# LEGAL RATIO OF REPORTING OF A DEED OF TESTAMENT BY A NOTARY TO THE DEPARTMENT OF WILLS CENTRAL REGISTRY OF THE MINISTRY OF LAW AND HUMAN RIGHTS OF THE REPUBLIC OF INDONESIA

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## ABSTRACT

*A testament is one way to obtain a disposition of inheritance with a deed of will that shall be made before a Notary Public and shall be reported by the Notary to the Department of Wills Central Registry within the period between the 1st to the 5th of the following month. However, a problem arises when the problem of a will maker passed away long before the will is reported, so that the Certificate of Inheritance Rights does not include the name of the heir through ad-testamento, as it is explained in a letter from the Civil Director that the will is not registered. Addressing this phenomenon, this study highlights these issues: (1) What shall be the urgency of the legal regulatory on a reporting of a deed of will to the Department of Wills Central Registry? (2) What are the legal consequences for the community if the will is not reported to the Department of Wills Central Registry? Reviewing these two problems, this study was conducted using primary and secondary legal materials, and by making use of statute and case approaches. Legal material was analyzed using the concept of responsibility, theories of legal certainty and legal validity with a deductive reasoning method.*

**Keywords**: Deed of Testament, Reporting, Notary.

## INTRODUCTION

By law, the rights and obligations of a person who has passed away pass on to their heirs. Determining a person to be an heir is based on the inheritance legal provisions they adhere to. In Indonesia there are three inheritance laws that apply, namely, Customary Inheritance Law, Islamic Inheritance Law and Civil Inheritance Law (Western Inheritance Law). Thus there is a pluralism of inheritance legal systems in force in Indonesia. The categorization and classification of the population, especially in relation to the enforceability of inheritance law, do not actually have the intention to divide a population; however, it is something that is sociological and cultural arising from the beliefs of each person (Law, 2011).

According to the Civil Inheritance Law system, the legal basis of heirs is that they are permitted to inherit a number of heir assets through two ways, namely (1) according to the provisions of the law (ab intestato or wettelijk erfrecht), and (2) through the appointment in a will (erfrecht testamentair) (Soerjono, 1983).

Every deed of testament shall be made before a Public Notary and after it is made, the concerned Notary public shall be obliged to report the making of the intended will to the Department of Wills Central Registry at the Ministry of Law and Human Rights of the Republic of Indonesia. The reporting on the making of the will shall only be validated within the first to the fifth day of the following month from the month of the issuance of the will itself.

A testament refers to the last will of a person to transfer his rights or property, and obligations to those rights or property to another person, which only applies after the death of the will-maker. Noting the provisions regarding the reporting of the will as previously mentioned, there is an opportunity for a study to be conducted, especially to uncover two important issues, namely: What shall be the urgency of the legal regulatory on a reporting of a deed of will to the Department of Wills Central Registry? What are the legal consequences for the community if the testament is not reported to the Department of Wills Central Registry? The present study addresses these two issues.

## RESEARCH METHOD

This study employs the normative legal research method, which specifically examines the legal ratios of Notary's report to the Department of Wills Central Registry regarding the making of a testament. Using this type of normative juridical research, the data in this study are in the form of primary and secondary legal materials. There are two approaches applied to study the issues pointed out in this study, namely statute and case approaches. Legal materials are analyzed using the concept of responsibility, the theories of the legal validity and legal certainty with a deductive reasoning method.

## RESULTS AND DISCUSSION

### Duties and Responsibilities of a Notary in the Making of a Deed of Testament

Subekti claimed that a testament refers to a statement from someone regarding what they want to happen after their death. Basically such a statement is made by only a party (eenzijdig) and, at any time, can be withdrawn by the maker of them. Thus, this implies that not everything a person wants, as contained in the deed of will, is also permissible to be undertaken (Subekti, 2011).

The will, which is also called a certificate of will, according to Article 875 of the Civil Code (or the term in Indonesia abbreviated as KUHPerd) refers to a deed of statement of a person on what he wants to happen after his death, and by him the statement is also permitted to be withdrawn. Furthermore Article 938 of the KUHPerd determines: Each certificate of will with a public deed shall be made before a notary public in the presence of two witnesses.

Grouded by these provisions, a will shall be made before a Notary, with the legal provisions stipulated in Article 16 paragraph (1) letter i of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Position (in Indonesia termed as an abbrevation UUJN-P). In the Act, it is prescribed: In taking effect of their position, each Notary shall be obliged to make a register of Deeds relating to the testatement according to the order in which the Deed is made every month. In Article 16 paragraph (1) letter j of the same Law, it is determined that the Notary shall be obliged to send a list of Deed as referred to in letter i or a

zero list relating to a will to the central register of wills in the ministry in charge of executing government affairs in the legal field within 5 (five) days of the first week of the following month. Further Regulation of the Ministry of Law and Human Rights of the Republic of Indonesia Number 60 Year 2016 concerning Procedures for Reporting Testaments and Applications for the Issuance of Electronic Testaments (in Indonesia, known as Permenkumham No. 60 of 2016), determines in Article 2 paragraph (2): Register of Deed or Zero List as referred to in paragraph (1) shall be reported to the Central Register of Wills. Article 3 paragraph (2): Reporting on the Deed List or Zero List as referred to in paragraph (1) shall be submitted no later than 5 (five) days within the first week of the following month.

Accordingly, the duties and responsibilities of a Notary in making a deed of will include reporting the making of a deed of will or certificate of testament to the Department of Wills Central Registry no later than five days, which is within the first week of the following month from the time the deed is issued. It means that the said report is validated to be submitted by the Notary only within five days, from the first to the fifth day of the subsequent month.

The duty of reporting the deed of will made by a Notary Public to the Department of Wills Central Registry is one of underlying responsibilities of a Notary. If it is ignored, the sanction will be imposed on the Notary concerned. Sanctions for default of such a Notary are based on the provisions of Article 10 paragraph (2) of Permenkumham Number 60 of 2016 determining: Notaries who do not report the Deed List or Zero List shall be subject to sanctions in accordance with statutory provisions. Sanctions for Notaries who do not report are stipulated in Article 16 paragraph (11) of UUJN-P, which determines: Notaries who break the rules of the provisions referred to in paragraph (1) letter a to letter l shall be subject to sanctions in the form of: (1). written warning; (2) temporary dimissal; (3) Respectful dismissal; (4) disrespectful dismissal.

The existence of the rule of law, which regulates the duties and responsibilities of a Notary Public obliging them to report the making of a deed of will and is liable to sanctions if they ignore it, shows that such a condition is consistent with the concept of legal liability put forward by Hans Kelsen. According to Hans Kelsen, a person legally responsible for a particular act or that they bear legal liability shall represent that they are responsible for sanctions towards contradictory acts they commit (Kelsen, 2007).

## Urgency and Legal Consequences of Reporting a Deed of Testament

### Urgency of reporting a deed of testament

Bequeathing property can take place due to an appoinment by law or what is called ab-intestato bequeathing. In addition, bequeathing can also occur under the will of the testament-maker through making a testament which is then called ad-testamento bequeathing (Hartando, 2015).

One legal basis is that a heir is permitted inherit a number of a testament-maker’s assets according to the civil inheritance law is a provision governing that inheritance is permitted to be executed through a deed of testament, which means that the beneficiary receives it through obtaining a will. Thus, the beneficiary is the heir of the legatee. According to Article 111 paragraph (1) letter c number 4), the second part of the Regulation of the Ministry of Agrarian Affairs/Head of the National Land Agency of the Republic of Indonesia Number 3 of 1997

concerning Provisions for Implementing Government Regulation Number 24 of 1997 concerning Land Registration, specifies: Application for registration of transfer of rights to land or Ownership Rights in the Flats shall be submitted by the heirs or their attorneys by attaching a letter of evidence as heirs which can be: for Indonesian citizens of Chinese descent: Certificate of Inheritance Rights from a Notary.

Notary has been given the authority to issue a Certificate of Inheritance Rights. Notwithstanding, before making a Certificate of Inheritance Rights requested by the public, a Notary shall first ask for a State Declaration regarding Testament Existence from the Department of Wills Central Registry regarding whether the deceased had made a will. A State Declaration regarding Testament Existence according to Article 1 number 6 of Permenkumham No. 60 of 2016 refers to a letter whose contents record whether or not a testament deed was made before a Notary that has been reported to the Central Register of Wills. Furthermore, Article 12 determines: a State Declaration regarding Testament Existence is submitted by the Applicant electronically to the Central Register of Wills through the official website of the Directorate General of General Law Administration.

After the application has been completed, in conjunction with the provisions in 15 paragraph (2), the Civil Director shall issue a State Declaration regarding Testament Existence, the contents of which are regulated according to the provisions of Article 17 which are as follows:

A State Declaration regarding Testament Existence can be in the form of statement:

1. Concerning non-registration of a will in the name of the person of which the state declaration being requested;
2. Concerning the registration of a will in the name of the person of which the state declaration being requested.

A State Declaration regarding Testament Existence, in the form of statement as referred to in paragraph (1) letter b, shall lists all the deeds of wills reported and shall have been registered in the Central Register of Wills database.

From the description above, it can be concluded that every deed of testament made by a person before a Notary shall be reported to the Department of Wills Central Registry. Thus, all the same deeds made before a Notary have been registered in one storage place, that is, the Department of Wills Central Registry, so that if a Notary will make a Certificate of Inheritance Rights at the request of the public, they will retrieve complete information about whether or not the concerned deceased have made a deed of will. Accordingly, the urgency of Notary's reporting on the deeds of wills lies in the purpose of making the will be registered to the Central Reegister of Wills. Consequently, whenever there is a need to make a Certificate of Inheritance Rights, the Notary Public can obtain accountable data regarding whether or not a testament exists.

## Legal consequences for the community if an issued deed of will is not reported to the department of wills central registry

It has been stated in the previous sections that the Notary who makes a will shall report the testament within 5 days, i.e. from the 1st to the 5th of the following month from the month of

the issuance of the intended deed. As an illustration, Mr. A appeared before Notary B in city X on April 1, 2020 to make a deed of will containing: If he dies, part of his wealth shall be given to Ms. Ana; accordingly, Notary B is required to report the will to the Department of Wills Central Registry within 5 days, from 1 to 5 May 2020. However, it turns out that on 3 April 2020 Mr. A passed away. Then, on April 10, 2020 his heir came before Notary C in city Y to make a Certificate of Inheritance Rights. With regard to his duties, Notary C submitted a request for a State Declaration regarding Testament Existence to the Department of Wills Central Registry and on May 20, 2020. Unfortunately, Notary C in city Y received data that in the Central Register of Wills there was no deed of testament in the name of Mr. A registered and signed by the Civil Director.

Getting wind of that Mr. A did not make any deed of wills, Notary C in city Y issued a Certificate of Inheritance Rights on behalf of the late Mr. A as the legatee and with heir that was only an ab-intestato heir, which in other words, a hair on behalf of Ms. Ana was not listed as an ad-testamento heir. Such a condition must occur because Notary B in city X, where Mr. A made a deed of will on April 1, 2020, is only required to report the will he made within the period of 5 days, starting from 1 to 5 May 2020, whereas the request for the State Declaration Regarding Testament Existence by Notary C in city Y was made on April 10, 2020, on which date there was no reporting of Mr. A's testamentary deed by Notary B in the city X (Eman, 2005).

As a matter of fact, in Article 13 paragraph (4) of Permenkumham No. 60 of 2016 has been determined:

If a devisee, to which a state declaration regarding the testament existence is being proposed to be made, dies before the reporting time as referred to in Article 3 paragraph (2), the Applicant shall not be permitted to submit an application for a state declaration of testament within 30 (thirty) days, starting from the date of death of the person of which a testament being requested to be made.

Even so, it is not possible for Notary C in city Y to know that Mr. A has made a deed of will if it has not been reported by Notary B in city X. Not only that, a will is a statement of the last will that is confidential, and therefore, the heir of Mr. A did not notice about the existence of the testament.

Understanding the provisions in Article 3 paragraph (2) of Permenkumham No. 60 of 2016 reveals that these provisions are contradictory when analyzed using Sudikno Mertokusumo's Legal Certainty theory stating: *"Legal certainty refers to a legal protection against arbitrary actions, which means that a person will be able to obtain something expected under certain circumstances"* (Mertokusumo, 2008). With Mr. A made a will, Ms. Ana should receive some of the assets of the late Mr. A; however, since the reporting on a deed of will specified in Article 3 paragraph (2) requires quite a long time (in the example of the case above more than 30 days), Ms. Ana finally did not get anything that should have belonged to her.

In addition, the provisions of Article 3 paragraph (2) and Article 13 paragraph (4) of the Permenkumham No. 60 of 2016 is contradictory when analyzed using the theory of legal effectiveness of Soerjono Soekanto, which states that the effectiveness of a law is determined by five factors, one of which is the legal factor itself (Soekanto, 2008) and the effectiveness measure of the legal factor itself, one of which is that qualitative and quantitative rules governing certain areas of life are sufficient (Soekanto, 2008). In terms of the legal factor itself, the provisions of the two articles above are essentially insufficient, because if Article 3 paragraph (2)

is applied it can be detrimental to Ms. Ana, while Article 13 paragraph (4) cannot be applied due to natural human limitations in the form of being not able to notice something that has not been disclosed to them or witnessed by them.

## CONCLUSION

Based on what has been described above it can be concluded that:

1. The urgency of reporting a certificate of will by a Notary is so that the certificate of will is registered, so that whenever the certificate is needed for the purpose of drawing up a legal heir certificate, the Notary will get information that can be accounted for on whether or not a will exists.
2. The reporting of a certificate of will by a Notary to the specified Central Register of Wills Section is contrary to the theory of legal certainty and the theory of law enforcement, which can potentially harm certain communities.

## RECOMMENDATIONS

Based on the conclusions above, the following suggestions can be made: It is suggested that the Ministry of Law and Human Rights of the Republic of Indonesia:

1. Repeal the provision of Article 3 paragraph (2) of the Regulation of the Minister of Law and Human Rights No. 60 of 2016 and replace it with the following: The reporting of a certificate of will by a Notary to the Central Register of Wills Section shall be done within 24 hours from the conclusion of the certificate of will.
2. Remove the provision of Article 13 paragraph (4) of the Regulation of the Minister of Law and Human Rights No. 60 of 2016 as they are no longer needed if the notary reports the certificate of will within 24 hours from the conclusion of the certificate of will.

## APPENDIX

### Code of Civil Law

Law Number 2 of 2014 concerning Amendment to Law Number 30 of 2004 concerning Notary Position (LN. 2014-3, TLN. 5491).

Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency of the Republic of Indonesia Number 3 of 1997 concerning Provisions for Implementing Government Regulation Number 24 of 1997 concerning Land Registration.

Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 60 Year 2016 concerning Procedures for Reporting Testaments and Applications for the Issuance of Electronic Testaments (BNRI. 2016-2127).

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