

Roles And Responsibilities Notary Deed Of Cancellation That Has Been Made Before Him

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Abstract. The purpose of this study as follows: 1) To analyze and clarify the roles and responsibilities of notaries on the cancellation of the deed will have been made before him. 2) To analyze and explain the obligations that must be performed by a notary public after the deed will be made. 3) To analyze and explain the responsibilities of a notary of the testaments deed made before him The method used by researchers is juridical Normative and specification in this study were included descriptive analysis. The sources and types of data in this study are primary data obtained from field studies with interviews. And secondary data obtained from the study of literature. Based on the results of research that Roles and Responsibilities of the notary deed canceled if one party has been in default and notaries have fulfilled the terms of a formal deed, the notary is not responsible for or can not be charged on the cancellation of the deed. Shall notify all testamentary deed (*acte testament*) that is made to Section List Wills Center (DPW) and the Institute for Heritage (BHP) both open testament (*openbaar testament*), written testament (*olographis testament*), as well as a closed or secret testament. If the deed will (*testament acte*) is not registered then it will not be valid binding. Moreover, notaries are also obliged to report or inform one's will on a five (5) days of the first week of each month. If you do not, then the deed is not valid as an authentic deed, or in other words the deed is only valid as a deed under hand, can even be declared null and void. Responsibility Notary Deed Testament Against Its Made before him is a) moral responsibility, b) ethical responsibilities, c) liability, consists of two (2) ways: 1. In terms of formal 2. material terms. Against the will deed (*acte testament*) are made in front of him, the notary is responsible to read it in front of witnesses.

Keywords : Roles; Responsibilities; Notary; Deed Cancellation.

1. Introduction

A will is a letter which contains a person's last wishes to be carried out if the person concerned died. In this testament more often contains the last wishes with regard to property held that he wanted to give or bequeath to the people he cared about, but it is not uncommon to load the wishes of the other things like burial later (known as *kodisi*). The contents of the last will clearly specified in article 875 the Civil Code which reads that:

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"As for what is called a will or testament is a deed which contains a statement about what he wanted to happen after he died, and that her irrevocable again".

Although Wills should be made in the deed, but the civil law does not require Wills whether it should be made in the form of a deed under hand or authentic deed. However, in practice, Wills are generally made in the form of an authentic deed (Notary). It is important to remember in terms of proving the authentic act has probative value was perfect.

Heritage is a treasure left by those who died or as a gift from heir to heir entitled prescribed by the Act or as it gets a will / testament. As from the death of the testator, the rights and obligations by operation of law will shift to the recipients of inheritance. Accordingly, pursuant to Article 834 Book of the Civil Law theorized that "The recipient is entitled to retain wealth heir (*boedel*) based on the recipient's rights as an heir of the testator."⁴

According to the Law and of the restrictions that are held legislation against the property that is important is the restriction on the portion under the Act or *legitieme portie* (inheritance under the Act), that particular part of the assets of someone who is on the multiple inheritance under the Act can be argued his rights called the legitimate, because the people who left do not have or are not allowed the free set something on it.⁵

Probate is also a legal act unilaterally. It is closely related to the nature of the "*herroepelijkheid*" (inalienable) of provisions that made it. Here means that it will not be made by more than one person because it will cause trouble when one vendor will revoke a will. It is as it turned out in Article 930 of the Civil Code, which states that:

"In the only deed, two or more people are not allowed to express their will, whether to grant a third, and on the basis of mutual or reciprocal revelation."

Notary duty and responsibility to save and send a list of wills that has been made to the Central Heritage (BHP) and the List Center Wills (DPW), such as the provisions of Article 36a PJN which states that: "The notary public shall, with the threat of fines as high USD 50, to offense, to make the list, which is recorded by the manufacturing, the deeds referred to in article 1 Ordinance on the List Center Testament they make in a calendar month. "

Notary shall within five (5) days of each month to send the recorded BHP, which is in the jurisdiction where the notary position were, register associated with the threat of a maximum fine of Rp 50, - for - each offense. Of each delivery, registration held on the day of delivery, with the threat of a maximum fine of Rp 50, - for each delay. If in a calendar month ago by a notary is not made deed, then he should send the recorded written statement regarding the BHP on one specified for delivery, which is thus the threat of fines as high as US \$ 50, - for each lateness.⁶

⁴Wilbert D. Kolkman, 2012, *Hukum Tentang Orang, Hukum Keluarga Dan Hukum Waris Di Belanda Dan Indonesia*, Denpasar: Pustaka Larasan, p. 148.

⁵R. and R. Tjitrosudibio Subekti, 1995, *Kitab Undang-Undang Hukum Perdata*, Prints 27th, Jakarta: Penerbit Pradnya Paramita, p. 239

⁶GHS Lumban Tobing, 1982, *Peraturan Jabatan Notaris*, Jakarta: Erlangga, p. 237-238

In carrying out his post, a notary is obliged to make a list of the relevant documentation to the will chronologically deed every month, sending the list deed will or register zero with respect to the will register the Center for Probate Department of the duties and responsibilities in the field of notaries within 5 (five) days of the first week of next month, as well as the delivery dates noted and it will list at the end of each month.⁷

Based on the above problems, the purpose of this study was to analyze and explain the roles and responsibilities of notaries on the cancellation of the deed will have been made before him; To analyze and explain the obligations that must be performed by a notary public after the deed will be made; and to analyze and explain the responsibilities of a notary of the testaments deed made before him

Research methods

The method used in this research is normative juridical approach that emphasizes the decomposition and interpretation of legal principles / doctrines of human knowledge can always be checked and examined critically, will continue to grow on the basis of studies conducted by the caregiver-nanny. In this study, specification of research conducted with descriptive analytical research. The sources and types of data in this study are primary data obtained from field studies with interviews. And secondary data obtained from the study of literature.

2. Discussion

2.1.Roles and Responsibilities of the Notary Deed of Revocation Against Probate That Has Been Made Before Him

Roles and Responsibilities of notaries in their profession in the opinion of Ciciek Suciati, SH., Sp.N⁸ That notaries as public officials whose main task is in the manufacture of an authentic deed. If the notary performing his respective duties appropriate laws and regulations of the notary office in deed, then the material in a formal atmosphere she meets the requirements and duties as well as possible. For example, that if the parties requested the preparation of a deed, the statement issued by the notary is a notary stay in a deed. Notary responsible for what is presented by the parties or concerned but is not responsible for the correctness of the material presented.

The responsibility of the notary in the case when there is an oversight of proof deed or deed he made mistakes that lose their authenticity is the responsibility of the notary itself. Notaries should carry out their duties and obligations as well as possible so that goal is accomplished deed and act as an authentic deed. Lumban Tobing stated that the notary is responsible for the deed he had done, if there are reasons as follows:

- In the matters expressly provided by law notary office.

⁷ Law No. 30 of 2004 concerning Notary

⁸ Results of interviews with Notary Cuciek Suciati, SH., Sp.N in Semarang, on January 3, 2020, 13:00 pm

- If a deed because it does not fulfill the terms of the form (*gobrek in de vorm*), was canceled before a court or considered valid only as a deed under hand.
- In any case, where, according to the provisions of article 1365 to article 1367 Book of Civil Law there is an obligation to make restitution, that is to say these things to go through the process of proving that balance.⁹

The responsibility of a person for what he made of course is the duty of each individual because it is a mandate given to him for the protection of a person. In this case the notary is authorized to make the authentic act in the sense of composing, reading and signing and authorized a deed in the form prescribed by law according to the Book of the Civil Law and Notary Act. Authentic deed made by the notary divided into three strength of evidence, namely the power of external verification, formal verification power and strength of evidence material.

Notaries can be held accountable if the notary acted against the law as stated by Moegni Djojodirjo, namely that the term against attached to both the nature and passive if accidentally did something acts that cause harm to others so deliberate movement, behold clearly the nature of the active of term against it. Conversely, if he deliberately remained silent, while he already knows that he must do something for the actions do not harm others, or in other words when the passive attitude he has fought without having to move his body. This is the nature of the term against.¹⁰

If the notary did a deed at the behest and request of the parties and formal requirements prescribed by law in deed have been met by a notary, the notary is not responsible. Accountability for one's actions are usually just no sense if the acts that are not allowed by law. Most in the Book of the Law of Civil Law called unlawful acts (*onrechtmatige daad*).¹¹ Both illegal under article 1365 Book of the Civil Law is any illegal acts that cause harm to others, obliging the wrong result in losses that, to replace those losses.

2.2. Obligations should a Notary Once Deeds Wills Created

Pursuant to Article 16 paragraph (1) of the Act No.30 / 2004 determined one of the duties of a Notary is a deed in the form of Minuta Deed and save them as part of Notary Protocols. The Notary protocol that consists of them on the register of wills and the deed under hand. One of the goals (Purpose) is to register to the List Center for Probate Department of Justice and Human Rights and the Regional Supervisory Council. In addition the aim is for the material to the notary in the notice to the parties concerned in terms of the testator dies. While the properties (nature) and the legal effects are similar to attached in an authentic act that has been described above. Having a will is formed either in the form of Deed or deed under hand, then the next Notary will send a list of certificates or letters regarding the will to List Center for Probate Department of Law and Human Rights within five (5) days of the first week of next month. In connection with that, keep in mind that the nature of a will made

⁹ Lumban Tobing, 1983, *Peraturan Jabatan Notaris*, Jakarta: Erlangga, p.55.

¹⁰ Moegni Djojodirjo, 1992, *Perbuatan Melawan Hukum*, Jakarta: Pradya Paramita, p.13

¹¹ Wirjono prodjodikoro, 1984, *Perbuatan Melanggar Hukum*, Bandung: Sumur Bandung, p 80.

before a Notary in the form of notarial deed and be registered in the Central List of the Miraculous Ministry of Justice and Human Rights of the Republic of Indonesia is *openbaar testament* or will open. In the open testament deed in question will be assigned one or more *Executor Testamentair* (Executing Wills) in accordance with Article 1005 of the Civil Code. Prior to the description of inheritance, Implementation will then who is the person entitled to apply for a second copy of the deed of the will meant (for the first copy must have already been given to the heir dies before the testator). If the deed will have been lifted more than 1 (one) of the Implementing Testament, then they are liable jointly and severally to perform the last will of the testator.

A list of the Deed of wills and deed under the hand (as part of the protocol notary) Notary, individually or through their proxies, notary must submit a written copy of which has been the legalization of the list of certificates and other lists made in the previous month later than 15 (fifteen) day of the following month to the Regional Supervisory Council. therefore Notary must also be enrolled to the Regional Supervisory Council. As is the Regional Supervisory Council. The Regional Supervisory Council is a body that has the authority and obligation to implement the guidance and supervision of a Notary.¹²

In a written testament (*olographis testament*), if the person is still alive made a will and handed over to the notary, the notary must keep the first deed will (*testament acte*) is. To do the deed notice will (*testament acte*), required to qualify that must be in accordance with the column provided by the Central List of the Miraculous (DPW). If not filled in 1 (one) column only, it means it will be blurred. Revocation of testamentary deed (*acte testament*) should also be reported to the Central List of the Miraculous (DPW) because if someone makes a will again without unplugging the previous wills, it wills applicable is a testament to the former. Moreover, notaries are also obliged to report or inform one's will on a five (5) days of the first week of each month. If you do not, then the deed is not valid as an authentic deed, or in other words the deed is only valid as a deed under hand, can even be declared null and void. This is in accordance with the provisions of article 84 and article 85 UUJN.¹³

Every notary who keep a written testament deed and deed of closed or secret testament, in principle obliged to deliver the deed of testament referred to the Central Heritage (BHP), the local after *testamenter* heir dies or is declared as absent subject by local courts. In this connection, the Center for Heritage (BHP) is in principle obliged:

- The certificate will open;
- make a verbal process of reception and the opening of the will deed (making the Minutes);

¹²<http://www.gultomlawconsultants.com/tugas-dan-kewajiban-seorang-notaris-dalam-kewarisan/>

¹³ Results of interviews with Notary Ciciek Suciati, SH., Sp.N in Semarang, on January 3, 2020, 13:00 pm

- restore deed is testament to the notary concerned.¹⁴

In the Ministry of Law and Human Rights are sexy list Wills Center (DPW) which is in charge of storing the reports shall be sent every month by the notary of all wills made in Indonesia. After evidenced by the death certificate that the person dies, a notary public may request information from the List Center Wills (DPW) whether the deceased left a will or not. List of Wills Center (DPW) provide information in writing about the presence or absence of the will. If there is a will made, List Center for Probate (DPW) will only mention the name and domicile of the notary who made it, Repertorium serial number, date, and number of it. While the content of the deed will not be notified because it is not known by the Central List of the Miraculous (DPW).¹⁵

Liabilities notary deed will be limited to the obligation to submit to the notary maker heir statement under the provisions of Article 943 of the Civil Code, which reads: "Every notary who store wills between the original letters, though in any form, must, after the who passed away, and told all concerned."

2.3. Responsibility Notary Deed Testament Against Its Made In front

In performing its duties, a notary shall execute it with full responsibility. This responsibility includes:

- Moral Responsibility

In performing its duties, a notary must not distinguish between those who are weak economic situation with people who are strong economic circumstances. This is in accordance with article 37 UUJN which reads: "Notaries are required to provide legal services in the field of notaries free of charge to those who can not afford."

- Ethical Responsibility

A notary in running position should have sufficient legal skills with a sense of responsibility based on the understanding of the nobility, his dignity, values and ethics. For the notary, it is not only required by law but also by the confidence the GCC given to him by the Act, namely Law No. 30 of 2004 concerning Notary, both from the nature of the post of notary alone or nobleness and dignity of the office that requires responsibility and personality as well as a high legal ethics. In this case, a notary is responsible for the code of professional conduct are supervised by the Honorary Board of Professional Organizations.

- Legal Responsibilities, includes two (2) terms, namely: Formal terms and Material terms

Against the will deed (*acte testament*) are made in front of him, the notary is responsible to read it in front of witnesses. After the notary will notify deed (*acte testament*) to Section List The Center for Probate, Civil Directorate, Directorate General of Legal Administration, Ministry of Justice and Human Rights and the Center for Heritage (BHP). So the responsibility ends with the notary deed did notice a will

¹⁴ Results of interviews with Notary Ciciek Suciati, SH., Sp.N in Semarang, on January 3, 2020, 13:00 pm

¹⁵ Ibid.

(*testament acte*). However, when an error in deed a will (*testament acte*) and the error is the fault of the notary, the notary shall be held accountable in court.¹⁶

3. Closing

3.1. Conclusion

- Roles and Responsibilities of the Notary Deed of Revocation Against Probate That Has Been Made Before Him
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- Obligations should a Notary Once Deeds Wills Created
Obligations that must be done by a notary public after the deed will be made is obliged to notify all the deed will (*testament acte*) were made to Section List Center Wills (DPW) and the Institute for Heritage (BHP) both testament open (*openbaar testament*), testament writing (*olographis testament*), as well as a closed or secret testament. If the deed will (*testament acte*) is not registered then it will not be valid binding. Moreover, notaries are also obliged to report or inform one's will on a five (5) days of the first week of each month. If you do not, then the deed is not valid as an authentic deed, or in other words the deed is only valid as a deed under hand, can even be declared null and void.
- Responsibility Notary Deed Testament Against Its Made before him
 - moral responsibility
 - ethical responsibility
 - liability, consists of two (2) ways: 1. In terms of formal 2. material terms

3.2. Suggestion

- A notary in performing the task, especially in terms of making a will deed (*acte testament*) pay more attention to the requirements that must be met so that the certificate will (*testament acte*) may be valid as an authentic deed.
- In addition, a notary must be able to understand the obligations and responsibilities in a deed will (*testament acte*) made his presence so that it is not detrimental to the testator or notary itself.
- For the future, the notary is expected to be more active in conveying their wills deed (*acte testament*) that is kept by the recipients will and attention to ads on the obituary published by the newspaper.

4. References

[1] GHS Lumban Tobing, 1982, *Peraturan Jabatan Notaris*, Jakarta: Erlangga

¹⁶ Results of interviews with Notary Ciciek Suciati, SH., Sp.N in Semarang, on January 3, 2020, 13:00 pm

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