

Legal Implications of Making a Certificate of Inheritance That Does Not Match the Heirs' Statement

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Abstract. *This study aims to analyze: 1) The legal implications of making a certificate of inheritance that does not match the information of the heirs can be considered invalid or does not have sufficient legal force to determine a person's inheritance rights. However, the Certificate of Inheritance is still valid as long as it is not stated that the deed is invalid by the Court Judge. Making a certificate of inheritance that does not match the information of the heirs will have legal implications. However, it does not have any legal consequences for the Notary, because the Notary is only a public official who is authorized to make a deed according to the information or wishes or legal acts given by the parties. 2) The notary's responsibility for making a certificate of inheritance that does not match the information of the heirs will not have legal consequences for the notary himself and the notary cannot be held accountable for anything, the party in the deed is responsible if the deed contains incorrect information, because the contents of the deed are the will of the parties, not the Notary. Except if the Notary participates in making incorrect information in order to gain profit, then it can result in the Notary also being prosecuted. Notary YP in this case does not need to be held criminally or civilly responsible for the legal acts he has committed, because in court it was proven that he did not violate any criminal or unlawful acts, so Notary YP does not need to be held legally responsible. The principle of responsibility held by a Notary, adheres to the principle of responsibility based on fault of liability, the Notary cannot be held accountable. Because, the Notary only records what has been conveyed by the parties and then the Notary pours what has been conveyed into the deed.*

Keywords: *Accountability; Deed; Inheritance.*

1. Introduction

SEvery natural event related to death will give rise to/give birth to civil legal events, both related to the deceased (the testator) and to the people left behind (the heirs), which inevitably must be resolved immediately by the

heirs.¹ Inheritance law is a law that contains regulations governing the process of passing on and transferring tangible property and intangible property from one generation of humans to their descendants.²

Distribution of assets due to the death of the testator, where the assets will fall to the heirs who are entitled. In relation to this, it is felt that there is a need for the role of another party who will regulate and provide direction to the parties. This other party acts as a mediator between the first party and the second party or more. In this case, an institution is formed which is known as notary institution or what we know as Notary.³

Notary means a person who has been given authority by the government based on appointment to validate and witness various agreements, wills, deeds and so on.⁴ A notarial deed is an authentic deed made by or before a notary according to the form and procedures stipulated in the Notary Position Law.⁵ An authentic notarial deed is a perfect means of evidence for parties carrying out certain legal acts which contain the rights and obligations of the parties which are clearly described in the authentic notarial deed.⁶ A deed made by a notary has perfect evidentiary power, unlike a private deed. A private deed is a deed made by the interested parties themselves without the assistance of a public official. An authentic deed is a notary product that is greatly needed by the community in order to create legal certainty. An authentic deed as the strongest and most complete evidence has an important role in every legal relationship in society, be it business/cooperation relationships, activities in the land sector, banking, social activities and other life needs. Based on Article 1870 of the Civil Code (hereinafter referred to as the Civil Code) and Article 1871 of the Civil Code, "an authentic deed is a perfect means of proof for both parties and their heirs and all those who receive rights from it regarding what is contained in the deed."⁷

Notaries have the responsibility to ensure that inheritance is distributed in accordance with positive law, and that legitimate heirs are recognized. Errors or inadvertences that occur in the process of making a notarial deed can have serious consequences for individuals, families, and society as a whole. Inheritance disputes that may arise from these discrepancies can consume

¹Umi Setyawati, Antonius Iwan Murdianto, Amin Purnawan, Deed of Confirmation of Heir Certificate as a Substitute for Heir Certificate in the Process of Transferring Heir Names at the Semarang City Land Office, *Jurnal Akta*, Vol 5 No 1 January 2018, Unissula, Semarang, p.40

²Tinuk Dwi Cahyani, 2018, *Inheritance Law in Islam*, University of Muhammadiyah Malang, Malang, p. 10

³Setya Qodar and Sukarmi, 2018, *The Role of Notaries in the Distribution of Inheritance Based on Western Inheritance Rights with the Role of Religious Courts in the Distribution of Inheritance Based on Islamic Inheritance Rights*, *Jurnal Akta*, Volume 5 Number 1, p.118

⁴Soegianto, 2015, *Professional Ethics and Legal Protection for Notaries*, Farisma Indonesia. Yogyakarta, p. 1.

⁵Widhi Handoko, 2019, *State Domination of the Notary Profession (Between Ideas and Reality)*, Roda Publikasi Kreasi, Bogor, p. 103

⁶Abdul Bari Azed, 2005, *The Notary Profession as a Noble Profession*, Media Ilmu, Jakarta, p.68

⁷Taufik Makarao, 2004, *Principles of Civil Procedure Law*, Rineka Cipta, Jakarta, p.100

valuable time, money, and resources, while also damaging the unity and relationships between family members. Therefore, it is necessary to have a strong understanding of inheritance law and uphold high ethical standards in notarial practice in order to prevent potential conflicts and legal problems that arise from discrepancies in the heir's statement in the Heir's Certificate.

Generally, a Certificate of Inheritance is made by the heirs if they intend to transfer rights to an inheritance as a condition for making another deed or is made to determine the share of each heir. An heir must ask for approval from the other heirs if he wants to transfer his inheritance rights, because the other heirs also have rights to the inheritance. If a person who is entitled to inherited land raises the suspicion that he is the sole owner of the land, then the transfer must not be considered to have been made based on tacit conditions.⁸

Problems arise when heirs who should have rights to the inheritance do not receive the recognition or rights they should have in the Certificate of Inheritance. This can happen for various reasons, including negligence in the administrative process, lack of understanding of applicable legal provisions, or improper actions by parties involved in making the Certificate of Inheritance.. One example of making a certificate of inheritance that does not match the statement of the heir is the decision of the Tegal District Court Number 9/Pdt.G/2021/PN Date. In this case, a Notary was sued by one of the heirs because in making the Certificate of Inheritance, all heirs were not involved.

2. Research methods

This type of research is normative legal research. The approach method in this research is a case study approach and a statute approach. The type of data uses secondary data obtained from literature studies. The analysis in this study is prescriptive.

3. Results and Discussion

3.1 Legal Implications of Making a Certificate of Inheritance That Does Not Match the Heirs' Statement

The event of a person's death is always related to inheritance events. Inheritance cannot be separated from the problem of proving someone as an heir from their parents, siblings, children or as an heir for other reasons. Lawmakers regulate the legal consequences of a person's death on the assets they own, the pattern of transfer to the heirs and the relationship with third parties, all of which are contained in inheritance law.⁹

A certificate of inheritance (*Verklaring van Erfrecht*) is a document that is made by oneself or issued by an authorized official or agency, containing an explanation of the provisions of inheritance law in terms of proving the position of an heir

⁸Said Ali, Wira, Legal Protection for Heirs Against Inheritance That Transfers Without the Consent of All Heirs, *Journal of Law & Notary Student Affairs*, Volume 1, Number 1, December 2021, p.282

⁹Effendy Perangin-angin, 2006, *Inheritance Law: Collection of Lectures from the Notary Department, Faculty of Law, University of Indonesia*, p.3.

and is also used as a basis for the right to claim certain inheritance rights over objects or property rights as objects of inheritance.¹⁰

The mechanism for making inheritance certificates after the issuance of Article 111 of the Regulation of the Minister of ATR/KBPN Number 16 of 2021 concerning changes of name due to inheritance, amending Article 111 paragraph (1) letter (c) number 4 of the Regulation of the Minister of ATR/KBPN Number 3 of 1997 concerning Land Registration. The elimination of the classification system in the process of issuing inheritance certificates makes people free to determine which legal option they consider to better protect and guarantee their rights. The options regulated in Ministerial Regulation Number 16 of 2021 include a will from the testator, a court decision, a judge's/chief court's decision, a statement of heirs made by the heirs witnessed by 2 (two) witnesses and known by the village head/sub-district head and sub-district head where the testator lived at the time of death, a deed of inheritance rights from a Notary domiciled in the place of residence of the testator at the time of death or an inheritance certificate from the Estate Management Office. These options do not look at the class or descent from which he came. Systematic requirements forgetThe certificate of inheritance is still based on the old regulations, however, regarding the place of making the certificate of inheritance rights from the Notary, it must be domiciled at the place of residence of the testator at the time of death.¹¹

The making of a certificate of inheritance must involve all heirs and describe the actual contents. This is because, the certificate of inheritance has a very important function as an authentic evidence, the certificate of inheritance does not only function in land activities but has the following functions:¹²

1. The heir's certificate has the function of allowing the heirs to pawn or guarantee the heir's inherited assets to other parties or creditors (Banks).
2. The heir's certificate has the function of transferring the heir's inherited assets to another party.
2. The heir's certificate has the function of changing the joint ownership status of the testator's inherited property to become the property of each heir by carrying out or making a deed of division and separation of the testator's inherited property before a notary.
3. The heir's certificate functions as evidence for the heir to be able to take or withdraw money from the heir at a bank or insurance company.

Certificate of Inheritance is very important, especially when registering the transfer of land rights, because the certificate of inheritance is proof of identity that a person is a legitimate heir. An example of a decision regarding the making of a certificate of inheritance that does not match the statement of the heir is the

¹⁰Ibid., p.392

¹¹Duta Aria, Legal Analysis of the Process of Making a Certificate of Inheritance Based on the Regulation of the Minister of ATR/BPN Number 16 of 2021 concerning the Transfer of Land Rights. Thesis, 2022, Muhammadiyah University of Magelang, p.10

¹²I Gusti Kade Prabawa Maha Yoga, et al., 2018, Notary's Authority in Making Inheritance Certificates for Indonesian Citizens, Scientific Journal of Pancasila and Citizenship Education, Volume 3, Number 2, p. 137.

Tegal District Court Decision Number 9/Pdt.G/2021/PN.TGL. Based on Decision Number 9/Pdt.G/2021/PN.TGL starting from a certificate of inheritance deed Number 02/NOT/VIII/2015 made before Notary/PPAT YP (Defendant) on August 4, 2015, which was carried out by the late Miss PRL who has now passed away, the contents of which are incorrect. The plaintiff (Mr. LD) has two sisters, namely the late PRL (died on January 30, 2014) and PSL (died on February 23, 2016). PRL and PSL were never married and did not have any legitimate children or descendants and only left one male sibling, LD (Plaintiff). In 2015, Notary YP (Defendant) made a legal product in the form of a Certificate of Inheritance Rights Number 02/NOT/VIII/2015 dated August 4, 2015 which stated (explained) that PRL was PSL's only sibling, while at that time and until now there were still living siblings of PSL besides PRL, namely LD (Plaintiff). The Plaintiff only found out about the Certificate of Inheritance Rights after PRL died and was told by someone that there was a certificate of inheritance from the Plaintiff's sibling who did not include the Plaintiff's name in the Certificate of Inheritance which was the object of the Lawsuit, because the Plaintiff was also the legitimate heir of his older brother named PSL which was made before Notary YP. The Certificate of Inheritance made before the Defendant stated as if PSL only had one sibling and heir, namely PRL, even though in fact they were 3 siblings from the same father and mother, namely LK (father) and LT (mother).

In mid-2016, precisely on July 18, 2016, the Plaintiff tried to clarify to the Defendant as a Notary, which basically the Defendant did not want to voluntarily cancel the deed that he had made even though the content was wrong, instead the Defendant asked the Plaintiff to make a Statement letter made before the Defendant as a Notary which basically stated the truth of the genealogy of his family, namely his siblings, which later if it was needed in the Court lawsuit process. The cancellation of the Inheritance Certificate needs to be done in order not to eliminate the origin of a person, namely the Plaintiff and his siblings as one descendant, especially since they are siblings in order to maintain family history.

LD in his lawsuit requested the Panel of Judges to declare null and void and have no binding legal force on the Certificate of Inheritance Rights Number 02/NOT/VIII/2015 dated August 4, 2015 because it contains contents that are not in accordance with the actual or real situation because of the existence of other heirs, so it can be assessed that the deed in question has deviated from the principle of a lawful cause. Regarding a lawful cause is one of the requirements for the validity of an agreement as stated in Article 1320 of the Civil Code, in addition it is also stated in Article 1335 of the Civil Code that an agreement made without a cause, or which has been made for a false or prohibited reason, has no legal force. If connected with the facts as outlined in the *posita* that have shown the Certificate of Inheritance Rights Number 02/NOT/VIII/2015 dated August 4, 2015 made by Notary YP (Defendant) has deviated from the contents of a lawful cause because the contents of the letter have deviated or are not in accordance with the actual situation.

A Deed of Inheritance where one of the heirs is not listed in the deed is basically legally flawed, so that the deed of inheritance becomes negative in nature which can mean several things as follows:¹³

1. null and void
2. Can be canceled
3. Becoming a Deed under hand

Of course, an authentic deed that is legally flawed is not immediately null and void by law, it can be cancelled or become a private deed, but it needs to go through a process of proof in accordance with the provisions of statutory regulations.

Making a certificate of inheritance that does not match the information of the heir will have legal implications. However, it does not have any legal consequences for the Notary, because the Notary is only a public official who is authorized to make a deed in accordance with the information or wishes or legal acts given by the parties. A notary only pours it into a deed called a notarial deed. The parties who have the will and desire for the legal act to be poured into a Deed of Information or Deed of Statement. A Notary will not know whether the legal act carried out by the parties is a true statement or an incorrect statement. Another reason is that the Notary is only a public official who makes evidence, so that the deed made is as evidence for the parties who appear, not the Notary.

In relation to Article 266 paragraph (1) of the Criminal Code regarding an authentic deed which here is a Deed of Information in which someone orders the insertion of false information into the deed, regarding matters whose truth must be proven by the deed with the aim of using or ordering someone else to use the deed as if the information were true, meaning ordering the insertion of false information can be interpreted as being on the person ordering (*doenplegen* or *manus domina*) in this case the parties or the parties who make the authentic deed or are also called indirect makers (*middelijke dader*). So that the maker of the deed in this case the Notary is only a person who is ordered to insert false information into an authentic deed or called *manus ministra*.¹⁴

Another legal consequence for a Notary if the Deed of Information used as the basis for making the Certificate of Inheritance Rights that he made contains an incorrect statement will basically have no legal consequences for the notary himself and the notary cannot be held responsible for anything, the party in the deed is responsible if the deed contains incorrect information, because the contents of the deed are the will of the parties, not the Notary. Except if the Notary is involved in making incorrect information in order to gain profit, then it can result in the Notary also being prosecuted. However, in the above case the

¹³Rochmawati, 2023, Legal Consequences of Notaries Not Including One of the Heirs in the Deed of Inheritance Information, *Journal of Law*, Volume 20, Number 2, p.354

¹⁴Neni Yunia, Rahmatul Hidayati, 2020, Legal Protection for Notaries for False Information, Identities and/or Documents Submitted by Parties Used as the Basis for Making Authentic Deeds, *Journal: Notary Masters Program*, Islamic University of Malang, p.10.

Notary cannot be blamed because the Notary has acted in accordance with the laws and regulations.¹⁵

A deed of information is a partij deed or party deed which can be defined as a deed made before a Notary, a deed made based on the information or actions of a party who appears before a Notary, and the information or actions are confirmed by the Notary to make a deed. The material aspect of a notarial deed is the certainty that what is stated in the deed is valid evidence for the parties who made the deed. The statements or statements of the parties submitted and given before a notary contained in the partij deed must have an element of truth to what is stated in the deed. If the statement or statement of the presenter turns out to be untrue then this is the responsibility of the presenter himself.

Without a statement or information from the parties regarding the contents of a deed, it is impossible for a notary to make a deed. Therefore, the statements or information of the parties submitted to the notary are the basis for the notary to make a deed in accordance with the wishes of the parties who appear before the notary. And if the statement or information submitted before the notary is suspected to be untrue, in the case above, namely the existence of false information in the Deed of Information, it does not cause the Deed of Information to be false.

The legal implications of making a certificate of inheritance that does not match the information of the heirs can be considered invalid or does not have sufficient legal force to determine a person's inheritance rights. However, the Certificate of Inheritance is still valid as long as it is not stated that the deed is invalid by the Court Judge so that if in the Certificate of Inheritance Rights someone appears and claims to be an heir who is harmed because it is not included in the Certificate of Inheritance, the Notary cannot cancel the Certificate of Inheritance. Therefore, the Certificate of Inheritance must be canceled by the court if another heir sues, if they do not sue, then the Certificate of Inheritance made by the Notary is considered still valid and the Certificate of Inheritance Rights remains valid because the Notarial Deed is perfect evidence as long as there is no lawsuit and court decision. The Certificate of Inheritance used as the basis for making the Certificate of Inheritance Rights if it is made based on incorrect information by the person appearing, then the deed is not automatically null and void by law. The parties who are harmed by the existence of the Certificate of Inheritance must file a civil lawsuit with the court to demand the cancellation of their deed. Therefore, the Deed of Information will be cancelled if it has been decided by the court and the decision is a decision that has permanent legal force.

Regarding the Certificate of Inheritance made by Notary YP, the Panel of Judges at the Tegay District Court considered that the certificate was a deed that had perfect evidentiary force, as long as there was no evidence to the contrary. A judge's decision or what is called a court decision is something that is highly expected by the parties in court in order to resolve the dispute faced, with the fairest possible judge's decision. Thus it can be concluded that a judge's decision is a written statement made by a judge as a state official who is authorized to do

¹⁵Monica Galuh, 2022, Legal Consequences of Making a Certificate of Inheritance Rights with Incorrect Information by the Applicants, Notary Law Research, Volume 04 Number 01, p.39

so which is pronounced in court in accordance with applicable laws which become law for the parties containing an order to a party to do an act or do an act that must be obeyed.¹⁶

3.2 Notary's Responsibility for Making a Certificate of Inheritance That Does Not Match the Heirs' Statement

Notaries as authorized public officials, in making authentic deeds are burdened with responsibility for the deeds they have made. Based on Article 65 of the UUJN, there are 4 (four) areas of responsibility of notaries in carrying out their duties, namely:

1. Civil liability for the deeds he made
2. Criminal responsibility for the deeds he made
3. Responsibility in carrying out his/her duties towards a notary
4. Responsibility for the code of ethics for the deeds he makes

The theory of legal liability has been developed by Hans Kelsen. Hans Kelsen put forward a theory that analyzes legal responsibility, which he called the traditional theory. In the traditional theory, responsibility is divided into two types, namely:¹⁷

1. Fault-based liability
2. Absolute responsibility

Based on the theory of legal responsibility, Notary YP in this case does not need to be held criminally or civilly responsible for the legal acts he committed, because in court it was proven that he did not commit a criminal act or break the law, so Notary YP does not need to be held legally responsible.

The principle of responsibility held by a Notary, adheres to the principle of responsibility based on fault of liability, which in making an authentic deed, the Notary must be responsible for the deed he has made. Whether in the deed there is an error or violation that he did intentionally or unintentionally. On the other hand, if the element of error or violation is committed by the parties, then as long as the Notary carries out his obligations in accordance with the UUJN, the Notary Code of Ethics and other regulations, the Notary cannot be held accountable. Because, the Notary only records what has been conveyed by the parties and then the Notary pours what has been conveyed into the deed. If there is false information made by the parties and later there is a lawsuit, the Notary can still be involved in the case and usually the Notary becomes a Co-Defendant.

Notaries in carrying out their duties, notaries are required to always adhere to the principle of accuracy. Accurate in this case, notaries in taking action, everything must be prepared and based on applicable legal regulations. One example is to re-examine all evidence shown to the Notary and listen to the

¹⁶Ni Made Eka Yanti Purnawan, Sale of Inherited Assets in the Form of Land Without the Consent of Other Heirs, Journal of Notary Law, Vol.ume 5 Number 2 August 2020, p.316

¹⁷Salim and Erlies Septiana Nurbani, 2013, Application of Legal Theory in Thesis and Dissertation Research, Rajagrafindo Persada, Jakarta, p. 211

statements or statements of the parties used as basic materials to be stated in the deed. This principle of accuracy is an application of Article 16 paragraph (1) letter a UUJN which states that notaries in carrying out their duties are required to act carefully.

Notaries can be held accountable in the form of the sanctions mentioned above that can be imposed on notaries, if it can be proven that the notary was negligent and guilty of the deed he made. If it is proven that the notary has committed a violation, then the notary can be made a co-defendant in the dispute trial of the parties in the case. However, because the certificate of inheritance is one form of party deed, which means that the letter is issued by a notary based on a statement made by the notary at the request of the parties. So, if it is proven that there is an error in the certificate of inheritance, it is not purely the fault of the notary, but the fault of the parties who from the beginning did not act in good faith in making the certificate of inheritance.

Notary YP in this case was also not proven to have violated the Notary Code of Ethics in making the deed of inheritance, so he cannot be subject to sanctions. If proven to have committed a violation, Notary YP can be subject to sanctions in the form of a reprimand, warning, temporary suspension from membership of the association, honorable suspension from membership of the association, or dishonorable suspension from membership of the association. The mechanism for imposing these sanctions is carried out by the Notary Honorary Council as a tool of the Association which functions to uphold the Code of Ethics, the dignity and honor of Notaries.¹⁸

Notary YP in making a certificate of inheritance does not need to be responsible for the contents of his certificate of inheritance because in making a certificate of inheritance, notary YP makes it based on statements, statements, and documents from the heirs that have been considered true. Therefore, Notary YP cannot be given sanctions because the fake birth certificate used as a document to make a certificate of inheritance is an error of the heirs who from the beginning did not act in good faith.

Notaries cannot be said to have made any mistakes, notaries do not know that what they have made is not in accordance with reality, for example, if the client falsifies documents and witnesses, so that the Notary in making the Deed of Inheritance is based on the existing documents and witnesses. Because the Notary is not authorized to check the truth of the documents submitted to him to the authorized party, but only on its physical appearance. However, the Notary must still be careful in making the Deed of Inheritance so that in the future no one will be harmed by the making of the Deed of Inheritance, and as a position of trust, it is only natural that the Notary must check carefully before making the Deed of Inheritance to avoid any errors in making the Deed of Inheritance.

¹⁸Nabila Mazaya, Henny, Violation of Office and Unlawful Acts Committed by Notaries in Exercising Their Authority, ACTA DIURNAL: Journal of Notary Law, Volume 5, Number 1, December 2021. p. 75

4. Conclusion

The notary's responsibility for making a certificate of inheritance that does not match the information of the heirs will not have any legal consequences for the notary himself and the notary cannot be held responsible for anything, the party in the deed is responsible if the deed contains incorrect information, because the contents of the deed are the will of the parties, not the Notary. Unless the Notary is involved in making incorrect information in order to gain profit, it can result in the Notary also being prosecuted. However, in the case above the Notary cannot be blamed because the Notary has acted in accordance with the laws and regulations. Notary YP in this case does not need to be held criminally or civilly responsible for the legal actions he has carried out, because in the trial it was proven that he did not violate a criminal act or was against the law, so Notary YP does not need to be held legally responsible. The principle of responsibility held by a Notary, adheres to the principle of responsibility based on fault of liability, the Notary cannot be held responsible. Because, the Notary only records what has been conveyed by the parties and then the Notary pours what has been conveyed into the deed.

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