

Dualism of Authority between Notaries and the Heritage Hall in Issuing Certificates of Inheritance Rights in Indonesia: A Normative Study on Legal Certainty and Protection

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Submitted : 13/03/2026 Reviewed: 16/08/2026 Accepted: 04/09/2026

Abstract: *Death is not merely a biological event but a legal event that transfers a decedent's assets to the heirs. In Indonesian practice, the Certificate of Inheritance Rights (Surat Keterangan Hak Waris/SKHW) proves who is lawfully entitled as an heir and is an administrative prerequisite for the transfer of land rights, banking transactions, and taxation matters. Its position is therefore bound to the legal certainty and legal protection guaranteed by the 1945 Constitution. Indonesia's pluralistic inheritance system, however, has dispersed the authority to issue SKHW among village and sub-district heads, notaries, and the Heritage Hall (Balai Harta Peninggalan/BHP). Regulation of the Minister of Agrarian Affairs and Spatial Planning/National Land Agency Number 16 of 2021, which opens BHP issuance to all Indonesian citizens, was intended to eliminate discrimination based on population groups, yet it produces a normative anomaly by introducing overlapping authority between notaries and the BHP within a system that simultaneously claims equality and legal uniformity. This research analyses that legal basis, examines the implications of the dualism for legal certainty and legal protection, and formulates a normative solution for integrating SKHW issuance nationally. It employs normative legal research with statutory, conceptual, and comparative approaches, examining the Burgerlijk Wetboek, the Notary Office Act, and land regulations, and comparing the laws of Singapore and the Netherlands. The study finds that (i) sectoral regulations governing notaries and the BHP are normatively disharmonious, leaving the boundaries of authority unclear; (ii) the absence of centralised national registration and verification permits multiple certificates for the same decedent; and (iii) a weak supervisory framework aggravates legal uncertainty and erodes the protection of heirs' rights. The dualism therefore does not merely duplicate administration but structurally weakens legal certainty and legal protection. The study proposes an integrated national SKHW system, clarified institutional authority, and strengthened supervision.*

Keywords: *Certificate of Inheritance Rights; Heritage Hall (Balai Harta Peninggalan/BHP); Legal Certainty; Legal Protection; Notary*

DOI: 10.20527/lamlaj.v11i2.312

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INTRODUCTION

Every human being born into this world will inevitably face death.¹ In line with the principle *ubi societas, ibi ius* (where there is society, there is law), law exists to regulate human life from birth to death.² Death is not merely a biological event but also a legal event because it has consequences for legal status and relationships, particularly concerning the transfer of wealth to heirs.³ Inheritance, as one of the legal events arising from death,⁴ requires a legal document that serves as authentic evidence of who is legally entitled as an heir, namely the Certificate of Inheritance Rights or *Surat Keterangan Hak Waris* (hereinafter referred to as SKHW).⁵

SKHW holds a crucial position in the practice of inheritance law in Indonesia. This document not only proves the legal relationship between the decedent and the heirs but also serves as an administrative requirement in various legal acts, such as banking, taxation, and the transfer of land rights. Therefore, the existence of SKHW is closely related to the principle of legal certainty as guaranteed under Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia (UUD 1945), as well as the principle of legal protection as emphasized by Philipus M. Hadjon, stating that every individual has the right to protection from arbitrary actions, whether by the state or fellow citizens.⁶

In practice, the issuance of SKHW is carried out by different officials depending on the population group.⁷ This is based on the pluralistic nature of Indonesia's inheritance law, so its

¹ Andyna Susiawati Achmad, "Pemberlakuan Pembedaan Asal Usul Harta Perkawinan Dalam Pembagian Waris Bagi Golongan Timur Asing," *Repertorium* 12, no. 1 (2023): 38–47, <https://doi.org/10.28946/rpt.v12i1.2577>.

² Astrid Athina Indradewi, "Keberlakuan Dan Kekuatan Hukum Terhadap Wasiat Yang Melanggar Legitieme Portie Ahli Waris," *Sapientia et Virtus* 8, no. 1 (August 2023): 248–60, <https://doi.org/10.37477/sev.v8i1.483>.

³ M. Wijaya S., "Tinjauan Hukum Surat Wasiat Menurut Hukum Perdata," *Jurnal Ilmu Hukum Legal Opinion* 2, no. 5 (2014): 107–14, <https://www.neliti.com/publications/145937/tinjauan-hukum-surat-wasiat-menurut-hukum-perdata>.

⁴ Aida Ardini, Faisal Abdullah Nasution, and Anggi Julianda, "Analisis Yuridis Putusan Nomor 447/Pdt.G/2019/PN Mdn Tentang Pembagian Harta Warisan Ahli Waris Berdasarkan Wasiat," *Unes Journal of Swara Justisia* 9, no. 2 (July 2025): 260–68, <https://doi.org/10.31933/hg0s6s61>.

⁵ Latifah Hanum, "Kekuatan Hukum Surat Keterangan Ahli Waris Yang Dikeluarkan Kepala Desa Sebagai Alas Hak Dalam Pembuatan Akta Pengikatan Jual Beli (PJB) Oleh Notaris Bagi WNI Bumiputera" (master's thesis, Universitas Sumatera Utara, 2016), <https://repository.usu.ac.id/handle/123456789/407>.

⁶ Philipus M. Hadjon, *Perlindungan Hukum Bagi Rakyat Di Indonesia* (Surabaya: Bina Ilmu, 1987).

⁷ Habib Adjie, *Unifikasi Pembuatan Keterangan Waris*, Cetakan Pertama (Yogyakarta: Nas Media Pustaka, 2020).

implementation adapts to each group.⁸ For indigenous populations, SKHW can be issued by the village head and ratified by the sub-district head. In contrast, for customary communities, such as in Bali, SKHW is issued by customary leaders as substitutes for village or sub-district heads.⁹ Meanwhile, for Chinese and other foreign Eastern communities, SKHW is issued by notaries pursuant to Article 111 paragraph (1) letter c of the Minister of Agrarian Affairs/Head of the National Land Agency Regulation Number 3 of 1997. This pluralistic system has been criticized for being incompatible with the principle of equality before the law (*vide* Article 27 paragraph 1 of UUD 1945) and the definition of citizens in Article 1 of Law Number 12 of 2006 on Citizenship of the Republic of Indonesia, as it allows heirs to choose the law most favorable to themselves, potentially disadvantaging other heirs (forum shopping).¹⁰ Essentially, the pluralism of inheritance law in Indonesia provides space for citizens to choose which law applies in the event of inheritance, based on agreements among heirs. Without consensus, disputes among heirs may arise and remain unresolved.¹¹

However, it is important to distinguish that Indonesian law does not recognize a single uniform instrument of proof of inheritance rights. Instead, several legal instruments coexist, including (i) certificates of heirs issued by village or administrative authorities, (ii) notarial deeds of inheritance rights as authentic deeds, (iii) certificates issued by the Heritage Hall (Balai Harta Peninggalan/BHP), and (iv) judicial determinations or decisions. This plurality raises a doctrinal question as to whether such arrangements constitute merely alternative evidentiary mechanisms or reflect a deeper normative inconsistency in the allocation of authority.

In line with regulatory developments and the need for public administrative services, the government issued the Minister of Agrarian Affairs/Head of the National Land Agency Regulation Number 16 of 2021. Specifically, Article 111 paragraph 1 letter c outlines that proof of inheritance rights may take the form of: (1) a will from the decedent, (2) a court decision, (3) a judge's determination, (4) a certificate of heirs issued by the heirs themselves and witnessed by two individuals and acknowledged by the village head or sub-district head where the decedent resided at the time of death, (5) a notarial deed of inheritance rights issued in the decedent's place of residence at the time of death, or (6) a certificate of inheritance from BHP. Through this regulation, the Indonesian government aims to harmonize and unify inheritance law by eliminating group-based discrimination.

⁸ Andyna Susiawati Achmad, "Penolakan Waris Akibat Gugatan Hutang Piutang Pihak Ketiga Ditinjau Dari Burgerlijk Wetboek," *Yustisia Merdeka: Jurnal Ilmiah Hukum* 8, no. 1 (April 2022): 50–55, <https://doi.org/10.33319/yume.v8i1.141>.

⁹ Debiana Dewi Sudradjat, "Pembuatan Akta/Surat Keterangan Waris Oleh Notaris Bagi Masyarakat Adat Bali," *Veritas et Justitia* 6, no. 2 (2020): 450–75, <https://doi.org/10.25123/vej.v6i2.3796>.

¹⁰ Elisabeth Oktiviani Kumala Ardianti, "Pelaksanaan Pengurusan Surat Keterangan Waris Terhadap Tiga Golongan Penduduk Di Indonesia Setelah Berlakunya PMA Nomor 16 Tahun 2021 Tentang Perubahan Ketiga Atas Peraturan Menteri Agraria/Kepala Badan Pertanahan Nasional Nomor 3 Tahun 1997 Tentang Ketentuan Pelaksanaan Peraturan Pemerintah Nomor 24 Tahun 1997 Tentang Pendaftaran Tanah (Studi Di Kota Semarang)," *Jurnal Hukum, Politik, Dan Kekuasaan* 3, no. 2 (February 2023): 205–15, <https://doi.org/10.24167/jhpk.v3i2.7193>.

¹¹ Mohammad Yasir Fauzi, "Legislasi Hukum Kewarisan Di Indonesia," *Ijtima'iyya: Jurnal Pengembangan Masyarakat Islam* 9, no. 2 (2016): 53–76, <https://ejournal.radenintan.ac.id/index.php/ijtima'iyya/article/view/949>.

The rule affirms that SKHW from BHP is not only for citizens of foreign Eastern descent other than Chinese but is available to all Indonesian citizens without exception. This policy is intended to eliminate group-based discrimination in inheritance law in Indonesia, allowing citizens full freedom in the issuance of SKHW.¹²

However, this policy has led to a duality of authority in issuing SKHW. On one hand, BHP has authority based on Article 3 of the Regulation of the Minister of Law and Human Rights Number 7 of 2021 concerning the Organization and Work Procedures of Heritage Hall, emphasizing BHP's responsibility for issuing SKHW. On the other hand, notaries, under Law Number 30 of 2004 regarding the Office of Notary and its amendment in Law Number 2 of 2014, retain authority to issue authentic deeds, including SKHW, referring also to Article 1868 of the *Burgerlijk Wetboek* (BW). The lack of a national integration system, unlike the registration mechanism for wills through the Central Will Registry at the Directorate General of Legal Administrative Affairs (*Direktorat Jenderal Administrasi Hukum Umum*/Ditjen AHU) under the Ministry of Law Republic of Indonesia has led to various legal risks. The absence of clear regulatory demarcation between these authorities raises the question of whether a true normative conflict exists or whether the system merely reflects functional overlap without legal contradiction.

From a practical perspective, this ambiguity is not merely theoretical. In administrative practice, particularly in land registration and banking transactions, different institutions may accept different forms of proof of inheritance rights without a unified verification mechanism. For instance, land offices under the National Land Agency (*Badan Pertanahan Nasional*) may accept certificates of heirs issued by village authorities or notarial deeds, while other institutions may recognize certificates issued by the Heritage Hall (*Balai Harta Peninggalan*), there is no integrated national registry for SKHW.

This fragmented system creates a structural possibility for multiple SKHWs to be issued for the same decedent, particularly when heirs apply through different authorities that operate independently and are not connected through a shared database or verification system. In such circumstances, each document may formally satisfy administrative requirements, yet substantively conflict with one another.

Furthermore, the coexistence of multiple legally recognized forms of inheritance certification opens space for strategic behavior by heirs (forum shopping), whereby parties may deliberately choose the authority or form of document that is most favorable to their interests. Although such practices are not always explicitly recorded in judicial decisions, they are implicitly acknowledged in administrative practice and doctrinal critiques of Indonesia's pluralistic inheritance system, which highlight the absence of uniform standards and oversight mechanisms.

Consequently, the risk of legal uncertainty does not merely arise from conflicting norms, but from the absence of an integrated institutional framework capable of ensuring consistency, verification, and accountability in the issuance of SKHW.

¹² Ella Emilia Rahmasari, I Gusti Ayu Ketut Rachmi Handayani, and Lego Karjoko, "Kepastian Hukum Pengaturan Surat Keterangan Waris Dalam Pendaftaran Peralihan Hak Atas Tanah Karena Warisan" (paper presented at Seminar Nasional Universitas Islam Batik Surakarta, Surakarta, 2022).

Similar research titled “Rekonstruksi Kebijakan Tugas Dan Kewenangan Lembaga Pembuat Surat Keterangan Waris Berbasis Nilai Keadilan” by Nany Pudjianti Suwigjo aims to analyze the problems of SKHW in a constitutional framework, particularly Articles 26 paragraph (1), 27 paragraph (1), and 28D paragraph (1) of UUD 1945, and the values of justice in Pancasila.¹³ Previous studies have focused more on administrative and civil practice, whereas this research highlights the misalignment of citizen classification with the principle of equality before the law. The study shows regulatory dualism and legal disharmony, where the abolition of population classification through Article 163 paragraph (4) I.S. and the Population Administration Law conflicts with land bureaucracy practices that still require citizen classification. The study also proposes recommendations for reconstructing SKHW issuance policies under a *One Map Policy* based on social justice, suggesting that SKHW issuance authority should be concentrated within the judiciary (Religious Courts, District Courts, and Customary Law Communities), emphasizing the need for institutional integration to eliminate dualism and reduce potential discrimination.

Another study, “Surat Keterangan Hak Waris Dalam Ketentuan Hukum Waris Nasional” by Sovia Febrina Tamaulina Simamora, discusses the regulation of SKHW and its forms, which are not clearly stipulated in legislation.¹⁴ Regulation of inheritance certificates is found only in Article 111 paragraph (1) letter c of the Minister of Agrarian Affairs/Head of the National Land Agency Regulation Number 3 of 1997 concerning the Implementation of Government Regulation Number 24 of 1997 on Land Registration (PMNA 03/1997). It governs officials authorized to issue inheritance certificates based on population groups and its implementation in society for legal proof in the transfer of inheritance rights. SKHW issuance in Indonesia is subject to the law of the decedent, not the heirs. By issuing SKHW, heirs can jointly manage the decedent’s asset, even if shares are specified, while what each heir receives is separately recorded in the Deed of Distribution and Separation of Inherited Asset.

A further study, “Pengalihan Hak Atas Merek Kepada Ahli Waris berdasarkan Surat Keterangan Waris” by Pramitasari and Habib Adjie, emphasizes the transfer of registered trademark rights to heirs based on inheritance certificates.¹⁵ The study highlights that the transfer of registered trademark rights recorded and applied for with the minister must be announced in the Official Trademark Gazette. In terms of inheritance law, heirs cannot directly have authority to transfer ownership of inherited asset from the decedent; they must act according to applicable regulations and issue SKHW as a primary requirement. The certificate provides clear information about who holds rights over the decedent’s asset.

While these three prior studies share the focus on SKHW regulation, they do not specifically examine the duality of authority in SKHW issuance or its implications for legal certainty and protection for heirs. This gap constitutes the novelty of the present research.

¹³ Nany Pudjianti Suwigjo, “Rekonstruksi Kebijakan Tugas Dan Kewenangan Lembaga Pembuat Surat Keterangan Waris Berbasis Nilai Keadilan” (PhD diss., Universitas Islam Sultan Agung, 2021), <https://repository.unissula.ac.id/18625/>.

¹⁴ Sovia Febrina Tamaulina Simamora, “Surat Keterangan Hak Waris Dalam Ketentuan Hukum Waris Nasional,” *Visi Sosial Humaniora* 3, no. 2 (December 2022): 189–96, <https://doi.org/10.51622/vsh.v3i2.1117>.

¹⁵ Pramitasari and Habib Adjie, “Pengalihan Hak Atas Merek Kepada Ahli Waris Berdasarkan Surat Keterangan Waris,” *Aladalah: Jurnal Politik, Sosial, Hukum Dan Humaniora* 2, no. 2 (February 2024): 199–207, <https://doi.org/10.59246/aladalah.v2i2.812>.

Based on the foregoing, the research problems in this study can be formulated as follows: (1) what is the legal function and evidentiary position of the Certificate of Inheritance Rights (SKHW) within the Indonesian inheritance law system; (2) whether the dual authority of Notaries and the Heritage Hall in issuing SKHW constitutes a normative conflict or merely an overlap of legally recognized powers, and how such a condition affects the principles of legal certainty and legal protection for heirs; and how the systems of inheritance certification in the Netherlands and Singapore provide comparative insights for formulating an ideal institutional model for SKHW issuance in Indonesia.

This research analyzes the legal basis for SKHW issuance by notaries and BHP, referring to the *Burgerlijk Wetboek*, Law Number 30 of 2004 on the Position of Notaries, Law Number 2 of 2014 amending Law Number 30 of 2004, Regulation of the Minister of Law and Human Rights Number 7 of 2021 on the Organization and Work Procedures of Heritage Hall, Minister of ATR/BPN Regulations Number 3 of 1997 and 16 of 2021. By adopting a normative legal approach, this study seeks not only to describe the existing regulatory framework but also to critically evaluate its coherence and to propose an integrated model for SKHW issuance in order to strengthen legal certainty and protection for heirs.

METHOD

The research method employed is normative legal research using primary and secondary legal materials. Primary materials include the *Burgerlijk Wetboek*, Law Number 30 of 2004 on Notaries, Law Number 2 of 2014 amending Law Number 30 of 2004, Regulation of the Minister of Law and Human Rights Number 7 of 2021, and Minister of ATR/BPN Regulations Numbers 3 and 16 of 1997/2021. Secondary materials include textbooks, legal journals, and scholarly articles related to SKHW. Analysis is conducted through the statute approach, conceptual approach, and comparative approach. The statute approach is used to examine the hierarchy, consistency, and potential disharmony among regulations governing the authority of notaries and the Heritage Hall. The conceptual approach is applied to analyze key legal concepts, such as authority, legal certainty, and legal protection, as developed in legal doctrine. The comparative approach is employed to contrast the Indonesian system with those of the Netherlands and Singapore in relation to inheritance administration and proof of heirship. The selection of the Netherlands as a comparative jurisdiction is based on its influence on Indonesian civil law, particularly through the historical adoption of the *Burgerlijk Wetboek*, making it relevant for examining doctrinal consistency in a civil law framework. Meanwhile, Singapore is selected as a comparator due to its more administratively integrated system of inheritance and probate, offering a contrasting model despite its common law background. The scope of comparison is limited to the regulation of proof of inheritance rights and institutional authority in issuing such proof, without extending to the entirety of inheritance law systems in each jurisdiction. This limitation is necessary to maintain analytical focus, particularly given the structural differences between civil law and common law systems. All legal materials are analyzed qualitatively through a prescriptive analytical method, aiming not only to describe the existing legal framework but also to evaluate its coherence and to formulate normative recommendations for resolving the identified issues of dual authority in SKHW issuance.

ANALYSIS AND DISCUSSION

The Function of Certificate of Inheritance and the Dualism of Issuance Authority in the Indonesian Inheritance Law System

The death of a person constitutes a legal event and gives rise to far-reaching legal consequences. These consequences include the determination of whether the deceased left outstanding debts, who the heirs are, the respective shares of each heir, and whether a will was executed during the deceased's lifetime.¹⁶ Upon the death of a person, his or her assets are deemed to be opened for inheritance by the heirs.¹⁷ The deceased is referred to as the decedent or testator, while the heirs are those who are legally entitled to the inheritance. Accordingly, inheritance can only occur if three elements are fulfilled, namely: the death of a person, the existence of heirs who are still alive, and the presence of an inheritance asset.¹⁸

In Western inheritance law, the principle of *le mort saisit le vif* is recognized, as stipulated in Article 833 BW, which provides that "all heirs, by operation of law, automatically acquire ownership of all assets, rights, and receivables of the deceased."¹⁹ In general, there are two categories of persons who may qualify as heirs: (1) individuals who are designated by law or statute as heirs, known as *ab intestato* heirs; and (2) individuals who are appointed as heirs through a will or testament executed by the testator during his or her lifetime, known as testamentary heirs.²⁰

Inheritance based on statutory provisions (*ab intestato*) recognizes the classification of heirs into four groups reflecting the principle of proximity in degree, whereby closer relatives exclude more distant ones. The first group consists of relatives in the direct descending line, namely children and their descendants, as well as the surviving spouse. The second group includes the parents and siblings of the deceased. The third group comprises relatives in the direct ascending line beyond the parents, such as grandparents from both paternal and maternal lines. The fourth group consists of collateral relatives and other extended family members.

The Indonesian inheritance system cannot be separated from the influence of Dutch colonial legal politics, which classified the population into several groups subject to different civil law regimes.²¹ Under the *Indische Staatsregeling*, the population was divided into three groups: Europeans, Indigenous Peoples, and Foreign Orientals.²² Subsequently, Law Number

¹⁶ Oemar Moechthar, *Perkembangan Hukum Waris: Praktik Penyelesaian Sengketa Kewarisan Di Indonesia*, Cetakan ke-1 (Jakarta: Prenadamedia Group, 2019).

¹⁷ Astrid Athina Indradewi, Andyna Susiawati Achmad, and Fajar Sugianto, "The Legal Status of Testaments That Eliminate the Inheritance Rights for the Longest-Living Marital Spouse," *Jurnal Ius Constituendum* 9, no. 2 (April 2024): 215–32, <https://doi.org/10.26623/jic.v9i2.8881>.

¹⁸ Eman Suparman, *Hukum Waris Indonesia: Dalam Perspektif Islam, Adat, Dan BW* (Bandung: Refika Aditama, 2005).

¹⁹ Oong Komariyah, "Implikasi Perbuatan Melawan Hukum Perjanjian Pengikatan Jual Beli Oleh Ahli Waris (Studi Kasus Putusan Nomor 25/PDT.G/2015/PN.LMG Jo Putusan Nomor 833 PK/PDT/2018)," *Otentik's: Jurnal Hukum Kenotariatan* 3, no. 2 (July 2021): 153–70, <https://doi.org/10.35814/otentik.v3i2.2519>.

²⁰ Karina Megawati and Ghansham Anand, "Hak Waris Anak Adopsi Dari Orang Tua Yang Telah Bercerai Dalam Perspektif Hukum Perdata Barat," *Res Judicata* 1, no. 2 (December 2018): 115, <https://doi.org/10.29406/rj.v1i2.1235>.

²¹ Agus Yudha Hernoko et al., "Unifikasi Dalam Pembuatan Keterangan Waris Di Indonesia" (research report, Universitas Airlangga, 2016), <https://repository.unair.ac.id/87598/>.

²² I Gusti Kade Prabawa Maha Yoga, Afifah Kusumadara, and Endang Sri Kawuryan, "Kewenangan Notaris Dalam Pembuatan Surat Keterangan Waris Untuk Warga Negara Indonesia," *Jurnal Ilmiah Pendidikan Pancasila Dan Kewarganegaraan* 3, no. 2 (December 2018): 132–43, <https://doi.org/10.17977/um019v3i2p132-143>.

12 of 2006 on Citizenship of the Republic of Indonesia classified residents into only two categories, namely Indonesian citizens and foreign nationals. Furthermore, Law Number 23 of 2006 as amended by Law Number 24 of 2013 on Population Administration reaffirmed the abolition of population classification based on colonial *Staatsblad* regulations.²³

Nevertheless, in practice, particularly in land law and inheritance matters, the influence of population classification remains evident, especially in the evidentiary requirements for determining heirship. Article 42 paragraph (1) of Government Regulation Number 24 of 1997 on Land Registration in conjunction with Article 111 paragraph (1) letter c of the Regulation of the Head of the National Land Agency Number 8 of 2012 stipulates that the transfer of rights due to inheritance occurs by operation of law upon the death of the rights holder, but must still be registered to ensure legal protection and administrative order in land affairs. These provisions also regulate that proof of heirship may take the form of a certificate of inheritance rights, a court decision or determination, or a certificate of heirs

At this point, it is necessary to emphasize that the plurality of legal instruments for proving inheritance rights does not automatically constitute a legal problem. In principle, multiple forms of proof may coexist within a legal system. However, the issue arises when such plurality is not accompanied by clear boundaries of authority, uniform verification standards, and an integrated supervisory mechanism. In the Indonesian context, the absence of these elements transforms what should be alternative evidentiary mechanisms into a condition of normative overlap.

More specifically, the form of proof of heirship continues to be differentiated based on the background of population classification. For Indigenous Indonesian citizens, the certificate of heirs is drawn up by the heirs themselves, witnessed by two witnesses, and endorsed by the Village Head or Sub-District Head. For Indonesian citizens of Chinese descent, proof of heirship must be made in the form of a certificate of inheritance rights drawn up by a Notary. Meanwhile, for Indonesian citizens of other Foreign Oriental descent, the certificate of heirs is issued by the Heritage Hall (*Balai Harta Peninggalan/BHP*).²⁴

The determination of who qualifies as an heir is essentially conducted through the issuance of a Certificate of Heirs (*Surat Keterangan Hak Waris*).²⁵ This certificate functions as evidence and as a legal basis for heirs to undertake various legal acts concerning the inheritance estate, as it contains the identities and legal positions of the heirs.²⁶ Furthermore, the certificate serves as a basis for pledging or encumbering inherited property as collateral to creditors, transferring rights over inherited assets, converting joint ownership into individual ownership through a deed of distribution and separation of inheritance executed before a Notary, and as proof for withdrawing funds belonging to the deceased that are held by banks

²³ Ibid.

²⁴ Giffari Yahya Muhamad and Suparjo, “Kedudukan Akta Keterangan Hak Mewaris Dengan Objek Warisan Hak Atas Tanah Atau Hak Milik Atas Satuan Rumah Susun Yang Berada Di Luar Wilayah Jabatan Notaris,” *Jurnal Ilmu Hukum “The Juris”* 5, no. 2 (2021): 193–200, <https://doi.org/10.56301/juris.v5i2.290>.

²⁵ Adjie, *Unifikasi Pembuatan Keterangan Waris*.

²⁶ Nikita Fikricinta, Muhammad Sofyan Pulungan, and Winanto Wiryomartani, “Keabsahan Surat Keterangan Waris Yang Dalam Pembuatannya Menggunakan Dokumen Palsu (Studi Kasus Putusan Nomor 577/PDT.G/2020/PN SBY),” *Indonesian Notary* 3, no. 2 (2021): 617–34, <https://scholarhub.ui.ac.id/notary/vol3/iss2/34/>.

or insurance companies.²⁷

To date, Indonesia has not achieved unification in the mechanism for issuing Certificates of Heirs, which is a consequence of colonial legal politics that differentiated population groups. As a result, the authority to issue Certificates of Heirs is dispersed among various institutions, including village and sub-district offices, Notaries, Religious Courts, and the Heritage Hall (*Balai Harta Peninggalan/BHP*).²⁸

However, the current regulatory development does not merely reflect historical continuity, but rather produces a new structural problem. The abolition of population classification is not followed by a clear redistribution of authority, resulting in multiple institutions exercising similar powers without a definitive legal hierarchy. This indicates that the issue is not simply legal pluralism, but rather the absence of institutional design in allocating authority.

The authority of Notaries to issue Certificates of Heirs is derived from the Law on the Office of Notary and its amendments. In practice, Certificates of Heirs issued by Notaries may take the form of private deeds, as referred to in *Staatsblad* 1913 Number 105. However, under certain circumstances, they may also be executed as authentic deeds in accordance with Article 1868 BW.²⁹ Article 1868 BW provides that “an authentic deed is a deed which, in the form prescribed by law, is drawn up by or before a public official authorized for that purpose at the place where the deed is made.” Based on this provision, an authentic deed must satisfy the following elements: (1) it must be drawn up by or before a public official; (2) it must be made in the form prescribed by law; and (3) the public official before whom the deed is drawn up must have the authority to do so.³⁰ In this regard, a Notary is obliged to ensure certainty as to the day and date stated in the deed.³¹ An authentic deed possesses perfect evidentiary force, whereby the truth of its contents is deemed correct unless proven otherwise through counter-evidence (*tegenbewijs*).³²

In practice, heirs of Chinese descent who intend to obtain a Certificate of Heirs before a Notary are first subjected to an examination regarding the possible existence of a will through the Legal Administration System (*Administrasi Hukum Umum*). If no will is found, the process may proceed upon fulfillment of administrative requirements. These include requiring the heirs to present original supporting documents, drawing up a notarial deed of declaration of heirs, examining whether the testator’s wife was pregnant at the time of death, inquiring whether

²⁷ Maha Yoga, Kusumadara, and Kawuryan, “Kewenangan Notaris.”

²⁸ Muchammad Kawtsar and Hening Hapsari Setyorini, “Kewenangan Lembaga-Lembaga Penerbit Surat Keterangan Waris Di Indonesia: Sebuah Perbandingan Pasca Penghapusan Penggolongan Penduduk,” *Legal Spirit* 9, no. 3 (December 2025): 635–44, <https://doi.org/10.31328/lis.v9i3.6021>.

²⁹ Andi Fitra and Ghansham Anand, “Tanggung Gugat Ahli Waris Notaris Terhadap Pewaris Yang Dijatuhi Hukuman Ganti Rugi,” *Al-Qanun: Jurnal Pemikiran Dan Pembaharuan Hukum Islam* 20, no. 2 (February 2018): 76–103, <https://doi.org/10.15642/alqanun.2017.20.2.76-103>.

³⁰ Habib Adjie, *Kebatalan Dan Pembatalan Akta Notaris*, Cet. 1 (Bandung: Refika Aditama, 2011).

³¹ Rumi Suwardiyati and Riky Rustam, “Urgensi Reformulasi Pengaturan Penyerahan Protokol Notaris Untuk Mewujudkan Kepastian Hukum,” *Peradaban Journal of Law and Society* 1, no. 2 (December 2022): 119–32, <https://doi.org/10.59001/pjls.v1i2.40>.

³² Candella Angela Anatea Taliwongso, Dientje Rumimpunu, and Muhammad Hero Soepeno, “Kedudukan Akta Otentik Sebagai Alat Bukti Dalam Persidangan Perdata Ditinjau Dari Pasal 1870 KUH Perdata (Studi Kasus Putusan Nomor 347/Pdt.G/2012/PN.Mdn),” *Lex Administratum* 10, no. 2 (2022), <https://ejournal.unsrat.ac.id/v3/index.php/administratum/article/view/40531>.

there are any heirs who are legally unworthy, and other relevant considerations.³³ The authentic deed containing the heirs' declarations serves as evidence in the event that any statement made by the appearing parties is later found to be untrue. Such false statements may cause harm to other parties, in which case liability rests with the parties who provided the false information. The distinction between a deed of declaration and a certificate of heirs lies in their content. A deed of declaration merely states who is entitled to inherit the estate, whereas a certificate of heirs specifies the respective shares of the inheritance allocated to each heir under BW.

In carrying out his or her duties, a Notary is required to adhere to the principle of prudence. Every action taken by a Notary must be carefully prepared and grounded in applicable legal provisions.³⁴ This includes re-examining all evidence presented to the Notary and listening to the statements and explanations of the parties, which form the basis for incorporation into the deed. This principle of prudence constitutes the implementation of Article 16 paragraph (1) letter a of the under the Law Number 30 of 2004 regarding the Office of Notary and its amendment in Law Number 2 of 2014, which mandates that a Notary must act carefully in performing his or her duties.³⁵

In this regard, although notarial authority is often linked to the principle of *lex specialis derogat legi generali*, this argument requires clarification. The Notary Office Act may be considered *lex specialis* in relation to the general provisions of civil law concerning evidentiary documents, particularly Article 1868 BW. However, this does not automatically exclude the authority of other institutions such as BHP, as their competence is derived from separate sectoral regulations. Therefore, the principle of *lex specialis* does not resolve the overlap, but instead reveals the absence of harmonization between sectoral norms.

In addition to Notaries, the Heritage Hall (*Balai Harta Peninggalan*/BHP), which previously only had authority to issue Certificates of Heirs for Indonesian citizens of other Foreign Oriental descent, is now also authorized to issue Certificates of Heirs for Indonesian citizens of Chinese descent pursuant to Regulation of the Minister of Law and Human Rights Number 7 of 2021 concerning the Organization and Working Procedures of the Heritage Hall. This regulation was enacted to accommodate developments in the implementation of the duties and functions of the Heritage Hall and to replace the Minister of Justice Decree Number M.01.PR.07.01-80 of 1980, which was deemed no longer relevant to current needs. The regulation stipulates that certificates of heirs previously issued by different institutions based on population classification are no longer applicable.³⁶ The government thus seeks to unify or standardize citizens' freedom to obtain certificates of heirs from any authorized institution.

The requirements for issuing a Certificate of Heirs by the Heritage Hall, based on Article 14 paragraph (1) of the *Instructie Voor De Gouvernements Landmeters in Indonesie* Stbl. 1916 No. 517 in conjunction with the Letter of the Minister of Home Affairs c.q. Head of the Directorate of Land Registration of the Directorate General of Agrarian Affairs dated 20

³³ Fikricinta, Pulungan, and Wiryomartani, "Keabsahan Surat Keterangan Waris."

³⁴ Habib Adjie, *Implementasi Peraturan: Pendaftaran Tanah Waris Oleh Notaris* (Bandung: Refika Aditama, 2022).

³⁵ Andyna Susiawati Achmad, *Tanggung Jawab Profesi Hukum Notaris Dalam Tindakan Malapraktik Dan Deliberate Dishonesty Action*, ed. Astrid Athina Indradewi, Cetakan Pertama (Bantul: Jejak Pustaka, 2023).

³⁶ Tiffany Agave Christiantirta and Ery Agus Priyono, "Kewenangan Notaris Dalam Pembuatan Surat Tanda Bukti Sebagai Ahli Waris," *Notaire* 5, no. 3 (October 2022): 469–84, <https://doi.org/10.20473/ntr.v5i3.38800>.

December 1969 Number DPT/12/63/12/69, and the Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency Number 3 of 1997 on the Implementing Provisions of Government Regulation Number 24 of 1997 on Land Registration, are as follows:

1. A written application addressed to the Head of the Heritage Hall;
2. A power of attorney affixed with stamp duty (if represented);
3. A stamped declaration of heirs (containing the decedent's history and acknowledged by the Village Office and Sub-District Office or RT and RW);
4. A stamped declaration stating that no previous Certificate of Heirs has been issued by the Heritage Hall of Surabaya;
5. A Certificate of Will from the Central Register of Wills, Sub-Directorate of Heritage and State Curatorship, Directorate of Civil Affairs, Directorate General of Legal Administration, Ministry of Law;
6. A copy of the death certificate of the testator;
7. Copies of death certificates of deceased heirs (e.g., parents, spouse, children);
8. Copies of identity cards and family cards of the heirs;
9. Copies of birth certificates of the heirs;
10. A copy of the marriage certificate of the testator;
11. Copies of identity cards and family cards of witnesses;
12. Copies of identity cards and family cards of the authorized representative;
13. Four stamp duties of IDR 10,000 each.

Upon fulfillment of these requirements, the Heritage Hall conducts verification of the supporting documents and summons the applicant to provide information, which is recorded in a report of appearance. The applicant is then instructed to pay the applicable Non-Tax State Revenue. Subsequently, the Heritage Hall issues the Certificate of Heirs. The issuance procedure is essentially similar to that of a Notary, with the primary difference lying in the official authorized to sign the document. The Head of the Heritage Hall acts as the authorized official, and the document is drafted in accordance with statutory provisions. Accordingly, a Certificate of Heirs issued by the Heritage Hall also fulfills the elements of an authentic deed.

Although the procedures of Notaries and BHP appear similar, the critical difference lies in the institutional accountability and scope of authority. Notaries operate within a professional legal framework with clear standards of liability, supervision, and evidentiary structure, whereas BHP functions as an administrative body with broader but less specialized authority in inheritance matters. This distinction becomes significant when assessing which institution is more suitable to ensure legal certainty.

This situation demonstrates the existence of a dualism of authority between Notaries and the Heritage Hall in issuing Certificates of Heirs, both of which produce legal instruments possessing equal authentic evidentiary force. Such dualism has the potential to give rise to legal issues, as each official or institution operates under different functions, procedures, and administrative requirements.³⁷

From a practical perspective, this dualism is reflected in administrative practices. For example, in land registration processes at the National Land Agency (BPN), different forms of SKHW may be accepted depending on the discretion of local officials and the completeness of

³⁷ Kawtsar and Setyorini, "Kewenangan Lembaga-Lembaga Penerbit."

supporting documents. Similarly, in banking practice, financial institutions may apply internal risk policies that lead to preference for certain forms of SKHW over others. This fragmented acceptance mechanism illustrates that the legal system lacks a uniform standard of verification and recognition.

As a result, the risk of duplicate SKHW issuance is not merely hypothetical but structurally embedded in the system. Because there is no centralized database or mandatory cross-verification mechanism between Notaries, BHP, and other authorities, each institution may issue a certificate based on independently verified data. This creates the possibility of conflicting documents concerning the same decedent, particularly in cases involving complex family structures or disputes among heirs.

Comparative Analysis of the Issuance of Certificate of Heirs in the Netherlands and Singapore

A Certificate of Heirs (*Surat Keterangan Hak Waris/SKHW*) is essentially a piece of evidence regarding the legal identity of the parties entitled to inherit the estate of a decedent. This document contains information about the status of heirs and their legal relationship with the decedent, and functions as the legal basis for heirs to undertake various legal acts concerning the decedent's estate.

Under the Dutch legal system, proof of inheritance rights is carried out through a document known as a *verklaring van erfrecht*.³⁸ This document is issued by a notary as a public official and serves as an official declaration identifying the lawful heirs, whether the estate has been accepted or renounced, whether there are arrangements concerning community property, the rights of the surviving spouse, the existence of a will, and the appointment of an executor (*exécuteur*). To issue a *verklaring van erfrecht*, a notary conducts thorough factual verification by examining relevant public registers such as civil registration data on births, deaths, and marriages, and by searching the Central Register of Wills to determine whether a valid will exists. This process does not require a court order as long as no dispute arises among the parties.

The Dutch model demonstrates the existence of a single authority for issuing inheritance documents under the competence of a notary. A *verklaring van erfrecht* is a notarial deed with authentic evidentiary force and is widely recognized by third parties such as banks, insurance companies, and land registry offices. The legal basis for issuing this document is found, among other places, in Article 4:188 of the Dutch Civil Code, which explicitly provides that a *verklaring van erfrecht* is a notarial deed and lists the elements that must be included. Notarial authority is further reinforced by the Notaries Act (*Wet op het Notarisambt*).³⁹ This system provides a high degree of legal certainty because factual verification is conducted by an authorized public official in accordance with established administrative procedures.

The strength of the Dutch model lies in its institutional clarity and centralized professional authority, which ensures consistency and predictability. However, this model also requires a high level of administrative integration, reliable civil registration data, and strong professional oversight of notaries. In the Indonesian context, while the historical connection to Dutch civil law supports doctrinal compatibility, the implementation of a fully centralized

³⁸ Government of the Netherlands, "Applying for a European Certificate of Succession," last modified August 22, 2025, <https://www.government.nl/topics/inheritance-tax/applying-for-a-european-certificate-of-succession>.

³⁹ Ibid.

notarial model faces challenges, including unequal access to notarial services and variations in administrative capacity across regions.

In contrast to the civil law system of the Netherlands, Singapore, a common law jurisdiction, places inheritance matters entirely under the authority of the judiciary, specifically the Family Justice Courts. In Singapore, the legal instruments functionally equivalent to SKHW are the *Grant of Probate* where there is a valid will, and *Letters of Administration* where there is no valid will.⁴⁰ The issuance of these documents occurs through a judicial process in which the court determines entitlement based on a judicial verification of entitlement.

Singapore has further developed its system through digitalization via *Probate eService*, an online platform that allows applications for *Grant of Probate* and *Letters of Administration* to be submitted electronically.⁴¹ This system leverages national digital identity infrastructure and integrated government data, including death records, to expedite administrative verification. For simple estates that meet specified criteria, cases may be resolved without physical court appearances, although original documents may still be required for verification when necessary. Under this system, notaries do not have a role in determining or verifying heirs; their function is limited to legalizing certain documents.

Singapore's model offers significant advantages in terms of efficiency, transparency, and prevention of duplication through digital integration. However, its implementation depends on advanced digital infrastructure, comprehensive population databases, and high public trust in electronic systems. In Indonesia, although initiatives such as the concept of Cyber Notary and digital legal administration have been introduced, the current legal and technical infrastructure is not yet fully integrated. Issues such as data fragmentation, cybersecurity, and recognition of electronic documents by land offices and financial institutions remain substantial challenges. Therefore, the Singapore model cannot be directly transplanted into the Indonesian system without substantial institutional reform and technological readiness.

The comparison between the Netherlands and Singapore shows two contrasting models that both offer legal certainty through different approaches. The Netherlands relies on administrative verification by notaries as authorized public officials, whereas Singapore places the authority entirely in the hands of the judiciary supported by robust digital systems. Both models provide important lessons for Indonesia, particularly in addressing the fragmented authority in issuing SKHW. The Dutch notarial model suggests that formally empowering notaries to verify inheritance facts, including examination of civil registration and wills, could be appropriate under the principle *lex specialis derogat legi generali*, where specific provisions governing notaries override general inheritance law. In this respect, notaries, as public officials whose mandate includes drawing up deeds, are well situated to serve this function, consistent with Article 15 of Law Number 30 of 2004 regarding the Office of Notary and its amendment in Law Number 2 of 2014.

Meanwhile, Singapore's digital probate model could be adopted by developing an

⁴⁰ Singapore Courts, "Probate and Administration," last modified October 15, 2024, <https://www.judiciary.gov.sg/family/probate-and-administration>.

⁴¹ Zhulkarnain Rahim and Daniel Lam, "Future of Estate Planning: Probate eService," Dentons Rodyk, May 12, 2023, <https://dentons.rodyk.com/en/insights/alerts/2023/may/12/future-of-estate-planning-probate-eservice>.

electronic SKHW service for straightforward inheritance matters, integrated with national population and identity data. Implementing such a model would face challenges, including limitations in data completeness and system integration, clarity of authority and duties for issuing SKHW, data security and privacy protection, and recognition of electronic inheritance documents by third parties. Nevertheless, the experiences of the Netherlands and Singapore indicate that harmonizing authority and digitizing inheritance procedures are strategic steps to enhance legal certainty, administrative efficiency, and legal protection for heirs.

Table 1. Comparison of the Issuance of Certificates of Heirs in Indonesia, the Netherlands, and Singapore

Aspect	Indonesia	The Netherlands	Singapore
Legal System	Civil Law with adaptations of customary law and Islamic law	Civil Law	Common Law
Issuing Authority / Institution	Multiple authority (Such as: Notary, Heritage Hall (<i>Balai Harta Peninggalan</i>), and Sub-District Head / Village Head	Single authority (Notary)	Court
Verification Mechanism	Fragmented, institution-based	Centralized notarial verification	Judicial verification
Type of Document	Certificate of Heirs (<i>Surat Keterangan Hak Waris</i>)	<i>Verklaring van Erfrecht</i>	Grant of Probate / Letter of Administration
Supervision	Sectoral	Professional (notarial oversight)	Judicial

Source: Results of Comparative Legal Research conducted by the authors, 2025.

Based on the comparative analysis, this study does not advocate a return to the previous population-based system, nor does it support maintaining the current fragmented model. Instead, it proposes a new institutional design that combines elements of the Dutch and Singaporean systems, adapted to Indonesian legal conditions. The proposed model consists of: (i) the designation of Notaries as the primary authority for issuing SKHW in the form of authentic deeds, based on their legal competence and evidentiary function; (ii) the establishment of a national digital registration and verification system under the Directorate General of General Legal Administration (Ditjen AHU), which integrates data on population, wills, and inheritance certificates; and (iii) the limitation of BHP's authority to specific cases, such as unmanaged estates, absent heirs, or legal incapacity.

In this model, every SKHW issued by a Notary must be registered in the national system, allowing real-time verification and preventing duplicate issuance. The system should be integrated with existing databases, including civil registration, land records, and the Central

Register of Wills. Verification authority remains with the Notary, while AHU functions as a supervisory and data integration body.

Implementation of this model requires regulatory harmonization, particularly through amendments to Minister of ATR/BPN Regulation Number 16 of 2021 and relevant regulations governing BHP, as well as the development of a legal framework recognizing electronic SKHW registration. This approach is more feasible for Indonesia because it does not eliminate existing institutions but reorganizes their roles within an integrated system, thereby balancing legal certainty, administrative efficiency, and institutional capacity. Thus, the Indonesian problem is not merely one of legal pluralism, but of institutional fragmentation without coordination. The comparative analysis demonstrates that legal certainty is achieved not simply by choosing a single authority, but by ensuring integration, verification, and supervision within a coherent legal framework.

CONCLUSION

The issuance of SKHW is a crucial element in the inheritance system as it serves as the basis for proving the status of heirs and their legitimacy to carry out legal acts over the estate of the deceased. In the context of Indonesian law, the regulation of SKHW still reflects fragmented authority, rooted in colonial legal policies that differentiated population groups. This situation has resulted in the lack of a unified mechanism for SKHW issuance, with authority spread across various officials and institutions, including Notaries and BHP.

The findings of this study demonstrate that the coexistence of authority between Notaries and BHP does not merely reflect administrative plurality, but constitutes a normative overlap that lacks clear regulatory boundaries, thereby creating legal uncertainty and weakening legal protection for heirs. This dualism allows multiple legally valid SKHWs to be issued for the same decedent, increases the risk of conflicting claims, and creates uncertainty for third parties relying on such documents.

In answering the research problems, this study affirms that Notaries, as public officials authorized to produce authentic deeds under Law Number 30 of 2004 as amended by Law Number 2 of 2014, have the legal competence to issue Certificates of Inheritance Rights for all Indonesian citizens. Such SKHW must be formulated in the form of a notarial deed that complies with the formal requirements set out in Article 38 of the Notary Office Act, thereby ensuring its authenticity, evidentiary strength, and legal certainty.

Based on these findings, this study proposes a normative model of institutional integration through: (i) the affirmation of Notaries as the primary authority in issuing SKHW in the form of authentic deeds; (ii) the establishment of a national SKHW registration and verification system under the Directorate General of General Legal Administration (Ditjen AHU) to prevent duplication and ensure data integration; and (iii) the limitation of BHP's role to specific circumstances, such as the administration of unattended estates or where heirs are unknown or legally incapable.

To implement this model, regulatory harmonization is required, particularly through the revision of Minister of ATR/BPN Regulation Number 16 of 2021 and the alignment of sectoral regulations governing BHP, in order to clearly define institutional authority and eliminate overlapping mandates.

Through these measures, the inheritance law system in Indonesia can move from fragmented authority toward an integrated and coherent framework that upholds the principles of legal certainty, legal protection, and equality before the law.

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