

ABSTRACT

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This research analyzes the provisions of Article 111 paragraph (1) letter C number 4 of Instruction of the State Minister for Agrarian Affairs/Head of the National Land Affairs Agency Number 3 of 1997 on the Implementation of Government Regulation of the Republic of Indonesia Number 24 of 1997 on Land Registration which regulates the differences in the deed-making authorities and the forms of Inheritance Deeds, which are differentiated based on descent, race and ethnicity—differentiating Indigenous Indonesian Citizens with Chinese Indonesian Citizens and Indonesian Citizens of Other Foreign Eastern-Descent. This research aims to make comparisons on the aspects of the deed-making authority and the legal strength of each Inheritance Deed. Furthermore, this research reviews whether regulation a quo has applied the principles of legal justice, legal certainty, and legal protection.

This research was conducted using a descriptive, normative-juridical method. The type of data used as the research data is secondary data, which is obtained from literature studies and interviews. The research was conducted by identifying legal regulations concerning Inheritance Deed and analyzing them using legal theories on basis of authority, legal force, legal justice, legal certainty, and legal protection.

The research findings indicate that Village Head and Sub-district Head, Notaris Notary, as well as the Balai Harta Peninggalan (an Indonesian Institution mainly providing assistance on inheritance management and administration) each has delegated authority on the makings of Inheritance Deeds. In particular, Notary even has attributed authority based on the Law Number 2 of 2014 juncto. Law Number 30 of 2004 on Notary Position. Each Inheritance Deed has different forms and legal forces, where the Inheritance Deed made for Chinese Indonesian Citizens and Indonesian Citizens of Other (Foreign) Eastern-Descent is classified as an authentic deed, thus provides the perfect evidentiary power for the parties, providing unbiased evidence of what was signed, by whom, and when; while on the other side, Inheritance Deed made for Indigenous Indonesian Citizens is classified as a simple contract (contract executed under hand), thus provides imperfect evidentiary power for the parties as it provides no evidence stated before as what an authentic deed provides. In consequence, Article 111 paragraph (1) letter C number 4 of Instruction of the State Minister for Agrarian Affairs/Head of the National Land Affairs Agency Number 3 of 1997 on the Implementation of Government Regulation of the Republic of Indonesia Number 24 of 1997 on Land

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Registration that make distinctions based on descent, race, and ethnicity have failed to apply the principles of legal justice, legal certainty, and legal protection on its provisions concerning Inheritance Deed.

Keywords: *Inheritance Deed, Authority, Legal Force, Legal Justice, Legal Certainty, Legal Protection*

INTISARI

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Penelitian ini berupaya untuk menganalisa ketentuan Pasal 111 ayat (1) huruf C angka 4 Peraturan Menteri Negara Agraria/Kepala Badan Pertanahan Nasional Nomor 3 Tahun 1997 tentang Ketentuan Pelaksanaan Peraturan Pemerintah Nomor 24 Tahun 1997 tentang Pendaftaran Tanah yang mengatur adanya perbedaan kewenangan pembuatan dan bentuk Surat Keterangan Waris berdasarkan keturunan, ras, maupun etnis, dengan membedakan Warga Negara Indonesia Penduduk Asli dan Warga Negara Indonesia Keturunan Tionghoa atau Keturunan Timur Asing Lainnya, khususnya dengan mengkomparasikan kewenangan pembuatan dan kekuatan hukum dari masing-masing bentuk Surat Keterangan Waris tersebut, kemudian dengan melihat apakah pengaturan yang demikian sudah dapat dikatakan memenuhi prinsip-prinsip keadilan, kepastian hukum dan perlindungan hukum.

Penelitian ini dilakukan dengan menggunakan metode penelitian hukum normatif yang bersifat deskriptif. Jenis data yang akan digunakan sebagai data penelitian adalah data sekunder yang diperoleh dari studi kepustakaan dan wawancara narasumber. Penelitian dilakukan dengan melakukan identifikasi terhadap peraturan-peraturan hukum yang mengatur dan teori-teori hukum yang mengkaji mengenai dasar kewenangan, kekuatan hukum, keadilan hukum, kepastian hukum dan peraturan perundang-undangan, serta perlindungan hukum.

Dari hasil penelitian dapat diketahui bahwa baik Kepala Desa/Lurah dan Camat, Notaris, maupun Balai Harta Peninggalan masing-masing memiliki kewenangan yang diperoleh secara delegatif untuk membuat Surat Keterangan Waris. Secara khusus, Notaris memiliki kewenangan yang bersifat atributif yang diperoleh dari Undang-Undang Nomor 2 Tahun 2014 *juncto*. Undang-Undang Nomor 30 Tahun 2004 tentang Jabatan Notaris. Surat Keterangan Waris WNI Keturunan yang dibuat oleh Notaris dan Balai Harta Peninggalan diklasifikasikan sebagai akta otentik sehingga memiliki kekuatan pembuktian yang sempurna, sedangkan Surat Keterangan Waris WNI Penduduk Asli diklasifikasikan sebagai akta di bawah tangan sehingga memiliki kekuatan pembuktian yang tidak sempurna. Pengaturan yang mengadakan perbedaan berdasarkan keturunan yang demikian diketahui tidak memenuhi prinsip keadilan, kepastian hukum, dan perlindungan hukum.

Kata Kunci: Surat Keterangan Waris, Kewenangan, Kekuatan Hukum, Keadilan, Kepastian Hukum, Perlindungan Hukum

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