INHERITANCE LAW ARRANGEMENTS FOR THE CHINESE COMMUNITY REGARDING INHERITANCE NOT INCLUDED IN A WILL

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ABSTRACT

The transfer of an asset in its whole or the entire rights and liabilities of the person who inherits it to his heirs is referred to as inheritance law. The purpose of this research is to analyze and investigate the organization of inheritance distribution to the Chinese population in Indonesia, as well as the implementation of inheritance distribution if heirs' assets are not mentioned in the will. The normative legal research approach was applied, along with the Statute Approach, Concept Approach, and Historical Approach. The study's findings suggest that an inheritance certificate that does not define and determine the part owned by each heir may result in inheriting assets that are not included in the inheritance certificate. This can create legal uncertainty, resulting in an imperfect Inheritance Certificate. If these issues arise, they can be resolved by discussion with the families. However, if it cannot be resolved by deliberation, it can be settled through litigation (court). As a result, it is necessary to establish additional regulations related to inheritance distribution procedures that are not listed in the inheritance certificate, which is critical, as well as an effort to increase the accuracy of the community in distributing inheritance to their heirs by understanding the terms and conditions of inheritance distribution to avoid an inheritance dispute at a later date.

Keywords: Inheritance Law, Chinese Society, Inheritance Certificate

1. INTRODUCTION

One of the challenging problems that continue to cause disagreements between families in people's life is the issue of inheritance. The notion of inheritance law is not directly controlled in the Civil Code, but simply specifies numerous principles surrounding who has the right to inherit. "Law of inheritance is the transfer of a whole property, thus the entire rights and duties of the person who bequeaths to his heirs," Vollmer claims. The legal implications of a person's death are issues concerning the management and sustainability of a person's rights and duties after death. As a result, a rule is required to address these issues, notably the establishment of Inheritance Law.

In Indonesia, inheritance law is divided into three categories: Islamic Inheritance Law, which applies to Muslim groups in Indonesia, Customary Inheritance Law, which has different arrangements in each region for people who follow Customary Law, and Western Inheritance Law, which refers to the Civil Code and applies to people who follow Western Civil Law. The pluralism of inheritance law in Indonesia is caused by several reasons, namely the diversity of cultural cultures, inheritance problems in each religion regarding their beliefs in distributing inheritance, and the implementation of inheritance distribution according to the provisions of laws and regulations but in a familial way as is usually applied in indigenous peoples.

To implement the Indonesian Civil Code's Inheritance Law, it is necessary to follow the grouping of the Indonesian population-based on Article 131 in conjunction with Article 163 of the Civil Code, which is divided into three (three) population groups, namely the European group, the Foreign Eastern group, and the indigenous group. The method of inheritance distribution can be based on the Ab intestato method (Article 832 of the Civil Code), in which the heir is "a person related by blood to the heir or who has a marital relationship," or on the testamentary (will) method (Article 899 of the Civil Code), in which the inheritance has been determined in the will by the testator.

The definition of a will as stated in Article 857 of the Civil Code is that "a will or testament is a deed containing a statement about what will happen after he dies, and by him, it can be withdrawn." Thus, a testament is "a deed or a statement made as evidence with the intervention of an official officer." The legal basis for issuing a Certificate of Inheritance/Will is also stated in the State Minister of Agrarian Affairs Regulation Number 3 of 1997 concerning Provisions for the Implementation of Government Regulation Number 24 of 1997 concerning Land Registration Article 111 paragraph 1 c point 4 in conjunction with the Letter of the Directorate of Land Registration dated December 20, 1969 Number 12 /63/12/69. According to the rule, the creation of a Certificate of Inheritance is dependent on the legal subject who dies. Regarding the transfer of land names, if the deceased is an Indonesian citizen of Chinese descent, then a Certificate of Inheritance is made before a notary. If the indigenous group is a Muslim and a Christian, the certificate of inheritance can be made by the lurah and sub-district head with 2 (two) witnesses. Meanwhile, it can be made before the Heritage Hall for those of Middle Eastern, Arab, Indian, and Pakistani origin.

1 Wirjono Prodjidikoro, 1988, "Inheritance Law in Indonesia", cat. 9, Bandung: Bale Bandung, p. 11.
3 Ibid
4Christiansi, Liliana, "Implementation of the Distribution of Inheritance to the Chinese Communities in Bangka Belitung (A Comparison with the Distribution of Inheritance to the Chinese Communities of Singkawang)." Indonesian Notary 1, no. 003 (2019).
8 The meaning of testament can be seen further in Article 857 of the Civil Code and anyone who is not allowed to make a testament can see further in Article 895 and Article 897 of the Civil Code.
Notary may provide a Certificate of Inheritance in connection with the payout of deposits, as specified in Book 2 of the Supreme Court’s instructions, which applies to all legal matters.

In the distribution of inheritance by way of the testament (will), there are heirs chosen by the testator in his will as well as legitimate heirs who have absolute rights (legitime portie) as established in Article 913 of the Civil Code, where it is also mentioned how much the share of each legitimation is (Article 914 of the Civil Code). However, it is still observed in practice that there is a Certificate of Inheritance that does not define and clearly establish the share owned by each Heir, thus inheritance might occur that is not included in the certificate of inheritance. This can create legal uncertainty, resulting in the Inheritance Certificate being invalid under Civil Law and producing complications in the future. As a result, this study will thoroughly examine the layout of inheritance distribution to the Chinese community in Indonesia, as well as the execution of inheritance distribution if there are heirs’ assets not mentioned in the will. The final section will include conclusions to bring the discussion of this research to a close.

The research method used was normative legal research. Normative legal research or library law research is research carried out through the stages of reviewing or researching library materials which include primary, secondary, and tertiary legal materials that are used as the basis for sharpening the analysis made.8 When there is a void, uncertainty, or contradiction between standards, normative legal research is utilized to describe legal arguments.9 Several approaches to normative legal research are recognized. First, the Statute Approach is an approach taken concerning reviewing legislation following what is observed in the topic of this research problem where there is a vacancy in the norms for the distribution of inheritance for the Chinese community based on a will if there is an inheritance that is not included in the second will, and a conceptual approach is an approach taken concerning examining views and doctrines in legal science.10 Second, is the conceptual approach, which is an approach that is carried out by examining views and doctrines in legal science.11 Third, there is the historical approach, which is founded on the concept that the law in the past was a unified whole with a close link to the law in effect now.12

2. DISCUSSION

2.1 Inheritance Sharing Arrangements in Chinese Society in Indonesia

Indonesia is a heterogeneous unitary state comprised of several ethnic groups with diverse customs, habits, faiths, and civilizations. This is why, during the Dutch administration, the Indische Statts Regeling (I.S) used population categorization as a legislative policy.14 According to Article 163 I.S, the Indonesian people are classified into three groups:

1. The European groups, based on Article 163 paragraph (2) I.S are:
   - Dutch citizens; Europeans; Japanese Citizens;
   - People from other countries who have the same family law as the Dutch family law, especially on the principle of monogamy;
2. Indigenous groups, based on Article 163 paragraph (3) I.S are:
   - Indonesian native;
   - Those who were originally from other groups assimilated themselves into the original Indonesians.
3. Foreign Eastern Groups, based on Article 163 paragraph (4) I.S, are:
   - Chinese Foreign Eastern Group (China) and,
   - Foreign Easterners who are not Chinese.

The classification of the population of the Dutch East Indies based on Article 163 I.S aims to determine the legal system that applies to each population group as also regulated in Article 131 I.S. based on the provisions of Article 131 I.S jo. Staatblad 1917 Number 129, the Civil Code (hereinafter referred to as the Civil Code) applies to:

1. Europeans and those equated with Europeans;
2. Chinese Foreign Easterners;
3. Other Foreign Easterners and Indonesians are subject to European law.15

The terms of Article 131 I.S are still recognized and valid today. This is mentioned in Article II of the 1945 Constitution’s Transitional Rules, which provides that “all existing State Bodies shall take effect immediately as long as no new one has been constituted according to this Constitution.” This is to avoid a lack of standards.

In terms of inheritance, Indonesia has several legal systems in place, including:

1. The western (European) civil inheritance legal system contained in the Burgerlijk Wetboek or the Civil Code;
2. Customary inheritance systems are influenced by the customary law of local communities, for example, the patrilineal kinship system in Batak, the matrilineal kinship system in Minangkabau, and the bilateral system in Java.
3. The Islamic inheritance law system applies to Muslims.16

Following Indonesia’s independence, the Chinese minority was classified as one of the ethnic groups in Indonesia under the requirements of Article 2 of Law Number 12 of 2006. According to the article, citizens of Indonesia are native Indonesians and persons of other nationalities who have been legally recognized as citizens. The explanation then emphasizes that “original Indonesian” are Indonesians who have been Indonesian nationals since birth and have never gained another citizenship.

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11 Ibid h. 133-136.
13 Subekti, Basic Civil Law. (Jakarta:Interuma, 1982), p. 11
This legislation establishes that persons of Chinese heritage born in Indonesia are considered native Indonesians with the same rights and duties as everyone else.17

The Chinese community is a population group governed by the Civil Code within the terms of Article 131 I.S. In practice, however, not all articles of the Civil Code are enforced, and some are even ignored, as in the case of inheritance requirements governed by Book II of the Civil Code. The custom of inheritance has long existed in Chinese society. This inheritance law is dynamic, evolving with society. The factors causing these advancements include aspects such as educational advancement, environmental conditions, and so on.

Inheritance is defined as “the transfer of wealth from a person who has died to his heirs.” As a result, what is passed in inheritance is the heir's wealth as well as the legal repercussions for the heirs, both in connection to fellow heirs and those with third parties.18 In Chinese customary law, inheritance is defined as the continuation of the heir's identity with all of its effects. It is stated to continue the identity since the Chinese community has a clan, which can only be passed down through boys, but girls, if married, would follow the clan of their husbands, therefore daughters cannot continue their family clan or identity of the heir. Thus, only sons become heirs in Chinese society because they will carry on the clan or identity of the heirs and take care of the ashes of their ancestors. Furthermore, it is known that the Chinese community adheres to the Patrilineal kinship system.19

The term kinship is the law of blood. The patrilineal kinship system means that a kinship system takes an upward line of descent through the father or son. A society with a father's lineage is a family system that is consequently passed through a man or a father.20

Because it is tied to the kinship structure, cultural values, and beliefs of the Chinese group, which differ from those of European groups, the execution of inheritance law in the Civil Code presents its issues for the Chinese community. This is observed in inheritance since the Civil Code does not discriminate between genders in inheritance distribution. They have an equal claim to a portion of the inheritance distribution as long as they are blood relations and legally recognized as offspring. Similarly, if the testator dies, the kid who is linked to the heir is still entitled to inherit, both from the prior marriage and from the current one. Unlike the case with inheritance in Chinese society, the inheritance is only for sons.21 This difference brings legal consequences to the law that should be obeyed to have deviated.

There are three types of assets in Chinese society:
1. Congenital assets of husband/wife originating from their parents or themselves brought during the marriage, for example, jewelry from parents;
2. Assets obtained by the husband/wife from parents or relatives at the time of marriage which is joint property;
3. Joint assets collected by husband and wife during the marriage bond

The three types of assets are inherited assets that will be distributed to heirs whose guidelines are based on the customs of the Chinese community.22

In Chinese society, the distribution of inheritance is also oriented towards family heirlooms such as:
1. Ancestral ashes
   Indigenous Chinese people continue to practice the tradition of burning bodies to revere their ancestors and save their ashes. This ancestor worship can be performed in either the dwelling or the Ash House. The father in the family presides over the ancestor worship event, and this role is passed on to the eldest son, and so on;
2. Rumah Gede or the Great House
   This is a house that has been occupied from generation to generation and is maintained by children and grandchildren so that whenever there is a ceremony, everyone may meet at the Big House. According to Chinese tradition, the huge mansion is normally occupied by the eldest males, although other children are also conceivable. The Chinese community at Rumah Gede performs ceremonies or commemorations such as praying for Chinese New Year, praying for Ceng Beng, praying for onde, praying for reading bananas, and praying for Cang Cu Pia (moon cake).
3. Hereditary jewelry
   This hereditary jewelry is meant for girls who want to pass on their dreams to their daughters. This heirloom jewelry is only presented to a daughter who can be trusted to maintain it in the family. This heirloom jewelry can be in the form of:
   a. Gold and diamond accessories; Gold belt; Gold purse or wallet; Gold ponytail.
   In Chinese society, it is the son who will be the heir of the inheritance (excluding family jewelry). This is because the son will be the leader of the family and will be in charge of his ancestors' ashes.23

The opening of inheritance occurs when the testator has died. The implementation of the distribution of inheritance in the Chinese community is carried out by dividing the inheritance amicably, namely:
1. The acquisition of sons and daughters is one in half (1:½);
2. The acquisition of a widow (left behind) is the same as that of a daughter (½);
3. The inheritance is divided after both parents die, the widow dies, or remarries;
4. The eldest son is given the power to cultivate or take care of the family’s inheritance.24

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2 Koentjaraningrat, 2004, Humanities and Culture in Indonesia., Djambatan, Jakarta, p. 359.
3 Kurniawati, S. N. A. Settlement of Chinese Community Inheritance Disputes (Study in Mataram City), Thesis, Faculty of Law, University of Mataram, p. 7.
4 I.G.N Sagangga, Special Customary Law (Inheritance Customary Law in Indigenous Law Communities with a Patrilineal System in Indonesia), (Semarang: Faculty of Law, Diponegoro University, 1998), p. 1.
7 Cindy, Op.cit., p. 54-57
8 Ibid.
There are three statues of children in Chinese society, namely:

1. Legal child
   These are children born legally from a legal marriage.

2. Children out of wedlock
   These are children born from the relationship of both parents who are not married but live together (samenleven). This child only has a civil relationship with his mother and his mother's family, while from the father there must be prior recognition. In the Chinese community, the illegitimate child is still considered to be the blood and flesh of the heir, so with compassion, his inheritance rights are not distinguished from those of legitimate children, or at least they are still given a share of the inheritance of their parents even though they are not heirs.

3. Adopted child
   This is a child whose rights are transferred from the parent's family, legal guardian, or another responsible person to the adoptive parent's family environment based on a court decision or decision. Ethnic Chinese also recognize the adoption of children which is carried out traditionally and then a deed of adoption is made before the authorized official. The adoption of this child is usually driven by the factor of not having children.

The Civil Code does not regulate the inheritance rights of adopted children, which only regulates the recognition of children out of wedlock which is regulated in Book I of the third part of the Civil Code Chapter XII, Articles 280 to 289, concerning Recognition of children outside of marriage. Thus, the Dutch East Indies government-issued Staatsblad Number 129 of 1917, specifically Articles 5 to 15 to fill the void of norms regarding the regulation of adopted children.

The way to get inheritance rights in Chinese society which is still based on Chinese customs is through grants or buying and selling without any payment. During his lifetime, the heir will distribute part of his wealth so that it can still be distributed according to Chinese customary law. This is done because if the heir does not divide his assets or donate them before he dies, then the assets that are still in the name of the heir must be given a certificate of an heir from a notary. The notary in making a certificate of the heir, in this case, is based on the Civil Code which means that the rights of inheritance between boys and girls are the same. This is contradictory because, in Chinese custom, male inheritance rights are more dominant than girls. The Chinese custom of dividing inheritance among their children during their lifetime is called a grant.

In practice, a Certificate of Inheritance is still needed to prove who is the authorized heirs. According to R. Soegondo Notodisorjo, an inheritance certificate is a certificate made by a notary that contains provisions on who according to law is the legal heir of a person who dies. Western Civil Inheritance Law is regulated in Book II of the Civil Code (BW). The number of articles that regulate inheritance law is 300 articles starting from article 830 of the Civil Code to 1130 of the Civil Code which starts from Chapter 12 to 18 of the Civil Code.

The issue of a Certificate of Inheritance is carried out by various officials depending on the population group, such as Notary, Balai Harta Peninggalan, or by the heirs themselves in the presence of the Lurah/Village Head and verified by the Camat. For the Chinese community, the certificate was issued by a Notary, who began examining the will at the Ministry of Law and Human Rights Center for the List of Wills. A marriage certificate from the heir to his husband/wife is one of the prerequisites for a notary to create an inheritance certificate. It is intended that with unambiguous inheritance rights and the availability of an inheritance certificate, there would be no more disagreements amongst heirs.

2.2 Arrangements for the Distribution of Inheritance to the Chinese Community Based on a Will If There Are Inheritance Assets Not Included in the Will

The Civil Law System in Indonesia, which includes the Law of Inheritance, is still being codified, which is related to legal pluralism in Indonesia with an inheritance system that has not yet been unified. Inheritance law is one part of civil law as a whole and is the smallest part of family law. Customary Inheritance Law, Islamic Inheritance Law, and Western Inheritance Law can all be applied in Indonesia. Customary Inheritance Law differs from area to region and pertains to those who are subject to Customary Law. Meanwhile, Islamic inheritance law applies to the Muslim people of Indonesia. Western Inheritance Law, on the other hand, applies to populations covered by the Civil Code. Each of these laws has its distinct personality. Traditional Chinese inheritance is used in some places of Indonesia for heirs of Chinese heritage. However, under Chinese customs, the position of sons and daughters is not the same, therefore, this arrangement poses a difficulty with inheritance distribution. Sons have a higher status in Chinese households than daughters, even though the Civil Code provides equal inheritance distribution to sons and daughters. Of course, these distinctions have legal ramifications in terms of which law should be applied.

The Chinese community in Indonesia is one of the population groups to whom the Civil Code applies under Article 131 IS. However, in practice, not all of the Civil Code's rules are observed, and some are simply ignored. Even though they have become a part of Indonesian culture, the Chinese community still utilizes Chinese norms in terms of inheritance distribution, where

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the status of sons and daughters is distinct in Chinese customs. In its evolution, inheritance may be carried out in several ways, one of which is through the use of a will by the heir to the heirs of the will. This serves as the foundation for creating a Certificate of Inheritance. The main goal is to establish a person’s status as an heir so that the heirs may use it as a guide in carrying out legal actions against the heir’s inheritance, such as transferring rights. An example is a process of changing the name of land certificates as well as managing the disbursement of deposits and becoming a guide for government and private agencies that guarantee that they surrender or transfer inheritance, both in the form of movable and immovable assets to people who are truly entitled to receive it. That is, the Certificate of Inheritance must be able to provide legal certainty. Therefore, the Certificate of Inheritance must be made following the legal provisions applicable to the community concerned, as stipulated in Article 111 paragraph (1c) point 4 of the Regulation of the State Minister of Agrarian Affairs Number 3 of 1997 concerning Provisions for the Implementation of Government Regulation Number 24 of 1997 concerning Land Registration juncto Letter of Directorate of Land Registration dated December 20, 1969 Number 12/63/12/69. In the article, it is stated that to carry out legal actions related to the process of registering the transfer of land rights to the Chinese community, it can be made in the form of a Certificate of Inheritance made by a Notary, while specifically for disbursement of deposits, it is carried out following book II of the Supreme Court guidelines, namely a Certificate of Inheritance. Inheritance may be made by a notary, for Indonesian citizens of Chinese descent, Indonesian Native Muslims, and Middle Eastern descendants such as Arabs, Indians, and Pakistanis. For Indonesian citizens of Chinese and European descent, based on population group according to LS Article 163 paragraph (1), the Civil Code (BW) applies, and based on Staatsblad 1924 Number 557 Western Civil Law (BW) is declared to apply to Chinese groups throughout Indonesia including the Law of Inheritance. It also regulates and determines the rightful heirs and the share of each heir in making certificates of inheritance for the Chinese community throughout Indonesia.

As it is known that until now, a Certificate of Inheritance is needed to carry out legal actions in the form of transferring inheritance from the heir to the heirs, such as the process of changing the name of land certificates and disbursing deposits, as stated explicitly in Article 111 paragraph (1c) point 4 Regulation of the Minister of State for Agrarian Affairs Number 3 of 1997 concerning Provisions for the Implementation of Government Regulation Number 24 of 1997 concerning Land Registration in conjunction with the Letter of the Directorate of Land Registration dated December 20, 1969 Number 12/63/12/69 that in carrying out legal actions the registration process for the transfer of land rights due to inheritance by the heirs can be made in the form of a certificate of inheritance rights which the authority to make is differentiated based on the population group or legal subject who died.

The inheritance certificate is created to establish who is the legal heir to the inheritance that has been opened. Based on the importance of the Inheritance Certificate, which was originally sourced from the Will, the heir must be very careful in making a will to his heirs, but if an omission occurs in its development, such as the heir's property which has not been included in the will, it causes inheritance to be implemented or a disagreement Disagreements in inheritance might arise as a result of differences of opinion or disagreements regarding inheritance. If there is a disagreement about the distribution of inheritance or inheritance, the solution is to hold a family meeting led by the heir's eldest son, or if the eldest brother is not present, by one of the heirs who is considered authoritative and wise, known as an heir other than the son, namely the father's brother. If there is no agreement between the heirs regarding the matter in dispute, then The next meeting is given the possibility of interference from family elders (grandfathers, grandmothers) and influential family members (uncles, aunts) as mediators to find a way out of differences of opinion so that they can find mutually agreed upon common ground.

If the heirs are still unable to reach an agreement on the disputed topic, the heirs may invite others who are thought to understand or have a solution to the disagreement (intervention by other parties). If the parties are not in agreement and peace, the matter will be compelled to be handled through the appropriate legal procedures, and the case will be presented before the relevant court. If a dispute arises, especially regarding inheritance, the family will generally try to resolve it through limited deliberation within the family scope. It is uncommon for disputes regarding inheritance distribution to be brought to litigation (courts) because the Chinese community considers it a family disgrace if there is a dispute between fellow members of the family only because of inheritance, especially if it is known to the wider public, will contribute to the family's disgrace and damage to the family’s image or good reputation.

3. CONCLUSION

In Chinese society, the Certificate of Inheritance is issued by a Notary, which begins by examining the will at the Ministry of Law and Human Rights Center for the List of Wills. A marriage certificate from the testator to his/her husband/wife is one of the prerequisites for a notary to create a Certificate of Inheritance. Inheritance Certificates that do not clearly and precisely indicate the portion possessed by each Heir might result in the presence of inheritance that was not included in the inheritance certificate. This can create legal uncertainty, resulting in an imperfect Inheritance Certificate. If this situation arises, it can be resolved by discussion with the family. If it cannot be addressed through deliberation, a solution might be sought through litigation (court). As a result, additional regulations related to inheritance distribution procedures that are not included in the inheritance certificate must be established, as well as efforts to increase the accuracy of the community in distributing inheritance to their heirs by understanding the terms and conditions of inheritance distribution to avoid the occurrence of a dispute between the heirs.

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