritance rights deed, the heir himself can complete this process, provided that it is witnessed by 2 witnesses, verified by the heir himself by 2 witnesses, and verified by the head of the village or sub-district and sub-district where the heir resided at the time of his death.

Inheritance law is a regulation that applies to property in all its forms and centers on the legal consequences of all types of assets. The transmission of inherited property to the relevant heirs is central to the concept of inheritance law. This wealth can take the form of immaterial rights such as copyright and so on, or it can take the form of assets equivalent to actual and tangible goods, claims from third parties, or a combination of both. Regarding inheritance issues which usually arise only after a person dies; As a result, property can be lost even when a previous heir has been named. According to the description given, inheritance law contains such well-known phrases as:

- a. "Heir: is a person who dies and leaves a piece of property to someone.
- b. Heirs: those who are eligible to
- c. Inherited Assets: Passive income and assets form the remaining wealth (boedel).
- d. Inheritance: The process of giving one's successors ownership of one's property, including rights and obligations.

There are still a number of basic forms of inheritance law regulation that are still pluralistic today. There are three (3) parts related to inheritance law: western inheritance law, which may be related to the Civil Code, and Islamic inheritance law, which has customary references to customary law. These three rights really apply and have coexisted under Indonesian law considering the country's diverse ethnicities, religions and legal systems. Each group in Indonesia has its own set of laws (Eric, 2019). Until now, Indonesian inheritance law is still classified using the Western Civil Inheritance Law (BW) method (Sari, 2014).

Article 163 of the Indische Staatstregeling (IS) lists three population groups of Indonesia (formerly the Dutch East Indies), including the "European group," which includes the Netherlands, Germany, England, and France, as well as Japan, the United States, Australia, and Canada. This is clearly related to the implementation of the inheritance law system based on civil law/ *Burgelijk Wetboek Vook Indonesie* (BW). "The foreign eastern group, which was divided into two (two) groups in its development: the Bumi Putera group, which consists of native Indonesians, and Arabs, Indians, Pakistanis, Thais and other foreign easterners."

According to the above classification, it is Chinese citizens living in Indonesia who change and use Western inheritance law regulated by the Civil Code. The Civil Code itself regulates that the inheritance system can be applied first, which changes the general provisions of the Law, namely "that if the deceased person does not state in law who will determine after their death, the individual can make their own decisions regarding their property". Under the clauses of the Civil Code, the heirs themselves are divided into 4 categories: Group 1: Families with a straight downward lineage consisting of the couple who has the longest life span and their children and their children, Group II: families with group I which consists of mother, father and siblings regardless of gender and is regulated by rules that are inversely proportional to those mentioned above, Group III: Heirs count ancestors from the grandfather's side, grandmother's side, the next ancestor, and are drawn in one line. Group IV: Relationships up to the sixth degree and those on the line to the side are family. The

Civil Code itself does not control heirs according to a person's gender or birth order. A will is a statement of what is intended after the testator or testator dies, based on the instructions included in the will. When the person who made a will has died, the will still retains legal validity . Because it varies in the intentions of each testator, the number of heirs or heirs shared in a will is unknown. "Inheritance is seen as mismanaged property if the property has been opened but no heirs will identify themselves. In this case, the estate hall has an obligation to care for the inheritance without waiting for the judge's order. Of such assignments, the district attorney in your area should be notified.

### **What can be required from the only institution/official authorized to produce evidence as an heir**

It is true that there is still discrimination or differentiation in the process of establishing heirs, because this decision depends on the class and ethnicity of the Indonesian population as well as the institutions or authorities involved. As proof that Indonesia cannot be built by one ethnic group or population group, and that no ethnic group or population group can determine the dignity of the Indonesian nation, the Unitary State of the Republic of Indonesia (NKRI) must immediately end discrimination as mentioned above. The diversity of Indonesia's ethnic groups is a blessing from Allah SWT and important for the welfare of the country.

Determining a form of formal proof as the heir and the only institution or official who has the authority to make it is necessary to avoid overlapping legal regulations which have the right/authority to make evidence (formality) as the heir and the official. /institution that created it. The above can cause confusion and appear discriminatory, and in the context of the need for democratic and fair legal certainty (Adjie, 2008) .

Every person has the civil right to show proof of heirship; This is not a gift from a notary, the state or government, or anyone else. Legal unification (a formality consisting of letters and authorities or institutions that are supposed to or simply make evidence of being the heir) has not yet occurred. Since independence, Indonesia has had to eradicate prejudice and discrimination based on different formalities and who (officials or institutions) must provide documentation to prove that they are heirs.

To completely eliminate discrimination in formal forms and officials/institutions who produce proof of heirship for Indonesian citizens and residents, the Notary can act as the only party (official or institution) who can do this. Notaries must actively participate in realizing the idea of independence while in an independent country . Not based on group, race, tribe or religion, a person must be willing to act as a reformer and the only person who is allowed to provide official party deeds as proof of inheritance for the entire population of the Republic of Indonesia.

A Notary must thus present himself as an authority available to meet the needs of society. If it turns out that we still uphold the colonial vision and goals, namely bringing, defending and carrying out discriminatory legal actions, especially in proving inheritance, then notaries are not good service providers. Therefore, Notaries have the opportunity to portray themselves as excellent civil servants. One important step in this process is that the Notary can use his authority as an official who can provide proof of heirship to members of any social circle in Indonesia, regardless of their ethnicity or group, through the formal process of party deeds.

Legally, a Notary can be the only person or organization that has the power to certify the heirs of every Indonesian citizen, regardless of the citizen's race, class or religion. This power is only based on the authority of the Notary. according to the Notarial Law (UUJN) Article 15 paragraph (1), specifically by making a deed. There has been legal unity in the field of notary regulations since the Notary Statute became the only law that currently regulates notaries in Indonesia. Bearing this in mind, the Notary Office Law can also be considered as an opening (regulation) for Indonesian Notaries in the future and a closure (regulation) for Notaries in the past. Currently, the statutes of the Notary Department itself have developed into a " *rule of law* " for the Indonesian Notary community.

This is confirmed by the provisions of the Notary's Office statute that regulations relating to notaries are no longer in line with legal requirements and the development of Indonesian society. To achieve legal unity that applies to all citizens throughout the territory of the Republic of Indonesia, it is necessary to completely reform and reorganize the law that regulates the position of Notaries.

Notary as a position (not a profession or job title); Each position in the country has its own powers and is subject to laws as constraints to ensure smooth operations and avoid interference with the authority of other positions. Every power needs a legal basis. What we mean by "authority" is that the powers of any official as determined by the law applicable to that official or position must be clear and unambiguous.

The Law on Notary Positions is a legal unification of Notary arrangements, so the Notary's authority has become a Unification, namely that a Notary's authority is only stated based on a provision of article 15 UUJN. With this, the Law on the Position of Notaries has come into force as a

legal unification within a Notary arrangement in Indonesia ( *ius Constitutum* ), so Article 15 paragraphs (1) and (2) apply, and only the UUJN can apply which contains the authority of a Notary. On the other hand, Article 15 paragraph (3) applies and refers to the laws and regulations then in effect ( *ius constituendum* ). Therefore, if a Notary performs actions outside his authority, then the Notary has violated the law or acted outside his authority.

In carrying out rights or responsibilities that give rise to legal proceedings due to inheritance, it is necessary to create and maintain an inheritance certificate. For heirs, a certificate of inheritance rights is very important because it is official proof of a person's inheritance from the grave and clarifies the distribution process. Having an inheritance rights certificate can make the lives of the heirs easier. It should be noted that an inheritance rights certificate can be a legal tool for heirs to carry out legal actions related to inherited property, starting from necessary management actions to ownership actions. From the application of the Civil Code, it can be seen that Chinese descendants who have Islamic religious ties can obtain inheritance letters from appointed officials or notaries. This is because Chinese descendants who adhere to Islam are not prohibited from exercising their right to self-determination by using inheritance law which contains Islamic provisions. can use inheritance law based on the western system which can be included in the Civil Code, because until now there has been no unity that discusses the development of inheritance law in Indonesia.

The authority of a Notary is to make a deed (Article 15 paragraph (1) of the Law on the Position of Notaries, and deeds made in front of or by a Notary must fulfill the provisions as stated in Article 38 of the Law on the Position of Notary.

Whereas regarding the Certificate of Inheritance (SKW), which is made by a Notary using the measurements mentioned previously and based on customs which have no legal basis at all based on a provision of Article 38 of the Law on the Position of Notaries, then the certificate of inheritance cannot be fulfills the requirements to be called a notarial deed, but only in the form of a notary's statement based on evidence that can be presented to the notary. In fact, according to Tan Thong Xie, in the making of Inheritance Certificates by Notaries there is no regulation in the underlying legislation.

Regarding an inheritance certificate, it is only a private letter that can be made by a Notary, which has an imperfect evidentiary value, and has the same value as other documents (for administrative purposes of the Notary's Office) which are usually issued by a Notary, for example Therefore , *it is outside the authority of the Notary* if they can issue a Decision Letter (SKW) which seems to have the same evidentiary weight as the deed. Compared with a Notarial Deed with such a letter, it is clear that the Notarial Deed has superior evidentiary value.

The only person authorized to provide testimony as an heir is a Notary, either as an official or an institution. Testimony like this is very suitable to be given along with a party deed, namely a notarial deed which states the parties' intentions regarding the distribution of heirs and their rights. If possible, two types of legal deeds can also be returned directly, namely party deeds and real estate deeds, made by or before a Notary, ensuring that there are no other types of valid deeds.

Regarding the proof, an inheritance deed has perfect evidentiary value because it can be made before an authorized official (Notary), but an inheritance certificate (SKW), even though it can be made by a Notary, lacks perfect evidentiary power because it is not valid. cannot be made into a deed and does not fall under the authority of a Notary. The previous heir certificate must be revoked by them, and a new deed must be drawn up in accordance with the actual facts desired by the parties. If it later turns out that the heir's inheritance deed is not correct, then this is the responsibility of the parties who appear before the Notary, and a Notary in this case is not needed.

A Notary may not revoke or annul an inheritance deed that he himself has made, even though there must be a way for someone to ask the Notary if the contents of the deed are fake, so that an inheritance certificate can be cancelled, so is it possible for the Notary to cancel and be able to revoke an inheritance certificate that has been did he make it himself? If this happens, where is the Notary's responsibility? So if the Notary does not want to revoke it, the revocation must be done by filing a lawsuit against the Notary. And the Notary can be sued for compensation. So that a lawsuit against a Notary is not in vain ( *illusoir* ) , a guarantee can be placed on the property (personal property) of the Notary. If a Notary's property (private property) can be confiscated and auctioned off in order to fulfill a claim regarding compensation, so that a Notary has nothing left, then this is what can be called a bankrupt Notary as intended by the law on the position of Notary. (A.Agung, 2022)

Whereas regarding an inheritance certificate deed, it is a desire or what can be called ( *Wilsvorming* ) of the parties to provide evidence that they are heirs, because it can be stated in the presence of a Notary, so that is in accordance with the authority of the Notary as stated in the regulations of the Law. In Article 15 paragraph 1 of the Law on the Position of Notaries, it is mandatory to formulate it in the form of a Notarial Deed. In this way, the Notary does not/does not

copy statements by the parties, but regarding a will (*wilsvorming*) by the parties themselves which is formulated in a form of heir certificate.

Because the Notary is not a party to a deed, the Notary does not have the will (*wilsvorming*) to make a deed for someone else. Therefore, the Notary will not make a Deed of Heirs' Certificate if the parties do not request or intend to make one.

What needs to be understood is that Notaries must be able to immediately try to stop the paradigm that Indonesian law can be designed and created for the interests of certain tribes/groups/ethnicities (Indonesia). Even among Notaries (both individuals and organizations) it seems that there has been no effort to eliminate discrimination in the process of proving heirs, and it seems as if Notaries are still in a condition where they must be able to differentiate themselves before the law.

Considering the authority possessed by a Notary, it is very important for us to anticipate and implement changes that are in line with developments over time. If the Notary succeeds in doing this, then his contribution will help create legal unity which will at least form one type of party deed that applies to all levels of society in Indonesia.

Apart from that, anyone can hold the position of Notary in Indonesia. It doesn't matter what ethnicity, nationality or religion they follow; The important thing is that you must be an Indonesian citizen and meet the qualifications to be appointed and carry out your duties as a Notary. Participate and strive to eliminate discrimination in the production of heir evidence in a formal form regarding the Heir Certificate Deed for all Indonesian citizens, which is one of the efforts to build the world of Notaries in Indonesia (Adjie, 2008).

Notary Public, Heritage Agency (BHP), or those made by themselves and/or by the heirs on paper witnessed by the village head/village head and confirmed by the sub-district head are the three officials who have the authority to make inheritance letters in the practice of making inheritance letters, which can be done by different officials depending on population groups.

Regarding this classification, it is very similar to a population classification based on the provisions of Article 131 and Article 163 of IS (*Indische Staatsregeling*), which divides the population of the Dutch East Indies into three foreign tribes. This can later be changed to achieve the development of a unified and homogeneous Indonesian nation by canceling its implementation through Cabinet Presidium Instruction Number/31/U/IN/12/1966, dated 27 December 1966.

Many problems in the process of making heritage certificates were discovered during implementation; In essence, the preparations carried out are still inadequate so that making an inheritance deed does not provide legal certainty for the heirs. Therefore, questions may arise regarding the validity of the evidence (whether it comes from a private deed or an original) (Hartono, 2019).

A notary is a member of the public who is authorized by the state to make original deeds. Meanwhile, it is tasked with ensuring that the signed deed has complete evidentiary power, meaning it must fulfill the requirements stipulated in Article 1868 of the Civil Code (Massora & Putri, 2019).

The division or grouping of society based on race actually no longer exists, thanks to the enactment of several laws and regulations, including the Law based on provisions Number 40 of 2008 concerning the elimination of racial and ethnic discrimination in particular. or citizenship. ethnic group and related to the use of inheritance certificates as evidence because it is contrary to state ideology, especially Pancasila which is the third principle relating to the unity of the Republic of Indonesia, the Constitution of the Republic of Indonesia, and legal requirements (Sukma, 2020).

Initially, a provision regarding the making of inheritance information can be regulated in *Statutes Bland 1860* Number 3, which contains a provision that regulates that the process of making inheritance information must be based on a division of occupation groups. Article 163 of the *Indische Staatsregeling* (IS) Juncto and article 109 of the Regulations (RR) at that time allowed the people of the Dutch East Indies as Indonesia during the colonial period to be divided into many demographic groups. The Bumi Putera (Indigenous) group, the European group, and the Foreign Eastern group are these groups. The application of different civil laws for each group, as outlined in Article 131 IS Juncto 73 RR, is also influenced by population classification.

Regarding the authority of a Notary in making proof of being an heir. In Indonesia, Notaries are accustomed to making Certificates of Inheritance (SKW), even though this authority has never been given in the Law on Notary Positions or the Notary Position Regulations (PJN) which are the legal basis for granting Notary authority. On the other hand, the provisions of Article 111 paragraph (1) letter c of ATR/BPN Ministerial Regulation Number 16 of 2021 are often used to support claims that notaries make inheritance deeds, even though the provisions above do not explicitly state that notaries have the authority to do this. This paragraph indicates that a Notary has the authority to issue inheritance deeds. In this provision, what is meant by a Notary is being able to issue a deed of proof

as an heir, in the form of an inheritance rights deed and not an inheritance deed. Similar to a court decision, a certificate of replacement heir is a certificate of inheritance rights.

## CONCLUSION

Discrimination: The legal rule in making evidence as an heir is the Civil Rights of every citizen, not a gift from a Notary or the State/Government or from anyone else. Legal unification (the formal formality of the letter and the intended official or institution or the only one providing proof of being the heir) has not yet occurred.

Regarding the determination of a formal proof as an heir and the only institution or official who has the authority to make it, this needs to be done to avoid overlapping legal regulations which have the right/authority to make evidence (formality) as the heir and the official. The institution that created it. The above can cause confusion and appear discriminatory, and in the context of the needed for democratic and fair legal certainty.

## REFERENCES

- Adjie, H. (2008). *Proof of being an heir with a notarial deed (in the form of a certificate of inheritance)*. Bandung: CV Mandar Maju.
- Agung, Anak Amanda, Devyn Wiryawan, I wayan., Vol. (No.1), (2021), the role and Responsibilities of a notary in obtaining a testamentary certificate regarding the application by the heir, P. 2502-8960
- Indrawati, Dewi Octavia & Putra, Muhammad Fajri Mekka. (2022). Applicability of the Civil Code and the Role of Notaries in Making Inheritance Certificates for Chinese Muslims. *Justia Science; Journal of Legal Studies*, Vol, 07, (No. 02), p.273-288.
- Eric. (2019). The Relationship Between Islamic Law and Customary Law in the Distribution of Heritage in Minangkabau Society. *Estuary Journal of Social Sciences, Humanities and Arts*, Vol,3. (No. 1), p. 61. <https://doi.org/10.24912/jmishumsen.v3i1.3532>
- Michael, H (2019). Legal Certainty for Indonesian Citizens in the Making of Certificate of Inheritance. *Jatiswara*, Vol.34, (No. 2), p.93. <https://doi.org/10.29303/jatiswara.v34i2.198>
- Massora, Monika Ardia Ningsih & Putri, Pasari Victoria. (2019). The Legal Strength of the Certificate of Heir for the Bumiputera Group which is confirmed by the Subdistrict. *Notary*, Vol,2. (No.3), p.389. <https://doi.org/10.20473/ntr.v2i3.13437>
- Rahardjo, S. (2012). *Law Science*. Bandung: Citra Aditya Bakti.
- Rizky, Virginia Sekar & Dianti Flora. (2022). Responsibility of Notaries in making inheritance certificates based on false information (case study of the decision of the DKI Jakarta Provincial Notary Supervisory Council's decision Number 03/PTS/Mj.PWN. Prov. DKI Jakarta/IX/2021). *JISIP (Journal of Social Sciences and Education)*, Vol,6, (No.3), p.9911-9924. <https://doi.org/10.58258/jisip.v6i3.3298>
- Sari, Ni Ketut Novita., Sihabudin, Sutjito Bambang (2014). Distribution of Inheritance Rights to Ab Intestato and Testamentary Heirs According to Western Civil Law (BW). *Aerospace Law Scientific Journal*, Vol,5. (No. 1), p. 1–20. <https://doi.org/10.35968/jh.v5i1.99>
- Sugitha, Ketut Nindy Rahayu & Dahana, Cokorda Dalem. (2021). The Urgency of Arranging Regulations for Making Inheritance Certificates Regarding the Division of Population Groups in Indonesia. *Acta Comitatus*, Vol. 2, (No. 1), 523. <https://doi.org/10.24843/ac.2021.v06.i03.p5>
- Sukma Angga Pratama Putu . (2020). Dynamics of Pluralism in Population Classification in Achieving Justice Regarding Inheritance Certificates. *Kertha Semaya: Journal of Legal Studies*, Vol,8, (No.9), p.1344. <https://doi.org/10.24843/ks.2020.v08.i09.p05>