

Notary's Responsibility for Wills That Violate the Provisions on the Legitieme Portie of the Heirs

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Abstract. *This study aims to analyze the provisions for making a will by a Notary if the testator still has absolute heirs, analyze the Notary's Responsibility for wills that violate the absolute share (legitieme portie) of the heirs and analyze examples of wills made by Notaries by paying attention to the absolute share (legitieme portie) of the heirs. The type of research used in this study is normative research using a statute approach. The data sources in this study are secondary data obtained through case studies and literature studies. The data obtained were analyzed using qualitative methods. The results of this study indicate that wills are regulated in Article 875 of the Civil Code, the making of wills by Notaries is guided by Article 938 and Article 939 of the Civil Code, UUJN Article 16 Paragraph (1) and Article 17 Paragraph (1), and the Notary Code of Ethics Article 4, the appointment of heirs through wills cannot ignore the absolute share of the legitimaris as regulated in Article 913 of the Civil Code and Article 914 of the Civil Code. The Notary's responsibility for wills that violate the absolute rights (legitieme portie) of heirs includes civil law, wills that conflict with the provisions of legitieme portie constitute a violation of the objective requirements for the validity of legal acts so that they can be declared null and void. Notaries can be held accountable through a lawsuit for unlawful acts based on Article 1365 of the Civil Code. In addition, Notaries are also professionally responsible because they are obliged to carry out their positions in accordance with the Notary Law and the Notary Code of Ethics.*

Keywords: Legitieme; Notary; Portie.

1. Introduction

Based on Article 1 number 1 of the Notary Law, a Notary is defined as a public official who has the authority to make authentic deeds and other authorities as regulated in the Law and other laws and regulations. The position of a Notary as a public official has a very important role in ensuring legal certainty and protection for the community, especially in the field of legal evidence. The

existence of a Notary provides legal guarantees for the community through his authority to make authentic deeds. Deeds made by a Notary have perfect and higher evidentiary power compared to private deeds, thus providing stronger legal certainty for interested parties.

In the making of certain authentic deeds, there are those that are required by laws and regulations in order to create certainty, order and legal protection. The making of such deeds is not only because it is required by laws and regulations, but also because it is desired by the interested parties to ensure the rights and obligations of the interested parties for the sake of certainty, order and legal protection for the interested parties as well as for society as a whole. The goal to be achieved from the existence of a notary institution is to guarantee certainty, order and legal protection for the community in the legal traffic of community life. In essence, the existence of a notary institution is due to the community's need for authentic written evidence that can clearly determine the rights and obligations of a person as a legal subject, in the legal traffic of community life. The existence of a notary is appointed by the authorized authority based on the law, not merely for the personal benefit of the person appointed as a notary, but for the benefit of the community that must be served by him, and also for the benefit of the state.¹

One form of deed made by a Notary is a will, specifically a general will (*openbaar testament*). A will made before a Notary is the most widely used form of will and is considered the safest, because the Notary can supervise the process and provide legal advice so that the contents of the will do not conflict with statutory regulations. By making a will before a Notary, the testator's last wishes gain legal legitimacy and serve as valid and binding evidence. The study of inheritance law regarding wills is a gift from one person to another in the form of an inheritance which can be in the form of objects, receivables, or benefits to be owned by the recipient of the will as a gift that is valid after the death of the person who made the will.² The creation of a will is based on the testator's freedom of will to determine the distribution of their inheritance, as long as it does not violate the limitations established by law. This freedom must be free from the influence or pressure of any party, including a notary public. In this context, a notary public not only acts as a deed preparer but also as a legal advisor, tasked with ensuring that the testator's wishes are legally and legally stated. The primary purpose of creating a will is to ensure that a person's inheritance after death is distributed according to the testator's final wishes.

Inheritance law essentially regulates the transfer of assets within a family due to

¹Sjaifurrachman and Habib Adjie, 2022, *Aspects of Notary Responsibility in Making Deeds*, (Bandung, Sumbersari Indah), p.10.

²Nada Putri Rohana, 2021, *Manadatory Wills in the Perspective of Law in Indonesia*, *Journal of Economic Law* Vol. 7, No. 1. p. 140.

the legal event of death. Upon death, rights and obligations regarding the inherited assets are transferred to certain entitled parties, both within the family and third parties. The Civil Code defines inheritance law as the law that governs the status of a person's assets after death, specifically regarding the transfer of those assets to others.

Making a testamentary deed must comply with applicable legal procedures and provisions, including the obligation to pay attention to the absolute rights (legitime portie) of legal heirs. Thus, the deed of will made by a Notary must not only fulfill formal requirements, but must also reflect justice and legal protection for all interested parties.

In connection with the making of a will, as regulated by the procedures and limits, there is often neglect which results in problems, this happened in Batam City, namely a will that is contrary to the Civil Code. In this case, the issuance of a will has set aside the absolute rights of the heirs. The findings indicate the importance of conducting research on the responsibility of Notaries in this case as public officials who are negligent in the will they made, based on this, the author is interested in discussing this by taking the title "Notary's Responsibility for Wills That Violate the Legitime Portie of Heirs".

2. Research Methods

The type of research used by the author in this study is normative legal research, employing a statute approach. To address legal issues and provide prescriptions regarding the appropriate research data sources, this study uses secondary data.³ To obtain correct and accurate data in this study, the researcher used case study and literature study data collection techniques. The data obtained were analyzed using qualitative methods.⁴ From the data analysis, we continue by drawing conclusions using the inductive method, which is a specific way of thinking and then drawing general conclusions to answer the problems posed.

3. Results and Discussion

3.1. Provisions for Making a Will Deed by a Notary Relating to the Existence of an Absolute Share (Legitime Portie) of Heirs.

The making of a Will Deed can essentially be made in the form of an authentic deed or a private deed, an authentic Deed is regulated in Article 165 HIR, Article 285 Rbg and Article 1868 of the Civil Code. An authentic deed is a deed made in a form in accordance with the Law by or before an authorized public official at the place where the deed was made which is complete evidence between the parties

³Trubus Wahyudi, 2020, Legal Consequences of Agreement in Islamic Economic Business, Jurnal Pembaharuan Hukum, Volume 7, Number 1, p. 67.

⁴Salim HS and Erlies Septiana Nurbani, Op.Cit, page 19.

and their descendants and those who receive the rights regarding what is contained therein and even about a statement. In inheritance law, Article 875 of the Civil Code states that a will or testament is a deed containing a person's statement about what he wants to happen after he dies, and which can be revoked by him. An Heir in the provisions of the Civil Code can make a will before a Notary, this provision can be seen from the form of a holographic Will or a self-written will, a general Will (openbaar testament) and a secret Will or closed will.

Judging from the form of a will made by a Notary, namely a general Will (openbaar testament) regulated in Article 938 of the Civil Code and Article 939 of the Civil Code, this deed must be made before a Notary and attended by 2 (two) witnesses, the Testator explains to the Notary what he wants and the Notary must clearly state it in writing. The Notary has a very important role in the process of making a general will (openbaar testament). In terms of authority and obligations, the Notary carries out a role based on Law of the Republic of Indonesia Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary and the Civil Code. In making a will, the testator often does not inform the heirs about the existence of a will made or the testator. This is because there is no obligation for the testator to notify the will he will make.⁵ According to its content, there are two types of wills, namely a will appointing heirs (erfstelling) and a will granting inheritance (legaat). Specifically regarding a will appointing heirs (erfstelling), Article 954 of the Civil Code states that a will appointing heirs is a will by which the person making the will gives one or more persons all or part (half, one third) of his assets if he dies. The people who receive the assets according to this article are heirs under the general title.⁶ The heirs based on this article are called heirs of the will (testamentaire erfgenaam). As with ab intestato heirs, testamentary heirs acquire all the rights and obligations of the heir who dies. The heirs of a will are under the general title (onder algemene title).

In this study, the author cites a deed explaining the appointment of heirs based on a will deed made by a Notary, in line with the provisions for making wills that authorize Notaries to make will deeds. In principle, Notaries are limited to the formal aspects of making authentic deeds. Notaries are tasked with confirming, recording, and pouring the will of the parties into the form of an authentic deed in accordance with applicable procedures. Notaries have no obligation for the material truth of all information or documents submitted by the parties. Therefore, if it is later discovered that there is false information or incorrect data originating from the parties, then the responsibility for the material truth remains with the party providing the information, as long as the Notary has

⁵Muslimah, Maziyyatul, and Dwi Ratna Kartikawati, 2022, Analysis of Wills Unknown to Heirs Based on Civil Inheritance Law." *Krisna Law: Student Journal of the Faculty of Law, Krisnadwipayana University*, Vol. 4, No. 1. p. 17.

⁶Ali Afandi, 2000, *Inheritance Law, Family Law, Evidence Law*, (Jakarta, Rineka Cipta), page 16.

carried out his duties in accordance with applicable legal provisions. This opinion is in line with the view of Asnahwati H. Herwidi, SH, who stated that the contents of the deed are the will of the parties, while the Notary only pours it into the form of an authentic deed in accordance with legal provisions. However, Notaries are required to apply the principle of prudence and are required to be guided by Law of the Republic of Indonesia Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary, the Notary Code of Ethics and the Civil Code.

The registration of the appointment of heirs cannot be done immediately based on the will of the testator but is still based on the national law of the Civil Code which regulates the provisions regarding the limitations as long as there are still heirs *ab intestaat* which cannot be set aside as regulated in Article 913 of the Civil Code "Legitime portie or part of the inheritance according to the law is the part and property that must be given to the heirs in a straight line according to the law, against which the deceased person may not determine anything, either as a gift between the living people, or as a will". In line with his book, Uryadini explains that Legitime portie is a certain part of the inheritance that must be given to certain heirs and cannot be removed by the testator, either through a gift or a will. Legitime portie is a part of the inheritance that must be given to the heirs in a straight line according to the law, and against this part the testator may not determine anything that reduces the right according to Article 913 of the Civil Code⁷.

That in the matter of making deeds or in carrying out his/her position, a Notary is bound by the Republic of Indonesia Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary, a Notary in carrying out his/her position is obliged to act in a trustworthy, honest, thorough, independent, impartial manner, and safeguard the interests of the parties involved in legal acts (Article 16 Paragraph (1) letter a) and is prohibited from carrying out other work that is contrary to religious norms, morality, and propriety that can affect the honor and dignity of the position of Notary (Article 17 Paragraph (1) letter i). Referring to the Notary's code of ethics, Article 4, the Notary's personality ethics as referred to in Article 3 letter a, contains the Obligations for members of the association and every person who holds and carries out the duties of the position of Notary, namely:

- a. must obey and be loyal to the Republic of Indonesia, Pancasila and the 1945 Constitution of the Republic of Indonesia;
- b. must obey the law, oath of office, and Code of Ethics;
- c. must have good morals, ethics and personality;

⁷Uryadini, Y., & Widiyanti, AT, 2020, Legal consequences of testamentary gifts exceeding the legitime portie. (Media Iuris), pp. 241-256.

- d. must maintain the dignity of the position of Notary;
- e. must have a trustworthy and responsible attitude;
- f. must have an honest and integrated attitude;
- g. must have a careful attitude;
- h. must have an independent attitude;
- i. must have a fair and impartial attitude;
- j. must have a professional attitude;
- k. must have a wise attitude; and
- l. must have a humble attitude.

Based on these provisions, the Notary can provide an understanding to the heir, including an explanation of what to do if there is an absolute right of heir in making the will, regarding this matter according to the provisions of the Civil Code, it is determined in a straight line according to the law, namely: Group I, Those who are first called by law as heirs are children and their descendants along with the husband or wife of the testator. Children inherit for an equal share and the husband or wife who lives the longest inherits the share with the children. Article 852 of the Civil Code explains that children or all their descendants, whether born of another marriage, inherit from both parents, grandparents or all their blood relatives in a straight line upwards, with no distinction between men or women and no distinction based on prior birth. Group II, Parents, siblings and descendants of siblings. The acquisition of inheritance from the second group is regulated by law in Article 859 of the Civil Code. Group III, family in a straight line upwards after the father and mother. If the testator does not leave a husband/wife, descendants, siblings and descendants of siblings, then the inheritance before being divided, is first divided (kloving). Half of the inheritance is given to relatives on the father's side, and the other half to those on the mother's side. Each part is divided into a separate inheritance. Division (kloving) in the Civil Code only occurs if there are no more heirs from the second group including descendants of the testator's brothers and sisters. Group IV, This group consists of blood relatives in the lateral line further up to the 6th (sixth) degree. If the deceased person does not leave descendants, wife or husband, siblings, parents, grandparents, then according to the provisions of Article 853 and Article 858 paragraph (2) of the Civil Code, the inheritance falls to the closest heir in each line. If there are several people of the same degree, then the inheritance is divided based on equal shares. If in one line there are no blood relatives in the degree that allows them to inherit, then all blood relatives in the other line receive the entire inheritance (Article 861 of the Civil Code).

In the Grouping of heirs, it has been regulated by explaining how to classify the order of heirs, namely the order of the first to be called as heirs, in line with the method of classifying heirs, absolute heirs (Legitimate) in the civil code has regulated the amount or procedure for distributing inheritance for Legitimate before it is given to other people in a will, regulated in Article 914 of the Civil Code, namely:

- 1) If the heir only leaves one legitimate child in line, then the legitime portie consists of half of the inheritance that the child would have received upon inheritance due to death.
- 2) If the deceased leaves two children, then the legitimate portion for each child is two-thirds of what each child would have received in the inheritance due to death.
- 3) In the case of a deceased person leaving three or more children, the legitime portie is three-quarters of what each child would have received in the inheritance due to death.
- 4) By the term children they also mean their descendants to whatever degree, but they are only counted as replacements for the children they represent in inheriting the heir's inheritance.

According to the absolute part (Legitime Portie), Legitimarum cannot be set aside or removed from the heirs unless they are not worthy of inheriting, regulated in Article 838 of the Civil Code, which states that people who are declared by law to be unworthy of inheriting and therefore excluded from inheritance are those who have been convicted of having killed or attempted to kill the testator, those who have been convicted by a judge's decision for slanderously filing a false complaint that the testator has committed a crime that carries a penalty of 5 (five) years or more and those who by violence or actions have prevented the testator from making or revoking a will. Those who have embezzled, damaged or falsified a will and heirs who reject inheritance Article 1058 of the Civil Code states that the heir who rejects inheritance is considered never to have been an heir.

The recording of a will by a Notary is guided by the Law of the Republic of Indonesia Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary, the Notary Code of Ethics and the Civil Code. Referring to a deed that is the subject of this research, in the contents of the deed there is an act of the testator recording his last will to the Notary whose contents are contrary to the law, so in this research the researcher raises an example of the appointment of an heir in a will as follows:

That SM (Heir) has 6 (six) biological children named St S, Sr S, Ma S, Mti S, Mni S, JL. That SM (Heir) has 1 unit of a permanent 1 (one) floor residential building

with an area of 69 M2 (Sixty Nine square meters) which stands on a plot of land with an area of 188.12 M2 (One Hundred Eighty Eight Point Twelve square meters) located in Batam City. That before SM (Heir) died, he had made a Deed of Will made by a Notary, in which the contents of the will stated that he had appointed an Heir, namely none other than the grandson of SM (Heir) named RS and appointed an executor of the will (exécuteur testamentaire) namely Mti S with the object of the will having 1 (one) unit of a permanent 1 (one) floor residential building with an area of 69 M2 (Sixty Nine square meters) standing on a plot of land with an area of 188.12 M2 (One Hundred Eighty Eight Point Twelve square meters) located in Batam City and if the price of 1 (one) unit of the residential building is IDR 1,200,000,000. (one billion two hundred million rupiah).

That based on the will, the absolute rights of the 6 (six) biological children of SM (Heir) named St S, Sr S, Ma S, Mti S, Mni S, JL as Legitimates have been ignored without paying attention to the absolute part. If referring to the provisions of the Civil Code, before appointing the heirs, it is necessary to first pay attention to the legitimate rights with the following amounts:

- 1) St. S received $\frac{3}{4}$ (three quarters) of what each child was supposed to receive and if it is valued in rupiah, if each child was supposed to receive IDR 200,000,000. (two hundred million rupiah), then St. S has the right to receive an inheritance as a legitimate amount of IDR 150,000,000. (one hundred and fifty million rupiah).
- 2) Sr. S received $\frac{3}{4}$ (three quarters) of what each child was supposed to receive and if it is valued in rupiah, if each child was supposed to receive IDR 200,000,000. (two hundred million rupiah), then Sr. S has the right to receive an inheritance as a legitimate amount, namely IDR 150,000,000. (one hundred and fifty million rupiah).
- 3) Ma S received $\frac{3}{4}$ (three quarters) of what each child was supposed to receive and if it is valued in rupiah, if each child was supposed to receive IDR 200,000,000. (two hundred million rupiah), then Ma S has the right to receive an inheritance as a legitimate amount of IDR 150,000,000. (one hundred and fifty million rupiah).
- 4) Mti S received $\frac{3}{4}$ (three quarters) of what each child was supposed to receive and if it is valued in rupiah, if each child was supposed to receive IDR 200,000,000. (two hundred million rupiah), then Mti S has the right to receive an inheritance as a legitimate amount of IDR 150,000,000. (one hundred and fifty million rupiah).
- 5) Mni S received $\frac{3}{4}$ (three quarters) of what each child was supposed to receive and if it is valued in rupiah, if each child was supposed to receive IDR 200,000,000. (two hundred million rupiah), then Mni S has the right to receive an

inheritance as a legitimate amount of IDR 150,000,000. (one hundred and fifty million rupiah).

6) JL received $\frac{3}{4}$ (three quarters) of what each child was supposed to receive and if it is valued in rupiah, if each child was supposed to receive IDR 200,000,000. (two hundred million rupiah), then JL has the right to receive an inheritance as a legitimate amount of IDR 150,000,000. (one hundred and fifty million rupiah).

Based on the amount of absolute legitimate rights that cannot be given to others is IDR 900,000,000. (Nine hundred million rupiah) and free assets that can be given or bequeathed by the testator is IDR 300,000,000. (Nine hundred million rupiah). The instrument of protection against absolute rights cannot be removed by the will of the testator through a will, this provision confirms that the testator transfers his assets not absolutely. The norm of legal provisions regarding the absolute legitimate part is normatively regulated with the aim of providing stronger legal certainty for interested parties and in line with the theory of legal certainty is a normative principle (certainty as a normative principle). This legal certainty is associated with the idea of certainty, stability and predictability of the law. However, in this case, in the concept of achieving legal certainty, absolute legitimate rights have not been fully fulfilled and have not been able to achieve what is said to be the achievement of legal certainty, these legal provisions have not been supported by certain situations in society, namely that the authorities (government) or officials have not implemented these legal regulations consistently and also submitted to and obeyed the law.

From the description of legal provisions related to absolute legitimate rights, fundamentally in inheritance law has provided legal certainty to the community that reflects justice and benefit, however in its implementation practice, Notaries as public officials based on the Republic of Indonesia Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary, the Notary Code of Ethics and the Civil Code are still found Notaries who have not implemented it as regulated in carrying out the position of Notary must obey the law, be trustworthy, honest, thorough, independent, impartial, and protect the interests of the parties involved in legal actions. So through these provisions in order to achieve legal certainty, public officials in this case Notaries are not only tasked with pouring the will of the testator into a deed, but also have a moral and professional obligation to ensure that the testator's legal actions do not conflict with Legitieme Portie, by applying the principle of maximum caution in order to minimize disputes and at the same time provide fair legal protection for all parties involved in the inheritance legal relationship in order to achieve legal certainty for the legitimacy.

Thus, the uncertainty of the formulation of rules, systematics, and their formal characteristics that have not been regulated by the mechanism for recording

wills which are the standard requirement for an official to provide legal certainty for the legitimate person to obtain rights without having to go through a dispute process in court and can instead be formally regulated based on more concrete provisions that can be "coercive" to the law so that it is "certainly" obeyed.

3.2. Notary's Responsibility for Wills that Violate the Absolute Part (Legitieme Portie) of Heirs.

In carrying out their duties, a notary must carry out the authority and duties assigned by law, namely, to create authentic deeds. A notary must also be responsible for the deeds they have created. An authentic deed is essentially inseparable from the notary's responsibility, which includes ensuring the material truth of the deed they have created.⁸ The theory of legal responsibility essentially positions a person as a subject who is obliged to account for every action that gives rise to legal consequences. In the context of the office of Notary, this responsibility is based on the principle of based on fault liability or responsibility based on error. This means that a Notary can only be held accountable if proven to have committed an error, whether intentionally or due to negligence, in exercising the authority granted by the Notary Law. Thus, the element of fault is the primary basis for determining whether or not a Notary is legally responsible.

Referring to the discussion in the first problem formulation, namely the provisions of the Deed of Will for the appointment of heirs related to the existence of absolute legitimate rights and when linked to the theory of responsibility, in carrying out the position of Notary as a public official who is authorized to make authentic deeds in accordance with the provisions of laws and regulations, he can be responsible in the form of civil, administrative and professional code of ethics.

In making a will, there are various requirements that must be met. The validity of a will must meet two (2) requirements: formal requirements and material requirements. In essence, formal requirements refer to the procedure for making a will, while material requirements concern the content or substance of the will maker's wishes. Material requirements for making a will relate to the will maker's statement of wishes regarding his or her assets, which can be determined and whose clauses are permitted by law.⁹Based on the Republic of Indonesia Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary, Article 15 Paragraph (2) letter e, in carrying out his position, a Notary has the authority to provide legal advice in

⁸Muhammad Iqbal, 2023, Notary's Responsibility for Making Wills That Are Cancelled Due to Violating Legitime Portie, Notary Journal, Vol. 3, No. 1, p. 53.

⁹Astrid Athina Indradewi, 2023, Validity and Legal Force of Wills that Violate the Legitimacy of Heirs, Jurnal Sapientia et Virtus, Vol. 8 Number 1, p. 256.

connection with the making of deeds, this authority can be realized by the Notary in connection with what will be notarized by the party and through this authority it becomes the basis that the Notary in carrying out his position does not immediately record the wishes of the party but can participate in the contents of the deed.

1. Indicators of Notary Responsibility for Deeds of Wills that Violate the Absolute Part (*Legitieme Portie*) of the Heirs.

Notary Liability is defined as the element of error, and the act is not only interpreted as an intentional act, but also includes negligence or lack of caution. As stated by Riduan Syahrani, a person can be held accountable if the loss incurred is the result of their intentional or negligent actions. Therefore, a Notary who makes a deed outside of his authority, fails to comply with established procedures, or ignores the obligation to exercise caution in carrying out his position can be considered to have fulfilled the element of error and is therefore obliged to be responsible for the resulting legal consequences.

a. There is Intention from the Notary.

In carrying out his/her duties, a Notary has the authority to make authentic deeds which are expanded by other authorities. A Notary may only carry out or exercise his/her authority in accordance with the provisions of the laws and regulations that regulate it, not limited to Authority. A Notary in carrying out his/her duties has obligations as stipulated in Article 16 of Law of the Republic of Indonesia Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary (UUJN).

The legal act in a Notarial deed is not a legal act carried out by the Notary, but rather a legal act of the parties who make a will for a legal act which is stated in an authentic deed. The Notary, the official who makes the authentic deed, must contain a clear connection between the parties carrying out the legal act. The Notary must ensure that there are no unlawful acts arising from the deed. To find out, the Notary must see the original document and request a photocopy related to all legal acts to be recorded in the deed. The Notary's actions are closely related to the Republic of Indonesia Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary (UUJN) Article 16 Paragraph (1) letter a. Acting in a trustworthy, honest, thorough, independent, impartial manner, and protecting the interests of the parties involved in the legal act. The connection is the Notary's obligation to protect the interests of the parties involved in the legal act. From the provisions above, it can be understood that if the Notary does not heed these provisions, it is interpreted that the Notary does not carry out his obligations and in the context of the appointment of a will, the Notary knows that the party in this case the heir has a legitimate absolute share that is undeniable, in carrying out his

position, the Notary can be considered to have committed an unlawful act. The Notary has also been given authority based on Article 15 paragraph (20) letter e of the Republic of Indonesia Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary which states: "Providing legal counseling in connection with the making of deeds" in line with what was conveyed by Bagir Manan at the Public Lecture of the Minister of Justice of the Republic of Indonesia, Mr. Oetojo Oesman, in the Up Grading-Refreshing Course for Notaries throughout Indonesia in Bandung on April 29, 1995, which stated¹⁰:

"An agreement made before a Notary or made with an authentic deed is binding on the parties who made the agreement and has absolute evidentiary power, so that the Notary in carrying out his/her duties functions to help form a legal agreement between the parties. In addition, the Notary can also function as a legal advisor who can help with legal counseling programs, because the Notary does not only read the deed to the parties as a fulfillment of the formalities determined by law, but of course also accompanied by legal explanations regarding everything related to the deed made."

Thus, in line with the obligations of a Notary, a Notary has the authority to provide legal counseling so that in the future the deed will not become problematic to the point of being disputed in Court due to unlawful acts in the contents of the deed. In relation to a Notary in carrying out his/her duties, a Notary who makes mistakes should be prohibited by the Notary's Position Regulations, but with the existence and presence of a Notary who is free from the permitted provisions, namely an act that is fabricated and then violated by the Notary, it causes losses that instead of the deed being an authentic and perfect evidence, the deed becomes a source of dispute for the parties due to questioning the validity or otherwise of the Notary's deed.

b. The Existence and Negligence of a Notary.

Negligence by a Notary that results in errors and creates legal problems, and these errors cause losses for parties relying on the Notary's services and give rise to legal liability for the Notary concerned. If losses arise due to negligence, the Notary can be held legally responsible under Article 1365 of the Civil Code (KUHPerdota) concerning unlawful acts. This applies as long as all elements are met, namely the existence of an unlawful act, negligence, loss, and a causal relationship between the act and the resulting loss. Negligence does not relieve a Notary from his/her responsibility, considering that professional standards require a duty of care. Notaries can make mistakes in their work due to a lack of knowledge, experience, or understanding in carrying out their duties and responsibilities. This situation often occurs when the Notary does not have

¹⁰Nico, Opcit, p. 216.

adequate information regarding the issues raised by the parties, both from a legal perspective and other aspects. If a Notary's error in preparing a document results in a loss, the injured party can take legal action against the Notary if there is a violation of the law, negligence, and actual loss suffered.

2. Form of Notary's Responsibility for Deeds of Wills that Violate the Absolute Part (*Legitieme Portie*) of the Heirs.

a. Civil Liability.

In the civil law system prevailing in Indonesia, it is the main basis of the Civil Code (*KUHPerdata*), where a will is understood as a statement of a person's will regarding the management of his/her assets and can be revoked or changed at any time while the testator is still alive. Although the law recognizes the right of every person to manage his/her assets through a will, this freedom is by no means absolute, there are limitations that are expressly stipulated by the Civil Code. portion of the inheritance that is legally the right of the heirs in a straight line, so that the testator has absolutely no right to reduce, transfer, or even eliminate it through a will or other form of legal act. The validity of a will is very dependent on the fulfillment of two groups of complementary conditions, namely the conditions related to the person who made it (subjective conditions) and the conditions related to the content and form of the will itself (objective conditions), where violation of both of them gives rise to very different legal consequences.

Subjective requirements are requirements concerning the testator's personality and the freedom of will underlying the making of the will. Based on Article 895 of the Civil Code, a person making a will must be a person who is legally competent to act. Civil law stipulates that if these requirements are not met, the will is not immediately void, but is still considered valid until a legally binding judge's decision declares its cancellation based on a lawsuit from the injured party. This is very different from the legal consequences that arise if a violation occurs in the objective requirements.

On the other hand, objective requirements are those related to the object being regulated, the content of the will, the form of its creation, and the intent and purpose of the will itself, the main basis of which is Article 888 of the Civil Code, which states that any legal act that is contrary to mandatory laws, public order, or morality is null and void. In the context of a will, this requirement includes the obligation to make a will in accordance with the procedures established by law. The relationship between the prohibition on violating *legitieme portie* and objective requirements becomes very clear if we refer to the provisions contained in the Civil Code itself. Subekti explains that this portion is a right that has been inherent from the beginning to certain heirs, so that the will of the testator has no power to change it, so their portion of the inheritance can be

regulated in the will as long as it does not interfere with the absolute share rights of the direct heirs. All of these provisions are legally binding, so they cannot be set aside by the testator's unilateral will, and any violation of them automatically constitutes a violation of the objective requirements for the validity of a will. Because violations of the provisions of *legitieme portie* fall within the realm of violations of objective conditions, the legal consequence is that the will is null and void. This is consistent in Supreme Court jurisprudence, including Decisions Number 148/PK/Perd/1982, Number 841 K/Pdt/2003, and Number 517 PK/Pdt/2010, all of which affirm that a will that violates the absolute share of the heirs is legally flawed and null and void. The meaning of null and void itself is that the legal act is considered as if it never occurred at all, having no binding force from the time it was made.

In practice, the injured party can still file a lawsuit with the District Court in order to obtain real legal certainty and if part of the legal act is void and part is valid, then the valid part is maintained as long as it does not conflict with the original intention of making the will. This reduction mechanism is known as *inkorting* which is regulated in Article 920 of the Civil Code, which gives the right to legitimate heirs to demand a reduction in gifts that exceed the limits of the testator's authority. However, this mechanism does not change the essence that provisions that exceed the limits are void by law, but only regulates the procedures for restoring the violated rights.

A Notarial Deed that is deemed null and void by law causes harm to another person as referred to in Article 1365 of the Civil Code which can be qualified as an unlawful act, a will that violates the absolute legitimacy. In principle, a Notarial Deed is null and void by law. Therefore, the legitimacy party can deny the validity of the Notarial Deed in the following aspects:

- 1) The aspect of external proof is the ability of the deed itself to prove its validity, as an authentic deed (*acta publica probant sese ipsa*). The authentic deed must comply with the established legal regulations regarding the requirements for an authentic deed, and because the deed does not meet the requirements as a deed. Therefore, as a legitimiser who objects to a will deed that ignores the legitimate rights as regulated in Article 913 of the Civil Code.
- 2) The formal evidentiary aspect is to provide certainty that an event and the facts in the deed were actually carried out by the Notary or explained by the party appearing at the time stated in the deed in accordance with the procedures determined in the recording of the deed in other words proving that formally the Notary before recording the will of the testator is obliged to provide a legal understanding of the limits of the will and record the absolute distribution of the heirs as required by law. The Notary's obligation to obey the law as regulated in the Law of the Republic of Indonesia Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary, the

Notary Code of Ethics on how the Notary carries out his/her position. Actions carried out by the Notary that violate the provisions of one aspect of the validity of the Notary's deed where the action is in violation of the provisions of the legislation, one of which is an unlawful act regulated in Article 1365 of the Civil Code, this is because it causes losses to the legitimacy.

Based on these two aspects, a Notary can be held responsible through a lawsuit at the District Court regarding the validity of his deed for his carelessness or negligence which causes harm to others, in line with the theory of legal responsibility, Hans Kelsen states that: "a person is legally responsible for a certain act or that he bears legal responsibility, the subject means he is responsible for a sanction in the case of a contrary act. Furthermore, Hans Kelsen states that: "Failure to exercise the care required by law is called negligence."

b. Professional Responsibilities / Notary Code of Ethics

In carrying out his/her duties, a Notary is always bound by the provisions of laws and regulations as well as the Notary Code of Ethics which serves as a guideline for the morals and professionalism of the profession. The validity of a Notary deed does not solely depend on the completeness of its physical form, but rather depends heavily on the fulfillment of objective requirements which include provisions regarding a particular object. As an official who has taken an oath of office, a Notary bears a personal responsibility that is inherent for life for every deed he/she makes, which includes the obligation to uphold the law, act in a trustworthy, honest, thorough and neutral manner, and is obliged to provide adequate legal counseling to the appearers before the statement of will is written down; this obligation is also the main point of the Notary Code of Ethics which requires each member to maintain the honor, dignity and integrity of the profession, and strictly prohibits the preparation of deeds whose contents are known or should be known to be unlawful or detrimental to the legal rights of other parties.

According to Habib Adjie, the obligation to test the conformity of the contents with objective requirements is not merely an administrative technical obligation, but an inseparable part of the ethical responsibility to ensure that the notarized deed truly reflects a valid and fair legal act, so that no party is harmed due to negligence or ignorance that should have been prevented by the Notary. When a violation of objective requirements occurs due to intentional or unforgivable negligence, it automatically constitutes a violation of the obligations of the position as well as a violation of professional ethical norms that paves the way for the imposition of ethical sanctions that are graded according to the severity of the error.

This ethical sanction has different characteristics from state administrative sanctions, civil sanctions, or criminal sanctions, because its main purpose is to

maintain the purity of professional values and restore public trust in the position of Notary, while also emphasizing that the authority held is not a free power but a mandate bound by law and moral norms. This is in line with the view of Sudikno Mertokusumo who stated that the role of Notary is not merely a recorder of the parties' statements of will, but rather a gatekeeper of legal certainty, so that refusing to make a deed that clearly violates objective requirements is actually the most fundamental and appropriate form of implementation of the code of ethics. Overall, it can be understood that violation of objective requirements in a Notary deed not only makes the deed null and void by law, but also triggers a hierarchical and firm ethical responsibility as evidence that the obligation to comply with the law and the obligation to uphold professional ethics go hand in hand, in order to maintain the integrity of the position and ensure the upholding of legal certainty and justice for the entire community.

Violations while carrying out their duties are regulated in the Republic of Indonesia Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary and violating the Notary Code of Ethics, where the one who carries out the examination whether it is right or wrong and has the authority to impose sanctions is the Notary Supervisory Board. Notaries who violate existing regulations can be one of the indicators that the Notary can be subject to sanctions. In this case, the MPN as a supervisory body can examine reports on the Notary's actions. There is a correlation between the Republic of Indonesia Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary and the Notary Professional Code of Ethics, where the Republic of Indonesia Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary and the Notary Code of Ethics.

A Notary in carrying out his/her duties as a Notary, fails to fulfill the requirements as a Notary, fails to fulfill his/her duties as a Notary or violates the code of ethics and Law of the Republic of Indonesia Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary. Therefore, a Notary may be subject to sanctions in the form of:

- 1) Verbal warning;
- 2) Written warning;
- 3) Temporary suspension;
- 4) Honorable discharge;
- 5) Dishonorable discharge.

Sanctions are imposed progressively, with enforcement measures appropriate to the violations and offenses committed. Imposing sanctions as a result of violations committed by Notaries is the authority of the Notary Supervisory Board. These sanctions are imposed based on inspections conducted at the Regional Supervisory Board, Regional Supervisory Board, and Central Supervisory Board levels.

4. Conclusion

Wills are regulated in Article 875 of the Civil Code, the making of a will by a Notary is guided by Article 938 and Article 939 of the Civil Code, UUJN Article 16 Paragraph (1) and Article 17 Paragraph (1), and the Notary Code of Ethics Article 4, this study shows that the appointment of heirs through a will cannot ignore the absolute part of the legitimaries as regulated in Article 913 of the Civil Code and Article 914 of the Civil Code. Provisions regarding the limitations in a will have provided legal certainty that reflects justice and benefit and with the application of a more optimal principle of caution by the Notary regarding the mechanism for making a will so that the rights of the legitimaries remain protected and inheritance disputes can be minimized. The Notary's responsibility for a will that violates the absolute rights (*legitieme portie*) of the heirs includes civil and professional responsibility. Civilly, a will that contradicts the provisions of *legitieme portie* is a violation of the objective requirements for the validity of a legal act so that it can be declared null and void and is consistent in the jurisprudence of the Supreme Court, including Decision Number 148/PK/Perd/1982, Number 841 K/Pdt/2003, to Number 517 PK/Pdt/2010, all of which confirm that a will that violates the absolute share of the heirs contains legal defects and is null and void. The Notary can be held responsible through a lawsuit for unlawful acts based on Article 1365 of the Civil Code. In addition, Notaries are also professionally responsible because they are obliged to carry out their duties in accordance with the Notary Law and the Notary Code of Ethics. Notaries who are proven to have violated their obligations can be subject to ethical and administrative sanctions by the Notary Supervisory Board, ranging from warnings to dismissal according to the level of violation committed. Thus, the responsibility of a Notary is not only limited to the formal aspects of making deeds, but also includes a professional obligation to prevent the birth of deeds that are contrary to legal provisions, especially those that harm the absolute rights of heirs.

5. References

Journal:

Nada Putri Rohana, 2021, *Wasiat Wajibah Dalam Perspektif Hukum Di Indonesia*, *Jurnal Hukum Ekonomi* Vol. 7, No. 1.

Trubus Wahyudi, 2020, *Legal Consequences of Agreement in Islamic Economic Business, Jurnal Pembaharuan Hukum*, Volume 7, Number 1.

Muslimah, Maziyyatul, dan Dwi Ratna Kartikawati, 2022, Analisis Akta Wasiat yang Tidak Diketahui Oleh Ahli Waris Berdasarkan Hukum Waris Perdata." *Krisna Law: Jurnal Mahasiswa Fakultas Hukum Universitas Krisnadwipayana*, Vol. 4, No. 1. hal. 17.

Muhammad Iqbal, 2023, Tanggung Jawab Notaris Terhadap Pembuatan Akta Wasiat Yang Dibatalkan Karena Melanggar *Legitime Portie*, *Notary Journal*, Vol. 3, No. 1.

Astrid Athina Indradewi, 2023, Keberlakuan dan Kekuatan Hukum Terhadap Wasiat yang Melanggar *Legitime Portie* Ahli Waris, *Jurnal Sapientia et Virtus*, Vol. 8 Nomor 1.

Books:

Ali Afandi, (2000), *Hukum Waris, Hukum Keluarga, Hukum Pembuktian*, (Jakarta, Rineka Cipta).

Uryadini, Y., & Widiyanti, A. T., (2020), *Akibat hukum hibah wasiat yang melebihi legitime portie*. (Media Iuris).

Sjaifurrachman dan Habib Adjie, (2022), *Aspek Pertanggungjawaban Notaris dalam Pembuatan Akta*, (Bandung, Sumbersari Indah).