

# Jurnal Notariil

Jurnal Notariil, Vol. 8, No. 1, 2023; 15-20

Available Online at <https://ejournal.warmadewa.ac.id/index.php/notariil>

P ISSN 2540 - 797X

E ISSN 2615 - 1545

## REGULATION OF REGISTRATION OF TRANSFER OF RIGHTS TO LAND DUE TO INSTRUCTION IN THE PERSPECTIVE OF PERMEN ATR/ KBPN NUMBER 16 YEAR 2021

Elizabeth Marchia Aristha

**Magister of Notary, Postgraduate Program, Universitas Warmadewa**

\*Email: [ichamarchia@gmail.com](mailto:ichamarchia@gmail.com)

How To Cite:

Aristha, E, M. (2023). Regulation of Registration of Transfer of Rights to Land Due to Instruction In The Perspective of Permen Atr/ Kbpn Number 16 Year 2021. *Jurnal Notariil*, 8 (1), 15-20, Doi: <https://doi.org/10.22225/jn.8.1.2023.15-20>

### Abstract

This paper analyzes the Registration Arrangements for the Transfer of Land Rights Due to Inheritance. The focus of the study in this paper is on the regulation of the registration of the transfer of land rights due to inheritance in the perspective of Permen ATR/KBPN Number 16 of 2021. The research method used in this paper is a normative research method using the Law, Concept, and Comparative Approach. Law. The analysis of legal materials in this paper is carried out using several legal theories, namely the theory of benefit, the theory of legal protection, and also the theory of legal certainty as an analytical tool in discussing legal issues in this study. It can be concluded that the regulation of land registration due to inheritance which was originally regulated based on the division of population groups as determined by the Regulation of the State Minister of Agrarian Affairs/Head of the National Land Agency Number 3 of 1997 has now been amended as based on the Regulation of the State Minister of Agrarian Affairs/Head of the National Land Agency Number 16 of 1997. 2021 which abolishes the provisions on the division of population groups in the land registration process due to inheritance in Indonesia. The legal materials used are primary legal materials in the form of laws and regulations relating to the formulation of the issues raised, then secondary legal materials in the form of reputable journals and the latest literature. Based on the results of the analysis, it is found that there is an inconsistency of norms in the land registration process due to inheritance, which can be seen in Article 111 Paragraph (1) letter c of the Minister of ATR/KBPN Number 16/2021 which does not guarantee legal certainty and still causes multiple interpretations in its implementation.

**Keywords:** inheritance; land registration; population group;

### 1. INTRODUCTION

Land for a person has a relationship that is quite influential for an individual even though later that individual has been declared dead. Even when the individual dies, the right to the land will not be lost and can be continued by his heirs. In the life of the people who own the nation and state, the existence of the land is consid-

ered as the determination of the area of sovereignty and its existence is also part of the assets owned and controlled by the state to be utilized as much as possible for the prosperity of the people. This is in accordance with the contents of Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. Especially for the life of indigenous peoples with traditional rights including land rights

are maintained in such way appearance as a source of survival.

In order for the implementation of Article 33 to be realized and used for the prosperity of the Indonesian people, the existence of land in Indonesia is controlled directly by the State. Where this country is considered as an organization that has the highest power for all Indonesian people. As the highest authority, the state has the "Right of Control" as enshrined in Article 2 of Law Number 5 of 1960 concerning Basic Agrarian Regulations. The article also regulates the authority possessed by the state in relation to the right of control. Based on the "Right of Control", the state then determines the types of land rights that can be granted to individuals, either alone or jointly, or to legal entities. Law Number 5 of 1960 concerning Basic Agrarian Basic Regulations as a legal unification of the land sector in Indonesia divides land rights into 3 (three) groups, namely rights that are permanent or have been written in Article 16 of the Basic Agrarian Law, namely property rights, use rights business, right to build, right to use, right to lease, right to clear land, right to collect forest products, right to use water, right to maintain and catch fish, and right to use space; furthermore, temporary rights are written in Article 53, namely lien rights, profit-sharing business rights, boarding rights and agricultural land rental rights; as well as rights which will be regulated later by other laws and regulations thereafter in accordance with the enumerative nature of the Basic Agrarian Law.

The constitutional mandate in the land sector demands that politics and land policies can make a concrete contribution to the process of realizing social justice for all Indonesian people and realizing the greatest prosperity of the people. In order to provide information to interested parties, including the government, to regulate order in land domination, and to claim legal certainty, the government conducts land registration as stated in Article 19 paragraph (1) of Law number five of 1960 concerning Basic Regulations. agrarian

tree.

Regulation of the Minister of State for Agrarian Affairs/Chairman of the National Land Agency number three of 1997 concerning Implementing Provisions for Government Regulation number 24 of 1997 concerning Land registration and the issuance of the Letter of the Director of Land Registration, Director General of Agrarian Affairs, Ministry of Home Affairs number Dpt/12/63/12/69 dated December 20, 1969 which basically the authority to make a certificate of inheritance is distinguished, namely for European descendants it is designed by a notary; the original/indigenous population is designed by heirs known to the Lurah and confirmed by the Camat; Chinese descent by a Notary; and Foreign Eastern descendants by the Relic Treasure Hall. Regarding the use of this matter, the regulation of land registration due to inheritance can be said to adhere to the division of population groups. In addition, the division of population groups has been in effect since the civil law system that applies in Indonesia in the realm of inheritance law, this is a civil law system that applies depending on the origin of each resident who submits and uses it, be it norms, Islamic rules, or regulations. Western Civil Code (B.W.).

To avoid differences and also harmonize agrarian law, the minister of agrarian affairs through the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 16 of 2021 concerning the Third Amendment to the Regulation of the State Minister of Agrarian Affairs/Head of the National Land Agency Number 3 of 1997 concerning Provisions for Implementing Regulations Government Number 24 of 1997 concerning Land Registration has issued a policy in the form of eliminating population groups in the land registration process through inheritance in Indonesia.

Based on the legal issues described above, several formulations of the problems to be studied are regarding the legal process of land registration due to inher-

itance after the issuance of Ministerial Regulation of ATR/KBPN Number 16 of 2021; and legal certainty of registration of transfer of land rights due to inheritance after the entry into force of Article 111 paragraph (1) letter c Regulation of the Minister of Agrarian Affairs and Spatial Planning of the Head of the National Land Agency of the Republic of Indonesia Number 16 of 2021.

The research formulation drawn in this paper is about (1) how is the legal process of land registration through inheritance after the issuance of Ministerial Regulation of ATR/KBPN Number 16 of 2021? and (2) What is the legal certainty of the registration of the transfer of land rights due to inheritance after the enactment of Article 111 paragraph (1) letter c of the Regulation of the Minister of Agrarian and Spatial Planning of the Head of the National Land Agency of the Republic of Indonesia Number 16 of 2021?

## **2. METHOD**

This paper was written using a normative research method. The normative research method is writing that uses legal materials aimed at investigating the quality of the legal norms themselves, as a result of which normative legal research is often classified into qualitative research. In the discussion, several types of legal approaches are used, namely the Law, Concept, and Comparative Law Approach. Furthermore, in discussing the problems raised in this paper, we use a deductive method that starts with general things, then the legal materials are applied according to the formulation of the problem that produces specific answers. To obtain a valid answer, authentic interpretation and systematic interpretation are used.

## **3. DISCUSSION**

Land registration law in Indonesia, which began with the provisions of Article 19 of the LoGA mentioned above, then proceeds in detail and specifically into Government Regulation, namely PP 24/1997. Land registration regulations that

apply to date are a series of activities carried out by the government. and is currently being carried out by the Ministry of Agrarian Affairs and Spatial Planning/ National Land Agency in the Republic of Indonesia continuously and regularly, in the form of collecting facts or exclusive data about certain lands located in certain areas or areas, processing, storing, as well as its presentation for the public interest, in the context of conveying collateral for legal certainty in the land sector, also including the issuance of indications in the form of evidence and its maintenance.

Land registration due to inheritance is required in order to provide legal protection to the heirs and for the sake of orderly state administration, especially with regard to land registration, so that the data stored and presented by the Ministry of Agrarian Affairs and Spatial Planning/ Head of the National Land Agency of the Republic of Indonesia can always show the state of the land. which is up-to-date and can always provide legal certainty for the entire community.

Article 111 paragraph (1) letter c Regulation of the State Minister of Agrarian Affairs/Head of the National Land Agency Number 3 of 1997 concerning Provisions for the Implementation of Government Regulation Number 24 of 1997 concerning Land Registration stipulates the existence of a population classification system in the Inheritance process in Indonesia originating from ancient rules ( Dutch East Indies). During the Dutch East Indies era, in the field of Civil Law in general and Civil Inheritance Law in particular, legal pluralism was encountered. This happened because the Dutch East Indies government according to Article 163 paragraph (1) I.S (Indische Staats Regeling) divided the Indonesian population into 3 population groups, namely: European, Native, and Foreign Eastern.

This classification can be seen when conducting a study in the field of inheritance law, where the process of transferring land rights from someone who has died or who is called an heir to an heir is

carried out in accordance with the legal rules in force in Indonesia.

Prior to the enactment of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 16 of 2021, the land registration system due to inheritance was still class division (*intergentiel recht*) which indicated which legal system was applicable or whether it was law, if the relationships and events between citizens in one country, one place and one particular time show points of connection with different legal systems and rules. Currently, there is no distinction/classification of the population. Previously, Indonesian Citizens of Chinese descent and other Foreign Easterners were required to use a Notary Deed and PPAT, currently based on Ministerial Regulation 16/2021 it has been equated with the Bumiputera or Native Indonesians who can determine their own inheritance system. Regarding the Chinese and Foreign East groups who are obliged to use a Notary deed, this is because the deed made before a Notary is a deed that has perfect proof and the deed can avoid a land dispute.

Based on the explanation of Article 42 of PP 24/1997 that a transfer of rights due to inheritance can occur due to legal reasons when the holder of the right in question dies (MD). This can be interpreted meaning, that since then the heirs as holders of new rights to the land. Regarding who will be the heir, it is generally regulated in the customary law that applies to the heir concerned. The registration of the transfer of rights regarding the existence of this inheritance is also an obligation, in order to provide legal protection to the heirs and for the sake of order in the administration of land registration, so that the data stored and presented always shows the current situation and the actual situation in the field.

A certificate of proof of becoming an heir can be obtained in the form of a certificate of inheritance rights, or a letter of determination of heirs or a certificate of

heirs. Registration for each transfer of rights is crucial once made to maintain a general register so that it is always in sync with the actual situation and the evidence in the form of a certificate always conveys legal certainty. Furthermore, in paragraph (2) Article 23, Article 32, Article 38 of the BAL, it is stipulated that registration of the deed of transfer of rights is required, because the certificate is a strong tool for the validity of a transfer of rights to the land in question. The registration of the transfer of land rights is due to the death of the party who previously held it, if according to the customary law applicable to the right holder, it means that the ownership of the inherited land goes directly to the heirs.

The latest principle demands that land registration data be maintained (whether inherited or not) to be carried out continuously and continuously, as a result, the data that will be stored in the land office is always synchronized based on real conditions in the field and also in the community so that the parties concerned get news about the data that valid every time. In order to encourage the new right holders to obtain the rights that were obtained because of the transfer of the inheritance, the registration of the transfer of rights is based on the appropriate law and uses the principles of the rules adopted.

Specifically regarding the enactment of the provisions in Ministerial Regulation 16/2021 that the elimination of population groups in the land registration process is based on the inheritance law as outlined in Ministerial Regulation 16/2021, it is considered easier and more efficient for the community because there is no need for ethnic tracing activities that apply based on expert conditions. inheritance. Given that Permen 16/2021 is the latest regulation in the agrarian sector, in the process of implementing land registration through inheritance, there will be obstacles that have the potential to occur. These obstacles include:

1. False statement of heirs.

2. Disputes between heirs.

3. The procedures of the Village/  
Kelurahan are complicated.

4. Government agencies, in this case  
the Land Office, do not provide effective  
and efficient services.

Lack of public knowledge about legal  
issues in the agrarian sector is also an ob-  
stacle to the land registration process  
through inheritance. The public's lack of  
understanding about the law is due to the  
public's perception of the many regulations  
that are quite difficult for ordinary people  
to digest. So that with the arrangement  
that is considered simpler and quite easy  
to understand through the policy of elimi-  
nating population groups in Permen  
16/2021 in the land registration process  
through inheritance in the land registration  
process, there are no legal imbalances.

#### **4. CONCLUSION**

Based on the results of the analysis, it  
can be concluded that (1) It can be found  
that there is an inconsistency of norms in  
the land registration process due to inher-  
itance. This can be seen in Article 111 pa-  
ragraph (1) letter c of the Regulation of  
the Minister of Agrarian Affairs/Head of  
the Land Agency Number 3 of 1997 con-  
cerning Provisions for the Implementation  
of Government Regulation Number 24 of  
1997 concerning Land Registration, where  
in the process and conditions for land reg-  
istration due to inheritance, there are still  
classifications. population. Then after  
the issuance of the Regulation of the Minis-  
ter of Agrarian Affairs and Spatial Plan-  
ning / Head of the National Land Agency  
of the Republic of Indonesia Number 16 of  
2021 in the land registration process be-  
cause inheritance currently does not rec-  
ognize any distinction or classification of  
the population. Previously, Indonesian Cit-  
izens of Chinese descent and other Foreign  
Easterners were required to use a Notary  
Deed and PPAT, currently based on Minis-  
terial Regulation 16/2021 it has been  
equated with the Bumiputera or Native  
Indonesians who can determine their own  
inheritance system. (2) Inc the registration

process and conditions for the transfer of  
land rights due to inheritance after the en-  
try into force of Article 111 Paragraph (1)  
letter c Permen ATR/KBPN Number  
16/2021 does not guarantee legal uncer-  
tainty and still causes multiple interpreta-  
tions in its implementation. This is because  
in the process of registering the transfer of  
land rights because inheritance is still ap-  
plying the Regulation of the Minister of  
Agrarian Affairs, Head of the National Lan-  
d Agency Number 3 of 1997 concerning  
Provisions for the Implementation of Gov-  
ernment Regulation Number 24 of 1997  
concerning Land Registration. As it is  
known that the Denpasar City Land Office  
still distinguishes the requirements for the  
files that are required for each group. Like-  
wise, there are several Notaries and PPATs  
in making the Certificate of Heirs docu-  
ment still paying attention to the imple-  
mentation of the three population classifi-  
cations. Meanwhile, on the other hand,  
there has been an amendment to the ATR/  
KBPN Ministerial Regulation No. 16/2021  
which does not recognize any distinction in  
population classification.

Suggestions that can be conveyed by  
researchers are as follows (1) The govern-  
ment and makers of laws and regulations  
in the Republic of Indonesia should make  
certain efforts in implementing a legal  
product that they have made, especially in  
the provisions stipulated by Permen ATR/  
KBPN Number 16/2021 so that it does not  
cause multiple interpretations for govern-  
ment agencies/extensions of the govern-  
ment's hands in carrying out their duties in  
the form of socializing services and com-  
munity service. (2) Notaries and PPATs in  
carrying out their official duties should be  
able to provide clear and better directions  
regarding procedures, legal provisions, or  
file requirements in conducting land regis-  
tration, especially due to the main inher-  
itance regarding the deeds made. by a No-  
tary and PPAT in conducting land registra-  
tion due to inheritance.

#### **REFERENCES**

Amiruddin., & Asikin, Z. (2016). *Pengantar*

- Metode Penelitian Hukum*. PT. Raja Grafindo Persada, Jakarta.
- Diantha, I, M, P. (2019). *Metodologi Penelitian Hukum Normatif dalam Justifikasi Teori Hukum*, Cetakan ke-3. Prenada Media, Jakarta.
- Irwansyah. (2021). *Penelitian Hukum Pilihan Metode&Praktik Penulisan Artikel*, edisi revisi. Mirra Buana Media, Yogyakarta.
- Jayantiari, I, G, A, M, R., Wijaya, I, K., Arya, K. (2017). Tinjauan Yuridis Pengaturan Tanah Druwe Desa di Bali (Aspek Hukum Perlindungan Masyarakat Adat atas Tanah). *Jurnal Lingkungan dan Pembangunan*, 1(1) (<https://ejournal.warmadewa.ac.id/index.php/kertawicaksana/article/view/415>).
- Peraturan Menteri Agraria dan Tata Ruang/ Kepala Badan Pertanahan Nasional Republik Indonesia Nomor 16 tahun 2021.
- Peraturan Menteri Negara Agraria/ Kepala Badan Pertanahan Nasional Nomor 3 Tahun 1997 Tentang Ketentuan Pelaksana Peraturan Pemerintah Nomor 24 Tahun 1997 Tentang Pendaftaran Tanah.
- Peraturan Menteri Negara Agraria/ Kepala Badan Pertanahan Nasional Nomor 3 Tahun 1997 tentang Ketentuan Pelaksanaan Peraturan Pemerintah Nomor 24 Tahun 1997 tentang Pendaftaran Tanah
- Sutedi, A. (2007). *Peralihan hak Atas Tanah dan Pendaftarannya*, Cetakan pertama. Sinar Grafika, Jakarta.
- Surat Direktur Pendaftaran Tanah, Dirjen Agraria Depdagri Nomor Dpt/12/63/12/69 Tanggal 20 Desember 1969.
- Undang-Undang Republik Indonesia Nomor 5 Tahun 1960 Tentang Peraturan Dasar Pokok-Pokok Agraria.
- Wargakusumah, H. (1995). *Hukum Agraria I*. PT. Gramedia Pustaka Utama, Jakarta.