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## The Dialectic of Notary Inheritance Deed Arrangement

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### Abstract

Verifying an heir's deed of inheritance is an approach to proving an heir's legal status. The Indonesian Ministry of Land and Special Planning Regulation No.16/2021 stipulates that a notary can make an inheritance deed for all residents in Indonesia regardless of their ethnic groups. This paper investigates the notary inheritance deed arrangement based on the regulation mentioned above and the challenges notaries still encounter in making an inheritance deed after the regulation's enactment. The researcher applied normative research with a descriptive approach and utilized secondary data for qualitative analysis. The deductive approach to this research helped the researcher conclude that the authority of notaries to make an inheritance deed as regulated in the Indonesian Ministry of Land and Special Planning Regulation No.16/2021 contradicts their authority as regulated in the Indonesian Law on the Notary Position Act. An in-depth understanding of the customary inheritance law in all Indonesian regions challenges the authority of notaries to make an inheritance deed under the Indonesian Ministry of Land and Special Planning Regulation No. 16/2021.

**Keywords:** Legal Evidence as Heirs; Notary Inheritance Deed; Land Registration; Indonesia.

### Introduction

Transferring assets and liabilities from the deceased to the heirs is a legal issue that often arises after death. The heirs must make an inheritance deed to prove their legal status to inherit. In Indonesia, heirship can be verified with an affidavit that the Director-General of Agrarian Affairs (Head of the Directorate of Land Registration) initially prescribed in Letter No. DPT/12/63/12/69 dated 20<sup>th</sup> December 1969, concerning the Certificate of Heirs and Proof of Citizenship.<sup>1</sup> It was later refined in

<sup>1</sup> Agus Yudha Hernoko and others, 'Urgensi Pemahaman Perancangan Kontrak Dalam Pengembangan dan Pengelolaan Obyek Wisata di Desa Kare, Kabupaten Madiun' (2022) 2 Jurnal Dedikasi Hukum.[231].

Article 111 (1) c of the Indonesian State Ministry of Agrarian Affairs Regulation No. 3/1997 concerning Provisions for the Implementation of Government Regulation No. 24/1997 concerning Land Registration. In the past, according to Article 131, in conjunction with Article 163 of the Dutch inherited Indonesian legal system called *Indische Staatsregeling*, heirs received different letters of heir proof depending on the multi-ethnic groups they belonged to. Accordingly, past legal institutions issued different types of certificates based on various heirs' ethnic backgrounds: European, Chinese, Indigenous, and foreign residents.<sup>2</sup>

The provisions of Article 111 (1) c of the Indonesian State Ministry of Agrarian Affairs Regulation No.3/1997 have been amended several times, most recently by the Indonesian Ministry of Land and Special Planning Regulation No. 16/2021 concerning the Third Amendment of the Indonesian State Ministry of Agrarian Affairs Regulation No. 3/1997. This regulation suggests that one's ethnic background should not affect a legal heir certificate in Indonesia, allowing heirs to choose the legal heir certificate they prefer. However, the following are required for processing the legal deed:<sup>3</sup>

- 1) The testators will;
- 2) Court decision;
- 3) Appointment of judge/chairperson of the court;
- 4) Statement of heirs made in front of two witnesses and approved by the village/sub-district/district head where the heritor resided at the time of death;
- 5) A notary, making the deed, domiciled at the same residence as the deceased at the time of death; or
- 6) Certificate of inheritance from the Insolvency and Public Trustee's Office.

In particular, the requirement that the notary making the inheritance deed live at the same address as the deceased at the time of death contradicts the notary's authority in making an inheritance deed. This rule confirms Article 15 (1) and Article 15 (3) of Indonesian Law No. 30/2004 concerning the Notary Position, which has been amended by Indonesian Law No. 2/2014 (hereinafter referred to

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<sup>2</sup> Sari Elsye Priyanti, 'Tinjauan Yuridis Penggolongan Penduduk Dalam Pembuatan Keterangan Waris' (2019) 4 *Lex Renaissance*. [226].

<sup>3</sup> Defid Tri Rizky and Mochamad Kevin Romadhona, 'Prinsip Pembuktian Perkara Tindak Pidana Pencucian Yang Berdiri Sendiri (Stand Alone Money Laundering)' (2022) 5 *Media Iuris*. [381].

as The Notary Position Act), which states that, regardless of the party's same or different residence from the deceased at the time of death, a notary may aid the heirs in preparing an Authorization Letter as long as the party physically requests it from the notary. The heirs have the option to request an Authorization Letter, known as *Surat Kuasa Otentik/Akta Otentik*, signed by an established, respected authority. Alternatively, they can a *Surat Di Bawah Tangan*, a letter written and signed by the heirs without notarization by a public official. It does not necessarily align with the existing formatted model or rules.

Article 111 (1) c Number 5 of the Indonesian Ministry of Land and Special Planning Regulation No. 16/2021 limits the notary authority to make deeds and certificates of proof as heirs; thus, only a notary who resides in the same residence as the deceased at the time of death can make a deed of inheritance. This regulation creates a conflict between applicable legal norms: the higher regulation should override the lower regulations.

In addition to the problem of arranging notary inheritance deeds, other legal issues challenge notaries in making deeds and certificates of proof as heirs. To date, no unification of inheritance law applies in Indonesia. In other words, the applicable inheritance law is still pluralistic, consisting of customary inheritance law, Islamic inheritance law, and civil inheritance law. The 2020 BPS census indicates a total of 1,340 ethnic groups in Indonesia.<sup>4</sup> Accordingly, Indonesia comprises numerous customary inheritance laws, which means that notaries must have in-depth knowledge of the provisions of customary inheritance law in all regions throughout Indonesia. This is a challenge for notaries working as public officials.

This paper aims to determine the existence of the notary inheritance deed arrangement based on the Indonesian Ministry of Land and Special Planning Regulation No. 16/2021 and to scrutinize the notary challenges in making an inheritance deed since the enactment of the regulation. This paper contributes to the existing knowledge of the periodization of inheritance deed arrangements in

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<sup>4</sup> Administrator, 'Suku Bangsa' (*Indonesia.go.id*, 2017) <<https://indonesia.go.id/profil/suku-bangsa/kebudayaan/suku-bangsa>> accessed 27 May 2022.

Indonesia and the legal effects of implementing Article 111 (1) c Numbers 4, 5, and 6 of the Indonesian Ministry of Land and Special Planning Regulation No. 16/2021.<sup>5</sup>

The researcher deployed normative research and the existing rules-based data analysis to identify solutions to the ensuing legal problems.<sup>6</sup> This study concentrates on vertical synchronization by observing the hierarchical point of view of the legislation from the highest to the lowest rules and their synchronization.<sup>7</sup> The researcher examined library resources as secondary data comprising primary and secondary legal sources. The primary legal materials consist of law on the Notary Position Act and its amendment (*Undang-Undang Jabatan Notaris dan Perubahannya*), the Indonesian State Ministry of Agrarian Affairs Regulation No. 3/1997 (*Peraturan Menteri Negara Agraria Nomor 3 Tahun 1997*), which has been amended several times, most recently by the Indonesian Ministry of Land and Special Planning Regulation No. 16/2021, and Law No. 12/2011 concerning the Establishment of Legislation. Secondary legal material, including research results and work from the legal community, support the primary legal materials.<sup>8</sup>

The study is descriptive in nature, providing an overview of the existing legal issues and analysing the resolution of the problem. Employing qualitative data analysis through data grouping and selecting, the researcher analyses and discusses findings related to theories and legal rules,<sup>9</sup> and employs deductive reasoning for conclusions.

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<sup>5</sup> Dinda Keumala, 'New Paradigm for Certificate of Inheritance Regulation as The Basis of Land Rights Transfer' in Joko Nurkamto and others (eds), *Proceedings of the First Lekantara Annual Conference on Public Administration, Literature, Social Sciences, Humanities, and Education* (EAI (European Alliance for Innovation) 2021).[610].

<sup>6</sup> Kornelius Benuf and Muhamad Azhar, 'Metodologi Penelitian Hukum Sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer' (2020) 7 *Gema Keadilan*. [20].

<sup>7</sup> Soekanto Soerjono and Sri Mamudji, 'Penelitian Hukum Normatif Suatu Tinjauan Singkat' (PT Raja Grafindo Persada 1995).[17].

<sup>8</sup> Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (Rajawali Pers 2021).[17].

<sup>9</sup> Nurnaeni Nurnaeni, 'Literature Review-Etika Dan Hukum Kesehatan' (2021) 14 *Jurnal Berita Kesehatan*. [1].

### **The Existence of the Notary Inheritance Deed Arrangement based on The Indonesian Ministry of Land and Special Planning Regulation No. 16/2021**

An inheritance certificate/deed is a document issued by an authorized agency or official proofing heirship. The document can be used as the basis to claim certain inheritance rights to the deceased's bequest.

Transferring land ownership, land rights, granting new rights related to a plot of land, and borrowing money with land collateral all require a certificate of proof as heirs.<sup>10</sup> In daily practice, banks solicit certified proof of heirship made by a notary (an authentic deed) to minimize future risks.<sup>11</sup> Article 111 (1) c Number 5 of The Indonesian Ministry of Land and Special Planning Regulation No. 16/2021 stipulates that a notary who resides with the deceased at the time of the death can make a deed of inheritance. Based on the authority attribution theory, the granting of new authority only occurs when occupying a position based on statutory regulations. Accordingly, the Indonesian Law on the Notary Position Act and its amendments give that authority to the public official, that is, the notary.<sup>12</sup> Article 15 (1) of the Indonesian law on the Notary Position Act and its amendments state: “*notaries can make authentic deeds regarding all acts, agreements, and provisions required by laws and desired by the interested parties. In addition, the notary guarantees the assurance of the date the deed is created, saves the deed, and provides a copy of a notarial deed or judgment (copies and quotations) as long as the heirs do not arrange the deeds with other officials or individuals stipulated by law*”.

Based on these provisions, a notary, at the request of the interested parties, can make all authentic deeds containing acts, contracts, and conditions that laws and regulations require to be made by or before a notary except certain deeds that are under the authority of other officials as regulated by law. For instance, the

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<sup>10</sup> Aden Ahmad, Sihabudin Sihabudin and Siti Hamidah, ‘Kepastian Hukum Surat Keterangan Waris Sebagai Persyaratan Pengambilan Jaminan Kredit’ (2018) 6 *Jurnal Selat*. [19].

<sup>11</sup> *ibid.*

<sup>12</sup> Ni Kadek Purnama Dewi, I Nyoman Putu Budiarta and Ni Made Puspasutari Ujjanti, ‘Keabsahan Surat Keterangan Hak Mewaris Yang Dibuat Oleh Notaris’ (2021) 3 *Jurnal Analogi Hukum*. [272].

land sale and purchase deed is under the control of a Land Deed Maker Official (*Pejabat Pembuat Akta Tanah* (PPAT)), as outlined in Government Regulation No. 37/1998 concerning PPAT Position Regulations, amended by Government Regulation No. 24/2016. In addition, notaries cannot make auction deed minutes because they fall under the authority of an auction officer, as regulated in the *Vendu Reglement* and the Indonesian Ministry of Finance Regulation No. 213/PMK.06/2020 concerning Guidelines and Implementation of Auctions. As a public official, a notary has the authority to make an inheritance deed documented in written form. It becomes an authentic deed as specified by the Indonesian law on the notary position and its amendment.

Furthermore, the provisions of Article 15 (3) of the Indonesian Law on Notary Positions and its amendment stipulate that “in addition to the authority as referred to in Article 15 (1) and Article 15 (2), notaries have other authorities as regulated in laws and regulations.” In practice, a notary will make a deed, known as a non-authentic deed, based on a statement from the heirs declaring that they are the only heirs of the decedent. Two witnesses claiming knowledge of the deceased’s family tree must support this deed and sign the legal act to confirm that the heirs are entitled to the inheritance. Only after the heir(s) makes a statement can the notary make a deed of the estate that identifies the decedent’s heir(s) and how much each heir inherits. Then this deed is authorized by the notary.

However, the provisions of Article 111 (1) c Number 5 of the Indonesian Ministry of Land and Special Planning Regulation No. 16/2021 stipulate that only a notary who resides at the same address as the deceased at the time of death can make a deed of inheritance, limiting the authority of the notary in making authentic deeds as regulated in Article 15 (1) of the Indonesian Law on the Notary Position Act and its amendment as well as and the authority of the notary to make an authorization letter as stipulated in Article 15 (3) of Indonesian law on the Notary Position Act and its modification. Article 111 (1) c Number 5 of Indonesia’s Minister of Land and Special Planning Regulation No. 16/2021 has, in effect, outlawed the authority of a notary to make an inheritance deed for all decedents residing anywhere. Hence,

only a notary with the same residence as the deceased at the time of death can make a deed of inheritance, resulting in vertical conflicts between legal norms.<sup>13</sup>

According to Hans Kelsen (cited in Soeprapto, 2007), legal norms are a dynamic norm system (mono-dynamics) because the law is constantly established and abolished by institutions or agencies authorized to form or cancel its enactment or formation.<sup>14</sup> Kelsen notes that legal norms (*Stufentheorie*) are tiered in a hierarchy according to which lower norms are sourced and based on higher norms while higher norms are sourced and based on even higher norms. This trend continues to norms that cannot be traced further, which are hypothetical and fictitious, namely the basic norm (*Grundnorm*).<sup>15</sup>

Article 7 of Indonesian Law No. 12/2011 concerning the Formation of Legislation delineates the following types and orders of Indonesian legislation:

- 1) The 1945 Constitution;
- 2) Decrees of the People's Consultative Assembly;
- 3) Laws or Government Regulations in place of Laws;
- 4) Government Regulations;
- 5) Presidential Decrees;
- 6) Provincial Regulations;
- 7) Regency/City Regulations.

The hierarchical statutory regulations determine each degree to create unified rules and regulations. If a conflict of regulations occurs, the higher degree of regulation is declared applicable.<sup>16</sup> The Indonesian Ministry of Land and Special Planning Regulation No. 16/2021 is a lower-level regulation than Indonesian Law on the Notary Position Act. The higher regulation negates the application of a lower regulation (*Lex Superior Derogat Legi Inferiori*).<sup>17</sup> Therefore, the provisions of

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<sup>13</sup> Ashari Setya Marwah Adli, 'Penyelesaian Sengketa Waris Adat Bagi Masyarakat Beragama Islam Berdasarkan Undang-Undang Nomor 3 Tahun 2006' (2020) 9 *Jurnal Magister Hukum Udayana*. [74].

<sup>14</sup> Maria Farida Indrati Soeprapto, *Ilmu Perundang-Undangan 1: Jenis, Fungsi Dan Materi Muatan* (6th edn, Kanisius 2007). [23].

<sup>15</sup> *ibid.* [113].

<sup>16</sup> Tanto Lailam, 'Penataan Kelembagaan Pengujian Norma Hukum Di Indonesia' (2018) 15 *Jurnal Konstitusi*. [206].

<sup>17</sup> Nurfaqih Irfani, 'Asas Lex Superior, Lex Specialis, Dan Lex Pesterior: Pemaknaan, Problematika, Dan Penggunaannya Dalam Penalaran Dan Argumentasi Hukum' (2020) 17 *Jurnal Legislasi Indonesia*. [305].



Article 111 (1) c Number 5 of the Indonesian Ministry of Land and Special Planning Regulation No. 16/2021 are abolished by Article 15 (1) and Article 15 (3) of the Indonesian Law on the Notary Position Act and its amendment.<sup>18</sup>

According to Lon L. Fuller (cited in Ali, 2009)<sup>16</sup>, a legal system must meet the following eight principles of law to qualify as law:

- 1) A legal system consists of regulations not based on momentary (ad hoc) decisions;
- 2) A legal system is announced to the public;
- 3) A legal system must be prospective, not retroactive;
- 4) A legal system must be in a reader-friendly format;
- 5) A legal system must be generated in a formula that the public can understand and conformable to other regulations;
- 6) A legal system must not demand actions beyond one's capability;
- 7) A legal system must not be changed frequently;
- 8) A legal system must be consistent with day-to-day implementations.<sup>19</sup>

Fuller argued that regulations should be consistent with Article 15 (1) and Article 15 (3) of the Indonesian Law on the Notary Position Act and its amendment and Article 111 (1) c Number 5 of the Indonesian Ministry of Land and Special Planning Regulation No. 16/2021. This rule contributes to the establishment of legal certainty.<sup>20</sup>

Article 111 (1) c Number 5 of the Indonesian Ministry of Land and Special Planning No. 16/2021 consequently affects a notary when making a deed of inheritance, requiring them to consider the deceased's domicile at the time of death. This article clearly emphasizes the location at which the decedent dies rather than the decedent's residential address stated on his or her identity card.<sup>21</sup> Accordingly, if a decedent dies abroad, a foreign/overseas notary would make the inheritance

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<sup>18</sup> Dina Sunyowati and others, 'Can Big Data Achieve Environmental Justice?' (2022) 19 Indonesian Journal of International Law.[6].

<sup>19</sup> Achmad Ali, *Menguak Teori Hukum (Legal Theory) Dan Teori Peradilan (Judicialprudence) Termasuk Interpretasi Undang-Undang (Legisprudence)*, vol 1 (Kencana Prenada Media Group 2009).[294].

<sup>20</sup> Agus Suhariono and others, 'Sistem Publikasi Pendaftaran Tanah (Kajian Sistem Publikasi Negatif Bertendensi Positif) (2022) 5 Notaire.[17].

<sup>21</sup> Bambang Sugeng Ariadi Subagyono, Zahry Vandawati Chumaida and Mochamad Kevin Romadhona, 'Enforcement of Consumer Rights Through Dispute Settlement Resolution Agency to Improve the Consumer Satisfaction Index In Indonesia' (2022) 37 Yuridika.[673].



deed. It is unlikely that any non-Indonesian notary in a foreign country has in-depth knowledge of the pluralistic inheritance laws in Indonesia; however, the Indonesian Ministry of Land and Special Planning Regulation No. 16/2021 does not address this predicament.

### **Challenges Notaries Face in Making Deeds of Inheritance Since the Enactment of Indonesia's Minister of Land and Special Planning Regulation No. 16/2021**

A deed of inheritance is essentially a product of civil procedural Law (formal Law) establishing who can be an heir. However, in practice, the deed of inheritance cannot be separated from inheritance law as part of material Law.<sup>22</sup>

The inheritance law in Indonesia is still pluralistic, consisting of Western Inheritance Law, codified in the Indonesian Civil Code (*Kitab Undang-undang Hukum Perdata* (KUHPER)), Islamic Inheritance Law, and Customary Inheritance Law. Legal subjects who submit to inheritance law are bound by religion, identity, origin, ethnicity, and choice of law.<sup>23</sup> Certain ethnic groups in Indonesia, obey and carry out Customary Inheritance Law, and arrangements are unwritten. If there is a violation of customary inheritance law, the perpetrator will receive customary sanctions. Kinship relations and social structure heavily influence this type of law.<sup>24</sup> A significant number of Indonesians still consistently rely on customary law rather than civil or Islamic law because they consider these two inheritance laws complicated and most people have inadequate knowledge of inheritance law.<sup>25</sup>

The form and system of customary inheritance law are very closely related to the state of society and the kinship system. The kinship system in most indigenous groups in Indonesia is rooted in a lineage drawing system, which consists of

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<sup>22</sup> Tengku Erwinsyahbana and Harmita Harmita, 'Kekuatan Hukum Surat Keterangan Ahli Waris Bagi Anak Luar Kawin Dari Pernikahan Tidak Tercatat' (2017) 8 *Jurnal Hukum Novelty*. [269].

<sup>23</sup> Laksana Arum Nugaheni, 'Dinamika Hukum Waris Adat Dalam Sistem Keekerabatan Patri-lineal : Pewarisan Terhadap Anak Perempuan' (2021) 5 *Jurnal Literasi Hukum*. [136].

<sup>24</sup> Diana E Rondonuwu, 'Perbandingan Sistem Pewarisan Dari Pewaris Kepada Ahli Waris Menurut Hukum Waris Adat Dan Hukum Waris Perdata' (2019) 7 *Jurnal Lex et Societatis*. [180].

<sup>25</sup> Muhammad Amrullah Drs Nasrul and others, 'An Overview Of The Inheritance Legal System In Malaysia And Indonesia: Issues Faced By Both Countries' (2021) 6 *Journal of Shariah Law Research*. [181].

patrilineal (father's lineage), matrilineal (mother's lineage), and parental or bilateral (lineage from father and mother) systems.<sup>26</sup> The inheritance system of customary inheritance law comprises the following three systems:

- 1) The Individual Inheritance System: used by indigenous groups in Java, Sumatra, and Sulawesi, an inheritance system that allows heirs to control and obtain inheritance based on their respective parts.
- 2) The Collective Inheritance System: utilized by the Minangkabau, an inheritance system that continues and transfers ownership of the inheritance from the deceased to the heirs as a unit that cannot be divided into control and privilege so that each heir can only use or receive the proceeds from the estate.
- 3) The Mayorat Inheritance System: an inheritance system wherein ownership rights are conveyed to the eldest child. This type of inheritance system embraces a male mayorat, in the Lampung community for example, or a female mayorat, as in the Semendo Indigenous community of South Sumatra.<sup>27</sup>

The pluralism of inheritance laws in Indonesia proves a challenge to notaries making legal deeds, requiring them to have an in-depth understanding of the diverse characteristics of customary inheritance law in all regions across Indonesia. Communities' need for customary law or written evidence (or a certificate of inheritance) is seemingly increasing to anticipate future inheritance disputes among heirs.<sup>28</sup> The researcher holds that provided that the parties require an inheritance document based on customary inheritance law, they request an authorization letter signed by all the heirs before two witnesses and approved by the sub-district/district head, as regulated in Article 111 (1) c Number 4 of the Ministry of Land and Special Planning Regulation No. 16/2021.

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<sup>26</sup> Zayad Abd Rahman, A Halil Thahir and Dewi Umi Maimunah, 'Analisis Teori Fungsionalisme Struktural Talcott Person Atas Metode Pembagian Waris Adat Berbasis Resolusi Konflik Di Desa Jiken Kecamatan Tulangan, Sidoarjo' (2021) 21 *Refleksi: Jurnal Filsafat dan Pemikiran Islam*. [77].

<sup>27</sup> Hilarius Kunto Dewandaru, Paramita Prananingtyas and Mujiono Hafidh Prasetyo, 'Pelaksanaan Pembagian Waris Dalam Sistem Kewarisan Patrilineal Menurut Masyarakat Timika, Papua' (2020) 13 *Jurnal Notarius*. [493].

<sup>28</sup> Debiana Dewi Sudradjat, 'Pembuatan Akta/Surat Keterangan Waris Oleh Notaris Bagi Masyarakat Adat Bali' (2020) 6 *Veritas et Justitia*. [450].

As government officials, sub-district and district heads have the authority to approve inheritance deeds in their territories to ensure every individual deserves their rights and performs their obligations. Consequently, the sub-district and district heads are assumed to understand the civil law that applies in their regions, including the customary inheritance law in their area. Nevertheless, the function and authority of the sub-district head are handed over to the district head as the lowest regional apparatus in the government. This transition has been in effect since the enactment of Indonesian Law No. 23/2014 concerning Regional Government and Indonesian Law No.1/2020 concerning State Financial Policy and Financial System Stability for the COVID-19 management to address the pandemic's damage to the national economy. This law was amended by Indonesian Law No. 11/2020 concerning Job Creation, partially revoked by Indonesian Law No. 17/2019 concerning Water Resources, and Indonesian Law No.1/2022 concerning Financial Relations between the Central Government and Regional Governments.<sup>29</sup>

Although heirs are allowed to write and sign a legal deed in front of two witnesses, even after the sub-district and district head approve it, the deed is prone to conflict because not all heirs can sign the letter and may have no knowledge that the testator ever made a will during.<sup>30</sup> However, a notary can confirm the deed of the statement, which is an authentic deed with perfect evidentiary power. Before making a confirmation based on inheritance information known by the sub-district and district heads, the notary can determine if the decedent made a will during his or her lifetime. This judgment can be carried out through the Head of the Will List Section of the Indonesian Ministry of Law and Human Rights. Only after that can the notary make a deed of confirmation of inheritance statements.

The confirmation deed of inheritance statement made by a notary is an authentic deed that has the following characteristics:

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<sup>29</sup> Wulandari Wulandari, KN Sofyan and Sri Suatmiati, 'Efektivitas Perubahan Kedudukan Kelurahan Dari Perangkat Daerah Menjadi Perangkat Kecamatan Di Kelurahan Sukamoro Kecamatan Talang Kelapa Kabupaten Banyuasin' (2021) 6 *Jurnal Hukum Doctrinal*. [118].

<sup>30</sup> Annis Setiawan, 'Keterangan Hak Waris Yang Dibuat Oleh Notaris Dalam Rangka Unifikasi Hukum' (2019) 1 *Jurnal Kenotariatan Narotama*. [37].

- 1) The legal deed is grounded in Indonesian Law on the Notary Position Act and its amendment.
- 2) The parties request the notary to make the deed.
- 3) The notary acts as a public official, not a party to the deed.
- 4) It has perfect evidentiary power.
- 5) Only the parties who made the deed can cancel it by making a separate deed of cancellation or by filing a lawsuit for cancellation of the deed through the district court.<sup>31</sup>

### **Conclusion**

According to the principle of *Lex Superior Derogat Legi Inferiori*, Article 111 (1) c Number 5 of the Indonesian Ministry of Land and Special Planning Regulation No. 16/2021 can be superseded by Article 15 (1) and Article 15 (3) of the Indonesian Law on the Notary Position Act and its amendment because they are vertically contradictory. When heirs use customary inheritance law, the notary can make a deed of confirmation based on an inheritance statement approved by the sub-district and district heads.

The study's results suggested that the Indonesian Ministry of Land and Special Planning reformulate the provisions of Article 111 (1) c Number 5 of Regulation No.16/2021. The original statement prescribed in this regulation -- "a notary residing in the same residence as the deceased at the time of death can make a deed of inheritance" – should read, "a notary makes the deed of inheritance." This modification will assist in creating vertical synchronization with the provisions of Article 15 (1) and Article 15 (3) of the Indonesian Law on the Notary Position Act and its amendment and ensure legal certainty.

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<sup>31</sup> Umi Setyawati, Antonius Iwan Murdianto and Amin Purnawan, 'Akta Penegasan Keterangan Waris Sebagai Pengganti Surat Keterangan Waris Dalam Pengurusan Balik Nama Waris Di Kantor Pertanahan Kota Semarang' (2018) 5 Jurnal Akta.[33].

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