

## The Substantive Rights of Heirs and Administrative Barriers in Indonesian Banking Practices

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**Abstract:** *This article explores the normative-institutional discrepancy between the declarative nature of Article 833 of the Indonesian Civil Code and the administrative practices of financial institutions in the execution of inheritance rights within Indonesia's national legal system. Legally, heirs acquire their rights automatically upon the decedent's death, without requiring court confirmation or formal recognition. In practice, however, banks often impose excessive procedural requirements, such as requesting additional documents or withholding funds without a clear legal basis. This study adopts a normative legal method, analyzing statutory provisions, doctrinal interpretations, and illustrative case studies. The findings highlight the urgent need for regulatory harmonization between inheritance law and financial administrative procedures in Indonesia. The article also emphasizes the strategic role of notaries as legal intermediaries who ensure the enforceability of inheritance rights through authentic documentation. It concludes that heirs' legal protection must be strengthened by upholding the principles of legality and substantive justice within the financial sector.*

**Keywords:** *Heirs; Banking Administration; Article 833 of the Civil Code; Legal Harmonization; Notary's Role.*

### A. Introduction

The distribution of inheritance represents one of the most complex legal mechanisms for the transfer of rights in civil law. It intersects not only with private legal norms but also with administrative procedures and, in the Indonesian context, religious and customary laws. Article 833 paragraph (1) of the Indonesian Civil Code provides that inheritance rights are transferred to the heirs at the moment of the decedent's death.<sup>1</sup> This aligns with Article 830, which stipulates that inheritance arises only upon death, thereby invoking the legal doctrine *le mort saisit le vif* the principle that all rights and obligations of the deceased automatically vest in the heirs by operation of law. This principle affirms the concept of automatic vesting of inheritance, which is declarative in nature, meaning that the rights of the heirs arise *ipso jure*, without requiring prior verification or intervention from state institutions, as such rights are inherently tied to their legal status as heirs.<sup>2</sup> In Western inheritance law doctrine, this principle

<sup>1</sup> Muhamad Taufik La Ode, "Ahli Waris Beda Agama Dalam Perspektif Waris Perdata," *Otentik's* 6, no. 1 (2024): 77–93, <https://doi.org/https://doi.org/10.35814/otentik.v6i1.5953>.

<sup>2</sup> R. Subekti, *Pokok-Pokok Hukum Perdata* (Jakarta: Intermasa, 2009).



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represents the legal foundation of the idea that inheritance law is primarily concerned with ensuring the continuity of proprietary legal relations, rather than adhering to rigid administrative formalities.<sup>3</sup>

In practical terms, however, there exists a disharmony between the declarative nature of inheritance law and the administrative mechanisms implemented by financial institutions, particularly in the banking and fiduciary sectors. Heirs frequently encounter obstacles when attempting to access the decedent's bank accounts or take control over assets that have been used as fiduciary collateral. Banking institutions commonly reject such requests, citing the absence of a formal heir determination issued by a court or the failure to satisfy administrative requirements established under the bank's internal Standard Operating Procedures (SOPs). The declarative normative provision as stated in Article 833 of the Civil Code is thus not automatically recognized within the administrative systems of financial institutions, which continue to require formal evidentiary instruments such as judicial determinations of heirship, notarial certificates of inheritance, or other formal inheritance deeds.

A close examination of Article 833 of the Indonesian Civil Code in relation to financial sector practices reveals a fundamental tension between the declarative nature of civil inheritance law and the administrative framework that prioritizes formal legal compliance as a prerequisite for the execution of rights.<sup>4</sup> On one side, the Civil Code grants heirs legal entitlement to inheritance automatically upon the death of the decedent. On the other side, administrative practices in banking and fiduciary institutions reframe access and the realization of inheritance rights through the lens of formal documentary verification. This contrast reflects a broader contradiction between the ideal of substantive legal certainty and administrative caution, which prioritizes customer identification protocols and internal legal safeguards.<sup>5</sup>

Such normative and procedural dissonance becomes increasingly apparent when fiduciary collateral is involved. In many cases, assets subject to inheritance are those pledged as fiduciary security for debts owed by the deceased to financial institutions. Upon the death of the debtor, legal responsibility for the secured object transfers to the heirs, encompassing both rights and obligations attached to the fiduciary contract. Despite this legal transfer, heirs often face difficulty in executing or transferring fiduciary assets without first fulfilling additional administrative procedures. This occurs even when substantive rights have clearly vested under inheritance law. As a consequence, legal uncertainty arises, particularly for heirs who are delayed in managing or continuing the legal affairs of the deceased.

This ongoing issue illustrates that the effectiveness of legal norms depends not only on the substance of the law but also on the structure of institutions that implement it, as well as the mindset and behavior of legal actors.<sup>6</sup> Although the law vests rights automatically in heirs, layered administrative requirements and rigid bureaucratic enforcement by financial institutions and legal professionals impede the realization of those rights. A lack of

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<sup>3</sup> Cornelis van Vollenhoven, *Het Adatrecht van Nederlandsch-Indië* (Leiden: Boekhande En Drukkerij Voorheen E.J. Brill, 1931), <https://books.google.co.id/books?id=ReEFEQAAQBAJ>.

<sup>4</sup> Salim H.S., *Perkembangan Teori dalam Ilmu Hukum* (Jakarta: RajaGrafindo Persada, 2010).

<sup>5</sup> Asep Rozali, "Prinsip Mengenal Nasabah (Know Your Customer Principle) Dalam Praktik Perbankan," *Wawasan Hukum* 24, no. 01 (2014): 298–307, <https://doi.org/https://doi.org/10.25072/JWY.V24I1.18>.

<sup>6</sup> Lawrence M. Friedman, *The Legal System: A Social Science Perspective* (New York: Russell Sage Foundation, 1987).

synchronization among these elements generates friction in legal application, undermines normative efficacy, and creates uncertainty in the realization of inheritance entitlements.

A concrete example of this legal friction is evident in the case involving an heir and PT Bank Central Asia (BCA). According to a report published by the legal news platform Hukumonline, the bank refused to release the deceased's funds on the grounds that there was no court-issued determination of heirship, even though the heir had presented legally valid evidence of their status. This refusal was subsequently challenged in court by the heir, and the judiciary ruled that BCA had exceeded its administrative authority by imposing a legal requirement that was not explicitly mandated under statutory regulations.<sup>7</sup> The case underscores a recurring tension between the declarative inheritance norm, as enshrined in Article 833 of the Indonesian Civil Code, and the cautious administrative posture of the banking sector, which often demands formal legal proof. This practice risks obstructing legitimate access to inheritance rights.

In light of the above problem, this study offers a distinct contribution from conventional legal analyses of inheritance law, which tend to focus primarily on the distribution of estate assets and the evidentiary process of establishing heirship. Instead, the research shifts its attention to a more systemic normative issue, namely the tension between the declarative legal norms embedded in Article 833 of the Civil Code and the administrative norms implemented by banking institutions and fiduciary entities. This area of inquiry remains underexplored in normative legal scholarship, particularly within the framework of analyzing the harmonization of different normative legal systems. By integrating a doctrinal legal approach with conceptual frameworks drawn from legal pluralism and norm effectiveness theory, this research provides a normative mapping of the challenges surrounding the realization of inheritance rights within Indonesia's multilayered and often unsynchronized national legal system.

Accordingly, this research is formulated to conduct a normative-legal analysis of Article 833 of the Indonesian Civil Code in the context of protecting the rights of heirs, particularly in relation to the administrative norms applied in banking and fiduciary practices. The primary focus of this study is to examine the normative disharmony between declarative inheritance norms and the procedural administrative standards enforced within the financial sector, which in certain cases may restrict the realization of heirs' civil entitlements. The research aims to identify the legal issues arising from this inconsistency and to propose a more coherent legal construction that promotes legal certainty and ensures equitable access to justice in the implementation of inheritance rights within the financial services sector.

## B. Methodology

This study adopts a normative legal research method, relying primarily on legal sources as the basis for analysis. It employs a juridical-normative approach to examine the legal norms governing the transfer of inheritance rights under Article 833 of the Indonesian Civil Code, and to assess how these norms interact with administrative requirements in banking and fiduciary practices. As a non-empirical study, it focuses on interpreting and evaluating written legal texts and legal doctrines.<sup>8</sup> Three methodological approaches are utilized: the statute approach, the

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<sup>7</sup> HRS, "Tolak Cairkan Dana, BCA Digugat Ahli Waris," Hukumonline, 2013, <https://www.hukumonline.com/berita/a/tolak-cairkan-dana--bca-digugat-ahli-waris-lt51e735b981549/>.

<sup>8</sup> Peter Mahmud Marzuki, *Penelitian Hukum. Cet. 3* (Jakarta: Kencana, 2017).

conceptual approach, and the case approach.<sup>9</sup> The statute approach examines relevant provisions in the Civil Code, the Fiduciary Security Act (Law No. 42 of 1999), and the Banking Act (Law No. 10 of 1998). The conceptual approach analyzes key legal principles such as legal effectiveness, automatic vesting of inheritance, and legal certainty. The case approach involves analyzing representative court decisions to illustrate the practical implications of legal norms.

The legal materials used in this study consist of: (1) primary legal sources, including statutory provisions especially Article 833 of the Civil Code and judicial decisions; (2) secondary legal sources, comprising literature on inheritance law, civil law, banking law, and legal theory; and (3) tertiary legal sources, such as legal dictionaries and encyclopedias. The analysis employs qualitative normative interpretation, combining doctrinal reasoning with jurisprudential review. The study aims to evaluate the effectiveness of Article 833 in the financial sector and to develop a model of normative harmonization between inheritance law and administrative procedures, thereby reinforcing the protection of heirs' rights and ensuring legal certainty in banking and fiduciary contexts.

## C. Results and Discussion

### Inconsistencies Between Inheritance Law Norms and Banking Administration

#### 1. The Declarative Character of Article 833 of the Indonesian Civil Code.

One of the defining characteristics of the Indonesian civil inheritance law system lies in its reliance on the principle that inheritance rights are transferred automatically to the heirs upon the death of the decedent. This legal framework does not regard succession as a constitutive process that requires a new legal act but rather as an immediate transfer of rights that occurs by operation of law. Understanding this doctrinal foundation is essential to properly interpret the legal character of Article 833 of the Indonesian Civil Code. The provision explicitly states that heirs, by force of law, acquire ownership of all property, rights, and receivables belonging to the decedent at the moment of their death.<sup>10</sup>

Article 833 thus affirms an automatic and declarative principle of inheritance under which the transfer of rights does not require any additional legal action by the heirs. In the broader doctrine of inheritance law, this is reflected in the maxim *le mort saisit le vif*, literally translated as "the living seizes from the dead". This principle means that upon the death of the decedent, the heirs immediately acquire the estate without needing division deeds or further procedure.<sup>11</sup>

The *le mort saisit le vif* principle originates from the French civil law tradition (Code Civil) and was incorporated into the Indonesian Civil Code through colonial legal influence. It asserts that legal relations between the decedent and the heirs are established immediately upon the legal event of death. Rights and obligations are transferred to the heirs solely by operation of law, not through legal acts such as contracts or judicial validation. The term *saisit* or *saisene* refers to the idea that inheritance rights vest not through formal instruments, but automatically through the force of law. The death of the decedent serves as a legal turning point that activates the heir's proprietary rights over the inheritance without the need for any constitutive

<sup>9</sup> Johnny Ibrahim, *Teori dan Metodologi Penelitian Hukum Normatif* (Malang: Bayumedia, 2006).

<sup>10</sup> R. Subekti, *Kitab Undang-Undang Hukum Perdata* (Jakarta: Pradnya Paramita, 1995).

<sup>11</sup> Effendi Perangin, *Hukum Waris*, Cetakan ke (Depok: PT. Raja Grafindo Persada, 2020).

action.<sup>12</sup> Accordingly, the legal character of this article is clearly declarative it affirms what has legally occurred, rather than creating a new right through formal procedures.

This declarative character is also reflected in the principle of automatic vesting of inheritance, which provides legal certainty over the inherited assets from the exact moment of the decedent's death.<sup>13</sup> Under this principle, there is no legal vacuum concerning title to the inheritance, because the law immediately designates the heirs as the new owners of the decedent's entire estate. The *le mort saisit le vif* principle plays a crucial role in maintaining the continuity of legal and social relations concerning the inherited assets, since the rights in question do not remain in suspense but attach directly to the heirs at the moment of death.<sup>14</sup> This serves to prevent legal gaps in ownership over critical assets such as land, houses, or claims to receivables.

In practical terms, a clear inconsistency persists between the declarative nature of inheritance law and the administrative realities faced by heirs in exercising their rights. Normatively, inheritance rights vest in the heirs immediately upon the death of the decedent, as emphasized in Article 833 of the Indonesian Civil Code. However, recognition of these rights within administrative systems, particularly in the banking and land registration sectors, remains heavily dependent on the availability of formal documents such as inheritance deeds, certificates of heirship, or updated land titles.

A recent study indicates that in practice, administrative procedures often become the primary determinant in the recognition and enforcement of inheritance rights. Although legal norms provide for the automatic transfer of rights under Article 833 of the Civil Code, the absence of formal inheritance documentation can hinder the re-registration of land titles or the withdrawal of funds from the deceased's bank account.<sup>15</sup> Moreover, the legal responsibility of heirs is further burdened by their obligation to assume the debts of the decedent, as provided in Article 1100 of the Civil Code. These realities demonstrate that the implementation of the automatic inheritance principle is still highly dependent on coordination and integration among administrative institutions such as banking, land affairs, and civil registration authorities, which to date have not operated with sufficient effectiveness.

From an academic perspective, a discernible gap emerges between the normative validity of the automatic inheritance principle and the formalistic requirements of administrative procedures. This reveals a disparity between the declarative conception of civil inheritance law and the administrative system that demands formal proof of status and entitlement. Thus, the applicability of declarative norms remains contingent upon the support of legal and institutional systems capable of accommodating the transition of rights in a practical and efficient manner. Accordingly, the principle of *le mort saisit le vif* and the doctrine of automatic vesting of inheritance have not yet provided a sufficiently robust normative framework within the civil law system, as their implementation continues to encounter structural and administrative challenges. Institutional reform therefore becomes crucial, particularly with

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<sup>12</sup> Maman Suparman, *Hukum Waris Perdata* (Jakarta: Sinar Grafika, 2015).

<sup>13</sup> Robin Spurr, "Estate Administration and Automatic Vesting," Schnurr Kirsh Oelbaum Tator, 2014, <https://estatelitigation.net/estate-administration-and-automatic-vesting/>.

<sup>14</sup> Elizabeth Rottenberg, *Prefatory Note*. *Inheriting the Future: Legacies of Kant, Freud, and Flaubert* (Redwood: Stanford University Press, 2005).

<sup>15</sup> M. Naldo Nurthanio, "Penerapan Pasal 833 dan Pasal 834 Kitab Undang-Undang Hukum Perdata (Studi Putusan Pengadilan Negeri Lumajang Nomor 24/Pdt.G/2011/PN.Lmj)" (Universitas Sriwijaya, 2021), <https://repository.unsri.ac.id/50321>.



respect to the digitalization of population and inheritance data, as well as the integration of systems among relevant institutions, including land affairs, banking, and civil registration. Such digitalization would not only accelerate the verification and recognition of inheritance rights but would also reduce the bureaucratic obstacles that have long hindered the realization of heirs' legal entitlements.

## 2. Banking and Fiduciary Administration in the Inheritance Process.

The transfer of inheritance assets cannot be separated from a tightly structured administrative system, especially within the framework of today's modern financial sector. Although the declarative nature of inheritance law as outlined in the Indonesian Civil Code stipulates that rights to inherited assets transfer instantly upon the death of the decedent, in financial contexts such as banking and fiduciary institutions, these rights can only be exercised effectively once the established administrative standards are fulfilled.

Each bank or financial institution operates under internal Standard Operating Procedures (SOPs) designed to ensure that all operational activities, including the management of deceased customers' accounts, comply with regulatory frameworks and good governance principles. These SOPs serve as procedural guidelines that ensure consistency, accuracy, and legal risk control. According to formal documentation on internal banking audit standards, periodic internal audits aim to evaluate the effectiveness of internal controls, compliance with institutional policies, and the completeness of customer and heir documentation in inheritance claims.<sup>16</sup> SOPs also serve as the basis for objective and well-documented decision-making, particularly in preventing abuse of authority and administrative errors.

The prudential principle is another foundational aspect of operational protocols in the banking sector. Banks are required to conduct thorough assessments of any transaction that may involve legal or financial consequences. This obligation extends to inheritance matters, where banks are prohibited from disbursing funds from a deceased customer's account until the legal status of the heirs has been officially verified. A commonly applied risk assessment framework in this context is the 5C principle (Character, Capacity, Capital, Collateral, and Condition), which is used to evaluate the validity and risk of all transactions, including those involving inherited assets.<sup>17</sup> Adherence to this principle is essential for maintaining long-term institutional credibility and financial system stability.

Furthermore, an integral component of banking administration is the Know Your Customer (KYC) procedure, which is mandatory for any individual claiming to be an heir. During this process, banks conduct a comprehensive identification and verification of the heir's identity by reviewing submitted documents and ensuring there is no element of fraud, forgery, or conflict of interest. KYC serves not only to prevent money laundering and asset misuse but also to ensure that inheritance rights are exercised by legally authorized parties.<sup>18</sup> Importantly, KYC is not limited to the initial account opening phase but is also applied in major post-mortem account activities, such as asset transfers and fund withdrawals.

<sup>16</sup> Sop Audit Internal, "BPR dalam dokumen SOP Audit Internal," Scribd, 2024, <https://www.scribd.com/document/586639203/SOP-AUDIT-INTERNAL>.

<sup>17</sup> Ety Mulyati, "Penerapan Manajemen Risiko Sebagai Prinsip Kehati-Hatian Dalam Pemberian Kredit Perbankan," *Supremasi Jurnal Hukum* 1, no. 1 (2018): 1–48, <https://doi.org/https://jurnal.usahid.ac.id/index.php/hukum/article/view/155>.

<sup>18</sup> Ginanjar Hasanudin, Jajang Nurjaman, dan Dadang Husen Sobana, "Implementasi Know Your Customer (KYC) sebagai Upaya Pencegahan Tindak Pencucian Uang di Industri Perbankan Indonesia," *Jurnal Ekonomi Keuangan Syariah dan Akuntansi Pajak* 2, no. 1 (2025): 203–18, <https://doi.org/https://doi.org/10.61132/eksap.v2i1.809>.

In practice, banking procedures emphasize legal and administrative verification concerning the rightful status of heirs before disbursing funds or transferring ownership of a deceased customer's assets. Consequently, banks commonly require official documents such as a death certificate, inheritance certificate, last will (if available), and valid identity documents of all heirs.<sup>19</sup> Fulfilling these requirements is part of a prudential approach that is both normative and practical, aimed at minimizing legal risks. Such caution is especially critical in preventing disputes between competing claims to inheritance.<sup>20</sup>

In fiduciary-based financing, administrative complexity increases due to the involvement of multiple parties, including the debtor, notary, and financing coordinator. Fiduciary transactions must be processed through digital platforms such as the Fiduciary Management System (FIMS), which requires the submission of application forms, invoices, and internal approval documents.<sup>21</sup> Delays or failures in processing fiduciary certificates often result from debtors' lack of understanding regarding the necessary documentation. As a risk mitigation measure, banks and financing institutions will not process inheritance claims or release fiduciary guarantees without complete and valid formal documentation. This measure is regarded as essential to protecting the interests of all parties involved, ensuring financial system stability, and reinforcing compliance with the legal and regulatory framework applicable to the financial services sector.

### **3. Conflict Between Inheritance Law Principles and the Prudential Principles of Banking.**

The case involving the heirs of Soeharso Kartodipuro and PT Bank Central Asia Tbk (BCA) serves as a significant precedent in examining the boundary between the administrative authority of banking institutions and the enforcement of civil inheritance rights. The dispute arose following the death of Soeharso Kartodipuro in 1995. Since then, the heirs sought to withdraw funds from time deposits allegedly belonging to the decedent's estate. They submitted a range of supporting documents, including a death certificate, a certificate of heirship validated by the village and subdistrict heads, and a police-issued account blocking report. Nevertheless, BCA refused to release the funds on the grounds that the certificate of heirship was not issued by a court and therefore lacked formal legal authority to justify the withdrawal.<sup>22</sup>

While BCA's administrative requirements were intended to uphold the prudential banking principle, they simultaneously raised concerns regarding the protection of heirs' legal rights. Even after the heirs obtained a formal court ruling recognizing their legal status, the bank continued to deny access to the funds, citing a competing claim by the second wife and her child, who also asserted inheritance rights.<sup>23</sup> This prolonged dispute ultimately led to a court ruling in favor of the plaintiffs, confirming them as the rightful heirs. However, BCA's delay in

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<sup>19</sup> Adi Surya Wijaya, "Cara Mencairkan Tabungan Pewaris di Bank Setelah Meninggal," ILS Law Firm, 2025, <https://www.ilslawfirm.co.id/cara-mencairkan-tabungan-pewaris-di-bank-setelah-meninggal>.

<sup>20</sup> Hendra Adiwijaya, "Prinsip Kehati-Hatian Bank Dalam Mencairkan Dana Nasabah Yang Telah Meninggal Dunia (Studi Putusan Mahkamah Agung Nomor: 1050 K/PDT/2015)," *Jurnal Ilmiah Penegakan Hukum* 1, no. 1 (2020): 1–13, <https://doi.org/10.31289/jiph.v9i1.6844>.

<sup>21</sup> Rani Yusita, Joni Emirzon, dan Annalisa Yahanan, "Tanggung Jawab Notaris Terhadap Penjamin Fidusia Sejak Diberlakukan Pendaftaran Fidusia Secara Elektronik," *Repertorium: Jurnal Ilmiah Hukum Kenotariatan* 5, no. 1 (2016): 20–36, <https://doi.org/https://www.academia.edu/download/92906327/177-403-1-SM.pdf#page=25>.

<sup>22</sup> HRS, "Tolak Cairkan Dana, BCA Digugat Ahli Waris."

<sup>23</sup> Yudho Winarto, "Ditolak 18 Tahun, Ahli Waris Gugat BCA," Kontan.co.id, 2013, <https://nasional.kontan.co.id/news/ditolak-18-tahun-ahli-waris-gugat-bca>.

releasing the funds resulted in the conversion of the deposit into a demand account, causing financial loss to the heirs due to lost interest income and generating both moral and material damages.<sup>24</sup>

The rulings of the Central Jakarta District Court up to the Supreme Court held that BCA was not at fault, reasoning that the delayed disbursement was part of its due diligence obligations to avoid legal conflicts.<sup>25</sup> This ruling highlights a regulatory gap concerning the bank's obligations when presented with legally valid inheritance documents. In the context of consumer protection in banking, this case illustrates the extent of administrative power held by financial institutions, which may override formal legal instruments in the absence of prescriptive regulation. The bank's continued refusal to act, even after a final court ruling, appears to contradict the principle of *rechtszekerheid* (legal certainty) and potentially violates the core principle of justice inherent to civil law.

The BCA case reflects a clear tension between *ius constitutum* in inheritance law which is declarative in nature and rigid banking practices rooted in the prudential banking principle. According to Professor Maria Farida Indrati, in a state governed by law, all legal norms formally established must be respected and implemented without exception, including by financial institutions. Once a legal right is confirmed by a final court decision, no institution, including a bank, may obstruct or delay its enforcement on mere procedural grounds.<sup>26</sup> Theoretically, this situation also illustrates the clash between the rule of law and rule by regulation. While the rule of law prioritizes the supremacy of substantive legal rights, rule by regulation often allows institutional procedures to dominate and potentially override individual legal entitlements. This tension is also addressed in Dicey's theory of legal certainty, which asserts that once a right has been established by law, its enforcement must not be hindered by any form of administrative discretion not explicitly grounded in legal norms.<sup>27</sup>

In assessing the effectiveness of inheritance rights enforcement in the banking context, legal systems theory offers a comprehensive analytical framework comprising structure, substance, and legal culture.<sup>28</sup> In this case, the legal structure includes the judiciary, which resolves disputes, and banking institutions, which administer the transfer of financial assets. However, this structure appears misaligned. The bank, as the executor of rules, exhibits administrative rigidity and a tendency to delay the execution of court-affirmed rights, signaling weak interinstitutional coordination and procedural inconsistency. On the other hand, the substantive legal rules governing inheritance rights are relatively clear under the Civil Code and judicial decisions. Yet, their practical application becomes ineffective when financial institutions introduce additional administrative requirements not found in statutory law such as dual heirship verification delaying the fulfillment of civil inheritance rights. This practice negatively impacts legal certainty and diminishes the normative power of inheritance law.

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<sup>24</sup> Ibid.

<sup>25</sup> Wuwun Nafsiah, "Gugatan Ahli Waris Nasabah BCA Ditolak," *Kontan.co.id*, 2013, <https://nasional.kontan.co.id/news/gugatan-ahli-waris-nasabah-bca-ditolak>.

<sup>26</sup> Maria Farida Indrati, *Pembaharuan Hukum di Indonesia: Problematika dan Tantangannya* (Yogyakarta: Gajah Mada University Press, 2010).

<sup>27</sup> Albert Venn Dicey, *Introduction To The Study Of The Law Of The Constitution*, Cet. 1 (Bandung: PT. Citra Aditya Bakti, 2007).

<sup>28</sup> Teddy Lesmana, "Pokok-Pokok Pikiran Lawrence Meir Friedman; Sistem Hukum Dalam Perspektif Ilmu Sosial," Nusa Putra University (Sukabumi: Universitas Nusa Putra, 2021), <https://nusaputra.ac.id/article/pokok-pokok-pikiran-lawrence-meir-friedman-sistem-hukum-dalam-perspektif-ilmu-sosial/>.



Moreover, the prevailing legal culture within banking institutions also affects legal effectiveness. An overly cautious approach in applying prudential principles often conflicts with the principle of *rechtszekerheid*. When banks assume the role of *de facto* adjudicators without a solid legal basis, they distort their non-judicial function and undermine the authority of final legal determinations. Conversely, citizens specifically heirs hold legitimate expectations for legal certainty and the timely realization of their rights. These tensions are further complicated in Indonesia's plural legal system. As observed in studies by ELSAM and LEIP, legal pluralism not only reflects the coexistence of state law, customary norms, and institutional practices, but also exposes the potential for intersystemic legal conflict and uncertainty in the absence of effective harmonization mechanisms.<sup>29</sup> In the context of inheritance, this legal plurality, particularly the interaction between civil inheritance law, banking administrative procedures, and familial or customary claims, often lacks a synchronizing bridge, thereby exacerbating barriers to justice for rightful heirs.

Given these challenges, there is an urgent need to evaluate the regulatory framework governing inheritance-related banking procedures. Harmonization is necessary to ensure that declarative legal norms in inheritance law are effectively implemented without being undermined by disproportionate administrative procedures. A normative solution may be pursued through the revision of Bank Indonesia regulations, particularly those concerning prudential principles and post-mortem account management, to avoid overregulation that infringes upon the civil rights of citizens.

### **Normative Harmonization Between Inheritance Law and Banking Administration**

#### **1. Normative Evaluation of Article 833 of the Civil Code in the Context of Financial Institutions.**

Article 833 paragraph (1) of the Indonesian Civil Code provides that heirs, by operation of law, automatically acquire ownership of assets, rights, and receivables from the moment of death. This provision reflects the declarative character of inheritance law, in which no further legal acts are required for the transfer of ownership to the heirs. Although this norm affirms legal certainty from the perspective of inheritance law, its application within administrative systems, particularly within financial institutions, remains far from automatic.

In practice, the prudential principle demands that every financial decision involving inherited assets must be preceded by meticulous verification processes, including the legal validation of the heir's status through official documentation. From the perspective of banking institutions, Article 833 is not regarded as normatively sufficient to serve as an independent basis for executing the release of funds or transferring ownership of a deceased customer's assets. Financial institutions are obligated to ensure the legal legitimacy of every claim made against the assets under their management. This precaution is intended to avoid the legal risks that may arise from disputes among multiple claimants asserting heirship.

Although civil law stipulates that inheritance rights vest upon death, banks still require strict procedural verification to confirm the accuracy of such claims. One study found that in practice, banks often condition the release of inherited funds on the completeness of supporting documents or the existence of life insurance policies, rather than relying solely on

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<sup>29</sup> Della Sri Wahyuni, "Pluralisme Hukum dalam Pembangunan Hukum Indonesia: Masalah dan Tantangan Ke Depan," Lembaga Kajian & Advokasi Independensi Peradilan, 2015, <https://leip.or.id/pluralisme-hukum-dalam-pembangunan-hukum-indonesia-masalah-dan-tantangan-ke-depan-2/>.

the legal force of Article 833.<sup>30</sup> Another scholarly finding suggests that while Article 833 explicitly regulates the legal basis for inheritance transfer, its application must be interpreted in conjunction with Articles 1315 and 1318 of the Civil Code, which establish the principle of legal personality in contract law. This means that while heirs may inherit rights, they are also responsible for the debts of the deceased, unless those obligations have been lawfully transferred to a third party, such as an insurance provider. In such cases, administrative compliance becomes essential to verify subrogation before a bank can conclude that the decedent's liabilities have been discharged.<sup>31</sup>

Under Indonesian positive law, the recognition of an heir's status depends heavily on the availability of formal documents that serve as legal proof of the relationship between the deceased and the recipient of the inheritance. There are three key legal instruments recognized administratively for this purpose: a certificate of inheritance (SKW), a court decree, and a notarial will. These documents function both as formal proof under civil law and as mandatory administrative prerequisites when dealing with banks and other financial institutions.

The certificate of inheritance (SKW) is the most common inheritance document used by the public. For Indonesian citizens who are not of Chinese or Foreign Eastern descent, SKWs may be issued before the village head and subdistrict head with two witnesses. For those of Chinese descent, the SKW must be drawn up by a notary.<sup>32</sup> For individuals of Foreign Eastern descent, such as Arabs or Indians, the SKW is issued by the Office of Inheritance Affairs (Balai Harta Peninggalan or BHP). This requirement reflects Indonesia's pluralistic approach to inheritance law, which distinguishes procedural rules based on ethnic or legal community background.<sup>33</sup> As emphasized in one legal commentary, "one of the uses of an inheritance certificate is as evidence to cash out savings at the bank... For those of Chinese descent, it is made by a Notary... For those of foreign eastern descent (Arabs and Indians), it is made at the Balai Harta Peninggalan."<sup>34</sup> SKWs are routinely used for administrative purposes, especially for accessing inherited funds from financial institutions.

When potential disputes arise or when banks have administrative doubts, financial institutions generally require a court-issued determination of heirs. For Muslim heirs, this determination is obtained from the religious court; for non-Muslims, from the general district court. Judicial determinations provide stronger legal certainty because they are issued by state judicial authorities and are legally binding. Banks are responsible for verifying the legal standing of heirs, especially when large credit obligations are involved. The greater the amount, the more documentation is required to validate the claims.<sup>35</sup> A normative legal study by Eirene Joy Carolina Kesek and others affirms that banks are entitled to request authentic

<sup>30</sup> Dwi Evanti Andriani dan Hardian Iskandar, "Penyelesaian Kredit dari Debitur Yang Meninggal Dunia Dengan Klaim Asuransi Jiwa," *UNES Law Review* 6, no. 2 (2023): 6981–89, <https://doi.org/https://doi.org/10.31933/unesrev.v6i2>.

<sup>31</sup> Fatihani Baso et al., "Debt Payment by Heir : A Study of Indonesian Legislation," *KnE Social Sciences* 2022, no. 1 (2022): 119–26, <https://doi.org/10.18502/kss.v7i8.10728>.

<sup>32</sup> La Ode, "Ahli Waris Beda Agama Dalam Perspektif Waris Perdata."

<sup>33</sup> Aden Ahmad, Sihabudin, dan Siti Hamidah, "Kepastian Hukum Surat Keterangan Waris Sebagai Persyaratan Pengambilan Jaminan Kredit," *Jurnal Selat* 6, no. 1 (2018): 19–36, <https://doi.org/10.31629/selat.v6i1.809>.

<sup>34</sup> Muh. Aidil Akbar, "Cara Urus Penetapan Ahli Waris Untuk Bank," *Legal Keluarga*, 2022, <https://www.legalkeluarga.id/penetapan-ahli-waris-untuk-bank/>.

<sup>35</sup> MYS, "Bank Harus Pastikan Dokumen Ahli Waris," *Hukumonline.com*, 2012, <https://www.hukumonline.com/berita/a/bank-harus-pastikan-dokumen-ahli-waris-lt50d7bc5cb3613/>.

inheritance documentation as a form of legal protection and to minimize the risk of future litigation.<sup>36</sup>

In cases where the decedent has left a will, banks are required to verify the authenticity and registration of the document in the central will registry managed by the Ministry of Law and Human Rights. If the will is not officially registered or its validity is disputed, the bank has the authority to refuse the release of inherited funds in accordance with its duty to exercise administrative caution. Bank validation of inheritance documents, such as wills, is conducted as part of their prudential obligations to prevent the misallocation of assets or conflicts among claimants.<sup>37</sup> This is in line with the prudential principle as stated in Article 43 of Law No. 10 of 1998 concerning Banking, which mandates that “banks must exercise prudence in carrying out their intermediary functions.”

While Indonesian positive law functionally regulates the necessary instruments to ensure legal certainty in the status of heirs, the practical implementation of inheritance rights remains heavily influenced by administrative compliance and the application of prudential principles by financial institutions. Therefore, harmonizing substantive law with institutional procedures is essential to ensure that legally valid inheritance rights are not obstructed by rigid administrative processes. From both a normative and institutional standpoint, the current restrictions on the transfer of inheritance rights due to administrative legal formalism indicate the need to strengthen the legal framework that integrates the provisions of the Civil Code with the operational standards of the financial sector.

More operational regulations issued by financial authorities such as the Financial Services Authority (OJK) or Bank Indonesia are needed to bridge the gap between the declarative norms of inheritance law and the administrative systems of financial institutions.<sup>32</sup> Such harmonization would prevent the risk of civil rights violations resulting from overly rigid procedures, while still upholding the prudential principles necessary to safeguard the interests of all parties involved.

## 2. The Urgency of Harmonizing Legal Norms and Administrative Practice.

Indonesia's legal system of evidence acknowledges the central role of authentic deeds as legally binding instruments. Article 1868 of the Civil Code defines an authentic deed as one that is drawn up in a prescribed form by or before a competent public official within their designated jurisdiction.<sup>38</sup> In the context of inheritance, a notarial certificate of inheritance qualifies as an authentic deed. As such, its legal validity does not require further proof unless refuted by a party that can demonstrate otherwise.<sup>39</sup> In practice, a notarial deed possesses three layers of evidentiary strength: its external validity, formal accuracy, and substantive

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<sup>36</sup> Eirene Joy Carolina Kesek, Jemmy Sondakh, dan Refly Ronny Umbas, “Tinjauan Yuridis Rekening Simpanan Nasabah Bank Tanpa Ahli Waris,” *Lex Privatum* 14, no. 2 (2024): 1–13, <https://doi.org/https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/58237>.

<sup>37</sup> Cindy Valencya Tumbel dan I Made Priadharsana, “Legal Protection of Heirs in the Disbursement of Inheritance Assets (A Case Study of District Court Decision Number 218/Pdt.G/2021/PN.Dps),” *Jurnal AktaAkta* 11, no. 2 (2024): 369–78, <https://doi.org/http://dx.doi.org/10.30659/akta.v11i2.36841>.

<sup>38</sup> Subekti, *Kitab Undang-Undang Hukum Perdata*.

<sup>39</sup> Ahmadi Miru, *Hukum Kontrak & Perancangan Kontrak*, Cet. 10 (Depok: PT RajaGrafindo Persada, 2022).

authenticity. These attributes grant it binding evidentiary force not only on the parties to the deed but also on heirs and third parties who acquire rights from the document.<sup>40</sup>

Within the financial and banking administrative domain, both notarial inheritance deeds and certificates of heirship are essential instruments used to access a decedent's bank assets. However, differences in form and evidentiary strength between certificates issued by subdistrict or village authorities and those drawn up by notaries often create administrative barriers. Arfiyan Sidrajat, in his study, asserts that notarial deeds carry inherent and binding evidentiary force. Therefore, financial institutions should not impose additional evidentiary requirements beyond those set forth in positive law when such deeds fulfill all formal and substantive legal conditions.<sup>41</sup>

Further, Bagaswara and Prananingtyas emphasize that the authority of notaries to issue certificates of inheritance is a form of attributed power explicitly provided under Article 15 of the Notary Law. Consequently, inheritance deeds issued by notaries ought to be fully recognized by financial institutions as legally valid administrative documents, without being subjected to burdensome additional procedures.<sup>42</sup> The disconnect between civil law substance and the Standard Operating Procedures (SOPs) implemented in the financial sector has created structural impediments to the enforcement of inheritance rights upon the death of a decedent. Although Article 833 of the Civil Code stipulates that heirs acquire ownership of the estate automatically by law (*van rechtswege*), this right is often obstructed by banking mechanisms requiring specific inheritance documents for administrative validation.

To resolve this issue, harmonization should follow the principle of regulatory harmonization as stipulated in Article 1 point 1 of Minister of Law and Human Rights Regulation No. 20 of 2015 in conjunction with Regulation No. 40 of 2016. These provisions emphasize the need for alignment in both the substantive content of legal materials and the technical drafting of regulations to ensure consistency within a unified national legal system and prevent normative overlap.<sup>43</sup>

One possible approach involves standardizing the recognition of inheritance documents by financial institutions, particularly banks. Banks must acknowledge the legal validity of certificates of heirship issued by competent authorities whether in the form of informal documents legalized by subdistrict offices for native Indonesians or in the form of notarial deeds for other legal communities without imposing extralegal requirements. As noted by Aden Ahmad and colleagues, classification of inheritance documents based on ethnic origin and issuing authority introduces legal uncertainty and administrative discrimination, which contradict both civil law equality and fundamental human rights.<sup>44</sup>

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<sup>40</sup> Kurniawan Arfiyan Sidrajat, "Analisis Hukum Kekuatan Pembuktian Akta Notaris Dalam Penyelesaian," *Jurnal Ilmu Hukum Toposantaro* 1, no. 1 (2024): 9–15, <https://doi.org/https://jurnal.fakum.untad.ac.id/index.php/TPS/article/view/1090>.

<sup>41</sup> Ibid.

<sup>42</sup> Rezanda Anugrah Bagaswara dan Paramita Prananingtyas, "Urgensi Akta Otentik Dalam Keterangan Hak Waris Yang Dibuat Oleh Notaris," *Notarius* 16, no. 2 (2023): 938–47, <https://doi.org/https://doi.org/10.14710/nts.v16i2.41832>.

<sup>43</sup> Wicipto Setiadi, "Pengharmonisasian, Pembulatan, dan Pemantapan Konsepsi Rancangan PUU" (Jakarta, 2021), [chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://pusdik.mkri.id/materi/materi\\_234\\_Pengharmonisan\\_PUU.pdf](https://efaidnbmnnnibpcajpcglclefindmkaj/https://pusdik.mkri.id/materi/materi_234_Pengharmonisan_PUU.pdf).

<sup>44</sup> Ahmad, Sihabudin, dan Hamidah, "Kepastian Hukum Surat Keterangan Waris Sebagai Persyaratan Pengambilan Jaminan Kredit."

Moreover, banking SOPs must be designed to respond effectively to inheritance law, upholding the principles of clarity and legal certainty in evidentiary matters. In this regard, notarial certificates of inheritance, although not expressly mentioned in the Notary Law, have a legal basis under Article 15 paragraph (1), which grants notaries the authority to create authentic deeds concerning legal events, including those related to inheritance.<sup>45</sup>

Interagency coordination is also essential to this harmonization strategy. Greater cooperation is required between notaries, courts, and financial institutions to establish unified protocols for verifying and accepting inheritance documents. This would prevent unilateral rejections based on internal SOP interpretations that conflict with substantive law. The prudential principle applied by banks must not override the legal protections guaranteed to civil rights holders.<sup>46</sup>

Finally, comprehensive regulatory reform and integrated outreach efforts from government and financial authorities are essential to prevent the recurrence of legal dualism between inheritance rights and their administrative implementation. Such reforms should reflect the principles of legality, equality, and non-discrimination as elaborated in Law No. 13 of 2022 amending Law No. 12 of 2011 on the Formation of Laws and Regulations. Additionally, these reforms should reinforce the principle of *lex superior derogat legi inferiori*, particularly in relation to technical regulations that still contain discriminatory features, such as those found in National Land Agency Regulation No. 3 of 1997.<sup>47</sup>

### 3. Recommendations and Harmonization Model

Recognition of the declarative force of inheritance rights as stipulated in Article 833 of the Indonesian Civil Code is essential for ensuring legal certainty and protecting the rights of heirs. However, in banking practice, administrative requirements frequently create obstacles to the realization of these rights, particularly when such requirements impose document submissions that are not aligned with positive legal norms.

The Financial Services Authority Regulation (POJK) Number 12/POJK.03/2021 concerning Commercial Banks provides a legal framework that can be adopted to address this issue. Article 42 paragraph (4) of the regulation stipulates that “a change in share ownership resulting in the transfer of bank control due to grants or inheritance shall be exempted from the takeover procedure,” provided that the recipient of the shares meets the criteria of a controlling shareholder and passes the fit and proper test. This indicates that the Financial Services Authority acknowledges inheritance-based transfers of ownership as legally valid processes that do not require complex takeover procedures.<sup>48</sup> Furthermore, the regulation mandates that banks must report changes in capital within ten working days after approval, reflecting a strong commitment to transparency and accountability in the inheritance process.

Despite this regulatory progress, a technical guideline explicitly integrating inheritance provisions under the Civil Code with banking regulations remains necessary. Such a guideline should affirm the declarative nature of inheritance rights as codified in Article 833 of the Civil Code and should establish a clear, nondiscriminatory, and lawful procedure that ensures heirs

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<sup>45</sup> Bagaswara dan Prananingtyas, “Urgensi Akta Otentik Dalam Keterangan Hak Waris Yang Dibuat Oleh Notaris.”

<sup>46</sup> Ibid. Hlm. 940

<sup>47</sup> Ibid. Hlm. 944

<sup>48</sup> Otoritas Jasa Keuangan, “Lembaran Negara Republik Indonesia: Peraturan Otoritas Jasa Keuangan Republik Indonesia Nomor 12/POJK.03/2021 Tentang Bank Umum,” Pub. L. No. Nomor 12/POJK.03/2021, 26 (2021).



can access inherited financial assets without facing unjustified administrative barriers. One of the core objectives of regulatory harmonization, especially in sector-specific regulations, is to align administrative provisions with higher legal norms and constitutional principles, thereby avoiding overlapping authority or normative contradictions that may harm those seeking justice.<sup>49</sup>

To meet this need for a harmonized technical framework, the involvement of legal actors with statutory authority is vital. Notaries, as public officials appointed under national law, are best positioned to serve this role due to their strategic function in bridging inheritance law and administrative requirements in the financial sector. This role is legally supported by Law Number 2 of 2014 amending Law Number 30 of 2004 concerning the Office of Notary, especially Article 15, which authorizes notaries to draft authentic deeds for any legal act, agreement, or statement required by law or requested by interested parties.<sup>50</sup>

In the context of inheritance, notaries serve a central role. Inheritance deeds or certificates of heirship prepared by notaries possess full evidentiary force both formally and materially before the law. The strategic function of notaries extends beyond formalization to include the active roles of verifying and ensuring the legal validity of submitted documents.<sup>51</sup> Notaries are required to verify the identity of individuals claiming to be heirs, examine supporting documents such as birth and death certificates and family registries, and assess any unresolved disputes. This positions the notary as a preventive actor against potential legal conflicts. Given this comprehensive role, it is highly appropriate for notaries to be regarded as essential intermediaries linking substantive legal norms and the administrative governance of the financial sector, which demands legal clarity and document validity.

Understanding the notary's preventive function should translate into facilitating heirs' access to their rights. Nevertheless, prior cases have demonstrated that this role is often diminished by banking practices that fail to align with positive legal norms. This condition highlights the importance of consistency between the legal authority attached to notarial deeds and the administrative compliance of financial institutions with the declarative provisions of Article 833 of the Civil Code.

Administrative practice in the financial sector continues to require serious alignment with positive law to prevent it from becoming an obstacle to heirs in securing their rightful assets. Heirs are frequently subjected to excessive requirements, such as the submission of documents not prescribed by law, or even the freezing of funds by financial institutions without a valid legal basis. Legal protection for heirs in this context necessitates a consistent application of the legality principle by financial institutions. Banks and other financial entities must not impose administrative requirements that lack foundation in prevailing legislation, including Financial Services Authority regulations and the Civil Code. Only legally recognized documents such as notarial inheritance deeds, certificates of heirship issued by competent authorities, or court rulings in cases of dispute may serve as the valid basis for processing inheritance claims. Studies affirm that the validity of notarial and governmental inheritance

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<sup>49</sup> Setiadi, "Pengharmonisasian, Pembulatan, dan Pemantapan Konsepsi Rancangan PUU."

<sup>50</sup> Presiden Republik Indonesia, "Undang-Undang Republik Indonesia Nomor 2 Tahun 2014 Tentang Perubahan Atas Undang-Undang Nomor 30 Tahun 2004 Tentang Jabatan Notaris," Peraturan BPK.go.id § (2014).

<sup>51</sup> Diena Zhafira Illiyyin dan Nynda Fatmawati Octarina, "Peran Notaris Dalam Menciptakan Kepastian Hukum Bagi Investor," *Jurnal Civic Hukum* (2023), <https://doi.org/https://doi.org/10.22219/jch.v8i1.22565>.

certificates must be honored by administrative and banking institutions and cannot be dismissed without legitimate legal justification.<sup>52</sup>

Enforcement of inheritance rights against restrictive banking procedures calls for Satjipto Rahardjo's concept of progressive law, which advocates prioritizing substantive justice over mere procedural compliance.<sup>53</sup> In this view, when internal banking policies disregard legally recognized heirship, the legal response must be corrective and oriented toward social justice. The Financial Services Authority, by virtue of its regulatory mandate, must play an active role in supervising and intervening in internal bank policies that deviate from the principles of justice and civil rights protection.

A similar perspective is offered by Ridwan Khairandy, who asserts that both financial service providers and notaries must adhere to the principles of consumer protection and legal certainty. He argues that any rejection of heirs' rights not based on positive law constitutes a violation of constitutional rights and opens the door for legitimate civil claims.<sup>54</sup> Additionally, the Indonesian legal system provides safeguards against excessive inheritance burdens. This is reflected in Article 1057 of the Civil Code, which allows heirs to reject an inheritance if it contains more liabilities than assets. This serves as an explicit form of legal protection against disproportionate financial burdens and reinforces the legal position of heirs in determining their response to an inheritance.

A balanced interpretation of the prudential principle is essential to ensure that administrative caution operates within the boundaries of legality. Prudence should not be understood as an excuse for excessive bureaucracy or as a barrier to the realization of legally recognized rights. Rather, it must complement the principle of legal certainty (*rechtszekerheid*) by ensuring that every procedural safeguard in the financial sector upholds, rather than undermines, the substantive rights of heirs. Harmonizing prudential standards with legal certainty thus reinforces both financial stability and the rule of law, enabling banks to act cautiously without contravening heirs' civil entitlements under Article 833 of the Civil Code.

#### D. Conclusion

Article 833 of the Indonesian Civil Code unequivocally provides that inheritance rights vest declaratively in the heirs upon the death of the decedent, without requiring any further judicial or administrative confirmation. However, in practice, the realization of these rights is often hindered by the administrative policies of financial institutions that do not fully adhere to positive legal norms. The findings of this study affirm the existence of a normative tension between the substance of inheritance law and the administrative structure of the financial sector. If left unresolved, this disconnect may undermine the principles of legal certainty and justice.

To bridge this normative inconsistency, harmonization is required through the revision of technical guidelines within the banking sector, the strengthening of supervisory functions of the Financial Services Authority, and the empowerment of notaries as legal actors authorized to produce authentic inheritance documents. Legal protection for heirs can only be guaranteed when all relevant institutions strictly observe the principle of legality and refrain from imposing

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<sup>52</sup> Novinia Yanita, "Peran Dan Tanggung Jawab Notaris Dalam Pembuatan Surat Keterangan Hak Waris Guna Pencairan Dana Simpanan Deposito Berjangka Oleh Ahli Waris Di Kabupaten Demak" (Universitas Islam Sultan Agung, 2023).

<sup>53</sup> Satjipto Rahardjo, *Hukum Progresif: Hukum yang Membebaskan* (Jakarta: Kompas, 2009).

<sup>54</sup> Ridwan Khairandy, *Perlindungan Hukum Konsumen Jasa Keuangan* (Yogyakarta: Fakultas Hukum UII, 2013).

administrative barriers that lack a legal basis. This study underscores the urgency of reformulating administrative regulations to ensure alignment with the normative framework of inheritance law and to uphold substantive justice for rightful beneficiaries.

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