

Validity of the Certificate of Inheritance Rights Made by a Notary



Ni Kadek Purnama Dewi¹, Ni Luh Made Mahendrawati², Ni Made Jaya Senastri³

^{1,2,3}Warmadewa University & Terompong No. 24, Sumerta Kelod, Bali 80239

ABSTRACT: This scientific paper reviews the position of a Notary in helping to resolve inheritance cases through the preparation of an inheritance statement that reflects the official duties as a factual instrument used to protect the perfection of the inheritance and the use of materials that explain who the heirs are and how much each heir's share is. One of the factual instruments that reports a person as a recipient of inheritance is the Inheritance Deed. An inheritance deed is needed by the recipient of the inheritance in managing the transfer of rights to the inheritance to distribute the inheritance. Inheritance deeds for Indonesian citizens of Chinese (European) descent are made by a Notary, so that the form of the deed can be made in the form of a Partial Deed and an Ambtelijke Deed because both forms of the deed are together forms of authentic deeds that can be made by a Notary and the regulations binding on the making of the deed do not clearly explain the form of an authentic deed that is prioritized for making an Inheritance Deed. Both forms of the Deed also have full checking authority. The inheritance deed corrects the Notary's legal opinion based on the actual legal reality. Although there are no provisions regarding the presence of all recipients of the inheritance, a notary cannot harm the rights and benefits of recipients of the inheritance who do not appear in the deed making process.

KEYWORDS: Deed Of Inheritance, Heirs, Notary.

I. INTRODUCTION

Background

When taking legal action against the inheritance of the testator, the heirs often want a certificate of inheritance. A certificate of inheritance is a letter that can be used as a basis by the heirs if they have the authority to take special legal action against the inheritance left by the testator that has not been divided. One of the legal actions that can be tried by the heirs is the method of registering the transfer of land rights tried by the heirs. Inheritance law itself is made so that citizens have legal clarity regarding who has the authority and who does not to allocate the inheritance of the testator. A Certificate of Inheritance Rights or what is commonly called a Deed of Inheritance ("SKW") is a letter containing information made by a Notary regarding the parties who are the heirs of a testator. The SKW itself is made so that the heirs can clearly identify whether there are assets in the form of inheritance, whether there is a mandate letter left by the testator, what is the last marital status of the testator, who are the parties who can receive the inheritance, the calculation of the amount of the inheritance portion and also the calculation of the portion that is always (legitimieme portie) for the heirs. Based on that, the Notary has a great responsibility to divide the inheritance of the heirs to be obtained and stated in the SKW. The Certificate of Inheritance is very important, especially when registering the transfer of land rights, because the certificate of inheritance is a genuine fact that someone is a legal heir. (Effendi Perangin, 2018, 84).

Notary as one of the parties who has the right to issue a Certificate of Inheritance is an ordinary official appointed by the government to assist citizens in making deeds that exist or arise in the community. The need to make this deed before a Notary is to ensure legal clarity and fulfill the law of strong evidence for the parties. Checking the authentic deed and statements from 2 supporting witnesses brought by the person who is directing. The authentic deed and the witness's statements will be the basis for making a Certificate of Inheritance Rights. The Notary must carefully check all the deeds and match them with what is presented by the supporting witnesses (people who are close to the testator's family; close blood relatives are not prohibited from being witnesses) (R. Subekti, 2005, 25). Negligence in the Certificate of Inheritance Rights can be caused by, among other things, the contents of the deed and/or the deed submitted by the person who is directing or the heir being incorrect or illegal, illegal

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statements from supporting witnesses and the Notary committing negligence in implementing the articles of inheritance law. In connection with this incident, the legal case in this research is the Validity of the Deed of Inheritance Rights made by a Notary.

II. METHOD

The type of research used in this research is a normative research type, where this type of research is tried to be based on law as a whole unit by studying the design, philosophy, and legal basis and recorded or unrecorded regulations that are related to this research. The normative research type is legal research that studies recorded law from various perspectives, namely historical, philosophical, metaphysical, analogous, form and layer, scope and module, stability, common description, and the like in addition to studying the view of its application, as a result it can be said that this type of normative research can also be said to be theoretical legal research. (Irwansyah, 2020, 21).

III. RESULTS AND DISCUSSION

a. Regulation of Notary's Authority in Making Certificate of Inheritance Rights

Notaries as public officials who are authorized by the state to make original deeds have a very significant role in making inheritance certificates. To analyze the authority of Notaries in making inheritance certificates for Indonesian Citizens, it needs to be analyzed based on the philosophy of authority with an analytical understanding method, namely interpreting laws and regulations by connecting them with other laws and regulations or with the totality of the legal system. (Sudikno Mertokusumo, 2014, 88). Based on the philosophy of authority, every action of the ruler and/or public officials must be based on legal authority. This authority is obtained through 2 sources, namely attribution and granting (Delegation and Mandate).

Remembering the presence of a certificate of inheritance is very important, so it needs to be made in a form that is legalized by law (authentic) in order to have perfect legal force. Therefore, based on the analytical understanding procedure, in this case a certificate of inheritance made in the form of an authentic deed meets the provisions of Article 1870 of the Civil Code which explains: "For the person concerned and his heirs or for the person who receives rights from them, an authentic deed provides perfect facts about what is stated therein". Through the relationship between all the regulations described in an analytical manner, the Notary's authority in making a certificate of inheritance in the form of an authentic deed is the authority of attribution, namely the granting of the latest authority to a position based on statutory regulations or legal provisions. Through the philosophy of this attribution authority, the Notary gets the basis of authority from Article 15 of the UUJN. This legal basis can be used as a basis for making a certificate of inheritance. As a result, based on this law, a notary can create a legal form of inheritance certificate or inheritance rights deed for all Indonesian citizens who need it without being based on Dutch law based on differences or groupings of society.

The authority of a Notary in making a certificate of inheritance for Indonesian citizens is based on the provisions of Article 15 of the UUJN, as a result, a certificate of inheritance for Indonesian citizens is made in the form of an authentic deed. To try whether the certificate of inheritance rights made by a Notary is an authentic deed, it needs to be reviewed from the Philosophy of Legal Clarity through an analytical approach. Clarity is a characteristic that cannot be separated from the law, especially for recorded legal norms. Law without clarity will lose its meaning because it can no longer be used as a principle of behavior for each person. Clarity itself is said to be one of the objectives of law.

b. Notary's Responsibilities in Making Certificates of Inheritance Rights

The responsibility borne by a Notary adheres to the basis of responsibility based on errors or negligence, in making an authentic deed, the Notary must be responsible if in the deed he made there is an error or intentional violation by the Notary. Conversely, if the error or violation factor is woven from the parties that appear, so as long as the Notary carries out his authority in accordance with legal provisions, the Notary concerned cannot be held responsible, because the Notary only writes what is informed by the parties to be stated in the deed. Illegal information informed by the parties is the responsibility of the parties. (Andi Mamminanga, 2008, 32). Based on the relationship between responsibility, role and reward for Hans Kelsen's philosophy with the authority, role and purity of the Notary's deed based on the UUJN, it can be explained that the Notary's legal responsibility in making the parties' deeds can be divided into 3 forms of responsibility, namely: administrative responsibility, civil responsibility, and criminal responsibility by the Notary. (Hans Kelsen, 2008, 140). The responsibility of a Notary in carrying out his/her duties also has limits. Applicants who have bad intentions often make efforts to deceive the Notary, for example, to make a Certificate of Inheritance Rights, the applicant brings an illegal Birth Certificate so that it seems as if the applicant is the heir of the testator and has the authority to accept the inheritance. The Notary who makes the Certificate of Inheritance Rights should instruct the applicant or heir to bring all deeds related to inheritance matters. The Notary then carries out an inspection to ensure that the contents of the documents are not contradictory. Applicants who have bad intentions must be responsible if later on there is a

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conflict due to the illegal Birth Certificate, the applicant will be charged with Article 263 of the Criminal Code concerning manipulation of deeds. The Notary who makes the Certificate of Inheritance Rights is not responsible jointly and severally because the Notary does not have a role in checking the validity of the deed brought by the applicant so that from the start he/she does not know that the applicant has manipulated his/her Birth Certificate. The Notary is also not responsible for the contents of the deed made in front of him/her. The notary is only responsible for the official form of the authentic deed in accordance with the provisions of Article 38 of the UUJN.

CONCLUSION

1. The regulation of the authority of a Notary in the Civil Code does not clearly regulate the authority of a Notary in making a Certificate of Inheritance, but is based on the authority of a Notary regulated in the UUJN which is so large in making deeds regarding all actions, that it can be used as a basic principle for a Notary to make a Certificate of Inheritance not only those that have so far been based on customary law. A Notary has a certain form of authority to make an authentic deed where in terms of the weight of evidence, an authentic deed has a form of evidence that can be said to be perfect. A Notary who is an ordinary official also helps in providing legal clarity to an individual or group in making a contract because a Notary is given the authority to make a deed that has strong legal force, namely an authentic deed.
2. The responsibility of the Notary in making a certificate of inheritance can be linked to the manipulation of the letter attempted by the parties in making a Notarial deed for the Notary's Position Law is when the Notary in carrying out his position is proven to have committed a violation, so the Notary is responsible in accordance with the actions he has done, both responsibility from the field of State Administrative Law, Civil Law, but in the UUJN and the UUJN Amendment Law does not regulate the existence of criminal sanctions. Violation of the sanctions is then qualified as a criminal act committed by the Notary. The aspects above are closely related to the Notary's actions in violating the authority of a Notary, if the Notary does not carry out his authority until it will cause the formation of manipulation or manipulation of the deed as a result it can cause losses for the parties concerned.

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