

# LEGAL CERTAINTY OF NOTARY AUTHORITY IN ISSUING A CERTIFICATE OF INHERITANCE RIGHTS BASED ON INDONESIAN POSITIVE LAW

<sup>1\*</sup>Arman Tjoneng, <sup>2</sup>Agus Setiawan, <sup>3</sup>Felicia Chang  
<sup>1,2,3</sup>Maranatha Christian University

**Corresponding Author:**  
[arman.tjoneng@gmail.com](mailto:arman.tjoneng@gmail.com)

**To Cite This Article:** Tjoneng, A. ., Setiawan, A. ., & Chang, F. . (2024). LEGAL CERTAINTY OF NOTARY AUTHORITY IN ISSUING A CERTIFICATE OF INHERITANCE RIGHTS BASED ON INDONESIAN POSITIVE LAW. *Journal of Advance Research in Social Science and Humanities* (ISSN 2208-2387), 10(8), 1-10.  
<https://doi.org/10.61841/4c9tyq21>

---

## ABSTRACT

*The issuance of Article 111 of the ATR Regulation No. 16 of 2021 regarding the authority of a notary in issuing a Certificate of Inheritance has caused a polemic because it is considered contrary to the provisions of Law No. 2 of 2014 that raises questions regarding legal certainty in it because legal certainty in a land registration system is an absolute thing. The purpose of this study is to examine the vertical consistency regarding the intended rules. This research uses a conceptual approach and statutory approach. The type of data in this study is secondary data. This research proves that Article 111 Paragraph (1) letter c. number 5 ATR Regulation No. 16 of 2021 remains vertically consistent with Article 15 UUJN No. 2 of 2014 jo. with Article 18 of Law No. 30 of 2004. It also provides legal certainty for notaries, land offices, and all heirs.*

**Keywords:** *Certificate of Inheritance Rights; Notary Authority; Transfer of Land Rights; Vertical Consistency.*

## INTRODUCTION

Article 1 paragraph (1) of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Notary Position (here in after referred to as UUJN No. 2/2014) states that a Notary is a public official who is authorized to make authentic deeds and has other authorities as referred to in this Law or based on other laws.<sup>1</sup> What is meant by 'this Law' in the definition above is, of course, UUJN No. 2/2014. Meanwhile, what is meant by 'other laws' in the definition above are the applicable laws and regulations, in addition to UUJN No. 2/2014, which of course also gives authority for Notaries to make a legal product in accordance with their main duties and authority based on laws and regulations. These 'other laws' include Law No. 42 of 1999 concerning Fiduciary Guarantees, Law No. 40 of 2007 concerning Limited Liability Companies, Law No. 20 of 2011 concerning Flats, the Civil Code, and other laws and regulations that contain the authority for Notaries to make a legal product.<sup>2</sup>

The main authority of Notaries in general is expressly stated in Article 15 of UUJN No. 2/2014 which regulates that:

- (1) "The Notary is authorized to make an authentic Deed regarding all acts, agreements, and determinations required by laws and regulations and/or required by the interested party to be stated in the authentic Deed, guaranteeing the certainty of the date of making the Deed, keeping the Deed, providing grosses, copies and extracts of the Deed, all of which are as long as the making of the Deed is not also assigned or exempted to other officials or other persons prescribed by law.
- (2) In addition to the authority as intended in paragraph (1), the Notary is also authorized to:
  - a. certify the signature and establish the certainty of the date of the letter under hand by registering it in a special book;
  - b. book letters under hand by registering in a special book;
  - c. making a copy of the original letter under the hand in the form of a copy containing the description as written and described in the letter concerned;
  - d. certify the photocopy of the match with the original letter;
  - e. providing legal counseling in relation to the making of Deeds;
  - f. making Acts related to land; or
  - g. make an auction minutes deed.
- (3) In addition to the authority as referred to in paragraph (1) and paragraph (2), the Notary has other authorities regulated in laws and regulations."

Based on Article 15 of UUJN No. 2/2014, the authority that exists in the Notary seems to be intended to exercise part of the state power in the field of civil law and for that reason the Notary is delegated certain authority, including to make written evidence, including making Determination required by laws and regulations.<sup>3</sup> Delegation or in the form of the adjective 'delegative' is because the authority possessed by the Notary profession is a delegation of authority from the Government through the Minister of Law and Human Rights who has previously received authority by attribution and there is a transfer of responsibility and liability to the Notary profession.<sup>4</sup>

The authority of the Notary to make the determination required by laws and regulations and other authorities regulated in laws and regulations is to make a certificate of inheritance rights (SKHW) intended for Indonesian citizens of European or Western descent and Indonesian citizens of Chinese descent.<sup>5</sup> The arrangement that the SKHW made by the Notary refers to the Supreme Court Circular Letter Number: MA/KUMDIL/171/V/K/1991 dated May 8, 1991.<sup>6</sup>

---

<sup>1</sup> Indonesia, "The authentic interpretation of the concept of 'Notary' is stated in article 1 number 1 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary" (2014).

<sup>2</sup> I Wayan Eka Darma Putra, Prija Djatmika, and Nurini Aprilianda, "The Basis for the Distribution of Authority of Notaries and Land Deed Making Officials (PPAT) in the Land Sector," *Jurnal Rechtidee* 13, no. 1 (2018): 45, <https://doi.org/10.21107/ri.v13i1.2873>.

<sup>3</sup> Asri Agustiwi and Bintara Sura Priambada, "A Study on the Role of Land Deed Making Officials According to Government Regulation Number 24 of 1997 concerning Land Registration (Case Study at the Notary and Ppat Office Immawati Uswatun Chasanah, Sh, M. kn)," *Rechstaat of Law* 8, no. 2 (2014): 6,3.

<sup>4</sup> Agus Setiawan, "Hermeneutic Relevance in Legal Reasoning Related to Notary Authority in Indonesia" (Dissertation of Doctoral Program in Law. Parahyangan Catholic University, Bandung, 2017), 456.

<sup>5</sup> Ahlan Sjarif, Surini, and Nurul Elmiyah, *Western Civil Inheritance Law: Inheritance by Law* (Jakarta: Kencana Prenada Media Group, 2014), 1.

<sup>6</sup> Fardatul Laili, "Analysis of the Making of Inheritance Certificates Based on Population Classification (Based on Law Number 40 of 2008 concerning the Elimination of Racial and Ethnic Discrimination)," *Student Journal of the Faculty of Law, Universitas Brawijaya*, 2015, 3.

Article 1868 of the Civil Code also regulates the use of the authority of the Notary as a public official which must be carried out in the place where the deed is made.<sup>7</sup> The regulation regarding the place where the deed is made is regulated in more detail is regulated in Article 18 of Law Number 30 of 2004 concerning the Notary Position which regulates:

1. Notaries have a place of residence in the district or city;
2. Notaries have an area of office covering the entire provincial area from their place of office.<sup>8</sup>

The place of position is the position of the existence of the Notary office which is used in daily life in accordance with the decision of his appointment, namely in a district or city. The area of office is the area of its authority which includes 1 (one) province which includes the place of its position.

Regarding the correlation between the use of Notary authority in terms of making deeds with the place of office and the area of office, it can be concluded that the Notary is authorized to make deeds outside his place of office, but still within the area of his office, namely in 1 (one) province where his place of office is located. The prohibition related to the Notary office area is regulated in Article 17 paragraph (1) of UUJN No. 2/2014, that Notaries are prohibited from exercising their office outside the area of their office and leaving their office area for more than 7 (seven) consecutive working days without a valid reason.

Listening to the provisions regarding the authority and area of the Notary office associated with the making of the SKHW intended for Indonesian citizens of European or Western descent and Indonesian citizens of Chinese descent, it can be understood that the Notary is authorized to make the SKHW for anyone who faces him, as long as the authority is used in his place of office which covers the entire provincial area of his place of office or is used in the outside their place of office, but still within their area of office, namely in 1 (one) province where their place of office is located. This authority can be exercised with certain restrictions, namely not leaving the area of office for more than 7 (seven) consecutive working days without a valid reason.<sup>9</sup>

In the exercise of this authority, in the creation of SKHW by the Notary, it is very possible that there are heirs who face the Notary who comes from outside the Notary's place of residence, even from outside the Notary's office area to make an SKHW whose heir also turns out to be the last residence outside the Notary's place of residence, even from outside the Notary's office area. In these conditions, based on some of the provisions above, of course, the Notary is authorized to make an SKHW as long as it does not violate the regulations set for him which specifically regulates the class or class of Indonesian citizens facing him, his authority, and the area of his office.<sup>10</sup>

On August 23, 2021, the Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 16 of 2021 concerning the Third Amendment to the Regulation of the Minister of State for Agrarian Affairs/Head of the National Land Agency Number 3 of 1997 concerning Provisions for the Implementation of Government Regulation Number 24 of 1997 concerning Land Registration (hereinafter referred to as the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia No. 16 of 2021) was promulgated.

Ministerial Regulation No. 16 of 2021 was stipulated with the aim of implementing the provisions of article 99 of Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flats, and Land Registration.

Article 111 paragraph (1) letter c number 5 of the Ministerial Regulation of ATR No. 16 of 2021 essentially stipulates that an application for registration of the transfer of land rights or ownership rights to a flats unit is submitted by the heirs or their proxies by attaching one of them is a certificate of proof as an heir, one of which is in the form of a certificate of inheritance rights from the Notary who is domiciled in the place of residence of the heir at the time of death. In this provision, the regulation regarding the preparation of SKHW by Notaries appears to be different from the previous provisions as stipulated in Article 111 paragraph (1) letter c number 4 of the 2nd flat line of the Regulation of the Minister of State of Agrarian Affairs / Head of the National Land Agency Number 3 of 1997 concerning Provisions for the Implementation of Government Regulation Number 24 of 1997 concerning Land Registration (hereinafter referred to as the Minister of Agrarian Affairs No. 3 of 1997).

In the Agrarian Ministerial Regulation No. 3 of 1997, the creation of SKHW by a Notary does not at all stipulate that the creation of SKHW is made by a Notary who is domiciled in the place of residence of the heir at the time of death. The Notary, based on his authority, can serve the needs of the community (which in this case is the heirs) from all regions of

<sup>7</sup> Mohd Idris Ramulyo, *Some Issues in the Implementation of Western Civil Inheritance Law (Burgerlijk Wetboek)* (Jakarta: Sinar Grafika, 1996), 13–14.

<sup>8</sup> Habib Adjie, *Proof as an heir with a notary deed (in the form of an heir's deed of evidence)* (Bandung: Mandar Maju, 2008), 5.

<sup>9</sup> Herlien Budiono, *Collection of Civil Law Writings in the Field of Notary* (Bandung: Citra Aditya Bakti, 2013), 84.

<sup>10</sup> Romanda Arif Kurnia and Umar Ma'ruf, "Implementation of Notary Duties and Authority in Making Deeds Related to Land (Study in the Notary Work Area, Kendal Regency)," *Journal of Deeds* 5, no. 1 (2018): 296, <https://doi.org/10.30659/AKTA.5.1.295>.

the Republic of Indonesia who face him at the Notary's place of residence to request an SKHW even if the heirs reside in a different place from the Notary's place of residence.

Article 111 paragraph (1) letter c number 5 of the Ministerial Regulation No. 16 of 2021 seems to narrow the services of Notaries to the public (who in this case are heirs) whose heirs live differently from the Notary's place of residence. For example, if the heir dies in the city of Bandung and has an address on the Identity Card in the city of Bandung, then the Notary whose SKHW is accepted by the Land Office as one of the bases for the registration of the transfer of land rights or property rights to the apartment unit is only the SKHW made by the Notary whose place of residence is in the city of Bandung. SKHW from other Notaries other than those in the city of Bandung will not be accepted as a basis for the transfer of land rights or rights to flats at the land office. In this condition, it is clear that before the Notary provides services to people who need SKHW, the Notary concerned must first ask the residence of the deceased heir.

The Notary may, based on his authority, make an SKHW for the heirs whose last place of residence is different from the Notary's place of residence, but at the time the SKHW is submitted to the Land Office as one of the bases for the application for land registration or ownership of the flats unit; Therefore, it is very likely that the SKHW will be rejected by the Land Office on the grounds that the SKHW is not in accordance with Article 111 paragraph (1) letter c number 5 of the Ministerial Regulation No. 16 of 2021. In this condition, the transfer of land rights or ownership of the flats unit certainly cannot be done and the heir(s) must return to find a Notary whose place of residence is the same as the place of residence of the heir at the time of the heir's death, and ask the Notary to make the SKHW again.

Looking at the existing arrangements in Article 111 paragraph (1) letter c number 5 of the Ministerial Regulation of ATR No. 16 of 2021 concerning the preparation of SKHW by Notaries from the perspective of Notary authority based on Article 15 of the Law No. 2/2014 *in conjunction with the* Supreme Court Circular Letter Number: MA/kumdi/171/V/K/1991 dated May 8, 1991, it seems that there is the potential for vertical inconsistency. On the one hand, the Notary has the authority to make an SKHW without having to have any similarity between the place of residence of the heir at the time of death and the place of residence of the Notary, on the other hand, one of the bases of the transfer of land rights and ownership of the flats unit must use the SKHW made by the Notary whose position is the same as the place of residence of the heir when the heir dies.

Based on the search, there are several writings that discuss SKHW, including: Notary Authority in Making Inheritance Certificates for Indonesian Citizens by I Gusti Kade Prabawa Maha Yoga in the Scientific Journal of Pancasila and Citizenship Education, December 2018. The focus of writing this scientific paper lies in the authority of the Notary as a state official in making SKHW based on pre-existing rules. In addition, there is a thesis entitled The Authority of Notaries to Make Inheritance Certificates for Native Indonesian Residents by Filbert Maynaldy, Master of Notary Study Program, Faculty of Law, Hasanuddin University of Makassar 2021. The focus of writing this scientific paper lies in the authority of the Notary as a state official in making SKHW, especially for Indonesian citizens. There is also a thesis entitled Legal Certainty for Indonesian Citizens in the Making of Inheritance Certificates by Michael Hartono, Notary Master Program of the Ministry of Research, Technology and Higher Education, Universitas Brawijaya, Faculty of Law 2018 where the focus is related to legal certainty with the legal basis of pre-existing rules. Meanwhile, this study reviews the creation of SKHW after the issuance of Ministerial Regulation No. 16 of 2021 which is related to UUJN No. 2/2014 where Ministerial Regulation No. 16 of 2021 is a new regulation that did not exist at the time the scientific works in question were made by the author.

This will be examined whether there has indeed been a vertical inconsistency in the regulation regarding the preparation of SKHW by Notaries or not. The vertical consistency of the arrangement needs to be examined because it has a direct impact on the legal certainty of the SKHW made by the Notary which will later be used as the basis for the application for the transfer of land rights and ownership rights to the flats. Therefore, the main study in this study is to test the vertical consistency of Article 111 of the Ministerial Regulation No. 16 of 2021 against the authority of the Notary based on the Constitution No. 2/2014 and the legal certainty regarding the preparation of a Certificate of Inheritance Rights by the Notary related to Article 111 of the Ministerial Regulation of the Judicial Regulation No. 16 of 2021.

## RESEARCH METHODS

The research specification is descriptive with the type of normative juridical research. The method of approach used, namely the legislative approach. The data collection technique uses literature studies. The secondary data used consisted of primary legal materials such as Law Number Number Law No. 2 of 2014 concerning Amendments to Law No. 30 of 2004 concerning Notary Positions and Minister of ATR Regulation No. 16 of 2021. as well as secondary legal materials consisting of previous research, papers, and journal articles related to the research theme. The data analysis method uses qualitative analysis.

## RESULTS AND DISCUSSION 1. VERTICAL CONSISTENCY OF ARTICLE 111 OF THE MINISTERIAL REGULATION NO. 16 OF 2021 ON NOTARY AUTHORITY BASED ON LAW NO. 2 OF 2014

The purpose of the enactment of the Ministerial Regulation No. 16 of 2021 is to implement the provisions of Article 99 of Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flats Units and Land Registration (hereinafter referred to as Government Regulation No. 18 of 2021). Article 99 of Government Regulation No. 18 of 2021 in principle states that regarding the implementation of electronic land registration, storage and presentation of electronic data and/or documents, form, content and procedures for making deeds of Land Deed Making Officials electronically, acceleration of land registration, electronic registration of dependent rights, recording of binding sale and purchase agreements and lease agreements, recording of case objects and status quo orders, the change of building use rights and use rights to property rights, and the registration of former Western land or customary land as well as swapraja or former swapraja land as referred to in Articles 84 to 98 are regulated in ministerial regulations.

The Ministerial Regulation in question is none other than the Regulation of the Minister of Agrarian and Spatial Planning / Head of the National Land Agency Number 16 of 2021. Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flats Units and Land Registration is actually also an implementing provision of Article 142 and Article 185 letter b of Law Number 11 of 2020 concerning Job Creation (hereinafter referred to as Law No. 11 of 2020).

Based on the description above, it can be seen that the "common thread" or the order of laws and regulations that are clearly implemented is that Article 142 and Article 185 letter b of Law No. 11 of 2020 are followed up by the provisions in Government Regulation No. 18 of 2021. Furthermore, Government Regulation No. 18 of 2021 is followed up on its implementation until there are changes to the three contained in the Ministerial Regulation of ATR No. 16 of 2021.

In the Ministerial Regulation of ATR No. 16 of 2021, there is a provision that in this research or writing will be tested for vertical consistency related to the authority of the Notary in the Law No. 2/2014. The provisions that will be tested for vertical consistency referred to above are in Article 111 paragraph (1) letter c. number 5 of the Ministerial Regulation of ATR No. 16 of 2021. The provision states in principle that: "The application for registration of the transfer of Land Rights or Property Rights over Flats Units is submitted by the heirs or their proxies by attaching: a certificate of proof as an heir can be in the form of: a certificate of inheritance rights from a Notary who is domiciled in the place of residence of the heir at the time of death".

This provision can be interpreted by grammatical interpretation that the registration of the transfer of land rights or ownership of flats can be submitted by the heirs or their proxies to the local land office whose transfer of rights is based on a deed of inheritance right statement made only by a Notary who is domiciled in the heir's residence at the time of the heir's death.

This provision has the consequence that if the certificate of inheritance rights is made by a Notary who is not domiciled in the place of residence of the heirs at the time of the heir's death, then the certificate of inheritance rights cannot be used as a basis by the heirs or their attorneys to register the transfer of land rights or ownership rights to the apartment unit and will certainly be rejected by the Land Office. Therefore, the registration of transfer of rights can only be accepted by the Land Office on the basis of a deed of inheritance right information made only by a Notary who is domiciled in the place of residence of the heir at the time of the heir's death.

On the other hand, regarding the authority of the Notary, Article 15 of the Law No. 2/2014 expressly states the authority of the Notary, namely:

"(1) The Notary is authorized to make an authentic Deed regarding all acts, agreements, and determinations required by laws and regulations and/or required by the interested parties to be stated in the authentic Deed, guaranteeing the certainty of the date of making the Deed, keeping the Deed, providing grosses, copies and extracts of the Deed, all of which are as long as the making of the Deed is not also assigned or exempted to other officials or other persons designated by the law.

(2) In addition to the authority as intended in paragraph (1), the Notary is also authorized to: a. certify the signature and determine the certainty of the date of the letter under hand by registering it in a special book; b. book a letter under your hand by registering it in a special book; c. make a copy of the original letter under hand in the form of a copy containing the description as written and described in the letter concerned; d. certify the compatibility of the photocopy with the original letter; e. provide legal counseling in relation to the making of the Act; f. making Acts relating to land; or g. make an auction minutes deed.

(3) In addition to the authority as intended in paragraph (1) and paragraph (2), the Notary has other authority regulated in laws and regulations."

The authority of the Notary is given in connection with its main duties and functions in exercising part of the state power in the field of civil law and therefore to the Notary is delegated certain authority, including to make written evidence, including making determinations required by laws and regulations. Notary Authority is the delegation of authority from

the Government through the Minister of Law and Human Rights who has previously received authority by attribution and there is a transfer of responsibility and liability to the Notary profession concerned.<sup>11</sup>

The authority to make determinations required by laws and regulations and/or other authorities regulated in laws and regulations, one of which is to make an SKHW which is specifically intended for Indonesian citizens of European or Western descent and Indonesian citizens of Chinese descent. The regulation regarding the creation of the SKHW refers to the Supreme Court Circular Letter Number: MA/KUMDIL/171/V/K/1991 dated May 8, 1991.<sup>12</sup>

In addition, Article 1868 of the Civil Code also regulates the use of the authority of the Notary as a public official which must be carried out in the place where the deed is made. The regulation regarding the place where the deed is made is regulated in more detail in Article 18 of UUJN No. 30/2004.

The place of position is the position of the existence of the Notary office which is used in daily life in accordance with the decision of his appointment, namely in a district or city. The area of office is the area of its authority which includes 1 (one) province which includes the place of its position.

Regarding the correlation between the use of Notary authority in terms of making Notary deeds and the place of office and the area of office, it can be interpreted that the Notary is authorized to make deeds outside his place of office, provided that he is still within the area of his office, namely in 1 (one) province where his place of office is located. Prohibited matters related to the Notary's office area are regulated in Article 17 paragraph (1) of UUJN No. 2/2014, namely that Notaries are prohibited from exercising their positions outside their office area and leaving their office area for more than 7 (seven) consecutive working days without a valid reason.

The provisions regarding the authority of the Notary and the area of office of the Notary if associated with the creation of the SKHW intended for Indonesian citizens of European or Western descent and Indonesian citizens of Chinese descent will be understood that the Notary is authorized to make the SKHW for anyone who faces him as long as the authority is used in his place of office which covers the entire provincial area of his place of office or used outside his place of office, but still within the area of his office, namely in 1 (one) province where his place of office is located, provided that he does not leave his office area for more than 7 (seven) consecutive working days without a valid reason. Therefore, in the preparation of SKHW by the Notary, it is very possible that there are heirs who face the Notary who comes from outside the Notary's place of residence, even from outside the Notary's office area to make a Certificate of Inheritance Rights in which the heirs can also be allowed to live in the last place outside the Notary's place of residence, even from outside the Notary's office area. In this condition, of course, the Notary is authorized to make an SKHW as long as it does not violate the regulations set for him which specifically regulates the class or status of Indonesian citizens facing him, his authority, and the area of his office.

The two provisions that regulate the same thing but have different arrangements, namely: UUJN No. 2/2014 and Ministerial Regulation No. 16 of 2021, of course, have the potential to cause legal problems that will lead to legal uncertainty. Article 111 paragraph (1) letter c. number 5 of the Ministerial Regulation No. 16 of 2021 states that the certificate of inheritance rights must be made by a Notary who is domiciled in the place of residence of the heir at the time of death, while Article 15 of UUJN No. 2/2014 essentially gives authority to the Notary to make an SKHW as long as it is within the area of his office and is made for Indonesian citizens of European or Western descent and Indonesian citizens of Chinese descent, without linking the position of the Notary to the place of residence of the heir at the time of death.

Therefore, an examination or research will first be carried out to determine whether the two provisions, both UUJN No. 2/2014 and Ministerial Regulation No. 16 of 2021, are included in officially recognized and legally binding laws and regulations or not. This examination is important to determine the next examination or research. If both are included in the laws and regulations, then it can be continued to research whether there is a vertical inconsistency or not. However, if it turns out that the Ministerial Regulation No. 16 of 2021 does not include laws and regulations that are recognized and legally binding, then it can be ascertained that there is no need to continue research on its vertical consistency.

UUJN No. 2/2014 can be ascertained to be a type of law that is included in the type and hierarchy of laws and regulations based on Article 7 paragraph (1) of Law No. 12 of 2011 concerning the Establishment of Laws and Regulations (Law No. 12 of 2011). Ministerial Regulation No. 16 of 2021 based on Article 8 paragraph (2) of Law No. 12 of 2011 includes types of laws and regulations other than those explicitly mentioned in the hierarchy of laws and regulations in Article 7 paragraph (1) of Law No. 12 of 2011 and is recognized for its existence and has binding legal force as long as it is ordered

---

<sup>11</sup> Yeni Salma Barlinti, "Inheritance legal system in Indonesia: A legal justice for people," *Indonesia Law Review* 3, no. 1 (2013): 24, <https://doi.org/10.15742/ilrev.v3n1.28>.

<sup>12</sup> Uswatun Hasanah, Mohammad Amir Hamzah, and Muffarijul Ikhwan, "Legal Pluralism in Resolving Inheritance Disputes in the Madura Community," *Legal Arena* 11, no. 1 (2018): 167, <https://doi.org/10.21776/ub.arenahukum.2018.01001.9>.

by higher laws and regulations or formed based on authority. In accordance with its purpose, Ministerial Regulation No. 16 of 2021 is a law and regulation stipulated to implement the provisions of Article 99 of Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flats Units and Land Registration. Therefore, the Ministerial Regulation No. 16 of 2021 is included in the laws and regulations which, according to Article 8 paragraph (2) of Law No. 12 of 2011, are recognized for their existence and have binding legal force because they are ordered to be the implementing provisions of higher laws and regulations, namely by Government Regulation No. 18 of 2021. Therefore, both UUJN No. 2/2014 and Permenmen, ATR No. 16 of 2021 based on Article 7 paragraph (1) *juncto* Article 8 paragraph (2) of Law No. 12 of 2011 are included in officially recognized and legally binding laws and regulations.

At first glance, Article 111 paragraph (1) letter c. number 5 of the Ministerial Regulation No. 16 of 2021 seems to contradict or be vertically inconsistent with the authority of the Notary in Article 15 of the Law No. 2/2014 *in conjunction with* Article 18 of the Law No. 30/2004. Therefore, after knowing that both UUJN No. 2 of 2014 and Permenmenan ATR No. 16 of 2021 are included in officially recognized and legally binding laws and regulations, the examination and research will continue by examining their vertical consistency.

The word 'consistency' is taken from the root word 'consistent'<sup>13</sup> which is interpreted as adhering to principles or being in harmony or appropriate. Consistency is interpreted as determination and steadiness or obedience. While the word 'vertical'<sup>14</sup> is interpreted as perpendicular from the bottom up or vice versa. Based on these two meanings, 'vertical consistency' can be interpreted: a certain thing (which in this study is a law and regulation) that obeys the principle of perpendicularity from the bottom up or vice versa.

The Notary is authorized to make an SKHW as long as it is within the area of his office without linking the Notary's place of residence with the place of residence of the heir at the time of death. However, if the SKHW is made by a Notary whose place of residence is different from the place of residence of the heir at the time of death, then based on Article 111 paragraph (1) letter c. number 5 of the Ministerial Regulation of ATR No. 16 of 2021, the SKHW cannot be used or rejected by the land office to be used as a basis for the transfer of land rights or ownership of flats.

Article 15 paragraph (1) of UUJN No. 2/2014 essentially states expressly about the authority of the Notary, namely that the Notary is authorized to make authentic deeds regarding all determinations required by laws and regulations. If the SKHW is seen as a 'determination' required by laws and regulations, then the Notary is still authorized to make the SKHW as long as it is within the scope of his office and is made for Indonesian citizens of European or Western descent and Indonesian citizens of Chinese descent. If it turns out that there are laws and regulations, in this case the provisions contained in Article 111 paragraph (1) letter c. number 5 of the Ministerial Regulation of ATR No. 16 of 2021 which relates the position of the Notary to the place of residence of the heirs at the time of death, then these provisions must still be fulfilled by the Notary in making the SKHW which will later be used by the heirs as a basis for transferring land rights or property rights to the flats.

If the creation of SKHW, one of the purposes of which will be used as a basis for the transfer of land rights and ownership rights to flats, including as other authorities regulated in the laws and regulations as referred to in Article 15 paragraph (1) of UUJN No. 2/2014, then the authority must also not be contrary to the laws and regulations that have regulated it. The laws and regulations in question are, of course, Article 15 of UUJN No. 2/2014 *in conjunction with* UUJN No. 30/2004 *in conjunction with* Article 111 paragraph (1) letter c. number 5 of the Minister of ATR Regulation No. 16 of 2021. Therefore, in making SKHW which will later be used by the heirs as a basis for transferring land rights or ownership rights to the flats, the Notary must still pay attention to whether the position of the Notary and the place of residence of the heirs at the time of death is the same or not. In another sentence, it can be stated that in making an SKHW which will later be used by the heirs as a basis for transferring land rights or property rights to apartment units, the Notary must remain subject and comply with the applicable laws and regulations for the legal act which is none other than Article 111 paragraph (1) letter c. number 5 of the Ministerial Regulation of ATR No. 16 of 2021.

In laws and regulations, several principles related to the research being carried out apply, including: the principle of *lex specialis derogat legi generali* and the principle of *lex superior derogat legi inferiori*. Therefore, this study will be continued to determine whether these two principles apply to the regulation of making SKHW in Article 15 of UUJN No. 2/2014 *in conjunction with* Article 111 paragraph (1) letter c. number 5 of the Ministerial Regulation of ATR No. 16 of 2021.

Asas *lex specialis derogat legi generali*. *Lex specialis* comes from the Latin word which means *law governing a specific subject matter* or law that governs specific subject matters. *Lex specialist derogat legi generali* means *special rules derogate from general ones or special law repeals general law*, which means that special laws are considered valid even

---

<sup>13</sup> The Great Indonesian Dictionary Preparation Team, *Great Indonesian Dictionary* (Jakarta: Ministry of Education and Culture of the Republic of Indonesia, 1998). <sup>14</sup> See *Id*, p. 1003

though they are contrary to general legal rules.<sup>14</sup> This principle only applies to the rule of law with the type of law. Even though there seems to be an arrangement regarding the creation of SKHW which is specifically intended as the basis for the transfer of land rights and property rights to apartment units as stipulated in Article 111 paragraph (1) letter c. number 5 of the Ministerial Regulation of ATR No. 16 of 2021, but because the regulations regarding the creation of SKHW are different in their hierarchy, of course this principle cannot be enforced.

The principle of *lex superior derogat legi inferiori* means a law higher in the hierarchy repeals the lower one. At first glance, it seems that there are differences in regulations regarding a certain legal act, namely the making of SKHW by a Notary; however, if we examine more deeply, the making of SKHW by a Notary according to his authority is not prohibited by Article 111 paragraph (1) letter c. number 5 of the Ministerial Regulation of ATR No. 16 of 2021. A Notary can still make an SKHW even though the position of the Notary and the place of residence of the heir at the time of death is different. The SKHW can still be used for other things, for example: transfer of rights to shares, opening a *safe deposit box* (SDB), closing an account at a bank, and so on. Notaries do not lose their authority in making SKHW. Article 111 paragraph (1) letter c. number 5 of the Ministerial Regulation of ATR No. 16 of 2021 only regulates and can be interpreted grammatically that if there is an SKHW made by a Notary that will be used as a basis for transferring land rights or property rights to a flat, then the SKHW must be made by a Notary who has the same Notary residence as the heir's residence at the time of death. In other sentences, it can be explained that there is actually no vertical inconsistency, what only happens is that there are certain arrangements in the conditions related to land registration, especially regarding SKHW as the basis for the transfer of land rights or property rights to flats. In connection with the absence of conflict, but the existence of certain regulations in the agrarian sector, especially those related to land registration, thus the principle of *lex superior derogat legi inferiori* cannot be enforced.

In addition, the stipulation that the SKHW which is intended as the basis for registering the transfer of land rights and ownership of flats made by the Notary related to the Notary's place of residence which must be the same as the residence of the heir at the time of death seems to be inseparable and carried away from the mindset in the field of land registration, including arrangements for authorized public officials. In Article 12 paragraph (1) of Government Regulation No. 37 of 1998 concerning Regulations on the Position of Land Deed Making Officials (PP No. 37 of 1998) in essence, it is stated that the PPAT work area<sup>15</sup> is one of the working areas of the Land Office. Most likely, this mindset is also carried over in the arrangement regarding SKHW that must be made by a Notary whose place of residence is the same as the place of residence of the heir at the time of death.

## **LEGAL CERTAINTY REGARDING THE PREPARATION OF A CERTIFICATE OF INHERITANCE RIGHTS BY A NOTARY RELATED TO ARTICLE 111 OF THE MINISTERIAL REGULATION OF ATR NO. 16 OF 2021**

Regarding the results of the research on vertical consistency between Article 111 paragraph (1) letter c. number 5 of the Ministerial Regulation of ATR No. 16 of 2021 and Article 15 of the Ministerial Regulation No. 2/2014 *in conjunction with* article 18 of the Ministerial Decree No. 30/2004 which turns out to remain vertically consistent, this research will be continued with research on legal certainty regarding the making of a certificate of inheritance rights by a Notary related to the provisions in Article 111 paragraph (1) letter c. number 5 of the Ministerial Regulation of the Ministerial Regulation No. 16 of 16 2021. This research needs to be carried out in order to provide legal certainty both for Notaries as public officials authorized to make SKHW, for land offices in each city or district, and for heirs who intend to register the transfer of land rights or ownership of their flats based on SKHW at the land office.

Legal certainty referred to in this study is interpreted that every legal subject must have confidence that if a case occurs related to a legal norm, then he can estimate what conclusion or decision he will receive.<sup>16</sup> Legal certainty can be interpreted as normative law based on applicable laws and regulations.<sup>17</sup> In the context of this study, the legal subjects are none other than Notaries, city/district land offices, and heirs.

The arrangement for the creation of SKHW by a Notary as the basis for registering the transfer of land rights and ownership rights to the flats unit that must be made by a Notary whose place of residence is the same as the place of residence of the heir at the time of death does not actually eliminate the authority of the Notary as stipulated in Article 15 of the UUJN No. 2/2014 *juncto* Article 18 of UUJN No. 30/2004. The notary still has the authority to make an SKHW as long as it does not violate the regulations set for him which specifically regulates the class or status of Indonesian citizens facing him,

---

<sup>14</sup> Marwan Mas, *Introduction to Law* (Bogor: Ghalia Indonesia, 2004), 112.

<sup>15</sup> PPAT or Land Deed Making Officer is a public official who is authorized to make authentic deeds regarding certain legal acts regarding land rights or Property Rights to Flats as interpreted authentically in Article 1 number 1 of Government Regulation No. 37 of 1998.

<sup>16</sup> Shidarta, *The Law of Reasoning and Legal Reasoning - Philosophical Roots* (Yogyakarta: Genta Publishing, 2013), 182.

<sup>17</sup> Edi Hudiata, "Legal Reconstruction of Sharia Capital Market Dispute Resolution: Strengthening Regulatory Aspects to Provide Legal Certainty," *Journal of Law and Justice* 6, no. 2 (2017): 301, <https://doi.org/10.25216/jhp.6.2.2017.297316>.



his authority, and the area of his office. The use of Notary authority to still be able to make SKHW is the first legal certainty for Notary public officials.

The SKHW made by a Notary can still be used as a basis for registering the transfer of land rights and rights to flats as long as it is made by a Notary whose place of residence is the same as the place of residence of the heir at the time of death. This is the second legal certainty for the Notary, that one of the determinations made by the Notary, namely the SKHW, can still be used as a basis for registering rights at the land office.

The third legal certainty is that a Notary whose position is different from the place of residence of the heir at the time of death can still make an SKHW that can be used for the transfer of rights to shares, opening SDB, closing accounts in banks, and so on. However, if one of the SKHWs is intended as a basis for registering the transfer of land rights and property rights to the flats, then the Notary whose position is different from the place of residence of the heir at the time of death must explain Article 111 paragraph (1) letter c. number 5 of the Ministerial Regulation of ATR No. 16 of 2021 and can recommend the creation of the SKHW to the Notary of the partner whose position is the same as the place of residence of the heir at the time of his death. It does not mean that there are two SKHWs, but the Notary who is in a different position from the place of residence of the heir at the time of death does not make an SKHW at all and explain it to the heirs.

The compliance of the Notary in exercising his authority must be harmonized with the provisions for making the SKHW as referred to in Article 111 paragraph (1) letter c. number 5 of the Ministerial Regulation of ATR No. 16 of 2021 is none other than because the authority of the Notary is given related to the main duties and functions in exercising part of the state power in the field of civil law. To the Notary is delegated certain authority, including to make written evidence, including making determinations required by laws and regulations. Notary Authority is the delegation of authority from the government through the Minister of Law and Human Rights who had previously obtained authority by attribution and there was a transfer of responsibility and liability to the Notary profession concerned. The authority of the Notary must be subject to every law and regulation whose existence is officially recognized and legally binding, even to the source of law that applies in Indonesia.

Article 111 paragraph (1) letter c. number 5 of the Ministerial Regulation of ATR No. 16 of 2021 also provides legal certainty for the land office in accepting or rejecting the SKHW which is intended as the basis for registering the transfer of land rights and ownership rights to the flats made by the Notary related to the Notary's place of residence with the residence of the heirs at the time of death. Regarding the implementation of this provision, of course, each land office in each city or district can socialize this provision to all Notaries through the regional management of the Indonesian Notary Association in the city or district where the land office is located.

This legal certainty also applies to heirs who intend to register the transfer of land rights and ownership rights to the flats unit using the basis for registering the transfer of rights, which is SKHW. The heirs received information from the Notary who made the SKHW regarding the stipulation of the provisions as stated in Article 111 paragraph (1) letter c. number 5 of the Ministerial Regulation of ATR No. 16 of 2021.

## CLOSING

Based on the results of the above research, Article 111 paragraph (1) letter c. number 5 of the Ministerial Regulation of ATR No. 16 of 2021 remains vertically consistent with Article 15 of the Law No. 2/2014 *in conjunction with* Article 18 of the Law No. 30/2004. All of them are included in the type and hierarchy of laws and regulations based on Article 7 paragraph (1) and Article 8 paragraph (2) of Law No. 12 of 2011 concerning the Establishment of Laws and Regulations, therefore officially recognized for their existence and legally binding. The principle of *lex specialis derogat legi generali* and the principle of *lex superior derogat legi inferiori* related to the assessment of vertical consistency are not violated. The authority of the Notary in making SKHW which will later be used by the heirs as a basis for transferring land rights or property rights to the flats unit must still be subject to and comply with the applicable laws and regulations for the legal act, which is none other than Article 111 paragraph (1) letter c. number 5 of the Ministerial Regulation of ATR No. 16 of 2021. Article 111 paragraph (1) letter c. number 5 of the Ministerial Regulation of ATR No. 16 of 2021 also provides legal certainty not only for Notaries as public officials authorized to make SKHW, but also provides legal certainty for SKHW legal products which will later be used as the basis for registration of the transfer of land rights and property rights to apartment units, for the Land Office in each city or district, and for heirs who intend to register the transfer of their rights at the Land Office.

## BIBLIOGRAPHY

- [1] Edji, Habib. *Proof as an heir with a notary deed (in the form of an heir's deed of evidence)*. Bandung: Mandar Maju, 2008.
- [2] Agustiwati, Asri, and Bintara Sura Priambada. "A Study on the Role of Land Deed Making Officials According to Government Regulation Number 24 of 1997 concerning Land Registration (Case Study at the Office of Notary and Ppat Immawati Uswatun Chasanah, Sh, M. kn)." *Rechstaat of Law* 8, no. 2 (2014): 1–14.

- [3] Barlinti, Yeni Salma. "Inheritance legal system in Indonesia: A legal justice for people." *Indonesia Law Review* 3, no. 1 (2013): 23–41. <https://doi.org/10.15742/ilrev.v3n1.28>.
- [4] Budiono, Herlien. *A Collection of Civil Law Writings in the Field of Notary*. Bandung: Citra Aditya Bakti, 2013.
- [5] Hasanah, Uswatun, Mohammad Amir Hamzah, and Muffarijul Ikhwan. "Legal pluralism in the settlement of inheritance disputes in the Madura community." *Arena of Law* 11, no. 1 (2018): 163–83. <https://doi.org/10.21776/ub.arenahukum.2018.01001.9>.
- [6] Hudiata, Edi. "Legal Reconstruction of Sharia Capital Market Dispute Resolution: Strengthening Regulatory Aspects to Provide Legal Certainty." *Journal of Law and Justice* 6, no. 2 (2017): 297–316. <https://doi.org/10.25216/jhp.6.2.2017.297-316>.
- [7] Indonesian. The authentic interpretation of the concept of 'Notary' is stated in article 1 number 1 of Law
- [8] Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Notary Position (2014).
- [9] Kurnia, Romanda Arif, and Umar Ma'ruf. "Implementation of Notary Duties and Authority in Making Deeds Related to Land (Study in the Kendal Regency Notary Work Area)." *Journal of Acts* 5, no. 1 (2018): 295–308. <https://doi.org/10.30659/AKTA.5.1.295>.
- [10] Laili, Fardatul. "Analysis of the Making of Inheritance Certificates Based on Population Classification (Based on Law Number 40 of 2008 concerning the Elimination of Racial and Ethnic Discrimination)." *Student Journal of the Faculty of Law, Universitas Brawijaya*, 2015, 1–24.
- [11] Mas, Marwan. *Introduction to Law*. Bogor: Ghalia Indonesia, 2004.
- [12] Sons, I Wayan Eka Darma, Prija Djatmika, and Nurini Aprilianda. "The Basis for the Division of Authority of Notaries and Land Deed Making Officials (PPAT) in the Land Sector." *Journal of Rehtidee* 13, no. 1 (2018): 42–61. <https://doi.org/10.21107/ri.v13i1.2873>.
- [13] Ramulyo, Mohd Idris. *Some Problems in the Implementation of Western Civil Inheritance Law (Burgerlijk Wetboek)*. Jakarta: Sinar Grafika, 1996.
- [14] Setiawan, Agus. "Hermeneutic Relevance in Legal Reasoning Related to Notary Authority in Indonesia." Dissertation of the Doctoral Program in Law. Parahyangan Catholic University, Bandung, 2017.
- [15] Shidarta. *The Law of Reasoning and Legal Reasoning - Philosophical Roots*. Yogyakarta: Genta Publishing, 2013.
- [16] Sjarif, Ahlan, Surini, and Nurul Elmiyah. *Western Civil Inheritance Law: Inheritance by Law*. Jakarta: Kencana Prenada Media Group, 2014.
- [17] The team compiled the Great Indonesian Dictionary. *Great Indonesian Dictionary*. Jakarta: Ministry of Education and Culture of the Republic of Indonesia, 1998.