

REPORTING OF TESTAMENTARY DEEDS FOR INDONESIAN CITIZENS ABROAD

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Abstract

This article will discuss the inconsistency of will reporting arrangements for Indonesian citizens abroad. The purpose of this research is to review and analyze the synchronization of Article 11 paragraph (1) of the Regulation of the Minister of Law and Human Rights Number 60 of 2016 with Article 8 letter c of the Regulation of the Minister of Foreign Affairs Number 5 of 2018 and to review and analyze the roles and responsibilities of Notaries in reporting testamentary deeds for Indonesian citizens abroad. By using normative juridical research, this research is prescriptive and uses the type of research on the level of vertical and horizontal synchronization. The approaches used by the author are statute approach and conceptual approach. Results of the research, First : The synchronization of the provisions of reporting the will deed for Indonesian citizens abroad is carried out by seeing that the position of Article 8 letter c of the Minister of Foreign Affairs Regulation Number 5 of 2018 is a specificity of Article 11 paragraph (1) of the Minister of Law and Human Rights Regulation Number 60 of 2016. Second: Notaries only have responsibility for the deeds they make or that are presented to them. Therefore, the Notary does not have a direct obligation and responsibility to report on testamentary deeds made by Indonesian citizens abroad.

Keywords : Testamentary Deed Reporting, Foreign Testament, Notary, Consular Post

INTRODUCTION

Human life can broadly be divided into three events: birth, marriage, and death. Human life can broadly be divided into three events: birth, marriage, and death (Puspitasari, 2020). When a person dies, there is a legal transfer of the deceased's rights and obligations to their heirs (Subekti & Tjitrosudibio, 1999). According to A. Pitlo, inheritance law is a collection of rules that regulate assets upon a person's death, specifically concerning the transfer of the deceased's assets and the consequences of this transfer for those who receive them, both in their relationships with each other and with third parties (Sagala, 2018).

Inheritance can occur either by appointment of the law (*ab intestato*) or based on a testament. In testamentary inheritance, the inheritance is carried out based on a will. Therefore, it is important for a will to be made in the form of an authentic deed to maintain its validity. A notary is one of the public officials authorized to create authentic deeds. Regarding wills, a notary has several obligations, one of which is to report the will to the Central Will Registry. The reporting of a will is not only done by Indonesian citizens within the country but also by those abroad.

Positive law in Indonesia regulates the reporting of wills for Indonesian citizens abroad in the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 60 of 2016 concerning Procedures for Reporting Wills and Applying for the Issuance of Will Certificates Electronically (hereinafter referred to as the Regulation of the Minister of Law and Human Rights Number 60 of 2016) and the Regulation of the Minister of Foreign Affairs of the Republic of Indonesia Number 5 of 2018 concerning the Protection of Indonesian Citizens Abroad. Article 11 paragraph (1) of the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 60 of 2016 stipulates that "in the event that a will is made by an Indonesian citizen abroad, the testator, the heir, or their legal proxy can report the will to the Central Will Registry through a Notary in Indonesia." Based on this rule, Indonesian citizens abroad report the will made by the testator to the authorized party, in this case, a Notary, in Indonesia.

Meanwhile, Article 8 letter c of the Regulation of the Minister of Foreign Affairs Number 5 of 2018 concerning the Protection of Indonesian Citizens Abroad stipulates that "one form of consular protection is to act as a Notary and Civil Registry Official or in a similar capacity to carry out certain administrative tasks as long as it does not conflict with the laws of the local country." Based on this rule, the reporting of a will for Indonesian citizens abroad does not have to be done by a Notary in Indonesia but can be done through an Indonesian consular representative abroad. The existence of these two conflicting regulations creates legal uncertainty, so there is no guarantee of protection for the interests of the testator, heirs, or third parties.

Previous research on a similar topic to the reporting of will deeds for Indonesian citizens abroad was written by Mudzakirah Al Mulia with the title "Legal Consequences of Will Deeds Not Reported to the Central Will Registry by a Notary." The researcher's study differs from the previous research because the previous study discusses the legal consequences of unreported will deeds, while this researcher discusses the regulation of reporting will deeds made by Indonesian citizens abroad.

RESEARCH METHODS

For this thesis, the author used a type of normative legal research, which is obtained from literature studies and uses a research type on the level of vertical and horizontal synchronization, with prescriptive legal research. The approaches used by the author are the statute approach and the conceptual approach. To analyze the legal issues, the author used both primary and secondary legal sources.

LITERATURE REVIEW

1. Theory of Legal Validity

To this day, there is no universally and perpetually binding rule in the world. Every legal rule has limitations on its validity, which results in a variety of legal rules created in different parts of the world. According to Hans Kelsen, there are four types of legal validity spheres (Kelsen, 2008):

- a. Sphere of time. This means that every legal rule only regulates events that occur within a certain period. For example, criminal law has the principle of legality, where an act cannot be punished if it was not previously regulated by a law.
- b. Sphere of space. This means that legal rules only regulate events that occur in a specific space or place. For example, a regional regulation is only valid in the place where the law was made or implemented.
- c. Personal sphere. This means that the personal sphere of legal validity refers to the personal element of the behavior prescribed by the norm. It specifically limits the validity of a law based on its legal subjects. For example, military regulations are only valid for military personnel.
- d. Material sphere. This means that legal validity according to material relates to the matters or substance to which the law is applied. The validity of a legal rule is determined by the matter or subject of the case in question. For example, in the case of an act that harms Indonesia's interests, even if it occurs outside Indonesian territory, legal validity can be applied based on the material, allowing the state to become involved.

To determine whether a specific regulation has binding force or is valid, one must look at its legal source. The term "legal source" is often used in several senses, one of which is as a legal principle, meaning something that is the origin of the law (Mertokusumo, 2007). The laws and regulations of a country do not intend for there to be contradictions within them. The legal system recognizes the existence of a hierarchy (order) (Mertokusumo, 2007). The existence of a hierarchy in legislation means that the principle of *lex superior derogat legi inferiori* applies if there is a conflict between a higher regulation and a lower one when they regulate the same matter. A conflict may also occur between a general law and a special law that both regulate the same matter. In such a case, the special law should take precedence: *lex specialis derogate legi generali* (Mertokusumo, 2007).

The formation of a law or legal regulation requires a foundation because this foundation will provide direction for human behavior in society. Therefore, to determine the validity of a regulation, three legal foundations are needed in its formation (Mujiyono, 2021):

- a. Philosophical Foundation: A regulation can be said to have a philosophical foundation if its formulation or norm is justified when studied philosophically. Thus, the reason for creating the regulation is in line with the ideals of human life, community values, and the ideals of truth, justice, the nation's way of life, and morality.
- b. Sociological Foundation: A regulation is said to have a sociological foundation if it aligns with general beliefs, the community's legal awareness, and the values and laws that exist in society, so that the regulation can be implemented.
- c. Juridical Foundation: A regulation is said to have a juridical foundation if there is a legal basis or foundation found in a higher-level legal provision.

2. Notary

The authentic definition of a Notary is found in Article 1 of Law Number 30 of 2004 concerning the Office of Notary, as amended by Law Number 2 of 2014, which states that a Notary is a public official authorized to create authentic deeds and other authorities as

referred to in this Law (Aini & Simanjuntak, 2019). Article 1868 of the Civil Code states that an authentic deed is a deed made in the form prescribed by law by or in the presence of a public official authorized to do so in the place where the deed is made. One of the authentic deeds made in the presence of a Notary as a public official is a Will Deed.

3. Will Deed

Article 875 of the Civil Code defines a will as a deed containing a person's declaration of what they wish to happen after their death. A will is a deed, a statement made as proof with the involvement of an official. The law has determined that there are several legal actions or agreements that must be made by or in the presence of a certain official (a Notary), which must formally follow a specific form, and these agreements (deeds) have perfect evidentiary power. Agreements that must be made by or in the presence of a Notary include various types of wills, including the storage of a general will, a will for establishing a foundation, a will for the separation and division of an estate, fideicommissum, the appointment of a will executor and estate administrator, and their revocation (Adjie, 2011).

Wills come in various types and forms. Based on their content, wills are divided into two types: a will containing *erfstelling* (appointment of an heir) and a will containing a grant (*hibah wasiat*) which can be called a *legaat*. In terms of form, wills are divided into a self-written will (*Olographis Testament*), a general will (*Openbaar Testament*), a secret or sealed will (*Geheim*), a will made abroad, and a will made in extraordinary circumstances (Suparman, 2015).

Article 1 paragraph (6) of the Regulation of the Minister of Law and Human Rights Number 60 of 2016 concerning Procedures for Reporting Wills and Applying for the Issuance of Will Certificates Electronically states that a Will Certificate is a document that explains whether or not a will deed made in the presence of a Notary and reported to the Central Will Registry is registered.

4. Consular Representation

A consul is a state representative usually placed in a region within the territory of the receiving state or in a territory that is not yet independent. The establishment of diplomatic relations between countries is usually preceded by the dispatch of a consular official. Consular relations are limited to non-political matters, meaning they are limited to matters aimed at promoting trade, commerce, and the interests of citizens residing in various regions within the jurisdiction of the state concerned.

The duties and functions of consular representation are regulated in Article 5 of the 1963 Vienna Convention as follows:

- a. Protecting the interests of the sending state and its nationals, both individuals and legal entities, within the limits permitted by international law in the receiving state;
- b. Promoting the development of commercial, economic, cultural, and scientific relations between the sending state and the receiving state, and fostering friendly relations between them in accordance with the provisions of this Convention;
- c. Ascertaining by all lawful means the conditions and developments of the commercial, economic, cultural, and scientific life of the receiving state, reporting thereon to the Government of the sending state and giving information to persons interested;
- d. Issuing passports and travel documents to nationals of the sending state, and visas or appropriate documents to persons wishing to travel to the sending state;
- e. Helping and assisting nationals, both individuals and legal entities, of the sending state;
- f. Acting as notary and civil registrar and in a similar capacity, and exercising certain functions of an administrative nature, provided that there is nothing contrary to the laws and regulations of the receiving state;

- g. Safeguarding the interests of nationals, both individuals and legal entities, of the sending state in cases of *mortis causa* succession in the territory of the receiving state, in accordance with the laws and regulations of the receiving state.

RESULT AND DISCUSSION

A. Regulation on Reporting Wills Through a Notary

Before the implementation of electronic reporting for will deeds, the reporting was done manually by Notaries to the Directorate General of General Legal Administration through a more traditional, physical document-based system. To improve the efficiency of this registration system, the Ministry of Law and Human Rights of the Republic of Indonesia introduced an online will registration system for Notaries on March 28, 2014. Subsequently, the Regulation of the Minister of Law and Human Rights Number 60 of 2016 concerning Procedures for Reporting Wills and Applying for the Issuance of Electronic Will Certificates was issued to serve as the legal basis for online will reporting (Borahima & Sitorus, 2022).

The procedures for reporting will deeds are regulated in Articles 2 through 8 of the Regulation of the Minister of Law and Human Rights Number 60 of 2016.

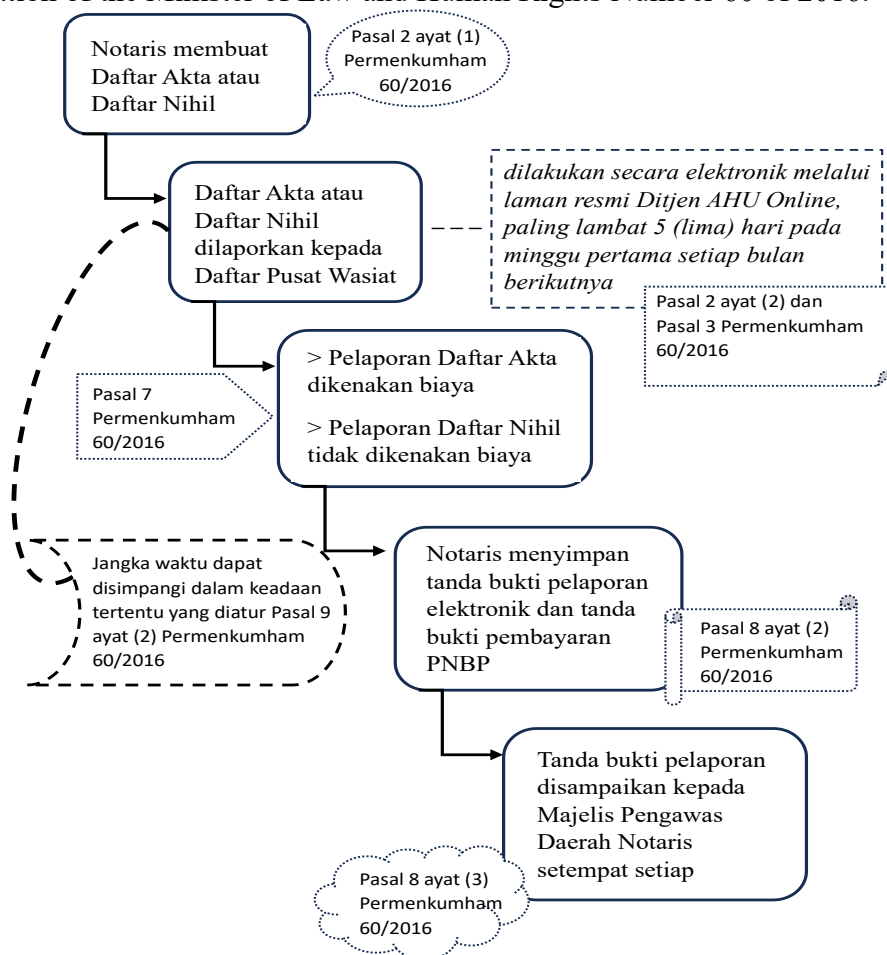


Fig 1. Will Deed Reporting Procedure

Source: Articles 2 through 8 of the Regulation of the Minister of Law and Human Rights Number 60 of 2016

Notaries have an obligation to compile a Will Deed List containing all the will deeds they have made. If no will deeds have been made by a Notary during a specific period, a Nihil List must be submitted, confirming that no will deeds were made during that time. This list of will deeds or the nihil list must be reported to the Central Will Registry. The reporting of the

will deed list or nihil list must be done electronically through the official website of the Directorate General of General Legal Administration of the Ministry of Law and Human Rights, with a deadline of no later than 5 (five) days in the first week of the following month. Notaries must follow a procedure to access the official website of the Directorate General of General Legal Administration, which involves submitting an application and being registered with the Directorate General of General Legal Administration, after which a user ID and password will be provided to the Notary.

A fee is charged for reporting the Deed List in accordance with the provisions of the non-tax state revenue laws and regulations applicable at the Ministry of Law and Human Rights, while reporting the Nihil List is free of charge. The Deed List or Nihil List that has been reported electronically is stored in the database of the Central Will Registry. Notaries are required to store the electronic proof of reporting for the Deed List or Nihil List and proof of payment for non-tax state revenue. This electronic proof of reporting must be submitted to the local Notary's Regional Supervisory Council every month.

In certain circumstances, Notaries can submit an application for reporting the Deed List and Nihil List electronically after the specified deadline has passed. These specific circumstances include the official website of the Directorate General of General Legal Administration being non-functional, based on an official announcement from the Minister or a designated official, or in the event of a *force majeure*. An application for reporting in these specific circumstances must be submitted by uploading a formal letter of application addressed to the Central Will Registry, accompanied by a valid reason, a statement from the local board of the Indonesian Notary Association, proof of payment for non-tax state revenue for reporting the Deed List, as well as other valid and acceptable evidence. The application must be submitted no later than 7 (seven) days from the date the disruption occurred. The proof of electronic reporting for the Deed List and Nihil List in specific circumstances must be submitted to the local Notary's Regional Supervisory Council.

The implementation of the electronic will deed registration system means that the Central Will Registry of the Sub-directorate of Inheritance, Directorate of Civil Affairs, no longer accepts manual submissions of will deed reports. If a Notary submits a will deed report manually, the report will not be recorded in the electronic will database. This failure to record the report leads to inaccurate information regarding the existence or non-existence of a will deed list at the Central Will Registry.

B. The Role of Consuls in Reporting Wills

A consul is an agent of a country abroad, but not a diplomatic agent. Their main duty in this capacity is to protect their country's commercial interests, but they typically perform various other tasks, such as creating notarial deeds, issuing passports to their citizens in the host country, granting visas to host country citizens who wish to visit the sending country, managing marriages, and exercising disciplinary jurisdiction over the crew of their country's ships (Rudy, 2011).

The legal basis for a consular representative to act as a notary is Article 8(c) of the Regulation of the Minister of Foreign Affairs Number 5 of 2018 concerning the Protection of Indonesian Citizens Abroad. According to Article 1, Paragraph (3) of the 1945 Constitution, a goal and obligation of Indonesia as a legal state is to develop national law in a planned, integrated, and sustainable manner within the national legal system. This is to ensure the protection of the rights and obligations of all Indonesian citizens, as outlined in the 1945 Constitution. Therefore, the creation of valuable, high-quality, and comprehensive laws must be done holistically, with inseparable philosophical, juridical, and sociological foundations (Gea, 2024).

The philosophical foundation is a consideration or reason that indicates a regulation is formed by taking into account the outlook on life, consciousness, and legal ideals that encompass the spiritual atmosphere and philosophy of the Indonesian nation, which is rooted in Pancasila and the Preamble of the 1945 Constitution (Laia & Daliwu, 2022). The Regulation of the Minister of Foreign Affairs Number 5 of 2018 was enacted with consideration for the principles of good governance and the evolving needs of society. This shows that the regulation seeks to reflect the values of Pancasila, especially the second principle (Just and Civilized Humanity) and the fifth principle (Social Justice for all Indonesian people), as well as the spirit of the Preamble of the 1945 Constitution, which emphasizes the importance of protecting the entire Indonesian nation, including those abroad.

The sociological foundation is a consideration or reason that indicates a regulation is formed to meet the needs of society in various aspects, representing empirical facts about the development of societal and national issues and needs (Khair, 2022). With increasing international interaction and global mobility, the number of Indonesian citizens working, studying, or living abroad is rising. Empirically, many problems faced by Indonesian citizens abroad require serious attention from the state. Based on these facts, society in this case, Indonesian citizens abroad needs protection from the state regarding various aspects, such as legal, social, and welfare protection.

The juridical foundation concerns legal issues related to the substance or subject matter being regulated, which necessitates the formation of laws and regulations (Agustina & Purnomo, 2023). At the constitutional level, the juridical foundation of the Regulation of the Minister of Foreign Affairs Number 5 of 2018 originates from the 1945 Constitution, specifically Articles 28A-28I and Article 27, Paragraph (1). Other key juridical foundations are Law Number 1 of 1982 concerning the Ratification of the Vienna Convention on Diplomatic and Consular Relations and Law Number 37 of 1999 concerning Foreign Relations.

The protection of Indonesian citizens abroad is carried out, among other things, by Consular Representatives. Consular protection is provided to ensure that the interests of Indonesian citizens are protected. One of the interests protected is related to wills, both in their creation, reporting, and execution. Indonesian citizens abroad can create wills in the form of authentic deeds in accordance with the regulations of that country, based on Article 945 of the Civil Code, which states: "An Indonesian citizen in a foreign country is not permitted to make a will, except with an authentic deed and by observing the customary procedures of the country where the will is made. Meanwhile, they are entitled to make a handwritten declaration based on and in the manner regulated in Article 935."

A will made by an Indonesian citizen abroad must first be legalized by the competent foreign authority. Based on Presidential Regulation of the Republic of Indonesia Number 2 of 2021, Indonesia joined the Apostille Convention, which eliminates the legalization requirement for foreign public documents. Then, on June 3, 2022, the Minister of Foreign Affairs of the Republic of Indonesia issued a Circular Note, where in its attachment, one of the public documents that can receive Apostille legalization is a Notary document. Therefore, if an Indonesian citizen wishes to legalize a document made abroad for use in Indonesia, they have two options. The first option is to perform non-Apostille legalization. The second option is to perform Apostille legalization.

Non-Apostille legalization for a document made abroad for use in Indonesia must first be legalized by a designated official at a representative or a designated official at a foreign state's representative, namely the Consulate General of the Republic of Indonesia. According to the website of the Consulate General of the Republic of Indonesia (KJRI) in Houston, Texas, Indonesian citizens residing in the United States who want to have a document legalized by the Consulate General of the Republic of Indonesia must ensure the document includes the applicant's passport number, the applicant's address in the United States, the applicant's name,

and a signature. In addition to the document with these requirements, the applicant must also send a photocopy of a valid passport, a photocopy of a valid permanent resident card (green card), a photocopy of an ID card or driver's license or another form of domicile, a photocopy of the document for which legalization is requested, and a signed waiver of liability form (KEMLU, 2025).

After obtaining prior legalization from the KJRI, Indonesian citizens can then apply for non-Apostille legalization by registering electronically through the STEMPEL ASLI (Sistem Pelayanan Legalisasi Kemlu Secara Elektronik - Ministry of Foreign Affairs Electronic Legalization Service System) application. The legalization applicant can fill out the required forms in the application, upload soft copies of all documents to be legalized, and provide a statement of responsibility for the accuracy of the legalization request and its use. The designated official will then verify the requested documents. If the application is approved, the applicant must make a payment. After making the payment, the applicant can proceed with printing the legalization sticker.

Apostille legalization abroad can be done at the competent authority of that country. For example, in the United States, the competent authority is the Bureau of Consular Affairs. According to the Bureau of Consular Affairs of the U.S. Department of State, to get an Apostille for a document to be used abroad, the document must first be legalized by a notary public (travel.state.gov, 2025). A notary public here is different from a Notary in Indonesia. The function of a notary public is to guarantee the authenticity of the signature of the person appearing before them. The document must also be translated into English by a certified translator, and the translation must also be legalized by a notary public (travel.state.gov, 2025). All signatures must also be original and not photocopies. If these conditions are not met, an Apostille cannot be issued for the document.

Considering the provisions in Article 11 of the Regulation of the Minister of Law and Human Rights Number 60 of 2016, after a will is made, it is reported to the Central Will Registry through the official website of the Directorate General of General Legal Administration. However, in practice, the notarial functions performed by consular affairs officials at Indonesian Representatives abroad have not been granted full authority. Although Article 8(c) of the Regulation of the Minister of Foreign Affairs Number 5 of 2018 gives consular representatives the authority to act as notaries, there is no implementing regulation or derivative of that provision that governs the procedures and other matters related to this authority.

Based on an interview with Mr. A, an ambassador, wills are made before a notary in that country and not before a consul. Mr. A stated, "the will deed is legalized by the Embassy of the Republic of Indonesia." Based on his statement, the Embassy of the Republic of Indonesia can only legalize the will that has been made. He was also unaware of the will registration regulated in the Ministry of Foreign Affairs Regulation, despite working as an Indonesian ambassador abroad. This statement is also supported by the response of Mr. Y, the sub-coordinator of the Central Will Registry at the Ministry of Law and Human Rights. He said that to date, there is still no definite clarification with the Ministry of Foreign Affairs regarding Article 8(c) of the Regulation of the Minister of Foreign Affairs Number 5 of 2018, because, according to him, no further regulations are available.

Furthermore, the researcher also interviewed Notary RS in Banjarmasin City. From the interview, Notary RS explained that there are three types of notaries: ordinary notaries, substitute notaries, and special notaries. Regarding the function of a consular representative as a notary, the consular representative can be classified as a special notary who only creates deeds for specific cases. However, Notary RS further explained that "a consular representative does not automatically become a special notary." To become a special notary, an appointment and

an oath of office must first be taken, and then the Consular Official will receive a Decree as a Special Notary.

Assuming the function of the consulate general as a notary can be exercised and is in accordance with Article 11 of the Regulation of the Minister of Law and Human Rights Number 60 of 2016, whose procedures are currently implemented, then the reporting procedure for a will made abroad is almost the same as for a domestic will. A will deed made by an Indonesian citizen abroad is reported to the Central Will Registry through the official website of the Directorate General of General Legal Administration. The will report will be sent as a copy to the Indonesian Representative Office in the local country. This will report must be submitted no later than 1 (one) month from the date the will deed was made. A fee will be charged for reporting the will in accordance with the provisions of the non-tax state revenue laws and regulations applicable at the Ministry of Law and Human Rights. The testator, heir, legal proxy, or notary is required to keep the will deed, proof of submission of the will report, and proof of payment for non-tax state revenue.

C. Review of the Status of Minister of Law and Human Rights Regulation Number 60 of 2016 Following the Enactment of Minister of Foreign Affairs Regulation Number 5 of 2018

Civil rights are everything that citizens must obtain or are entitled to fully and responsibly. The 1945 Constitution guarantees the fundamental rights of every citizen. Every individual as a citizen has equal rights and obligations under the law and before the government, without any discrimination (Ruhianti et al., 2023). Article 27, Paragraph 1 of the 1945 Constitution of the Republic of Indonesia, states that every individual as an Indonesian citizen has an equal position in terms of law and government, and has the obligation to obey said law and government without exception.

The concept of justice is often associated with law. This is understandable because the law is an effective means of social control to prevent or address all forms of injustice that occur in society. Essentially, the meaning of justice includes two things: the meaning related to the nature of justice and the meaning related to the content or norms for acting concretely in certain circumstances. The essence of justice is the evaluation of a treatment or action studied based on a norm from a subjective point of view (for the benefit of a group, class, etc.) that exceeds other norms (Butarbutar, 2009).

Aristotle distinguished justice into commutative justice (*justitia commutativa*) and distributive justice (*justitia distributiva*). Commutative justice is justice that equates performance with counter-performance. Distributive justice (*justitia distributiva*) is a form of justice where everyone receives a proportional right/share according to their quality (Butarbutar, 2009). Thus, it can be understood that distributive justice is a concept of justice that focuses on the proportional distribution of rights, resources, and obligations to every individual in society, according to their needs, contributions, or social position. In positive law, distributive justice requires the state to guarantee equal access to fundamental rights, without discrimination, and to provide different treatment to parties with different needs or conditions, as long as it is proportional and rational under the law.

In this regard, the state cannot treat Indonesian citizens abroad and at home identically due to differences in situations, access, and legal and administrative needs. Therefore, the state is obliged to distribute services and protection proportionally, not uniformly. For example, the state must allocate additional funds for diplomatic services and legal assistance abroad, even though the Indonesian citizens in question do not reside in Indonesia. This action is a manifestation of distributive justice, where different treatment is given to achieve substantive equality, not just formal equality.

Every citizen has constitutional rights, which are rights guaranteed by the Constitution. With these constitutional rights, the state has a constitutional obligation to protect all Indonesian citizens. This constitutional obligation of the state is outlined in the Preamble of the 1945 Constitution of the Republic of Indonesia, Fourth Paragraph, which states that the state is obliged to protect the entire nation, implement general welfare, intellectualize the nation's life, and carry out world order based on independence, eternal peace, and social justice.

To ensure the constitutional rights of Indonesian citizens are guaranteed in relation to inheritance through a will, the state not only regulates the creation of will deeds carried out by a Notary as the authorized official but also the reporting of the will deeds. The purpose of reporting a will deed is to ensure that every will deed made can be accessed and executed properly. This reporting of will deeds is regulated in the Minister of Law and Human Rights Regulation Number 60 of 2016 concerning Procedures for Reporting Wills and Applying for the Issuance of Electronic Will Certificates. The regulation not only regulates the reporting of wills for Indonesian citizens in Indonesia but also for Indonesian citizens residing abroad. This is regulated in Article 11, paragraphs (1) through (6). Article 11, paragraph (1) states that in the event a will is made by an Indonesian citizen abroad, the testator, the heir, or their legal proxy can report the will to the Central Will Registry through a Notary in Indonesia. With this, Indonesian citizens abroad must return to Indonesia and visit a Notary to report the will.

Two years after the Minister of Law and Human Rights Regulation Number 60 of 2016 was enacted, specifically on September 19, 2018, the Minister of Foreign Affairs Regulation Number 5 of 2018 concerning the Protection of Indonesian Citizens Abroad was enacted to achieve distributive justice. Article 8, letter c of the Minister of Foreign Affairs Regulation Number 5 of 2018 states that a consul can act as a Notary and civil registrar or in a similar capacity to perform certain administrative tasks as long as it does not conflict with the laws of the local country. Thus, the reporting of wills for Indonesian citizens abroad does not have to be done only through a Notary in Indonesia but can also be done by a consular representative. From this explanation, it can be understood that there are two regulations that regulate the same thing.

A 'inherent' problem of a legal state is regulatory disharmony caused by an excessive number of regulations being formed, known as *hyper-regulations* or popularly called "legal obesity" (Chandranegara, 2019). The theory of legal validity according to material can be used to examine the status of both regulations. This theory can be used because the law applicable to an act depends on the matter or issue being regulated. The Minister of Foreign Affairs Regulation Number 5 of 2018 was specifically created to provide protection and convenience for Indonesian citizens abroad. When linked to the issue of reporting will deeds for Indonesian citizens abroad, it can be seen that the regulation in the Minister of Foreign Affairs Regulation Number 5 of 2018 better meets the needs of Indonesian citizens abroad. In addition, considering the philosophical, sociological, and juridical foundations of its formation as previously explained, the theory of legal validity suggests that Article 8, letter c of the Minister of Foreign Affairs Regulation Number 5 of 2018 can be considered valid and binding within a legal system.

Furthermore, to determine the status of the Minister of Law and Human Rights Regulation Number 60 of 2016 after the enactment of the Minister of Foreign Affairs Regulation Number 5 of 2018, the principle of *lex specialis derogat legi generali* can be used, which means that a specific law (legal norm/rule) overrides the applicability of a general law (legal norm/rule). Specificity is prioritized over general regulation, and it is undisputed that anything related to a specific matter is of utmost importance. The rationale for prioritizing special law is that a special legal rule is certainly more relevant, compatible, and better suited to the needs of a more specific legal subject that a general legal rule cannot reach. It is possible that, since its formation, a special legal provision was intentionally created with the potential

to deviate from a general provision, with the aim of supplementing or even correcting the general legal provision. This aligns with the view of the famous utilitarian legal philosopher, Jeremy Bentham, who said that special provisions are made based on a closer and more precise view of the subject than general provisions, which can be considered a correction (Trachtman, 2013).

Professor Bagir Manan in his book "Hukum Positif Indonesia," as quoted by A.A. Oka Mahendra in his article titled "Harmonisasi Peraturan Perundang-undangan" (Harmonization of Laws and Regulations), stated that there are several guidelines that can be used to apply the principle of *lex specialis derogat legi generali*, which are as follows (Tindoo, 2024):

1. The provisions found in a general legal rule remain in effect, except for those specifically regulated in the special legal rule;
2. The *lex specialis* provision must be on the same level as the *lex generalis* provision (for example, a law with a law); and
3. The *lex specialis* provision must be within the same legal environment (regime) as the *lex generalis*. For example: the Commercial Code is *lex specialis* of the Civil Code because it is within the same legal environment, namely civil law.

Based on these three provisions, if we refer to point 1, Article 11, paragraph (1) of the Minister of Law and Human Rights Regulation Number 60 of 2016 regulates the reporting of will deeds for Indonesian citizens abroad, while other articles in the same regulation also regulate the reporting of will deeds for Indonesian citizens in Indonesia. If we look at the foundations for the creation of the Minister of Foreign Affairs Regulation Number 5 of 2018 as explained above, then the presence of the Minister of Foreign Affairs Regulation Number 5 of 2018 is to facilitate Indonesian citizens abroad for the sake of achieving justice for all Indonesian citizens.

In the Minister of Foreign Affairs Regulation Number 5 of 2018, regarding wills, it only regulates for Indonesian citizens abroad, so other rules can still be applied as regulated in the Minister of Law and Human Rights Regulation Number 60 of 2016. Specifically for the reporting of will deeds for Indonesian citizens abroad, if we look at the philosophical, sociological, and juridical foundations of the formation of the Minister of Foreign Affairs Regulation Number 5 of 2018, then Article 8, letter c of the Minister of Foreign Affairs Regulation Number 5 of 2018 is considered more appropriate to apply in this regard.

The Minister of Law and Human Rights Regulation Number 60 of 2016 was issued by the Ministry of Law and Human Rights. Meanwhile, the Minister of Foreign Affairs Regulation Number 5 of 2018 was issued by the Ministry of Foreign Affairs. Since both regulations were issued by Ministries, they have the same status in the legislative hierarchy. This is in accordance with the provision in point 2. Furthermore, by considering what is regulated in Article 11, paragraph (1) of the Minister of Law and Human Rights Regulation Number 60 of 2016 and Article 8, letter c of the Minister of Foreign Affairs Regulation Number 5 of 2018, both are within the same legal environment (regime). The similarity of regulations related to the reporting of will deeds for Indonesian citizens abroad is also in accordance with the provision in point 3.

The application of a special law over a general law must always be done partially, so that the general legal norm will remain in effect as a background that provides direction for the legal interpretation of the special norm. The special legal norm is an exception to the general legal norm. This special legal norm creates a "legal gap" in a general legal regulation or norm, because the special legal norm has a more concrete and specific scope of regulation, so it can partially derogate the general legal provision (Kammerhofer, 2010).

Another way to determine whether a legal rule is a special rule is by looking at the antecedent of the rule. In this case, the principle of *lex specialis derogat legi generali* is used as an argumentative tool that seems to rearrange the systematic meaning of the general norm

so that the general norm does not conflict with the special norm. A norm is declared a special norm if its antecedent contains at least one key factor that is not intended by the general norm (Araszkievicz & Pleszka, 2015).

When linked to this problem, Article 11, paragraph (1) of the Minister of Law and Human Rights Regulation Number 60 of 2016, which regulates the reporting of will deeds through a Notary in Indonesia, can be considered the antecedent of norm-1. Meanwhile, Article 8, letter c of the Minister of Foreign Affairs Regulation Number 5 of 2018, which regulates that a consul can act as a Notary so that the reporting of will deeds can be carried out by a Consular Official, can be considered as norm-2. A conflict between these two norms arises if it is interpreted that the antecedent of norm-1 as a general norm implies that the reporting of will deeds for Indonesian citizens abroad can only be carried out by a Notary, and does not provide a way for a Consular Official to exercise the authority given to them to act as a Notary. If interpreted this way, norm-1 clearly conflicts with norm-2. However, based on the principle of *lex specialis*, norm-2 can be interpreted as a special norm because its antecedent has a key factor not found in norm-1. The antecedent "through a Notary in Indonesia" in norm-1, in norm-2 has a key factor not found in norm-1, namely "Consular Official."

Lex specialis can very well be formed after a general rule is already in effect. In this situation, the application of the *lex specialis* principle can help simplify the process of forming special regulations later on. The formation of a special rule is not hindered by a pre-existing general rule because the special rule is prioritized in its applicability over the general rule.

When linked to this problem, if norm-2 is not interpreted as *lex specialis*, then of course norm-2 could not have been formed before norm-1 was first adjusted, for example, to "Indonesian citizens abroad can report will deeds through a Notary in Indonesia or a Consular Official in the country of domicile." If norm-1 and norm-2 were in the same regulation, this would not be a problem because the adjustment of norm-1 to norm-2 could be done simultaneously in the formation of that regulation.

From the explanations above, the author can analyze the status between the Minister of Law and Human Rights Regulation Number 60 of 2016 and the Minister of Foreign Affairs Regulation Number 5 of 2018 using the principle of *lex specialis derogat legi generali*. Regarding the reporting of will deeds for Indonesian citizens abroad, the Minister of Law and Human Rights Regulation Number 60 of 2016 has the status of *lex generalis*. Meanwhile, the Minister of Foreign Affairs Regulation Number 5 of 2018 has the status of *lex specialis*. Therefore, in this regard, the status of the Minister of Foreign Affairs Regulation Number 5 of 2018 is prioritized. Indonesian citizens abroad should be able to report will deeds through a consular official in the country where they reside for the convenience of Indonesian citizens abroad and to achieve justice.

CONCLUSIONS

Notaries are obligated to report will deeds to the Central Will Registry within the first five days of each month. The reporting of will deeds for Indonesian citizens abroad is regulated by two different rules. Article 11, paragraph (1) of the Minister of Law and Human Rights Regulation No. 60 of 2016 requires reporting to be done through a Notary in Indonesia, while Article 8, letter c of the Minister of Foreign Affairs Regulation No. 5 of 2018 states that it can be done by a Consular Representative. When examining these two regulations based on their content and applying the principle of *lex specialis derogat legi generali*, Minister of Law and Human Rights Regulation No. 60 of 2016 is considered the general law (*lex generalis*) and Minister of Foreign Affairs Regulation No. 5 of 2018 is considered the specific law (*lex specialis*). Therefore, the provisions in Minister of Foreign Affairs Regulation No. 5 of 2018 take precedence when it comes to the reporting of will deeds for Indonesian citizens residing abroad.

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