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Notary Authority to Use Retention Right to Keep Documents Based on Custody Agreement in Legal Assurance Review

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Abstract. *The purpose of this study is to determine and analyze the authority of a notary in retaining documents in the form of a power of attorney to sell and certificates that have transferred their ownership rights to other parties and to identify and analyze the position of heirs who have changed their citizenship on land ownership rights in a review of legal certainty. The approach method used in this research is sociological juridical. The results of the study stated that the storage of SHM certificate No. 2343/Salatiga by Notary WI is based on a safekeeping agreement between KT and notary WI. However, the authority to keep the certificate within a period of one year is no longer valid, considering that KT as the provider of care has changed its citizenship to become a citizen of the Netherlands. This refers to article 21 paragraph (3) of Act No. 5 of 1960 concerning Basic Agrarian Regulations. With the enactment of such provisions, the Notary WI within one year since the inheritance no longer has the right to keep the land certificate SHM No. 2343/Salatiga, considering that KT as the power of attorney no longer has rights to the land.*

Keywords: Authority; Retention; Documents; Custody; Assurance.

1. INTRODUCTION

A notary is a public official who has the authority to make an authentic deed. The importance of this authority is that it can be used as evidence, so that what is stated in the deed must be considered true, as long as it has not been proven otherwise.[1] The existence of this fact shows that the existence of a notary is intended to provide services to the community in order to meet the needs of authentic written evidence.[2]
The authority of a notary to make an authentic deed is regulated in Article 15 of Act No. 2 of 2014 concerning Amendments to Act No. 30 of 2004 concerning the Position of a Notary. In the article, it is explained that a notary is authorized to make an authentic deed regarding all acts of agreement, and stipulations required by legislation and/or desired by the interested party to be stated in an authentic deed, guaranteeing the certainty of the date of making the deed, storing the deed, giving grosse, copies

[1]Ghansham Anand, (2018), *Karakteristik Jabatan Notaris di Indonesia,* Prenada Media Group, Jakarta, p. 36.
[2]I Gusti Ayu Agung Devi Maharani Ariatmaja, (2018), *Kewenangn Notaris dalam Transaksi Jul Beli Tanah & Bangunnan: Studi Kasus Penahanan Sertipikat Hak Guna Bangunan,* Jurnal Kertha Patrika, Vol. 40, No. 2, 2018, p. 113.

and excerpts of the deed, all of which are as long as the making of the deed is not assigned or excluded to other officials or other people stipulated by law.[3]

One example of an agreement related to the authority of a notary in making an authentic deed is a sale and purchase agreement. The definition of buying and selling according to Article 1457 of the Civil Code is an agreement in which one party binds himself to surrender an object and the other party pays the agreed price.[4] Referring to this definition, the consequence of this agreement is the transfer of ownership rights and control of an item from one party to another.

The implementation of the sale and purchase agreement on certain objects requires that it be carried out before a notary or PPAT. An example of a sale and purchase agreement that must be carried out before a notary is a sale and purchase with a land object. Provisions regarding sale and purchase with land objects must be carried out before a notary or PPAT referring to Article 37 paragraph (1) PP No. 24/1997 on Land Registration. In this article, it is explained that the transfer of land rights and ownership rights to apartment units through buying and selling, exchanging, grants, income in companies and other legal acts of transferring rights, except rights through auctions can only be registered, if it is proven by a deed made by the authorized PPAT according to the provisions of the applicable laws and regulations.

The efforts of the land sale and purchase agreement carried out by the parties in the presence of a notary or PPAT are aimed at smooth administration and there is legal certainty for the parties in conducting the sale and purchase agreement. An example of a case that occurred in the community, in 2018 the Notary-PPAT AR with the task area of his position in Salatiga City, Semarang, Prov. Central Java has made a deed of binding sale and purchase No. 4 dated April 3, 2018 between BP and HM. However, a copy of the binding sale and purchase agreement cannot be submitted to the parties, because the original certificate of HM No. 2342/Salatiga which is the object of the sale and purchase binding deed has not been submitted by the seller to the Notary.

The chronology of the case began when a sale and purchase transaction occurred on a plot of land with a Certificate of Ownership (SHM) No. 2343/Salatiga covering an area of 946 M² on behalf of YS for IDR 1,000,000,000 (one billion rupiah) between BP (as Seller) and HM (as Buyer). The sale and purchase is stated in the Sale and Purchase Binding Deed Number 4 dated April 3, 2018 which was made before a Notary/PPAT AR in Salatiga. Legal standing (legal position) BP acts as a Seller because BP is the heir of the late. YS. In this context, Alm. YS has two heirs, namely BP and KT. Apart from being an heir, BP's (late) legal standing as a seller is also based on a power of attorney to sell as stated in the Deed of Authorization to Sell No. 39 dated 19 May 2017 between KT (Proxy) and BP (Authorized Person) made before a Notary WI in Salatiga. After the deed of Authorization to Sell No. 39 was made, then KT kept the certificate of SHM No. 2343/Salatiga to Notary WI verbally.

In connection with the sale and purchase price of land SHM No. 2343/Salatiga above, it has been agreed that the price between BP and HM is IDR 1,000,000,000 (one billion rupiah). HM has also paid the SHM No. 2343/Salatiga in full to BP through a bank account. The payment is made at the signing of the Sale and Purchase Binding Deed No. 4 dated April 3, 2018 before a Notary AR. Even though the payment has been made in full, the Deed of Sale and Purchase of Land SHM No. 2343/Salatiga has not

[3]Shidqie Noer Salsa, *Hukum Pengawasan Notaris di Indonesia & Belanda,* Kencana, Jakarta, 2020, p. 12.

[4]R. Subekti & R Tjitrosudibio, (2006), *Kitab Undang-Undang Hukum Perdata (Burgerlijk Wetboek),* Cet. 37, Pt. Pradnya Paramita, Jakarta, p. 366.

been given to HM, because the original certificate is still brought by Notary WI Salatiga. In this regard, KT, who is one of YS's heirs, has also changed citizenship to become a citizen of the Netherlands.[5]With the change of citizenship status owned by KT, by law, the ownership rights to the land are released. This refers to Article 21 paragraph (3) of Act No. 5 of 1960 concerning Basic Regulations on Agrarian Principles which states that foreigners who after the enactment of this law obtain property rights due to inheritance without a will or mixing of assets due to marriage, as well as Indonesian citizens who have property rights and after the enactment of the law If the person loses his/her citizenship, he/she must relinquish that right within one year of the acquisition of the right or the loss of that citizenship. If after this period of time the ownership rights have not been relinquished,

Based on these provisions, with the change of citizenship status owned by KT, then KT is no longer entitled to land ownership HM No. 2342/Salatiga. It's just that, even though the land ownership rights have been released, but Around 2018 to 2020, HM has also several times asked BP for the original certificate of the object of sale and purchase (the seller). However, in the request for the certificate, BP basically said that the original certificate document was still with the WI Notary, so HM had together with BP met the WI Notary to ask for the original certificate of the object of sale and purchase. However, Notary WI does not want to provide the original certificate document of the object of sale and purchase to HM and BP.

Based on this background, the authors are interested in conducting a study entitled: Authority of a Notary to Use Retention Right to Store Documents Based on a Custody Agreement in Legal Assurance Review.

2. RESEARCH METHODS

The approach method used in this research is a sociological juridical approach. Meanwhile, the research specifications used were descriptive analytical. The types and sources of data needed in this study are primary data and secondary data. The secondary data needed in this study are divided into primary legal materials, secondary legal materials and tertiary legal materials. The need for these types and sources of data resulted in the data collection methods used were library research and field studies through interviews, observation, and documentation. Analysis of the data used in this study using qualitative data analysis.

3. RESULTS AND DISCUSSION

3.1. Authority of a Notary in Withholding Documents in the Form of Power of Attorney to Sell and Certificates that Have Transferred Ownership Rights to Other Parties

Case chronology started when a sale and purchase transaction occurred on a piece of land with a Certificate of Ownership (SHM) No. 2343/Salatiga covering an area of 946 M² on behalf of YS for IDR 1,000,000,000 (one billion rupiah) between BP (as Seller) and HM (as Buyer). The sale and purchase was stated in the Sale and Purchase Binding Deed Number 4 dated April 3, 2018 which was made before a Notary/PPAT AR in Salatiga. Legal standing (legal position) BP acts as a Seller because BP is the heir of the late. YS. In this context, Alm. YS has two heirs, namely BP and KT. Apart from being an heir, BP's (late) legal standing as a seller is also based on a power of attorney to sell as stated in the Deed of Authorization to Sell No. 39 dated 19 May 2017 between KT (Proxy) and BP (Authorized Person) made before a Notary WI in Salatiga.

[5]Interview with Moh. Dias Saktiawan, Lawyer for HM.

After the deed of Authorization to Sell No. 39 was made, then KT kept the certificate of SHM No. 2343/Salatiga to Notary WI verbally.
In connection with the sale and purchase price of land SHM No. 2343/Salatiga above, it has been agreed that the price between BP and HM is IDR 1,000,000,000 (one billion rupiah). HM has also paid the SHM No. 2343/Salatiga in full to BP through a bank account. The payment is made at the signing of the Sale and Purchase Binding Deed No. 4 dated April 3, 2018 before a Notary AR. Those present at the signing of the Sale and Purchase Binding Deed were Notary AR, BP (Seller), HM (Buyer), WN, and an unknown man. Although the payment has been made in full, the Deed of Sale and Purchase of SHM land no. 2343/Salatiga has not been given to HM, because the original certificate is still brought by Notary WI Salatiga.
Around 2018 until 2020, HM has also requested BP (the seller) several times to request the original certificate of the object of sale and purchase. However, in the request for the certificate, BP basically said that the original certificate document was still with the WI Notary, so HM had together with BP met the WI Notary to ask for the original certificate of the object of sale and purchase. However, Notary WI does not want to provide the original certificate document of the object of sale and purchase to HM and BP. In this regard, KT, who is one of YS's heirs, has also changed citizenship to become a citizen of the Netherlands.[6]
Article 1 point 1 of Act No. 2 of 2014 concerning Amendments to Act No. 30 of 2004 concerning the Position of a Notary, states that a notary is a public official who is authorized to make an authentic deed and has other authorities as referred to in this law or based on other laws. Notaries are state organs that are equipped and authorized to provide public services to the community, especially in making authentic deeds. The function of an authentic deed is as a perfect proof of civil law actions.[7] In line with that, a Notary is a state organ referred to as a public official or public official *open bare ambtenaren.* GHS Lumban Tobing explained that notaries are included in the category of public officials because the state gives them the authority to make authentic deeds and serve the public interest.
Provisions regarding the authority of a notary are regulated in Article 15 of Act No. 2 of 2014 concerning Amendments to Act No. 30 of 2004 concerning the Position of a Notary. In the article, it is expressly stated that a notary has the authority to make an authentic deed regarding all actions, agreements, and stipulations required by laws and/or interests to be stated in an authentic deed, save the certainty of the date of making the deed, save the deed, provide grosse, copies and excerpts of the deed, all of which are as long as the making of the deed is not assigned or excluded to other officials or other people stipulated by law.[8]In addition to this authority, a notary also has obligations as regulated in Article 16 of Act No. 2 of 2014 concerning Amendments to Act No. 30 of 2004 concerning the Position of a Notary. In the article, it is stated that in carrying out his office, a notary is obliged to:

a. *Acting trustworthy, honest, thorough, independent, impartial, and safeguarding the interests of the parties involved in legal actions;*
b. *Make a deed in the form of minutes of deed and save it as part of the notary protocol.*
c. *Attach letters and documents as well as fingerprints of those who appear in the minutes of the deed.*

[6]Interview with Moh. Dias Saktiawan, Lawyer for HM.
[7]Shidqi Noer Salsa, Loc. cit, p. 1.
[8]Ghansham Anand, Op.cit, p. 14.

d. *Issue grosse deed, copy of deed, or deed excerpt based on the minutes of the deed.*
e. *Provide services in accordance with the provisions of this law, unless there is a reason to refuse it.*
f. *Keep everything about the deed he made and all information obtained for the making of the deed in accordance with the oath/promise of office, unless the law provides otherwise.*
g. *Bind the deed he made in 1 (one) month into a book containing no more than 50 (fifty) deeds, and record the number of minutes of deed, month, and year of manufacture on the cover of each book.*
h. *Make a list of deed of protest against non-payment or non-receipt of securities.*
i. *Make a list of deeds that are in accordance with the will according to the order in which the deed is made every month.*
j. *Send the list of deeds as referred to in letter i or the list of nil relating to wills to the center of the will register at the ministry that administers government affairs in the field of law within 5 (five) days in the first week of each following month.*
k. *Record in the repertory the date of delivery of the will at the end of each month.*
l. *Have a stamp or stamp containing the symbol of the Republic of Indonesia and in the space surrounding it the name, position, and place of position of the person concerned are written.*
m. *Read the deed before the public in the presence of at least 2 (two) witnesses, or 4 (four) special witnesses for the making of an underhand testament deed, and signed at the same time by the appearer, witness, and notary, and*
n. *Accepting the internship of prospective notaries.*

In connection with the chronology of the cases described above, the deed of binding sale and purchase from a notary AR to HM was not given, even though the payment had been made.on the sale and purchase of land object SHM No. 2343/Salatiga because BP has not submitted a certificate of the object of sale and purchase that has been made. As the chronology of the case above, that the certificate of SHM No. 2343/Salatiga is still being brought by a WI notary regarding the existence of a verbal custody agreement from KT to a WI notary.

Safekeeping of goods is basically one of the legal actions based on a safekeeping agreement. In contract law, safekeeping is included in the category of nominee agreement whose provisions are specifically regulated in Article 1694 of the Civil Code to Article 1793 of the Civil Code. Article 1694 explains that safekeeping occurs when a person receives an item from another person on the condition that he will keep it and return it in its original form.[9]The obligation that must be carried out by the recipient of the deposit referring to Article 1705 of the Civil Code is to maintain and care for the goods that are deposited with the recipient of the deposit as he maintains his own goods. WI Notary who is the recipient of the original certificate of SHM No. 2343/Salatiga, of course, must comply with such provisions, so that he has the obligation to care for and maintain the safekeeping of the certificate of SHM No. 2343/Salatiga. 2343/Salatiga is like taking care of his own things.[10]

[9]Ahmadi Miru & Sakka Pati, (2020), *Hukum Perjanjian; Penjelasan Makna Pasal-Pasal Perjanjian Bernama dalam KUHPerdata,* Sinar Grafika, Jakarta, p. 153.

[10]Kadek Dio Anjasmara & Endang Sri Kawuryan, (2019), "*Pertanggungjawaban Notaris sebagai Penerima Titipan Sertifikat Hak Atas Tanah Milik Klien", Jurnal IUS Kajian Hukum & Keadilan,* Vol. 7, No. 2, 2019, p. 216.

In connection with this fact, the authority of a notary in keeping a certificate based on a safekeeping agreement is part of the attribution authority. In this case, Philipus M. Hadjon divides the sources of authority into three parts, namely:

a. Article 1 paragraph (21) of Act No. 30 of 2014 concerning Government Administration states that attribution is the granting of authority to Government Agencies and/or Officials by the 1945 Constitution of the Republic of Indonesia or the Act.
b. Article 1 paragraph (22) of Act No. 30 of 2014 concerning Government Administration states that delegation is the delegation of authority from a higher Government Agency and/or Official to a lower Government Agency and/or Official with responsibility and accountability fully transferred to the recipient of the delegation.
c. Article 1 paragraph (23) of Act No. 30 of 2014 concerning Government Administration explains that a mandate is the delegation of authority from a higher Government Agency and/or Official to a lower Government Agency and/or Official with responsibility and accountability remaining with the mandate giver.

The storage of certificates carried out by a WI notary is part of the attribution authority, considering that the storage is based on an agreement for the safekeeping of goods verbally between KT and the WI notary. The storage of the certificate is included in the attribution category because Article 1338 of the Civil Code states that all agreements made legally are valid as law for those who make them. An agreement cannot be withdrawn other than by agreement of both parties, or for reasons which are stated to be sufficient by law. An agreement must be made in good faith. Although the storage of certificates carried out by WI is part of the law, the existence of this authority has a period of only one year considering that KT as the custodian has changed his nationality to become a citizen of the Netherlands. The existence of a period of one year is due to referring to the Article 21 paragraph (3) of Act No. 5 of 1960 concerning the Basic Regulations on Agrarian Principles, it is explained that foreigners who after the enactment of this law obtain property rights due to inheritance without a will or mixing of assets due to marriage, as well as Indonesian citizens who have property rights and after the enactment of this law loses his or her citizenship must relinquish that right within one year of the acquisition of said right or loss of citizenship. If after this period of time the right of ownership is released, then the right is nullified by law and the land belongs to the state, provided that the rights of the other party that burdens it continue to exist.

Based on these provisions, with the change of KT's citizenship to become a citizen of the Netherlands, by law KT must relinquish the ownership rights of SHM No. 2343/Salatiga within a period of 1 (one) year. The loss of KT's ownership rights over the land object SHM No. 2343/Salatiga resulted in the ownership of the land being fully transferred to BP as one of the heirs of the late. YS. With the transfer of land ownership rights SHM No. 2343/Salatiga to BP, the WI notary no longer has the authority to withhold SHM certificate No. 2343/Salatiga. Notary WI does not have the authority to keep the certificate because KT, whose legal position is as the custodian, no longer has land rights, so Notary WI must give the certificate to BP. It is just, because the sale and purchase of land object SHM No. 2343/Salatiga between BP and HM before a Notary/PPAT AR in Salatiga, then the ownership rights have been transferred to HM as the buyer. Article 1457 of the Civil Code states that buying and selling is an agreement in which one party binds himself to deliver an object and the other party pays the promised price. The occurrence of a sale and purchase agreement

between HM and BP resulted in the right of control and ownership of the land SHM No. 2343/Salatiga has switched to HM Article 1457 of the Civil Code states that buying and selling is an agreement in which one party binds himself to deliver an object and the other party pays the promised price. The occurrence of a sale and purchase agreement between HM and BP resulted in the right of control and ownership of the land SHM No. 2343/Salatiga has switched to HM Article 1457 of the Civil Code states that buying and selling is an agreement in which one party binds himself to deliver an object and the other party pays the promised price. The occurrence of a sale and purchase agreement between HM and BP resulted in the right of control and ownership of the land SHM No. 2343/Salatiga has switched to HM

3.2. Position of the Heirs whose Nationality has Changed with respect to Land Ownership Rights in the Review of Legal Certainty

As As explained above, the chronology of the case began when YS died. YS has two children, namely BP and KT. One of the objects of inheritance given to the two children is a plot of land SHM No. 2343/Salatiga. However, one of the heirs, namely KT, is no longer an Indonesian citizen, but his citizenship has been changed to a Dutch citizen. In this regard, basically inheritance law is the law that regulates the transfer of assets left by someone who dies and the consequences for the heirs.[11] In line with that, Wirjono Prodjodikiro also explained that inheritance law is the laws or regulations that regulate whether and how various rights and obligations regarding a person's wealth at the time of his death will be transferred to the living person.[12] Furthermore, Ali Afandi also explained that inheritance is all assets left by people who died in the form of all assets from death after deducting all debts.

Provisions regarding inheritance law in Indonesia are regulated in the Civil Code and Islamic Law Compilation. According to Wirdjono Prodjodikiro, the elements of inheritance are divided into three things, namely:[13]

a. An heir or *erflater* who in his death left wealth. The heir is the person who controls or owns the inheritance/inheritance.[14] Article 830 of the Civil Code expressly states that: *Inheritance only takes place by death*.[15] The death of the testator is divided into two:[16]
    1) Real death. The meaning of true death is that his death is known to be true or real. The true death can be proven by the five senses which indicate that the person has died.
    2) Die for the law. Death by law must be declared by the court, that is, it is not really known according to the fact that can be proven that he is dead.
b. A person or several heirs or *erfgenaam* who is entitled to receive the wealth left behind. Heirs are people who receive the transfer or forwarding or distribution of inheritance, the discussion related to the heirs is divided into three things, namely:[17]

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[11]Istijab, (2020), *Hukum Waris (Berdasar Kitab Undang-Undang Hukum Perdata & Hukum Adat),* Cv. Penerbit Qiara Media, Pasuruan, p. 3,

[12]A. Pitlo, (1986), *Hukum Waris Menurut Kitab Undang-Undang Hukum Perdata Belanda,* Intermasa, Jakarta, p. 1.

[13]Istijab, Op.cit, p. 6.

[14]Sigit Sapto Nugroho, *Pengantar HUkum Waris Edisi Barat (Edisi Revisi),* Penerbit Lakheisa, Boyolali, 2019, p. 39.

[15]R. Subekti and R Tjitrosudibio, Loc.cit, p. 221.

[16]Istijab, Op.cit, p. 7

[17]Sigit Sapto Nugrooo, Op.cit, hlm. 39.

1) The person who becomes the heir must have the right to the inheritance of the heir. Provisions regarding parties who can become heirs are regulated in Article 831 of the Civil Code. In the article, it is explained that according to the law, those who are entitled to become heirs are blood relatives, both legal and out of wedlock and the husband or wife who has lived the longest, all according to the regulations listed below. In the event that neither the blood relatives nor the one who has lived the longest between husband and wife are present, then all the inheritance of the deceased becomes the property of the State which the authorities will pay off all debts, only the price of the inheritance is sufficient for that.[18]
2) The parties who are entitled or heirs to the inheritance must already exist or be alive when the testator dies. The life of an heir is divided into two, namely:[19]
    a) Real life, that is, according to reality is really still alive and can be proven by the five senses.
    b) Legally alive, i.e. not known in fact still alive. This includes babies who are still in their mother's womb.
3) People who become heirs are not included in those who are declared undeserved *(*onwaardigheid*),* don't speak *(onbekwaan),* or refuse inheritance *(verwerp).*[20]

c. Inheritance or *nalatenschap,* namely the form of wealth that is left behind and passes on to the heirs. Inheritance is all property left by the deceased. Inheritance assets based on the type of ownership are divided into three, namely:[21]
    1) Original assets are assets owned by the testator since before the marriage, either inherited or inherited assets that are still owned at the time of carrying out the marriage until death.
    2) A gift is an inheritance that is given by someone else.
    3) *Gono Gini* (Divorce) assets are all assets obtained at the time and during the marriage ark.

Changes to citizenship in principle cannot cause loss of rights inheritance. This is because referring to the provisions in the Civil Code, it is explained that the obstruction of inheritance rights is regulated in Article 838 of the Civil Code. In the article, it is explained that what is considered inappropriate to be an inheritance and therefore exempt from inheritance are:

a. Those who have been convicted of having killed or attempted to kill the deceased.
b. Those who by a judge's decision have been blamed for slanderously have filed a complaint against the deceased, namely a complaint has committed a crime which is punishable by a prison sentence of five years or the heaviest sentence.
c. Those who by force or action have prevented the deceased from making or revoking his will.
d. Those who have embezzled, tampered with, or falsified the deceased's will.

[18]R. Subekti and R Tjitrosudibio, Op.cit, p. 221.
[19]Istijab, Op.cit, p. 7
[20]Oemar Muchtar, (2019), *Perkembangan Hukum Waris (Praktik Penyelesaian Sengketa Kewarisan di Indonesia),* Prenadamedia Grup, Jakarta, p. 19.
[21]Nm. Wahyu Kuncoro, (2015), *Waris: Permasalahan & Solusinya,* Raih Asa Sukses, Jakarta, p. 10.

In addition to the Civil Code, provisions regarding the causes of obstruction of heirs from being able to obtain inheritance rights are also regulated in Article 173 of the Compilation of Islamic Law. In the article it is explained that a person is prevented from becoming an heir if by a judge's decision which has permanent legal force, is punished because:

a. *Blamed for killing or attempting to kill or severely maltreating the heirs.*
b. *Accused of slander has filed a complaint that the testator has committed a crime punishable by a sentence of 5 (five) years in prison or a heavier sentence.*

Based on such provisions, the change of citizenship cannot actually cause the loss of inheritance. However, based on the chronology described above, one of the objects of inheritance is a plot of land SHM No. 2343/Salatiga. With the object of inheritance in the form of land, Article 21 paragraph (3) of Act No. 5 of 1960 concerning Basic Agrarian Regulations. In the article, it is explained that foreigners who after the enactment of this law obtain property rights due to inheritance without a will or mixing of assets due to marriage, as well as Indonesian citizens who have property rights and after the enactment of this law loses their citizenship are obliged to relinquish that right within a period of one year from the acquisition of such rights or loss of citizenship. If after this period of time the right of ownership is released, then the right is nullified by law and the land belongs to the state, provided that the rights of the other party that burdens it continue to exist.

Regardless of the context.

The principle of legal certainty is a principle in the national and international legal space which states that legal subjects have clarity about their rights and obligations in dealing with other legal subjects. In order for legal subjects to obtain clarity, legal subjects need to have certainty of orientation and certainty of realization. The intended certainty is that legal norms must be understood, so that they can be obeyed and enforced. Based on the legal certainty, the law must have clarity, continuity of predictability (can be predicted), and reliability of its norms. The importance of the principle of legal certainty causes that nature to be attached and recognized internationally as the main condition for implementing the law (rule of law).[22] In line with that, a group of legal scholars also argues that the most important legal task is to provide legal certainty (*rechtzekerheid*) in life, because the law must guarantee certainty between the rights and obligations of one party to another.[23]

In relation to the principle of legal certainty, Jan M. Otto in this case requires legal certainty in five matters, namely:[24]

a. There are clear, consistent, and accessible legal rules issued by the state power.
b. Ruling agencies (government) apply the rules of law consistently and are also subject to and obedient to them.
c. The majority of citizens agree in principle with the content and therefore adjust their behavior to these rules.
d. Independent and impartial judges (courts) apply these legal rules consistently when they resolve legal disputes; and
e. Judicial decisions are concretely implemented.

[22]Budiono Kusumohadjojo, Op.cit. p. 23.
[23]E. Utrecht & Moh. Saleh Djinjanng, (1982), *Pengantar Hukum Indonesia*, Ichtiar Baru, anggota Ikapi, Sinar harapan, Jakarta, p. 13.
[24]M. Sulaeman Jajuli, Op.cit, p. 52.

Referring to the principle of legal certainty as mentioned by Jan M. Otto, the rules related to inheritance law are clear, consistent, and issued by the authorities are regulated in the Civil Code and the Compilation of Islamic Law, while the legal rules relating to land are based on Act No. 5 of 1960 concerning Basic Agrarian Regulations. In this context, the three regulations constitute the legal substance applied by the ruling agencies which are consistently used as legal references in terms of inheritance and land. Furthermore, the majority of the community as a whole still agrees with these contents, because so far there has been no attempt at judicial review which indicates public disapproval of the provisions of the legislation that have been issued by the government. In line with that, judges' decisions related to inheritance law for the community are also based on the Civil Code and the Compilation of Islamic Law. As for the provisions relating to land, the judges also based their decisions on Act No. 5 of 1960 concerning Basic Agrarian Regulations.

Based on this discussion, a common thread can be drawn that the position of heirs who have changed their citizenship with respect to land ownership rights in a review of legal certainty does not actually cause the loss of inheritance rights. This is due to the obstruction of inheritance rights referring to Article 838 of the Civil Code due to:

a. *Those who have been convicted of having killed or attempted to kill the deceased.*
b. *Those who by a judge's decision have been blamed for slanderously have filed a complaint against the deceased, namely a complaint has committed a crime which is punishable by imprisonment for five years or the heaviest sentence.*
c. *Those who by force or action have prevented the deceased from making or revoking his will.*
d. *Those who have embezzled, tampered with or falsified the will of the deceased.*

Side other than that, the obstruction of inheritance rights referred to in Article 173 of the Compilation of Islamic Law is also due to:

a. *Blamed for killing or attempting to kill or severely maltreating the heirs.*
b. *Accused of slander has filed a complaint that the testator has committed a crime punishable by a sentence of 5 (five) years in prison or a heavier sentence.*

Referring to the chronology described above, that one of the inheritance is a plot of land SHM No. 2343/Salatiga. With the inheritance in the form of land with such ownership rights, then the provisions of Article 21 paragraph (3) of Act No. 5 of 1960 concerning Basic Agrarian Regulations. In the article, it is explained that foreigners who after the enactment of this law obtain ownership rights due to inheritance without a will or mixing of assets due to marriage, as well as Indonesian citizens who have property rights and after the enactment of this law lose their citizenship are obliged to relinquish that right within a period of one year from the acquisition of such rights or loss of citizenship. If after that period has elapsed the ownership right is relinquished, then the right is annulled because the law and the land fall to the state, provided that the rights of the other party that burdens it continue. Based on these provisions, the loss of KT's ownership rights over the land object of SHM No. 2343/Salatiga is not based on the loss of inheritance rights, but because of the change of citizenship as stipulated in Article 21 paragraph (3) of Act No. 5 of 1960 concerning Basic Agrarian Regulations.

4. CONCLUSION

SHM certificate storage No. 2343/Salatiga by Notary WI is based on a safekeeping agreement between KT and notary WI. However, the authority to keep the certificate

within a period of one year is no longer valid, considering that KT as the provider of care has changed its citizenship to become a citizen of the Netherlands. This refers to article21 paragraph (3) of Act No. 5 of 1960 concerning Basic Agrarian Regulations. With the enactment of such provisions, the Notary WI within one year since the inheritance no longer has the right to keep the land certificate SHM No. 2343/Salatiga, considering that KT as the power provider no longer has rights to the land. In connection with the loss of KT's ownership rights to the land, SHM No. 2343/Salatiga, the land ownership rights are fully transferred to BP, so the WI notary must provide the certificate to BP. Furthermore, because there has been a sale and purchase of land for SHM No. 2343/Salatiga between BP and HM before a Notary/PPAT AR, then the right of control and ownership of the land is transferred to HM. The other side of it. The position of heirs who have changed their citizenship on land ownership rights in a review of legal certainty does not actually cause the loss of inheritance rights. This is because referring to Article 838 of the Civil Code and Article 173 of the Compilation of Islamic Law, it does not mention the loss of inheritance rights due to the change of citizenship. However, referring to the chronology described above, one of the heirs is a plot of land with SHM No. 2343/Salatiga. With the inheritance in the form of land with such ownership rights, then the provisions of Article 21 paragraph (3) of Act No. 5 of 1960 concerning Basic Agrarian Regulations. Based on these provisions, the loss of KT's ownership rights over the land object of SHM No. 2343/Salatiga is not based on the loss of inheritance rights, but due to the change of citizenship as stipulated in Article 21 paragraph (3) of Act No. 5 of 1960 concerning Basic Agrarian Regulations.

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