

Implementation of Notary's Authority in Making Deeds of Distribution of Inheritance Rights (APHW) as Legal Certainty Regarding the Transfer of Land Rights

Haide Agustin Karina Nurul Bachtiar¹⁾ & Jawade Hafidz²⁾

¹⁾Faculty of Law, Universitas Islam Sultan Agung, Semarang, Indonesia, E-mail: haide.aknb@gmail.com

²⁾Faculty of Law, Universitas Islam Sultan Agung, Semarang, Indonesia, E-mail: jawade@gmail.com

Abstract. *The transfer of land rights through inheritance is based on the authority of a Notary as a public official authorized to make a Deed of Distribution of Inheritance Rights (APHW) as a form of legal certainty by providing proof of rights, namely a certificate. The implementation of the Notary's authority in making APHW for the transfer of land rights based on Article 111 Paragraph (5) of the Minister of ATR/BPN Regulation Number 16 of 2021 in practice shows a discrepancy with the rules and policies of the Land Office. In this case, it will raise legal issues related to gaps and contradictions between legal events and Land Office policies. This study aims to determine and analyze the basis of the Notary's authority in making APHW as legal certainty for the Heirs. The formulation of the problem as a limitation of the discussion of this thesis is What is the scope of the Notary's authority in making APHW related to the transfer of land rights? How is the implementation of the Notary's authority in making APHW to ensure legal certainty for the transfer of land rights? How is the legal certainty of APHW made by a Notary in the context of the transfer of land rights reviewed from a normative and legal doctrine perspective? This research is structured as a normative legal research study using a statutory and conceptual approach, supported by interviews with notaries. The data used are primary and secondary, comprising primary, secondary, and tertiary legal materials. After data collection, a qualitative analysis is conducted, followed by inventorying, identifying, and systematizing the data through logical and systematic interpretation using deductive reasoning. The results of the study show that the process of transferring rights based on the Deed of Distribution of Inheritance Rights (APHW) according to Article 42 Paragraph (4) of Government Regulation Number 24 of 1997 and Article 111 Paragraph (5) of the Regulation of the Minister of ATR/BPN Number 16 of 2021 can strengthen legal certainty. With the authority given to*

Notaries in making APHW as legal certainty for the transfer of land rights, it is considered to be able to simplify and shorten and ease the process of registering the transfer of land rights for citizens, by giving it directly to one of the Heirs legally as the full recipient of the rights/object of inheritance.

Keywords: *Deed of Distribution of Inheritance Rights (APHW); Inheritance; Notary Authority; Transfer of Land Rights.*

1. Introduction

Indonesia, as a state based on law, as mandated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, places law as the commander in every aspect of national and state life. One of the main pillars of a state based on law is the realization of legal certainty. Legal certainty is a guarantee that the law is implemented clearly, consistently, and predictably. This ensures that every legal subject can obtain clarity regarding their rights and obligations and is able to defend those rights before the law.¹In the context of land law, legal certainty regarding land ownership rights is a vital foundation for socio-economic stability, dispute prevention, and smooth legal traffic related to land.

According to the Indonesian Land Law (Agrarian Law), Indonesian citizens have the right to own land. Through the processes and requirements outlined in the law, land rights can also be transferred to other individuals. Legal acts and events can result in the transfer of land rights. This transfer can result in the transfer of land rights if the land rights holder intentionally surrenders their rights to another party. Certain legal events can also result in the transfer of land rights. For example, if the legally registered rights holder dies, ownership of the land automatically transfers to all heirs of the deceased rights holder.

The importance of legal certainty in the land sector is expressly regulated in Law Number 5 of 1960 concerning Basic Agrarian Regulations (hereinafter referred to as UUPA). Article 19 of UUPA mandates the government to organize land registration throughout the Republic of Indonesia that is simple, secure, up-to-date, and open to the public, with the primary objective of providing legal certainty and legal protection to land rights holders.²The realization of this mandate was realized through Government Regulation Number 24 of 1997 (hereinafter referred to as PP No. 24/1977) concerning Land Registration, which makes certificates a strong proof of ownership.

One of the most frequent legal issues that creates legal uncertainty is the transfer of land rights due to inheritance. Inheritance law is a crucial area of

¹ Sudikno Mertokusumo, 2005, Understanding Law: An Introduction, Liberty, Yogyakarta, p. 89.

² See Article 19 paragraph (1) of Law Number 5 of 1960 concerning Basic Agrarian Regulations.

family law, as it is intimately connected to the foundations of life.³ Basically, every living human being will experience death, and of course has assets that can be left to heirs in accordance with the provisions of the applicable sharia.⁴ Islamic inheritance law regulates in detail the mechanism for dividing inheritance assets, including the categories of inheritance assets.⁵ Even Islamic inheritance law has been implemented as positive law and has become part of Indonesian law.

Inheritance, as a legal process of transferring assets from the testator to the heirs,⁶ Land often plays a key role in inheritance. Land's ever-increasing economic value, along with its inherent historical and emotional aspects, makes the inheritance process vulnerable to internal family conflict and disputes with third parties. Although well-regulated and legally binding in Indonesia, its implementation remains elusive.⁷ This is proven because there are still many inheritance conflicts in community life caused by various factors, for example economic factors, religious factors, lack of public awareness and the minimal role of the authorized government.⁸

Conflicts in the distribution of inheritance often arise due to differences in interests between the heirs or other parties intervening.⁹ This results in inheritance disputes between heirs and requires the relevant authorities to intervene in their resolution. Inheritance conflicts are intra-family conflicts that frequently arise, particularly regarding the distribution of inherited land. To register the transfer of land rights through inheritance, authentic evidence is required that not only establishes the legal heirs but also establishes the distribution agreement between them.

At this point, the profession of Notary as a public official plays a very crucial and strategic role. Based on Article 15 paragraph (1) of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary (hereinafter referred to as UUJN), Notaries are given attributive authority by the state to make authentic deeds regarding all actions, agreements, and

³Ibnu Jazari, "Comparative Study of the Concept of Inheritance of Stepchildren from the Perspective of the Compilation of Islamic Law (KHI)", *Jurnal Ilmiah Ahwal Syakhshiyah (JAS)*, 1.1 (2019).

⁴Ali Wahdi, (2019), "History of Inheritance in Jahiliyah and the Beginning of Islam", *Al-Manhaj: Journal of Indonesian Islamic Family Law*, 1.2.

⁵R. Haniru, (2014), *Al-Hukama: The Indonesian Journal of Islamic Family Law, Inheritance Law in Indonesia: Perspective of Islamic Law and Customary Law*, Volume 04 No. 02, p. 456.

⁶R. Subekti, 2003, *Principles of Civil Law*, Intermasa, Jakarta, p. 87.

⁷Nurzaman & Fidhayanti (2024), *Al' Adl: Journal of Law*, Volume 16 Number 1, January 2024 SSN 1979-4940/ISSN-E 2477-0124

⁸Septia Alamanda and Akmal Akmal, (2021), *Journal of Civic Education*, "The Application of Islamic Inheritance Law in the Distribution of Inheritance in Nagari Ujung Gading." 4.4: pp. 307-311.

⁹Asni Zubair, *Conflict Resolution on the Distribution of Inheritance of the Bugis Bone Community*, Syahadah, 2021.

determinations required by statutory regulations or desired by the parties.¹⁰In the context of inheritance, a Notary is authorized to document the agreement of the Heirs in a Deed of Distribution of Inheritance Rights, which in practice is known as an APHW (hereinafter referred to as APHW). This document is one of the proofs of ownership that serves as the basis for the National Land Agency (hereinafter referred to as BPN) to register the transfer of land rights due to inheritance.¹¹

Normatively (*das sollen*), a Notary's Deed of Deed (APHW) should be a solid and effective legal instrument in creating legal certainty. As an authentic deed, an APHW has perfect evidentiary power (physical, formal, and material), meaning everything stated therein is presumed true until proven otherwise in court.¹²The preparation of an APHW requires a notary to act carefully, thoroughly, and professionally, with a thorough understanding of applicable inheritance laws (civil, customary, or Islamic), as well as relevant land regulations. An ideal APHW should clearly identify the subject (heir), object (inherited land), and rights (respective shares), thus avoiding any ambiguity that could trigger future disputes.

However, at the implementation level (*das sein*), the implementation of the Notary's authority in making APHW is often faced with various practical challenges that have the potential to delegitimize the goal of legal certainty itself.¹³Field practice demonstrates a gap between ideal norms and reality. One fundamental issue is variation in notarial practices, both in the interpretation of inheritance law, the completeness of verification of supporting documents (such as inheritance certificates), and the drafting of deed clauses. This inconsistency can result in deeds of varying quality and potentially give rise to legal issues.

Furthermore, the quality of the APHW prepared by a Notary has a direct impact on the registration process at the National Land Agency (hereinafter referred to as BPN). APHW documents that do not meet the administrative and substantive requirements set by the BPN, such as unclear party identities, land object descriptions that do not match BPN data, or ambiguous division formulations, are often grounds for rejection of registration applications.¹⁴This refusal not only delays the process and incurs additional costs, but also creates a prolonged state

¹⁰ Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary, Article 15 paragraph (1).

¹¹ See Article 42 paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration.

¹² Herlien Budiono, 2015, *Jurnal Hukum Ius Quia Iustum*, "The Evidential Power of Notarial Deeds in the Land Registration System in Indonesia", , Vol. 22, No. 4, p. 558.

¹³ Fachrizal Afandi, 2018, *Journal of Law and Notary Affairs*, "The Role of Notaries in Providing Legal Certainty in the Making of Authentic Deeds in Indonesia", Vol. 2, No. 3, p. 120.

¹⁴ Hadi Purnomo, 2019, *Sultan Agung Notary Law Review (SANLaR)*, "Legal Problems of Joint Rights Distribution Deeds in the Process of Registering Transfer of Rights due to Inheritance at the Land Office", Vol. 1, Issue 2, p. 135.

of legal uncertainty for the Heirs who should have received legal protection for their rights.

In addition, external factors such as the lack of synchronization and coordination between the Notary institution and the BPN also become obstacles.¹⁵ Differences in understanding of the latest regulations, internal BPN procedures that are sometimes not properly communicated to notaries, or technical constraints in the land information system can hinder the smooth process and create inefficiencies. This phenomenon indicates a discrepancy between the formal authority inherent in the notary's position to issue APHW and the functional effectiveness of the deed in ensuring legal certainty during registration with the BPN.

Based on the description of the gap between *das sollen* and *das sein*, an in-depth study on "The Implementation of Notary Authority in Making Deeds of Distribution of Inheritance Rights (APHW) as Legal Certainty for the Transfer of Land Rights" is very important and relevant. This study aims to identify and critically analyze how Notary authority is implemented in practice, what factors influence the effectiveness of APHW, and its implications for the realization of legal certainty of inherited land ownership.

2. Research Methods

The type of research used in this thesis is normative legal research, using a statutory and conceptual approach, supported by interviews with notaries. The data used are primary and secondary data, comprising primary, secondary, and tertiary legal materials. After the data is collected, a qualitative analysis is conducted, which will be inventoried, identified, and systematized through logical and systematic interpretation using deductive reasoning methods.

3. Results and Discussion

3.1. Scope of Notary's Authority in Making Deeds of Distribution of Inheritance Rights (APHW) related to Transfer of Land Rights

Based on the results of the research conducted, a Notary as a public official authorized to make authentic deeds that can be proven in accordance with applicable laws. A Notary has the authority to make deeds before the parties for an agreement, provision, or deed mandated by law or whose interests require it to be stated in an authentic deed.¹⁶ Considering that the Notary's duty is to make original deeds as written information regarding a particular legal act or event, as

¹⁵ Adrian Sutedi, 2010, *Transfer of Land Rights and Their Registration*, Sinar Grafika, Jakarta, p. 155.

¹⁶ Fauzia, *The Validity of APHW Made by a Notary as the Basis for Transfer of Land Rights*. Vol. 7 No. 3 (2025)

stated in Article 1868 of the Civil Code, it is very clear that Notaries have an important role in society.¹⁷

An authentic deed in Article 1868 of the Civil Code is “a deed made in a form determined by law, made by or before a public official authorized for that purpose at the place where the deed was made.” According to this definition, it is clear that a deed must fulfill three conditions to be considered to have met the criteria as an authentic deed:

- a. That the deed is made and formalized in a form that has been determined by statutory regulations. For example, in the process of Transfer of Land Rights, namely the Deed of Sale and Purchase (hereinafter referred to as AJB) must meet the formal requirements stipulated in the UUPA;
- b. That the deed was made by or before an authorized public official. The public official in question is a Notary, PPAT, Judge, or other official appointed by law;
- c. That the deed was made at the place where the official is authorized.

Every State and Government organizer must have Legitimacy, namely the Authority granted by Law. In terms of Administrative Law, there are three sources of applicable authority, namely Attribution, Delegation, and Mandate. Broadly speaking, based on Law Number 30 of 2014 concerning Government Administration (Government Administration Law), Attribution is the granting of authority to Government Agencies and/or Officials by the 1945 Constitution of the Republic of Indonesia. Delegation is the transfer of Authority from a higher Government Agency and/or Official to a lower Government Agency and/or Official with responsibility and accountability transferred entirely to the recipient of the delegation. Meanwhile, Mandate, the transfer 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. Occurs if a Government organ allows its authority to be exercised by another organ on its behalf.

Based on the explanation above, a Notary has the authority to attribut. This authority stems from legislation, specifically the 2004 Notary Law (UUJN). This authority is outlined in Article 1 of the Notary Law Regulations of the 1860 State Gazette Ordinance Number 3, which states:

*"Notaries are Public Officials, who are specifically authorized to make authentic deeds regarding all acts, agreements and decrees, which are ordered by a general law or which are desired by interested people, which will be proven by authentic writing, guaranteeing the day and date, keeping the deeds and issuing grosse-girosse, copies and quotations thereof; all this to the extent that the deeds are made by a general law nor assigned or handed over to officials or other people."*¹⁸

¹⁷Civil Code, 1847 in Fauzia, Validity of APHW Made by a Notary as the Basis for Transfer of Land Rights. Vol. 7 No. 3 (2025)

¹⁸S. 1916-46; N. Not. 1

The authority of a Notary in making an authentic deed as a valid evidence is also regulated in Article 15 paragraph (1) UUJN which reads, "A Notary is authorized to make an authentic deed regarding all actions, agreements and determinations required by law and/or desired by the interested party to be stated in an authentic deed, guarantee the certainty of the date of making the deed, keep the deed, provide grosse, Copy and extract of the deed, all of that as long as the making of the deed is not also assigned or excluded to another official or other person determined by law. In this Article it is clear that all that is desired for interests that include an action, agreement, and determination that is required by law within the scope of Civil Law to be made into a valid evidence in accordance with the authority of the Notary. This Article provides a guarantee of legal certainty that the Notary's authority in making an authentic deed for all legal actions as long as the authority is not handed over to another Official.

For all interested parties to undertake a legal act for the sake of certainty, order, and legal protection, a notary is authorized to prepare an authentic deed as valid evidence. This includes the preparation of a deed regarding inheritance as evidence of legal action. According to Article 830 of the Civil Code, "inheritance occurs when a person dies, leaving behind heirs and inheritance."¹⁹In other words, it explains that inherited wealth will be subject to legal action as legal certainty after the testator dies. According to the provisions of Article 833 Paragraph (1) of the Civil Code, "all Heirs automatically, by law, obtain ownership rights to all assets left by the testator."²⁰

Thus, in inheritance, all heirs have the same right to use their assets according to their wishes. Article 1069 of the Civil Code explains that, "if all heirs can act freely regarding their assets and are present, then the separation of the inheritance can be carried out in a manner and with a deed that they deem appropriate."²¹This legal act is considered valid because the heir has the right of Saisine, which is the right of the heir to, without any action whatsoever, legally replace the heir's position in the field of property law. Separation and distribution of inheritance can also be carried out on all of the heir's assets or on a portion of the heir's assets.²²

The legal act to be carried out is to distribute the inheritance of the Heir. This can be done by making an authentic deed made by and with the authority given to a Notary based on Article 15 Paragraph (1) of the UUJN. The deed in question is the APHW, based on a special request made by one or more of the Heirs, who have deliberated to transfer land rights, then the process of transferring land rights will be carried out based on the APHW. Based on this special request, the

¹⁹Civil Code, 1847, Article 830.

²⁰Civil Code, 1847. Article 833 Paragraph (1).

²¹Civil Code, 1847. Article 1069

²²Alwesius. (2022). Information on Inheritance Rights and the Separation and Distribution of Inherited Assets for Indonesian Citizens. Publishing Agency of the Faculty of Law, University of Indonesia.

Notary will put the desire for this legal act into a *partij* deed, namely the APHW as a form of valid evidence as an Heirs.

Based on the provisions of Article 1083 of the Civil Code, the Heirs who receive these rights obtain the rights to their land directly from the Heir. In practice, if one of the Heirs wishes to receive a certain portion of the inheritance proceeds without first transferring it to all Heirs, then an Heirs distribution will be carried out. APHW is made when the Heirs have agreed to transfer land rights to one or more Heirs and the purpose of the inheritance is land rights. By doing so, one of the Heirs in question replaces the position of all Heirs in terms of land ownership and does not inherit the rights of the other Heirs.

A notary is a public official authorized to make authentic deeds that have the strongest evidentiary force. The authority granted to a notary is the broadest authority granted to a public official in accordance with statutory regulations. According to Article 15 Paragraph (3) of the UUJN which explains that "in addition to the authority as referred to in Paragraphs (1) and (2), a notary has the authority regulated in statutory regulations." One of the authorities of a notary is to be able to make deeds related to inheritance. In Article 111 Paragraph (1) letter C of the Regulation of the Minister of State for Agrarian Affairs (Permen Agraria) Number 3 of 1997 which is the implementing agency of Government Regulation Number 24 of 1997 concerning land registration, it also expressly states that "Changing the name of the certificate to the name of the heir must be made based on the Deed of Distribution of Inheritance made by a notary."²³

The transfer of land rights based on the APHW made by a Notary opens up the possibility of convenience that can be carried out more flexibly and easily. In this case, when an heir dies and leaves assets, then one of the Heirs can directly become the recipient of the land rights as a legal consequence of the transfer of rights process. This process can take place without the process of making a deed that is generally carried out by the PPAT. The PPAT in this process still plays a very important role for the continuity of the transfer of rights process, however, his task in making an authentic deed for this transfer process is not necessary.

As regulated in Article 37 Paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration, "Transfer of land rights and ownership rights to apartment units through sale and purchase, exchange, grant, income in companies and other legal acts of transfer of rights, except for transfer of rights through auction can only be registered if proven by a deed made by an authorized PPAT according to the provisions of applicable laws and regulations." However, in this regard, with the existence of Article 111 Paragraph (5) of the Minister of ATR/BPN Regulation Number 16 of 2021 which regulates the Transfer of Inheritance Rights, it has the advantage of the possibility of transfer using APHW providing a new alternative opportunity that is simpler and more efficient.

²³Kukuh et. Al., (2023), Journal of Law & Policy Review, "Registration of Transfers of Land Rights Originating from Heirs' Agreements Made Before a Notary", ISSN 2987-3150, p. 228.

This opportunity can reduce dependence on the formal process of making deeds by PPAT.²⁴

3.2. Implementation of Notary Authority in Making Deeds of Distribution of Inheritance Rights (APHW) to ensure Legal Certainty of Transfer of Land Rights

Based on research conducted, not all notaries use APHWs as the basis for transferring land rights based on the APHW. This is due to several factors, most importantly, not all National Land Agency (BPN) are willing to accept APHWs as the basis for transferring land rights.

According to Article 19 of the 1960 UUPA, to ensure legal certainty, the government conducts land registration throughout the Republic of Indonesia, in accordance with provisions stipulated in Government Regulations. This registration includes:

1. Land mapping and bookkeeping measurements;
2. Registration of land rights and transfer of these rights;
3. Providing letters of proof of rights, which act as a strong means of proof.

In order to ensure certainty of regulations in the land sector, the Government carries out land registration using the *rechtcadaster* or Legal Cadastre system to ensure legal certainty for the people in the land sector, in accordance with the mandate of Article 19 of the 1960 UUPA. With the aim of providing certainty of rights, land origins, owner data, area, and boundaries, thereby preventing disputes and providing legal protection through the issuance of certificates. Registration with the *rechtcadaster* method is crucial, because it is not uncommon for the process of transferring land rights to involve primary methods, such as; buying and selling, grants, inheritance, division of joint rights and exchange.

When someone dies and leaves behind assets, there must be an heir to take over and manage the estate. Inheritance can occur if there is a deceased heir, a living heir, and assets left behind. The legal event of death triggers the transfer of the rights and obligations of the heir to the rightful party.²⁵ As a continuation of the transition process based on inheritance, a Statement of Inheritance Rights is issued by:

1. Judicial Bodies, namely District Courts for all Indonesian citizens and Religious Courts for Muslims;
2. Government agencies, namely BHP for Indonesian citizens of Arab descent;

²⁴Kukuh et. Al., (2023), Journal of Law & Policy Review, "Registration of Transfer of Land Rights Based on an Heir Agreement Made Before a Notary", ISSN 2987-3150, p. 222.

²⁵Tegar Alfian and I Ketut Oka Setiawan, "Legal Study of Acts Against the Distribution of Inheritance (Case Study of Decision Number: 388/PDT.G/2020/PN.BGD)", Legal and Notary Affairs Vol 2 No. 01, December 2022 Notary, Faculty of Law, University of Law in the Pancasila Masters Journal <https://journal.univpancasila.ac.id/index.php/imanot/article/view/4456/2131> in the Sasana Law journal, Volume 10 Issue 2, December 2024 accessed on Monday, January 5, 2026

3. State Officials, namely the Village Head or Sub-district Head, for native Indonesian residents if the inheritance rights statement is made privately and signed by the Heirs;
4. Notary, for Indonesian residents of European and Chinese descent.

The government issued Government Regulation Number 24 of 1997 (PP 24/1997) which stipulates provisions to make it easier for owners of land, apartment buildings, and other registered rights to ensure ownership. Article 3 Paragraph (1) of PP 24/1997 aims to provide legal certainty and protection for owners. The form of ownership based on the transfer of rights to inheritance is regulated in Article 42 Paragraph (2) and paragraph (2) of PP/1997. The Ministry of ATR/BPN issued Regulation of the Minister of ATR/BPN Number 16 of 2021, this regulation is the third amendment to Regulation of the Minister of Agrarian Affairs/BPN Number 3 of 1997 concerning the implementation of PP 24/1997 concerning land registration. This research focuses on Article 111 Paragraph (5) which regulates inheritance.

According to Article 111 Paragraph (5) of the Regulation of the Minister of ATR/BPN Number 16/2021, a Notary is tasked with making a Deed of Distribution of Inheritance or similar after receiving proof of inheritance from the Inheritance Office (BHP), Court Decision, Inheritance Certificate (SKW), or Deed of Inheritance Rights. Meanwhile, if there is an agreement between the Heirs regarding their desire to give it to only one Heirs, the Notary is authorized to make an APHW based on Article 15 Paragraphs (1) and (2) of the UUJN. In practice, it shows a discrepancy between existing regulations and the actual situation, there are legal issues related to gaps and contradictions between legal events and Land Office policies.

There is a gap in the problems related to the implementation of registration of transfer of rights through inheritance with APHW at the Land Office in Cities/Regencies in Indonesia, in accordance with the Minister of ATR/BPN Regulation Number 16/2021 Article 111 Paragraph (5), namely:

1. There are various variations in the mechanism for creating an inheritance deed by a notary, with some using the terms APW, APHW, and Inheritance Deed. However, Regulation of the Minister of ATR/BPN Number 16/2021 defines the term "Inheritance Deed" for documents that include an agreement on the distribution of land rights to one of the heirs.
2. The process for registering transfer of rights at the Land Office varies; some record it using a Certificate of Inheritance followed by an APW or APHW, while others only record it based on the Deed of Distribution of Inheritance.²⁶

Based on the explanation above, the Notary as well as the PPAT can discuss first with the relevant Land Office whether or not it is permissible to carry out the process of transferring land rights using APHW as the basis for the transfer.²⁷

²⁶Nurhadi, Jurnal Hukum Sasana, Volume 10, Issue 2 (2024), pp. 191-204

Article 15 Paragraph (2) of the UUJN clearly states that there are laws and regulations that grant broad authority to Notaries. This authority is granted in making land deeds which are also regulated in Government Regulation Number 37 of 1998, which explains that PPAT has the authority to make authentic deeds related to land. This authority has given rise to several debates between Notaries and PPAT, regarding the authority granted to Notaries.

Differences of opinion based on the provisions contained in Article 15 Paragraph (2) letter F UUJN, legally formal Notaries are authorized to make land deeds. The authority of Notaries in making land deeds has strong legal provisions, because this authority is based on applicable laws. The authority given to Notaries in making these deeds clearly conflicts with the authority of PPAT as the only official appointed to make authentic deeds related to land. The authority of Notaries is based on law, while PPAT is only regulated in Government Regulations, but in reality Notaries are not permitted to make land deeds if they have not passed the Code of Ethics Examination process to be appointed as PPAT.²⁸

Based on the provisions of Article 15 Paragraph (1) and (2) letter F UUJN, APHW is a valid and provable evidence in the form of an authentic deed which can be accounted for, if made before a Notary who is an official who is authorized to make authentic deeds regarding all agreements, provisions and deeds required by statutory regulations or desired by the interested parties.

Based on Law Number 2 of 2014, which regulates Notaries, they also have special authority to make deeds regarding land. APHW legally becomes the basis for the transfer of land rights due to inheritance as regulated in Article 42 Paragraph (4) and (5) of Government Regulation Number 24 of 1997 in conjunction with Article 111 Paragraph (5) of PMNA/KBN Number 3 of 1997.

3.3. Legal Certainty of the Deed of Distribution of Inheritance Rights (APHW) made by a Notary in the context of Transfer of Land Rights reviewed from a Normative and Legal Doctrine Perspective

Transfer of rights through inheritance occurs when the rights holder dies and leaves assets, which can result in the transfer of rights to the heirs as a result. This transfer of rights can occur automatically without going through legal action for the transfer of rights. The process of registering the transfer of rights that occurs is regulated in Article 20 Paragraph (2) of the UUPA, which involves the process of transferring rights from the old holder to the new holder.

This transfer of rights can be classified into 2 (two) categories, namely:

- a. Transfer of Rights due to Legal Events

²⁷The results of the author's interview with Notary/PPAT YIM, on Monday, 12-01-2025, at 12.56 WIB.

²⁸Kukuh et. Al., "Registration of Transfer of Land Rights Based on an Heir Agreement Made Before a Notary", Journal of Law & Policy Review, ISSN 2987-3150, (2023), p. 229.

Transfer of rights due to legal events, for example, can occur through inheritance. Inheritance can occur when the rights holder or testator dies, leaving behind assets, which can automatically be transferred to the surviving heirs according to customary law. The transfer of land rights through inheritance is affirmed in Article 42 of Government Regulation No. 27/1997 and Article 111 of the Minister of Agrarian Affairs and Spatial Planning Regulation No. 3/1997, and has been updated with Article 111 of the Minister of Agrarian Affairs and Spatial Planning Regulation No. 16/2021, which regulates the registration of transfers of rights based on inheritance.

b. Transfer of Rights due to Legal Acts

Transfer of rights due to legal acts can occur through sale and purchase, gift, exchange, even state auction as regulated in Article 37 paragraph (1) of PP Number 24 of 1997 concerning land registration. Registration is made before a PPAT as an official authorized to make authentic deeds as a form of evidence for every transaction registered with the Land Office.

Based on research on the registration of transfer of land rights through inheritance based on APHW in accordance with the Regulation of the Minister of ATR/BPN Number 16 of 2021, providing conformity between legal certainty and legal issues that actually occur in the field, using information and documents available at the Notary Office and the Land Office, and also involving the Regional Financial and Revenue Management Agency (BPKPD) as a form of process for the purpose of ensuring that there is legal certainty and protection in accordance with the UUPA.

Legal certainty in registering the transfer of land rights based on the APHW results in a certificate as proof of the transfer of rights from the testator to the heir. Legal certainty, or *Rechtssicherheit*, exists when the law is written, affirmed, and published. Four main aspects related to the meaning of legal certainty:

1. Law is positive (statutory), meaning it is a regulation that is officially enforced, accessible to the public, and not simply a judge's subjective judgment. This law aims to ensure that the applicable law is known by as many people as possible.
2. Fact-based, meaning it must be based on the reality that occurs in society, not just abstract matters about morality, ensuring that the law is relevant and can be applied in everyday social life;
3. Clarity and firmness (clarity), meaning it must not be open to multiple interpretations (ambiguous) and not contradictory, avoiding doubts in the meaning so that it is easy to implement and understand all forms of consequences;
4. Stability (resistance to change), meaning that the applicable law should not change too often so that it remains a permanent and reliable guideline for behavior, and this stability can create legal security and protect the public's expectations from sudden changes in the law.

Legal certainty in registering the transfer of land rights through inheritance based on the APHW provides clear decisions and ensures the rights and obligations of citizens. Legal certainty is defined as the clarity of norms that can serve as guidelines for those subject to these regulations. This definition of certainty can be interpreted as the clarity and firmness of the application of laws within society, which can be announced firmly and logically.²⁹ Legal uncertainty can result in interpretations that become unclear norms in the existing legal system.³⁰

Normatively, legal certainty is the result of regulations that are clearly and logically designed and enacted, without raising doubts, and without causing ambiguity in the prevailing legal system. Normatively, inheritance is the transfer of rights that occurs due to a legal event. When the testator dies, he leaves behind assets that can be automatically transferred to the heirs. Legal events and legal acts are distinct and cannot be combined. The differences in registration procedures for transfers between the two depend heavily on the policies in effect at each local Defense Office where the object of the transfer is located. This creates empirical issues that have not yet been generally agreed upon.

This study shows that the process of transferring rights based on APHW according to Article 42 Paragraph (4) of Government Regulation Number 24 of 1997 and Article 111 Paragraph (5) of the Regulation of the Minister of ATR/BPN Number 16 of 2021 can strengthen legal certainty. It is concluded that the process of transferring rights based on APHW is considered to simplify and shorten and ease the transfer registration process for citizens, by giving it directly to one of the legal heirs as the full recipient of the rights/object of inheritance.

4. Conclusion

The scope of the Notary's authority in making APHW is broadly based on the provisions of Article 15 paragraph (1) and (2) letter f of the Notary Law (UUJN), which is a deed made by a Notary as proof of agreement between the Heirs to give or hand over rights to one of them to legally have full inheritance rights as a result of a legal event, namely what is meant by inheritance. The transfer of land rights through inheritance can be registered with the Land Office according to the location of the land object itself. The rights and obligations that are the responsibility for the land object are automatically transferred to the Heirs. Once the transfer registration process is complete, the Heirs can legally take any legal action regarding the object. Because it has been registered and a certificate has been issued, the State has provided legal certainty and legal protection to the rights holder. However, if the transfer of rights has not been registered, the State cannot guarantee legal certainty and legal protection for those rights. Notaries

²⁹Arif, The Principle of Legal Certainty According to Experts, Journal of Constitutional Law e-ISSN: 2656-9671, p-ISSN: 2685-6077 Volume 4, II, December 2021, p. 61

³⁰Peter Mahmud Marzuki, Introduction to Legal Science, (Jakarta: Kencana, 2008), p. 202.

also have special authority to make deeds regarding land, APHW is the basis for carrying out the process of transferring land rights due to inheritance as regulated in Article 42 paragraph (4) and (5) of Government Regulation Number 24 of 1997 in conjunction with Article 111 paragraph (5) of PMNA/KBPN Number 3 of 1997.

5. References

Books:

- Achmad Budi Cahyono, 2012, Kewenangan Notaris dan PPAT, Laksbang, Semarang, hal. 120-145;
- Adjie, Habib, (2008), Kewenangan Notaris dan PPAT. Semarang: Laksbang.
- Adrian Sutedi, 2010, Peralihan Hak Atas Tanah dan Pendaftarannya, Sinar Grafika, Jakarta, hal. 155.
- Alwesius. (2022). Keterangan Hak Mewaris Serta Pemisahan dan Pembagian Harta Warisan Bagi Warga Negara Indonesia. Badan Penerbit Fakultas Hukum Universitas Indonesia.
- Asni Zubair, Resolusi Konflik Pembagian Harta Warisan Masyarakat Bugis Bone, Syahadah, 2021.
- Boedi Harsono, 2008, Hukum Agraria Indonesia: Sejarah Pembentukan Undang-undang Pokok Agraria, Isi dan Pelaksanaannya, Edisi Revisi, Djambatan, Jakarta, hal. 451.
- Boedi Harsono, 2013, Op. cit., hal. 395-420; Juga dalam jurnal: Serlina Panggabean, 2020,
- Cahyono, Achmad Budi, (2012), Kewenangan Notaris dan PPAT. Semarang: Laksbang.
- Gustav Radbruch, 2006, Filsafat Hukum, terjemahan oleh Agus Salim, Pustaka Pelajar, Yogyakarta
- Hadjon, Philipus M, (1997), Pengantar Hukum Administrasi Indonesia, Yogyakarta: Gajah Mada University Press.
- Hafidz, Jawade, (2013), Korupsi dalam Perspektif Hukum Administrasi Negara, Jakarta: Sinar Grafika.
- Harahap, M. Yahya, (2000), Pembahasan Permasalahan dan Penerapan KUHAP (Penyidikan dan Penuntutan). Jakarta: Sinar Grafika.
- Harsono, Boedi, (2008), Hukum Agraria Indonesia; Sejarah Pembentukan Undang-undang Pokok Agraria, Isi dan Pelaksanaannya. Edisi Revisi. Jakarta: Djambatan.

- HR, Ridwan, (2013), Pengantar Hukum Administrasi Indonesia, Jakarta: Rajawali Press.
- Jawade Hafidz, 2013, Korupsi dalam Perspektif Hukum Administrasi Negara, Sinar Grafika, Jakarta.
- M. Yahya Harahap, Pembahasan Permasalahan dan Penerapan KUHAP (Penyidikan dan Penuntutan), Sinar Grafika, Jakarta, 2000
- Marpaung, Leden, (2017), Asas Teori Praktik Hukum Pidana. Jakarta: Sinar Grafika.
- Mertokusumo, Sudikno, (2005), Mengenal Hukum: Suatu Pengantar, Yogyakarta: Liberty.
- Muhammad Daud Ali, 2015, Hukum Islam: Pengantar Ilmu Hukum dan Tata Hukum Islam di Indonesia, Rajawali Press, Jakarta;
- Peter Mahmud Marzuki, Pengantar Ilmu Hukum, (Jakarta: Kencana, 2008)
- Philipus M. Hadjon, 1997, Pengantar Hukum Administrasi Indonesia, Gadjah Mada University Press, Yogyakarta
- Philipus M. Hadjon, 2015, Pengantar Hukum Administrasi Indonesia, Gadjah Mada University Press, Yogyakarta, hal. 120-135; Lihat juga Ridwan HR, 2013, Hukum Administrasi Negara, Rajawali Press, Jakarta
- R. Soesilo, Kitab Undang-Undang Hukum Pidana (KUHP) serta Komentar-Komentarnya Lengkap Pasal Demi Pasal, Politeia, Bogor, 1993
- R. Subekti, 2003, Pokok-Pokok Hukum Perdata, Intermasa, Jakarta,
- Radbruch, Gustav, (1950), "Legal Philosophy," in The Legal Philosophies of Lask, Radbruch, and Dabin, Massachusetts: Harvard University Press.
- Sari, D. A. W., Murni, R. A. R., & Udiana, I. M. (2018), Kewenangan Notaris di Bidang Cyber Notary Berdasarkan Pasal 15 ayat (3) Undang-undang Nomor 2 Tahun 2014 tentang perubahan atas Undang-undang Nomor 30 Tahun 2004 tentang Jabatan Notaris. Udayana University.
- Soekanto, Soerjono, (2001), Penelitian Hukum Normatif: Suatu Tinjauan Singkat, Jakarta: Raja Grafindo Persada.
- Soesilo, R, (1993), Kitab Undang-Undang Hukum Pidana (KUHP) serta komentarnya Pasal demi Pasal. Bogor: Politeia.
- Subekti, R, (2015), Hukum Pembuktian. Jakarta: Pradnya Paramita.
- Sudikno Mertokusumo, 2005, Mengenal Hukum: Suatu Pengantar, Liberty, Yogyakarta

Sutedi, Adrian, (2010), *Peralihan Hak atas Tanah dan Pendaftarannya*, Jakarta: Sinar Grafika.

Zubair, Asni, (2021), *Resolusi Konflik Pembagian Harta Warisan Masyarakat Bugis Bone*, Watampone: Syahdah Creative Media (SCM).

Regulations:

Civil Code of the Republic of Indonesia (Burgerlijk Wetboek van Indonesia);

Law Number 12 of 2011 in conjunction with Law Number 13 of 2022 concerning the Formation of Legislation;

Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary;

Law Number 30 of 2004 concerning the Position of Notary

Regulation of the Minister of Agrarian Affairs and Spatial Planning of the National Land Agency (ATR/BPN) Number 16 of 2021 concerning the third amendment to Regulation of the Minister of ATR/BPN Number 3 of 1997 concerning Land Registration

The 1945 Constitution of the Republic of Indonesia;