

Lurah's Accountability For The Letter of Inheritance As Evidence

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Abstract

Inheritance occurs because of the death of a family member. Currently, heirs can be limited with a Letter of Inheritance that can be made in the Kelurahan. This study aims to analyze the responsibility of the Lurah in making a Letter of Inheritance based on the inheritance system according to Islamic law in Indonesia. In addition, it is also aimed at analyzing the legal status of the Letter of Inheritance made by the Lurah as evidence. The research method used is normative juridical research. The results of the research, the Lurah and Camat are only administratively responsible in the process of recording the Letter of Inheritance, and are not responsible materially regarding the substance of the composition of Inheritaries. Other findings show that the Letter of Inheritance which was signed by the Petitioner legalized by the Head of the Village and the Camat, is an underhand letter.

Keywords: Lurah, Letter of Inheritance, Islamic Law

Abstrak

Warisan terjadi karena kematian anggota keluarga. Saat ini ahli waris dapat dibatasi dengan Surat Waris yang dapat dibuat di Kelurahan. Penelitian ini bertujuan untuk menganalisis tanggung jawab Lurah dalam membuat Surat Warisan berdasarkan sistem warisan sesuai syariat Islam di Indonesia. Selain itu, juga bertujuan untuk menganalisis status hukum Surat Warisan yang dibuat oleh Lurah sebagai bukti. Metode penelitian yang digunakan adalah penelitian yuridis normatif. Hasil penelitian, Lurah dan Camat hanya bertanggung jawab secara administratif dalam proses pencatatan Surat Waris dan tidak bertanggung jawab secara materi mengenai substansi komposisi Warisan. Temuan lain menunjukkan bahwa Surat Warisan yang ditandatangani oleh Pemohon yang dilegalisir oleh Kepala Desa dan Camat adalah surat underhand.

Kata kunci: Lurah, Surat Warisan, Hukum Islam

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Introduction

Legal position has an understanding as, the condition in which a legal subject or legal object is located. Legal subject or legal object can take action and authority according to their status (Ishaq, 1990). Humans are legal subjects of *natuurlijk persoon*, namely natural law subjects since they are in the womb until humans die. The time he is in the womb until a human dies he has rights and obligations that are regulated by law.

Inheritance arises because of a death that occurs to a family member, for example a father, mother or child if the person who dies has assets. So, what matters is not the death incident, but the wealth left by the person who died. It is clear that inheritance on the one hand is rooted in the family because it involves who is the heir and is rooted in assets because it involves inheritance on the assets left by the deceased. In the sense of inheritance, namely family members who died and members left behind or who were given a will by the deceased. The event of

death which causes the opening of the inheritance from the heir to the heir. The object of inheritance is the property left by the deceased. If concluded, the Law of Inheritance is a legal event that regulates the transfer of inheritance from an event due to death to the heir or the person appointed (Muhammad, 1993). Wirjono Prodjodikoro, former chairman of the Supreme Court of the Republic of Indonesia, said that "Inheritance law is the laws or regulations that regulate whether and how the various rights and obligations regarding a person's wealth when he dies will be transferred to a person who is still life" (Ramulyo, 1992). Inheritance events of course have rules/laws of heirs, which can not be violated, while the law of inheritance according to the Compilation of Islamic Law in Article 171 (a) is the law governing the transfer of ownership of the inheritance (tirkah) of the heirs, determining who entitled to be heirs and how many parts each (Kompilasi Hukum Islam di Indonesia, 2012). The law of inheritance in Islam applies to all Muslims around the world. However, the features of an Islamic state and life in that country or region have a different effect on inheritance laws (Wahyuni, 2018). In community life, the law of inheritance plays a very important role, in fact it is very important to determine the system or form of law that applies in society (Hazairin, 1974).

Islamic law views that the transfer of property rights follows the times so that Muslims do not feel treated or separate from the arrangements and provisions that develop in society for the transfer or transfer of property rights (Abraham. 2017). Based on the principle, the transfer of the inheritance automatically occurs for the sake of law, but does not directly control the inheritance but determines what attitude will be carried out on the inheritance. Legal actions can be carried out against the rights and obligations arising from the inheritance property required a Letter of Inheritance (Massora, 2019). The distribution of Islamic inheritance recognizes the existence of a social principle, namely dividing the inheritance, do not forget about relatives, orphans and the poor around. This is in accordance with Q.S. An-Nisa 'verse 8: which means,' And if during the distribution there are some relatives, orphans and poor people, then give them from the treasure (in moderation) and say good words to them.

Al-Qur'an surah An-Nisa 'verse 8 reminds the heirs that if at the time of distribution of the inheritance some relatives, orphans and poor people are present, then give it to relatives, orphans and needy children. The poor is a shadaqah part of the inheritance (inheritance) which will be shared fairly (in moderation) based on sincerity and say good words or treatment (Naskur, 2012). According to Islamic Law, if all groups who are entitled as heirs (both heirs who belong to nasabiyah and sababiyah) are present, then those who are entitled to

inherit property are Husband or Wife, Mother and Father, and Sons and Daughters (Hamid, 2000). When compared to customary law, Islamic law tends to distribute inheritance to as many heirs as possible (Anshori, 2008), because child heirs do not close the rights of other heirs, namely widows or widowers, mothers and fathers. Islamic law determines heirs based on lineage and marriage, while customary law prioritizes the existence of lineage relationships. In addition, the distribution of Islamic inheritance tends to expand or embrace as many heirs as possible, while the distribution of inheritance according to customary law tends to be more limited due to the principle of mutual closure between potential heirs.

In fact, at this time, heirs can be limited with a Letter of Inheritance or Inheritance Pact which can be made in the Kelurahan even though they are both embracing Islam. Soedaryanto stated that Javanese Adat tends to emphasize that property is only used for offspring, even only limited to the nuclear family (nuclear family) does not expand like Islam, namely to the widow or widower, parents (extended family), and the people. This carries the message that Javanese custom does count lineages only on a small scale, while Islam links descent on a broader scale. For the Javanese, thinking only of one's own descendants is the most important thing. Relatives outside the nuclear family are not borne by someone to share their assets. As for Islam, it does not only emphasize lineage but also marital relations or even religion (Sudaryanto, 2010). Letter of Inheritance made by the Lurah is basically an application that is requested by the applicant and is attached with a family card. The problem is whether the Letter of Inheritance can simply wipe out the position of other heirs, because usually there is a certain desire of the applicants for an Letter of Inheritance. In addition, because it is only administrative in nature, sometimes the Letter of Inheritance is often misused (Hakim, 2011).

As has been explained that the legal position has an understanding as a legal subject or legal object (Ishaq, 1990). The legal position also applies to legal objects, one of which is the Letter of Inheritance in Islamic Inheritance Law. The Letter of Inheritance is of course a law that is governed administratively by the state, while the Religious Court has the authority to issue a Fatwa or stipulation regarding the distribution of inheritance of an heir who is Muslim. This authority is based on the provisions of Article 49 of Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning the Religious Courts. The inheritance fatwa acts as a statement of who has the right to inherit the inheritance of the heir (heir). Based on the inheritance fatwa, the Notary/PPAT can determine who is entitled to sell the inherited land. What is the legal position of the Letter of Inheritance made by the Lurah in the inheritance system according to Islamic law in Indonesia.

Written evidence is a very important aspect of the level of proof in the settlement of cases in court. Before a judge (jury) decides on a case in court they must consider the evidence presented by the parties. According to Article 1866 of the Civil Code, it is explained that the evidence consists of written evidence, evidence with witnesses, allegations, confessions and oaths (Subekti, 2006). In civil procedural law, the mention of written evidence (letters) is the main evidence, because a letter is actually made to prove a situation, or an event that has occurred or a legal action that someone must take later.

Letter of Inheritance made by the Head of Village is written evidence. Luke Rachmat Surya Puluhulawa alias Luke (49) became a case in the case of alleged criminal acts of falsifying information in the Letter of Inheritance, on decision Number: 1381/Pid.B/2019/PN.Bdg. Rachmat Surya Puluhulawa Als Luke Bin H.M. Willy Suganda (Alm) was legally and convincingly proven guilty of committing a criminal act of "Asking to enter false information into an authentic deed which seems as if the statement is in accordance with the truth". What is the responsibility of the *Lurah* in making a Letter of Inheritance based on the inheritance system according to Islamic law in Indonesia and the legal position of an Letter of Inheritance made by the *Lurah* as evidence in the inheritance system.

Research Problems

Based on this description, the following problems can be formulated:

1. What is the responsibility of the *Lurah* in making a Letter of Inheritance based on the inheritance system according to Islamic law in Indonesia?
2. What is the Legal Position of the Letter of Inheritance made by the Head of the Village as Evidence in the Inheritance System according to Islamic Law in Indonesia?

Research Method

This research method uses a normative juridical research, so the approach methods taken are: Statute Approach, Case Approach, Conceptual Approach. The data used in this study are secondary data and primary data as a complement to secondary data. The data analysis method used is qualitative normative.

Discussion

1. The *Lurah* 's Accountability in Making a Letter of Inheritance Based on the Inheritance System according to Islamic Law in Indonesia.

Based on Article 39 of Government Regulation Number 24 of 1997, Article 60 letter (g) and Article 61 Paragraph (1) of the Decree of the Head of the State Land

Agency Number 3 of 1997. The Lurah has a role as a party who knows or witnesses that there has been a transfer of rights to a certain land registration object. In addition, the Lurah also has a position as the party issuing preliminary evidence or the basis of the right to register land, while in land registration data maintenance the position of the Lurah can be asked as a witness, which means it is not absolutely necessary. The authority of the Lurah theoretically derives from the Mayor Regulation (PERWALI) of Bandung City Number 185 of 2015 concerning the Delegation of Part of the Affairs of the Mayor of Bandung to the Camat and Lurah, in mandate, as stated by HD. Van Wijk, in our mandate we cannot talk about the transfer of power or authority in a juridical sense, now that it has been handled by and on behalf of the government institution concerned, the handling is also left to that institution; juridically speaking, it remains the decision of the institution itself. Here we are talking about a form of representation of government agencies. The mandate also remains authorized to handle his own authority if he wishes, he can give his mandate (the person who receives the mandate) all forms that he deems necessary, entirely responsible for all decisions made under the mandate. Juridically, the word mandate is nothing but the word mandans.

The concept of legal responsibility is closely related to the concept of rights/authorities and obligations. The concept of rights is a concept that emphasizes the notion of rights which is coupled with the meaning of obligations. The general opinion says that rights to someone are always correlated with obligations to others (Raharjo, 2000). A concept related to the concept of legal obligation is the concept of legal responsibility. That a person is legally responsible for certain actions or that he bears legal responsibility, meaning that he is responsible for a sanction if his actions are contrary to the applicable regulations.

Letter of Inheritance made by the Lurah is basically an application that is requested by the applicant and is attached with a family card. The problem is whether the Letter of Inheritance can simply wipe out the position of other heirs, because usually there is a certain desire of the applicants for an Letter of Inheritance. In addition, because it is only administrative in nature, sometimes the Letter of Inheritance is often misused.

The positions of the Lurah and Camat are strengthening, meaning that it strengthens the truth of the contents of the Letter of Inheritance, especially ensuring that no other heirs are left, or other people who do not have an inheritance relationship but are included in the Letter of Inheritance as heirs. The Lurah and Camat, which are state administrative officials, must uphold the precautionary principle. Before signing it, steps should be taken for examination and verification so that later it is not blamed before the law. The question is what

if the Letter of Inheritance made by the Lurah is a means of falsifying information, and whether the Lurah is responsible.

Lurah plays a role in strengthening the Letter of Inheritance. Decree of the Mayor of Bandung Number: 470/Kep.1385-Pem/2018 Regarding Stipulation of Standard Operating Procedures for Recording Letter of Inheritance in the City Government of Bandung, the sixth number states that, 'Lurah and Camat are only administratively responsible in the process of recording Letter of Inheritances, and is not materially responsible regarding the composition/lineage of the Inheritance'. A Lurah who violates the prohibition may be subject to administrative sanctions in the form of verbal warning and/or written warning, in the case of administrative sanctions, temporary dismissal can be taken and can be continued with dismissal.

The fifth point of the Bandung Mayor's Decree Number: 470/Kep.1385-Pem/2018 concerning the Stipulation of Standard Operating Procedures for Recording Letter of Inheritances in the Government of the City of Bandung which states that, 'All legal consequences arise regarding the Registration of Letter of Inheritances, in the Kelurahan and the District is fully the responsibility of the Heirs and/or their proxies.'

As explained in the Decree of the Mayor of Bandung Number: 470/Kep.1385-Pem/2018 concerning the Establishment of Standard Operational Procedures for Recording Letter of Inheritance in the City Government of Bandung, the sixth number is that, the Lurah and Camat are only administratively responsible in the process of recording an Letter of Inheritance, and are not responsible materially for the composition/lineage of the heirs. The Lurah and Camat are only responsible administratively in the process of recording an Letter of Inheritance, when the Lurah 's fault is in the administrative area, then he can be blamed.

Based on the overall description of the discussion, it can be concluded that the responsibility of the Lurah in making an Letter of Inheritance is based on the inheritance system according to Islamic law in Indonesia, namely the sub-district and sub-Camats are only administratively responsible in the process of recording an Letter of Inheritance, and are not materially responsible for the composition/lineage of experts. Inheritance. The Lurah and Camat are only responsible administratively in the process of recording an Letter of Inheritance, when the Lurah 's fault is in the administrative area, then he can be blamed.

2. Legal status of Letter of Inheritance made by the Lurah as evidence in the inheritance system according to Islamic law in Indonesia.

Legal position has an understanding as a legal subject or legal object. By having a position, a legal subject or legal object can take action and authority

according to their status (Ishaq, 1990). This means that the function of the Lurah and Camat is as the person who confirms the Letter of Inheritance made by the heirs witnessed by 2 (two) witnesses. Of course, it is not appropriate if the Lurah and Camat are judged to be able to provide this formal element to the Letter of Inheritance if they do not have the intended authority which is regulated in statutory regulation (Pramana, 2014).

The making of a Letter of Inheritance consists of two forms, including the first form based on the statement letter of the heir in question is fully signed by Camat and the head and office letter number of the sub-district office, then the second form is made and signed with the heirs and strengthened by the local Lurah and known by the Camat (Andraini, 2009). Based on principle, a Letter of Inheritance can be made by just one of the heirs to appear at the head of the Lurah or Camat and Notary, so that if there is an heir in the Letter of Inheritance, the heir can then transfer the rights to the inherited land to another party without approval from other heirs because their names are not included in the Letter of Inheritance, so that this will cause losses for the heirs whose names are not listed in the Letter of Inheritance (Djayanti, 2017).

Letter of Inheritance is classified as written evidence that can be used to support a party's arguments before the Court (Tjitrosoedibjo, 2008), as well as lawful according to law where it has a role in every civil law relationship, for example in transferring rights over inheritance objects such as being sold, granted or having their rights released, and is used as the basis for making authentic deeds before a notary. If the Letter of Inheritance contains something that is not true, the certificate is legally flawed and can be sued in court to be canceled by the party who feels aggrieved so that it no longer has legal force. The Letter of Inheritance can also serve as evidence for the heirs to be able to take or withdraw money from the heirs in a bank or insurance company, although for each bank or insurance institution it is different in determining what form of Letter of Inheritance it can receive (Purwaka, 1999).

Implementation of the making of the Letter of Inheritance, various problems were found, the making of the Letter of Inheritance did not provide legal certainty to the heirs, because the basis for making the Letter of Inheritance was found, so that the strength of the proof was doubted (Laili, 2015). Letter of Inheritance signed by the Applicant and legalized by Lurah and Camat, is a letter or deed under hand. The power of material proof of the deed under the hand according to Article 1875 of the Civil Code, the deed under the hand is recognized by the person against whom the deed is used or who can be deemed recognized according to law for the signer, his heirs and other persons who get rights from that person, is perfect

evidence like an authentic deed. Based on this, the contents of the information in the underhand deed are valid as to who made it and for the benefit of the person for whom the statement was made.

Underhanded deed is basically a deed made by the parties for a particular interest or purpose without involving the authorized official. So in a deed under the hands of the deed it is sufficient to make the parties themselves and then be signed by the parties, for example receipts, letters of agreement and accounts payable. The absence of authorized officials is the main difference between an underhand deed and an authentic deed. Then, with the signature of the Lurah and Camat, the Letter of Inheritance will be authentic. Not according to the author, even though the Letter of Inheritance even though it is stipulated in the Legislations and even the Mayor of Bandung Decree Number: 470/Kep.1385-Pem/2018 concerning the Stipulation of Standard Operating Procedures for Recording Letter of Inheritance in the Government of Bandung City, in principle Inheritance is made by the applicant, not made by Lurah and Camat.

This underhanded deed is regulated in Articles 1874-1984 of the Civil Code and Articles 286-305 RBg, including regulating: first, all underhand writings that are signed are considered as underhanded deeds, and if the parties wish to write-under hand writing to be legalized to a notary or authorized official; second, the written deed under hand must be acknowledged by the parties involved in it; third, the way to prove the deed under hand must be examined in court; fourth, it must be written in person and clearly agreed upon; fifth, proof of deed under the hands of each party must have it; sixth, the power of proof of the deed under hand is in the original deed, while the copies can be trusted if they are made by order of a judge and in the presence of the two parties concerned.

Furthermore, in Stb. 1867 Number 29 also regulates the proof of an underhanded deed if there is a signature that is denied, then the party submitting the underhanded deed must prove the truth of the signature through other evidence. Thus, as long as the signature is not recognized, the underhanded deed will not bring much benefit to the party who filed it in court. However, if the signature has been recognized, then the deed under that hand for the signatory, the heirs and the people who get the rights from them, is perfect evidence such as an authentic deed which has the power of formal proof and the power of making material.

The underhand deed contains special provisions in it, among others, the underhand deed which contains a one-sided debt agreement to pay a sum of money or deliver an object whose price is determined by an amount of money must be written entirely by the signatory's own hand. If this is not done, the underhand

deed can only be accepted as a preliminary written evidence only (Article 1871 of the Civil Code).

Underhanded deed according to Article 1875 of the Civil Code, the power to bind a deed under hand has formal evidentiary power if the underhanded deed is recognized by the person against whom the deed is intended to be used, then the deed can be a perfect tool of proof for the person who signed it and experts, inheritors and those who derive rights thereof. The strength of material evidence with respect to the truth of the contents of the information contained in the deed, the information contained therein must be considered true as the information desired by the parties and is binding on the signatory parties. The requirements for the deed under hand are used as evidence, namely: The letter or writing is signed; The content described therein concerns legal action or legal relationship; Deliberately made to be used as evidence of the deeds mentioned in it (Supomo, 2002).

The elements in the deed under hand are as follows: Deed that is not made and signed in front of or by an authorized public official; Party in nature, that is, at least involving two parties; Includes all forms of underhand deeds, letters, lists of household affairs letters, and other writings.

Several formal and material requirements that must be met in order for a deed to be categorized as an underhand deed are: The letter or writing is signed by the parties; The contents described in it are related to legal actions (*rechtshandeling*) or legal relations (*rechtsbetrekking*); Intentionally made to be used as evidence and acts or legal relationships mentioned therein; Underhanded deed must be stamped, this is stipulated in the Decision of the Supreme Court of the Republic of Indonesia Number: 589 K/Sip/1970 dated March 19, 1971; that the deed on the unmarked hand is not a valid evidence; The content of the deed under hand is directly related to the subject matter in the dispute being handled (Manan, 2006).

Based on a series of descriptions above, the position of the Letter of Inheritance made by the Lurah has limited other heirs in accordance with the provisions in Islamic law. Letter of Inheritance also limits the heirs not only because of requests and not writing of other heirs who should be entitled but also in cases involving only heirs according to the Family Card. Letter of Inheritance signed by the Petitioner (heir) on a 6,000 stamp duty, signed by witnesses (two witnesses), registered and signed by the Head of the RT, registered and signed by the RW Chairman, registered and signed by the Lurah is not an authentic deed. Letter of Inheritance signed by the Applicant and legalized by the Head of Sub-district and Camat, is a letter or deed under hand.

Conclusion

The Lurah and Camat are only responsible administratively in the process of recording an Letter of Inheritance, and are not materially responsible for the substance of the composition/lineage of the Inheritance Expert. If the Lurah who violates the prohibition can be subject to administrative sanctions in the form of verbal warning and/or written warning, in the case of administrative sanctions, temporary dismissal can be taken and can be continued with dismissal.

The Letter of Inheritance made by the Lurah limits the heirs according to the provisions in accordance with Islamic law and ensures that no other heirs are left behind, or other people who do not have an inheritance relationship but are included in the Letter of Inheritance as heirs. Letter of Inheritance registered and signed by the Lurah is not an authentic deed. The strength of the evidence and the strength of proof of authentic deeds is perfect, although authentic deeds are perfect evidence, they can still be countered with strong opposing evidence, but the denial party must prove, as long as there is no contradictory evidence (on the contrary) everything that is contained in the deed must be deemed true.

Suggestions

To the head of the village, it is better to be more orderly in population administration, especially in the registration of births, marriages and deaths to avoid mismatching of the data of the villagers, so that there is a match between formal truth and material truth.

To the Head of the Village, there should be a standard operating procedure that requires the Lurah not only to base the recognition of the applicant but according to the existing data in the Kelurahan/Desa and to summon village officials residing in the applicant's environment, thereby reducing the risk of false information. This is related to the power of proof of the Letter of Inheritance which is an underhanded letter, which if one of the parties does not recognize the statement listed is not recognized and justified.

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