

The Authority Of Notaries In Filling Legal Gaps In Issuing Inheritance Certificates For Foreign Citizens Following The Enactment Of Law Number 6 Of 2023 Concerning The Stipulation Of Government Regulation In Lieu Of Law Number 2 Of 2022 On Job Creation

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Abstract

The purpose of this research is to provide an overview of the legal vacuum (*rechtsvacuum*) in the proof of heirs as legitimate heirs of a deceased foreign national. This research is normative juridical research. It uses a normative juridical approach with two methods: statutory and conceptual. The sources of legal materials consist of primary sources (legislation), secondary sources (academic manuscripts, legal journals, books, articles), and tertiary sources (legal dictionaries, KBBI). The literature study method is used to search for legal sources. The analysis of legal materials is conducted using teleological interpretation and the specialization construction technique (*rechtsvervijsnings*). The research results show that granting Property Rights (*Hak Milik*) for apartment units (*Sarusun*) to Foreign Citizens (*WNA*) in Indonesia is not new and has long been practiced as an effort to attract investment and provide facilities for foreign nationals who contribute to national development. However, there is a legal vacuum regarding the creation of Inheritance Certificates (*Surat Keterangan Waris - SKW*) for foreign heirs, which is important for proving their status as legitimate heirs and conducting legal transactions related to the inheritance. To address this legal vacuum, it is recommended that the creation of SKW for heirs of foreign nationals should be carried out before a Notary. The main reason for choosing a Notary is because they have the authority to create authentic deeds, have a wide reach throughout Indonesia, and are not limited by religious factors in creating SKW. Additionally, deeds made by a Notary have stronger legal force compared to SKW in letter form. Therefore, this arrangement is expected to provide legal certainty for foreign nationals owning *Sarusun* in Indonesia and their heirs.

I. Introduction

Indonesia is a densely populated country with a diverse range of ethnicities, cultures, religions, and nationalities. This diversity requires Indonesia, as a rule-of-law state, to provide protection and legal certainty to everyone under its sovereignty. According to Article 26, Paragraph (2) of the 1945 Constitution of the Republic of Indonesia, "Indonesian residents are Indonesian citizens and foreign nationals residing in Indonesia."

According to Article 33, Paragraph (3) of the 1945 Constitution of the Republic of Indonesia, the land, water, and natural resources contained therein belong to the state and must be utilized for the greatest benefit of the people. Based on this provision, the Indonesian Government has the authority to regulate and implement the use, provision, and maintenance of land, water, and space. Additionally, the Government has the authority to establish and regulate legal relationships between individuals and the land, water, and space, as well as to regulate legal relationships related to legal actions involving land, water, and space.

Based on this authority, the Indonesian Government subsequently created regulations regarding land ownership that can be held by both Indonesian citizens and foreign nationals in Indonesia. Various types of land rights are regulated under the Basic Agrarian Law (UUPA) Article 16, including Ownership Rights, Cultivation Rights (HGU), Building Rights (HGB), Use Rights (HP), Lease Rights, land clearing rights, and other rights regulated by law, as well as temporary rights as explained in Article 53.

Among the various types of land rights, foreign nationals are only granted the right to enjoy Use Rights (HP) and Lease Rights. This is because, according to Article 9 of the Basic Agrarian Law (UUPA), only Indonesian citizens can have a full relationship with land, water, and space. This full relationship means that Indonesian citizens can control and use land in Indonesia with Ownership Rights.(Carona et al., 2024)

Then, in 1985, Law Number 16 of 1985 concerning Apartment Units was established. Apartment Units (hereinafter referred to as Rusun) can only be established on land with Ownership Rights, Building Rights, and Use Rights granted by the State, as well as Management Rights.(Febriani, 2019) For owners of individual units within the Apartment Units (Rusun), they must meet the requirements as holders of joint land rights as stipulated in Articles 21, 36, and 42 of the Basic Agrarian Law (UUPA). Therefore, if the joint land status is Ownership Rights (Hak Milik) or Building Rights (HGB), only Indonesian citizens are

allowed to purchase it, as determined in Articles 21 and 36 of the UUPA. For foreign nationals residing in Indonesia, there is the possibility to purchase and own an Apartment Unit (Sarusun) if the joint land status is Use Rights (HP). Additionally, foreign nationals can only engage in leasing. (Soraya & Kurniati, 2021)

For Foreign Nationals (WNA), this regulation was initially reinforced by Government Regulation Number 40 of 1996 concerning Building Rights (HGB), Cultivation Rights (HGU), and Use Rights (HP) on land, as well as Government Regulation Number 41 of 1996 concerning the ownership of houses as residences for Foreign Nationals living in Indonesia. However, these regulations were repealed by Government Regulation Number 103 of 2015, which regulates the ownership of houses as residences for Foreign Nationals in Indonesia. According to this regulation, Foreign Nationals in Indonesia are permitted to own a residence in the form of a single house on land with Use Rights (HP), or Use Rights on land with Ownership Rights (Hak Milik) obtained through an agreement with a Land Deed Official (PPAT), as well as an apartment unit (Sarusun) on land with Use Rights. Additionally, this ownership can be inherited, provided that the heirs have residence permits in Indonesia, either as Indonesian citizens (WNI) or Foreign Nationals (WNA).

In 2020, the Indonesian Government amended several laws by implementing an Omnibus Law approach through the enactment of Law Number 11 of 2020 on Job Creation. However, this law was subsequently repealed and replaced by Law Number 6 of 2023, which establishes Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation as the applicable law (referred to as Law Number 6 of 2023).

In Paragraph 3 of Article 144, the government established a "new norm" for Foreign Nationals, where Ownership Rights over Apartment Units (HM over Sarusun) can be transferred or assigned in ways intended to transfer land rights and HM over Sarusun, and can be mortgaged with Mortgage Rights. This article is further clarified in Government Regulation Number 18 of 2021 and Ministry of Agrarian Affairs and Spatial Planning/National Land Agency Regulation Number 18 of 2021. However, as explained previously by the researcher, the Ownership Rights (HM) over Apartment Units (Sarusun) are not a new concept. However, Law Number 6 of 2023 clarifies the subjects who can own Sarusun and expands the types of land rights on which Apartment Units can be built and owned by Foreign

Nationals (WNA). Previously, WNA could only own HM over Sarusun on land with Use Rights (HP). With the introduction of Law Number 6 of 2023, Apartment Units on land with Building Rights (HGB) can also be owned by WNA. However, the rights to own, inherit, transfer, and mortgage HM over Sarusun have existed for a long time.

Among the characteristics of HM over Sarusun for WNA, the researcher focuses on HM over Sarusun that can be inherited by the heirs of a deceased WNA. The main reason is that the transfer of Ownership Rights (HM) over an Apartment Unit (Sarusun), aside from the death of a Foreign National (WNA), can be done based on Government Regulation Number 24 of 1997 concerning Land Registration (hereinafter referred to as the Land Registration Regulation). However, regarding inheritance, the requirements stated in Government Regulation Number 18 of 2021 only require that the heirs must have immigration documents in accordance with the legislation. Since the beginning, WNA have been allowed to inherit Use Rights (HP) or HM over Sarusun, with the only requirement being that the heirs must have a residence permit.

In Ministry of Agrarian Affairs and Spatial Planning/National Land Agency Regulation Number 16 of 2021, it is stated that heirs must prove their status as heirs by providing an Inheritance Certificate (SKW) in various forms and issued by different institutions. An SKW is a letter or deed that states who the legitimate heirs of the deceased are, created by institutions and/or officials authorized by law. In Ministry of Agrarian Affairs and Spatial Planning/National Land Agency Regulation Number 16 of 2021, the institutions and/or officials authorized to create or validate the SKW are Judges/Chiefs of Courts, Village Heads/Urban Village Heads, Sub-district Heads, Notaries, and the Center for State Property Management (BHP). The forms of SKW are divided into two: letters and deeds. It is important to ensure proof of legitimacy as an heir because it will be the basis for controlling, owning and transferring certain rights. Immigration documents regulated in Government Regulation Number 18 of 2021 include visas, passports or residence permits issued by authorized institutions in accordance with applicable law. However, these documents do not include documents that identify the heir such as a Certificate of Inheritance (SKW).

Philosophically, recognizing oneself as an heir cannot necessarily be done verbally. But it must be proven. Indonesia as a legal state should regulate it further in accordance with the

mandate of PP Number 18 of 2021. In a pre-survey conducted by researchers at the Balai Harta Ininggalan (hereinafter referred to as BHP) Surabaya on June 26 2023, BHP explained that the ATR/BPN Ministerial Regulation Number 16 of 2021 is only intended for Indonesian citizens. This latest change is a form of population groups no longer being adhered to. Meanwhile, determining authority in making SKW is determined by the nationality of the Heir. If the heir is an Indonesian citizen, then this refers to ATR/BPN Ministerial Regulation Number 16 of 2021, but for heirs who are foreign citizens, there are still no regulations that mandate this. The nationality of the heirs does not matter, whether they are Indonesian citizens or foreigners.

There needs to be a clear arrangement regarding the certainty of the transfer of ownership rights to Sarusun owned by foreign nationals (WNA), especially regarding proof of heirs of the foreign national, considering that the value of the Sarusun units that can be owned by foreign nationals is not cheap. In the Decree of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 1241/SH-HK.02/IX/2022 concerning the Acquisition and Price of Residential Houses for Foreigners, it is stated that for Flats, the minimum price limits are:Tabel 1. 1

Minimum Price Limit for Flats for Foreigners

Num ber	Location/Province	Minimum Price (Rupiah)
1.	Jakarta Capital Special Region	Rp. 3.000.000.000,00 (three billion rupiah)
2.	Banten	Rp. 2.000.000.000,00 (two billion rupiah)
3.	West Java	Rp. 2.000.000.000,00

		(two billion rupiah)
4.	Central Java	Rp. 2.000.000.000,00 (two billion rupiah)
5.	East Java	Rp. 2.000.000.000,00 (two billion rupiah)
6.	Bali	Rp. 2.000.000.000,00 (two billion rupiah)
7.	Special Region of Yogyakarta	Rp. 2.000.000.000,00 (two billion rupiah)
8.	Other Regions/Provinces	Rp. 1.000.000.000,00 (one billion rupiah)

Source: Decree of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 1241/SH-HK.02/IX/2022 concerning the Acquisition and Price of Residential Houses for Foreigners.

To achieve administrative orderliness as stated in Article 3 letter c, every transaction regarding land and apartment certificates, including the transfer, weighting and cancellation of land rights and ownership rights to apartments must be registered. Based on the explanation and explanation above, the researcher then drew up a problem formulation regarding what the future regulatory concept would be regarding the creation of SKW for

foreigners to ensure legal certainty for foreigners who own flats in Indonesia.

II. Research Method

The type of research in this research is normative juridical research with a statutory approach and a conceptual approach. The sources of legal materials are divided into 3 (three), namely primary, secondary and tertiary legal materials.

- 1) Primary legal material in this research was obtained from statutory regulations related to the issues the researcher raised, such as the 1945 Constitution of the Republic of Indonesia, laws, government regulations, and ministerial regulations.
- 2) Secondary legal materials used in this research were obtained through academic texts, legal journals, books and articles.
- 3) Tertiary legal materials are obtained from legal dictionaries and KBBI.

In terms of legal source search techniques, the researcher used a library study method using sources from the Legal Documentation and Information Center (PDIH) Faculty of Law, Brawijaya University, Brawijaya University Central Library, and Surabaya City Public Library. Meanwhile, for the legal material analysis technique in this research, the researcher applied teleological interpretation and specialization construction techniques (*rechtsvervijnings*).

III. Results and Discussion

In answering the legal vacuum for the authority to make SKW for foreigners in this research, the researcher used analysis techniques with 2 (two) methods. The first is the teleological interpretation method, namely an interpretation method that looks at the aims and objectives of making a statutory regulation.(Prasetyo, 2017) The second method is to use the specialization construction method (*rechtsvervijnings*), which changes generally applicable legal regulations to become more specific. The purpose of this method is to narrow down rules that are too abstract, broad, and general to be applicable to certain events.(Rahmasari & I Gusti Ayu Ketut Rachmi Handayani, 2022)

First, researchers will analyze the gaps in creating SKW using teleological interpretation techniques that look at the purpose of establishing a regulation. Where here, the researcher will explain the purpose of establishing HM for Sarusun which is intended for foreigners. As explained in the background to this research, Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia states that "the earth, water and natural resources contained therein are controlled by the state and used for the greatest prosperity

of the people". Therefore, based on this, the Indonesian Government then issued regulations regarding land in Indonesia, dividing it into various types of rights, including Ownership Rights, HGU, HGB, HP, Rental Rights, Rights to clear land, and Rights to collect forest products. Foreign Citizens (WNA) are given the right to use cellphones and rental rights to land.

Then, to register ownership rights to an apartment after a transfer occurs due to inheritance, the process depends on the testator's death certificate and the relevant will or SKW. At the same time, ownership rights to apartments can be guaranteed but are burdened with fiduciary duties. Then, with the formation of Law Number 16 of 1985 concerning Flats, the government issued Government Regulation (PP) Number 40 of 1996 which regulates Business Use Rights (HGU), Building Use Rights (HGB), and Land Rights. This PP regulates HP in detail from Article 39 to Article 58. However, this government regulation only briefly discusses foreign nationals (WNA), who are only mentioned as one of the subjects of HP in Article 39.

This regulation states that property ownership rights (HP) can be transferred to another party and secured by Mortgage Rights. The provisions also stipulate that the transfer of a cellphone through inheritance must be supported by a will or Certificate of Inheritance (SKW) issued by the competent authority. The definition of foreigners in this context includes foreigners who live in Indonesia and make positive contributions to national development. In the same year, Government Regulation Number 41 of 1996 was issued regarding Ownership of Residential Houses or Residences by Foreigners Domiciled in Indonesia, aimed at providing legal clarity regarding ownership of houses or residences for foreigners. The regulation stipulates that foreigners living in Indonesia must provide benefits for national development.

In general, the aim of providing houses as a place to live for foreigners is to support development that develops in line with the cooperation of friendly countries. The increase in the number of foreigners working and doing business in Indonesia has increased the demand for housing for them. Therefore, a policy is needed that provides legal certainty regarding this matter. Initially, government regulations did not mention the possibility of guaranteeing housing for foreigners with mortgage rights. However, this has only been regulated in ATR/BPN Ministerial Regulation Number 29 of 2016, which has now been replaced by ATR/BPN Ministerial Regulation Number 18 of 2021.

In 2020, the Government changed several laws and regulations using the omnibus law method. The Job Creation Law not only changes several articles in Law Number 2 of 2012 concerning Land Acquisition for Public Interest and Law Number 41 of 2009 concerning Protection of Sustainable Agricultural Land, but also introduces new norms in CHAPTER VIII concerning Land Acquisition. The first to third parts of this CHAPTER amend a number of existing articles, while the fourth part introduces new norms related to land. The Job Creation Law was later replaced by Law Number 6 of 2023, but CHAPTER VIII concerning Land Acquisition remains unchanged in its substance. The Land Bank is a special institution responsible for managing land resources. Its role includes planning, acquisition, procurement, management, utilization and development of land. One way to improve the investment climate is to provide facilities for foreigners to have ownership rights to flats in Indonesia. The giving of HM over the flat to a foreigner is a form of towing facility because the HM over the flat can be transferred and exchanged, inherited and used as collateral for debt. From the explanation above, several important points can be concluded. The first is that in fact, HM's gift of Sarusun to foreigners has been done for a long time. So it is nothing new that HM over Sarusun can be owned by foreigners. Including that foreigners can inherit, transfer and guarantee HM for his apartment. The second is that from the beginning, since 1985, the aim of HM giving Sarusun was none other than to attract and provide facilities for foreigners who contributed to national development and investors. And third, that HM's ownership of Sarusun for foreigners has only been confirmed and expanded from one regulation to another. So it is not entirely new that foreigners can own Sarusun in Indonesia.

After understanding the purpose of giving foreigners the right to own Sarusun in Indonesia. **Second**, Researchers will answer the problem formulation in this research related to the concept of future regulations related to the creation of SKW for foreigners to ensure legal certainty for foreigners who own flats in Indonesia. The method used is the *rechtsvervijnings* or narrowing/specializing construction method.

ATR/BPN Ministerial Regulation Number 16 of 2021 eliminates the existence of population groups. This makes the sound of Article 111 paragraph (1) apply alternatively and becomes broader and more general than before. That is why the researcher chose to use the *rechtsvervijnings* construction method as well as the interpretation method. Because for

making SKW in Indonesia, there are actually already regulations that regulate it, but it is limited to heirs who are Indonesian citizens, this narrowing construction method will help researchers in determining the most appropriate institution and/or official to fill the gap in making SKW for heirs whose heirs are foreigner. Because as stated by the Surabaya BPN which the researcher mentioned in the background to this research, determining the authority to make SKW is based on the citizenship of the Heir. Where if the Heir is an Indonesian citizen, then making evidence as an heir (SKW) can be done with reference to ATR/BPN Ministerial Regulation Number 16 of 2021 because the data of the Heir is in Indonesia. However, if the citizenship of the Heir is other than Indonesian citizen, there are no regulations that mandate the formation of the SKW. This is certainly not in line with foreigners who are given the right to inherit from HM the Sarusun that they can own.

Therefore, using the rechtsverviijnings construction method and the theory of authority presented by Philipus M. Hadjon, the researcher will offer a concept for making SKW for heirs whose heirs are foreign citizens. Philipus M. Hadjon stated that authority is power that is regulated by law. Thus, authority is closely related to the concept of public law which is related to power.(Pietersz, 2018) Every administrative step must be based on legitimate authority, obtained through attribution, delegation, or mandate.(Puasa et al., 2018)

First is the Judge/Head of Court who is given the authority to determine/decide SKW for Indonesian citizens. Courts and judges are prohibited from refusing to examine, try and decide on a case submitted to them on the pretext that there is no or lack of clarity in the law. Meanwhile, the Chief Justice has the main task of supervising judges, clerks and bailiffs and notaries. The judiciary is the place where a case is filed or appealed. As the researcher mentioned previously, the product of this judicial institution is in the form of a decision or determination. Decisions start from the existence of a problem, while determinations are more about requests for something to be determined. Judicial institutions in Indonesia consist of several types. However, for SKW, whether in the form of a decision or determination in terms of which judicial institution has the right to decide or determine, it is seen from the religion of the legal subject. For Indonesian citizens who are Muslim, applications or lawsuits regarding SKW can be submitted to the Religious Courts, but for non-Muslims, applications can be submitted to the General Courts.

If a judge issues a power of attorney for inheritance to the family, this is regulated in Article 49 of Law no. 3 of 2006 concerning Amendments to Law no. 7 of 1989 concerning Religious Courts.(Iftitah, 2023) In his explanation, inheritance refers to the identification of heirs, distribution of inherited assets, allocation for each heir, implementation of distribution of inherited assets, and the court determining heirs and their shares based on individual requests.(Saputera et al., 2021) So if it is related to the theory of authority presented by Philipus M. Hadjon, the authority obtained by judges is obtained by attribution or directly from the law to a certain position or in this case a judge. Apart from that, the judge's authority to make SKW is confirmed by ATR/BPN Ministerial Regulation Number 16 of 2021.

Regarding the authority to issue SKW for Indonesian citizens, up to this moment there is still debate. The second example is the SKW's authority which is known by the Village/Subdistrict Head and Subdistrict Head. In a discussion that took place in Solo on February 29 2024 with the theme Implementation of Law Number 30 of 2014 concerning Government Administration which was attended by academics and government officials. In the discussion, the participants mentioned that the scope of decisions of institutions and/or officials was too broad and the source of authority of these officials was not clear. One of them is related to the creation of SKW. One of the Solo City Regional Secretariat employees said that the Village/Subdistrict Head and Subdistrict Head approved the SKW made by the heirs. However, in practice, the person who makes it is the Village/Subdistrict Head. Then it is forwarded to the local sub-district. The source of authority for the creation of SKW by Village/Subdistrict Heads and Subdistrict Heads is unclear. Is the authority to make SKW obtained delegatively or mandatorily.(Wiratama & Ishak, 2020)

If we return to the Village Law, there is no clause that states that the Village/Subdistrict Head and Subdistrict Head have the authority to make SKW like the judge/head of the court. Initially, the authority came from the Letter of the Supreme Court of the Republic of Indonesia Number MA/KUMDIL/171/V/K/1991 which discussed the Fatwa regarding the Application for Determination of Heirs to various judicial agencies in Indonesia, dated 8 May 1991. This relates to the Application for Determination of Heirs Number MA/041/III/1991 submitted to Mrs. Sri Redjeki Kusnun, S.H., on March 25 1991, at a time when Indonesia still adhered to a population system. Currently, the authority to ratify or

acknowledge an Inheritance Certificate (SKW) is only regulated in the Regulation of the Minister of Agrarian Affairs and Spatial Planning/National Land Agency Number 16 of 2021. However, it needs to be emphasized that the authority given is only limited to ratifying or knowing, not making the SKW. A Notary has the main role in accordance with the UUJN, namely making official documents called authentic deeds, and has other authorities as regulated in this regulation or other laws. This authentic deed includes all actions, agreements and stipulations that are required by law and can be requested by related parties to be officially recorded. The notary is also responsible for determining the accurate date of the deed, storing the document, and providing an official copy (grosse), copy, and quotation from the deed, unless otherwise regulated in the applicable law.

One of them is the authority granted by ATR/BPN Ministerial Regulation Number 16 of 2021. Namely making a deed stating inheritance rights. Unlike Judges/Heads of Courts, Village/Subdistrict Heads and District Heads, and BHPs, Notaries are not government officials. Rather, they are general officials who assist the government in carrying out government affairs. So that the deeds will be accounted for in his name or on his own behalf. Giving authority to a Notary to make SKW is a delegation of authority from the government to the Notary as a public official. SKW is basically a document made based on the wishes of the heirs. Like the SKW made by the judiciary, the form is a determination, which is based on the request/desire of the applicants (in this case the will of the heirs) so that proof is made that they are the legal heirs of the heir, then by the Village/Subdistrict Head and the sub-district head is given the role of validating/knowing the SKW made by the heirs themselves.

Notaries are no exception. In making SKW made by a Notary, before making the SKW, the Notary makes a deed of statement first. In the deed of statement, a minimum of 2 (two) people closest to the family of the heir and heirs are requested who are considered to really know the condition of the family of the heir and heirs. Then, on that basis, the notary makes the SKW in the form of a deed of inheritance rights. A notary is the only official who makes proof of heirship in the form of a deed. R. Soegondo Notodisoerejo said in his book that "in the deed of inheritance rights, there is no comparison in it, and there is no facing. Therefore, the notary makes the deed based on accompanying documents and witnesses who know or are considered to know the heir's family, such as the heir's neighbors or the heir's relatives

and their families.(Dewi et al., 2021)

BHP is the party that has been given the latest authority to issue a Special Power of Attorney (SKW). BHP's main task is to represent and follow up on the interests of legal subjects to implement court decisions or determinations, as well as for legal interests related to inheritance, in accordance with applicable regulations. BHP's authority to make SKW is stated in Article 3 letter c of Minister of Law and Human Rights Regulation Number 7 of 2021 where BHP carries out the function of making SKW. The granting of authority to BHP to create SKW is delegated. Because BHP is responsible and under the Director General of Legal Administration and Human Rights who is then given the functions as previously mentioned. So BHP is an institution that carries out government functions. Like Judges/Chairmen of Courts, Village/Lurah Heads and Subdistrict Heads, BHPs are also government officials. So the SKW issued is in the form of a letter, not a deed like a Notary who is a public official.

After the researcher describes and explains the role of each institution and/or official who is given the authority to make SKW based on ATR/BPN Ministerial Regulation Number 16 of 2021, it can be seen that an heir proves that he or they are the legal heirs of the Heir in Indonesia and for Indonesian citizens it is very important. For SKW matters, the government has given the authority to make them to several institutions and/or public officials. Then what about foreigners? Is it necessary for HM's transfer of Sarusun to occur due to the death of the foreign citizen's heir, proven by SKW by his heirs? The answer is necessary. Because in civil law there is a principle of *Actori In Cumbit Probatio*. Where every person who claims to have a right to a certain thing, he is obliged to prove it.(Christiantirta & Ery Agus Priyono, 2022) As the researcher previously mentioned, SKW is a document created at the request of the heirs to prove that they or they are truly the legal heirs of the Heir. This SKW is used as the basis for transferring the rights and obligations of the Heir to his heirs.

Therefore, it is not just talking about the transfer, even if the heirs can then claim/acknowledge or be able to control the Sarusun unit, it is not necessarily only said verbally. Sarusun is a residence where there are meetings in it. The association contains owners and residents of Sarusun (hereinafter referred to as PPPSRS). Even the form of this association is a legal entity. Management of matters relating to Sarusun is carried out jointly and is known to the Association. According to the Flat Law, PPPSRS has the responsibility to

look after the interests of owners and residents regarding the management of shared ownership, shared shares, shared land and occupancy. If the unit owner dies, the heirs must be able to prove their status as legal heirs of the unit owner. That is why the requirements for heirs for foreigners, namely having to have a residence permit, are not sufficient to then be used as a basis for evidence as heirs. Because the Heir is a foreigner, the heir of the foreigner does not have a legal umbrella regarding which institutions and/or officials can be asked to make their SKW. So it will be difficult for the foreign heirs to then be able to carry out legal relations with HM over the Sarusun owned by the Heir.

The residence permit requirement for heirs who are foreign citizens is a form of fulfilling the requirements for foreigners to be able to own a house to live in Indonesia, and is not a basis for transferring their rights. If proof of being the heir of the Heir is not accompanied by valid documentary evidence such as SKW, then anyone can then claim the unit after the foreign Heir dies. According to Article 1866 of the Civil Code and Article 164 HIR, evidence that can be used includes writings, witnesses, allegations, confessions and oaths, with written evidence placed in the most important order. This shows that in civil matters, writing in the form of letters/deeds has an important role.(Salangketo & Anindita, 2024) As the researcher previously mentioned, SKW is a document created at the request of the heirs to prove that they or they are truly the legal heirs of the Heir. This SKW is used as the basis for transferring the rights and obligations of the Heir to his heirs.

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Second, giving authority to a Notary to make authentic deeds is a direct step from the law to support government administration. The notary has jurisdiction throughout the province where he lives. The presence of a Notary at the district or city level ensures easy access, including for Sarusun which can be owned by foreigners in Special Economic Zones, Free Trade and Free Port Zones, Industrial Zones, as well as other economic areas such as urban areas, tourism and vertical housing. The flats provided for foreigners are commercial flats whose aim is to make a profit. Third, according to Article 111 paragraph (1) letter c ATR/BPN Ministerial Regulation Number 16 of 2021, Notaries are given the authority to make SKW in the form of a deed. This is different from the Village Head/Lurah and District Head, who are only given the authority to know/validate the SKW made by the heirs themselves, not to make the SKW.

And the final reason is that Notaries are given the authority by UUJN and ATR/BPN Ministerial Regulation Number 16 of 2021 to make authentic and SKW deeds in the form of deeds without any requirement that processing deeds from Notaries does not depend on religion such as judicial institutions. The reasons that the researcher mentioned above make the Notary the most appropriate candidate for making SKW for heirs whose Heirs are foreigners in the case of HM's transfer of Sarusun which occurs due to inheritance events. Proof of heirship is made before a Notary in the form of an authentic deed and both Muslims and non-Muslims can make a SKW deed before a Notary by referring to ATR/BPN Ministerial

Regulation Number 16 of 2021.

4. Conclusion

Based on the analysis carried out, it can be concluded that granting Ownership Rights (HM) over Sarusun to Foreign Citizens (WNA) in Indonesia is not new and has been carried out for a long time as an effort to attract investment and provide facilities for foreigners who contribute to national development. However, there is a legal vacuum regarding the preparation of Inheritance Certificates (SKW) for foreign heirs, which is important for proving their status as legal heirs and carrying out legal transactions related to inherited assets.

To overcome this legal vacuum, it is recommended that the preparation of SKW for heirs whose heirs are foreign citizens should be done before a Notary. The main reason for choosing a Notary is because they have the authority to make authentic deeds, have a wide reach throughout Indonesia, and are not limited by religious factors in making SKW. Apart from that, a deed made by a Notary has stronger legal force compared to an SKW in the form of a letter. Thus, it is hoped that this arrangement can provide legal certainty for foreign nationals who own Sarusun in Indonesia and their heirs.

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