

Roles and Responsibilities of Notaries in Making Certificates of Inheritance Rights for the Disbursement of Time Deposit Savings Funds by Heirs

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Abstract. *This writing aims to find out and analyze the role and responsibilities of Notaries in making certificates of inheritance rights for the disbursement of time deposit savings funds by heirs, the obstacles and ways to overcome obstacles faced by Notaries in making certificates of inheritance rights for disbursement of time deposit savings funds by heirs, and a sample deed of certificate of inheritance rights for the disbursement of time deposit savings funds by the heirs. This research uses empirical legal research. In this research, the object of study is sociological juridical legal research. The analytical knife in this writing uses the theory of legal responsibility and the theory of legal certainty. The results of the research show that the role of a notary in making a certificate of inheritance rights for the disbursement of time deposit savings funds by the heirs is to carry out a certificate of inheritance rights according to procedures. Notary responsibilities include the Notary's civil responsibilities regarding the material truth of the Deed he or she makes, in the construction of an unlawful act. The obstacles faced by notaries include legal substance, legal structure and legal culture. The way to overcome the obstacles that occur is that the Notary as the letter maker is more careful, the Notary needs to know and understand all the provisions that apply to certificates of inheritance rights in Indonesia.*

Keywords: *Certificate; Deposit; Inheritance; Time.*

1. Introduction

The term notary basically comes from the word "notaries" (Latin), namely the names given to Romans whose job was to carry out writing work or people who made notes in the past. Apart from that, there is also another opinion which says that notarius comes from the words nota literaria, namely a sign (letter mark or character) that states a word. Then in the fifth and sixth centuries the title notary was given to the personal writer (secretary) of the king (emperor), while at the end of the fifth century the title was given to palace officials who carried out

administrative work.¹

Notaries as public officials play an important role in the banking industry, especially in making authentic deeds, one of which is a Certificate of Inheritance Rights made by a Notary. With the Certificate of Inheritance Rights, it is possible to know precisely and with certainty who has the right to the assets left behind by the testator. These assets include movable and immovable assets, tangible and intangible, all of which involve legal traffic. Including deposits of the deceased's assets at the bank, whether in the form of cash as demand deposits or deposits or assets in safe lockets.

In general, deposits are money storage products provided by banks with a deposit system that is made in advance and has withdrawal provisions that can only be made in accordance with withdrawal provisions that can only be made in accordance with a certain time period agreed upon by the customer and the bank. Although deposited funds can only be withdrawn after a certain period of time, deposits have their own advantages compared to savings accounts. The interest rates given by banks for deposits are more competitive than ordinary savings. However, if you decide to withdraw the funds you have deposited before the agreed period ends, some banks allow you to withdraw your deposit funds but are subject to a number of penalties or deductions that you must bear.

Deposits have various deposit term options that can be selected according to your needs and preferences. Generally the terms offered are from 1, 3, 6, 12 or even up to 24 months. With the selected time period, the money deposited will be stored and cannot be withdrawn until the time period ends. When a customer who uses time deposit savings dies, for heirs who wish to disburse the savings, the bank sets several requirements that must be fulfilled by the heirs, if the deposit is above IDR 100,000,000,- (one hundred million rupiah). So the heirs must bring a Certificate of Inheritance Rights issued by a Notary.

The Certificate of Inheritance Rights is proof that the heir has the right and legal right to disburse the savings funds. Banks cannot carelessly disburse these savings funds, considering the existence of Article 2 of Government Regulation in Lieu of Law Number 23 of 1960 concerning Bank Secrecy, which states "Banks may not provide information about the financial condition of their customers which is recorded with them and other matters that must be kept confidential by the bank according to customs in the banking world."²With a Certificate of Inheritance Rights, the Bank can know for sure to whom the savings funds can be handed over by releasing or allowing the opening of a safe counter.

¹Liliana Tedjosaputro, 1991, Notary Malpractice and Criminal Law, Semarang, Agung, p. 10.

²M. Natsir Asnawi, 2013, Law of Evidence in Civil Cases in Indonesia, UII Press, Yogyakarta, p. 31

The role of the notary in bridging the interests of the customer's heirs with the bank is the preparation of an Inheritance Certificate which is required for the disbursement of time deposit funds at the bank. The Certificate of Inheritance Rights made by a Notary contains information regarding the heir, the heirs, and the parts to which the heirs have rights based on the Civil Code. Therefore, notaries as public officials are required to act professionally and behave and adhere to the guidelines stated in the Law on Notary Positions and the Notary's Code of Ethics.³

Based on the description above, the author formulates the problem related to how The role and responsibilities of a Notary in making a certificate of inheritance rights for the disbursement of time deposit savings funds by the heirs and what are the obstacles and how to overcome the obstacles faced Notary in making a certificate of inheritance rights for the disbursement of time deposit savings funds by the heirs.

2. Research Methods

This research method uses a sociological juridical approach. Sociological juridical research is legal research carried out by examining how reactions and interactions occur because legal expectations are often different from the reality that occurs in society, or it can be called a gap between *Das Sein* (facts/reality) and *Das Sollen* (norms/expectations). The specification of this research is descriptive analysis, namely research that aims to provide an overview of the problems that occur in connection with the use of applicable laws and regulations. Data sources and data collection methods use primary data obtained by interviewing sources who are considered to understand the research topic and secondary data obtained by reviewing literature related to the research topic. The data that has been obtained is analyzed qualitatively which is described in a quality manner in the form of coherent, orderly, logical and non-overlapping sentences, making it easier to understand the results of the analysis.⁴

3. Results and Discussion

3.1. Roles and Responsibilities of Notaries in Making Certificates of Inheritance Rights for Disbursement of Time Deposit Savings Funds by Heirs

Clients come to the Notary's office because they need the services of a Notary, so in principle it can be said that the Notary who is considered a service seller

³Ropaun Rambe, 2010, Complete Civil Procedure Law, Sinar Graphics, Jakarta, p. 42

⁴Mukti Fajar ND and Yulianto Achmad, 2010, Dualism of Normative and Empirical Legal Research, Yogyakarta, Student Library, p. 51.

must try to serve the client as well as possible. Services are a business activity process, generally based on verbal agreement between both parties (service provider and recipient) to achieve a certain goal. This indicates that a notary does not mean anything if society does not need it.⁵

In Indonesia, when making Inheritance Certificates, for several groups of people in Indonesia, such as European groups and Chinese groups, notaries have routinely made and are still making them. This information has received full trust from the public, government agencies and the private sector, even from debtors (those who owe money to heirs), especially banks for money saved by customers who have died.

With the Inheritance Certificate, we can know precisely and definitely who has the right to the assets left behind by the testator. These assets include movable and immovable assets, tangible and intangible, all of which involve legal traffic. The Agrarian Office, for example, can know for sure to whom an immovable property belonging to someone who has died will be inherited. Banks that hold the deceased's assets, whether in the form of cash as demand deposits or deposits or assets in safelots, can know for sure to whom they can pay the money or hand over the assets by releasing or allowing the safelot to be opened. In addition, a certificate of inheritance made by a Notary can be used to disburse time deposits at the Bank.

The important things that a Notary needs to pay attention to when making a Certificate of Inheritance are: Firstly, the testator's last place of residence needs to be considered and mentioned in the inheritance statement. The place where the heir dies is not a determining factor in inheritance matters. If someone dies in Jakarta or Singapore, where he was traveling or seeking treatment, but the person who died lived in the city of Yogyakarta, then it is in the city of Yogyakarta that his legacy is "open". By determining that an inheritance is open in Indonesia, for example, then the Indonesian Civil Law applies which regulates and controls the legal consequences of that inheritance.

Furthermore, if after being proven by a death certificate, a Notary can ask the Office of the Central Registry of Wills for information as to whether the testator left a will or not. Next, the Wills Registration Center will provide written information about whether or not there is a will from the testator. If there is an office, it will only mention the last will, the name and location of the Notary who made it, the serial number of the repertory, the date and number of the deed. The contents of the deed were not disclosed because the service was not aware of it. The information from the Central Register of Wills must be checked

⁵Habib Adjie, 2007, Indonesian Notary Law; Thematic Interpretation of Law Number 30 of 2004 concerning Notary Positions, First Printing, Bandung, Refika Aditama, p. 4.

carefully, first to see whether the spelling of the testator's name matches that stated in the will letter. Second, is the old name included in it (in connection with the name change regulations implemented between 1966-1968, it is possible that someone made a will at that time). After obtaining a copy of the will, you must pay attention to whether the will contains a revocation of all wills ever made by the testator or not.⁶

The role of the Notary in making inheritance certificates is aligned with fairness, so it is fair and not just.⁷This is in line with the Islamic theory of justice. Basically, the concept of justice in Islam is not "equality" but "comparability". It is fair if what he gets is proportional to what he does, not the same as what other people get. This is in accordance with Rawls' opinion, namely that everyone has the same right to be rich, not the right to have the same wealth.

A notary as a public official who has the authority to make an Authentic Deed can be burdened with responsibility for his actions in connection with his work in making the Deed. The scope of a Notary's responsibility includes the material truth of the Deed he or she makes, namely: 17

1. Civil responsibilities of a Notary regarding the material truth of the Deed he or she makes, in the construction of an unlawful act. Acts against the law here are active or passive.
2. Notary's criminal responsibility for material truth in the deed he or she makes. Crime in this case is a criminal act committed by a notary in his capacity as a public official who has the authority to make deeds, not in the context of an individual as a citizen in general.
3. The Notary's responsibility is based on the Notary's Position Regulations regarding the material truth in the Deed he or she makes.
4. The Notary's responsibilities in carrying out his/her duties are based on the Notary's code of ethics

In the banking world, Notaries have duties and also the authority to make legal actions which are generally administrative in nature. In the act itself, the Notary can make various kinds of contracts or agreements regarding credit or borrowing, buying and selling, renting, auction minutes and other contracts required by the parties. Of course, notaries must also adhere to the standards for making agreements in accordance with the law.

⁶Dahlan, "Authority of the Honorary Council of Notaries Regarding Criminal Aspects in the Field of Notary Affairs", Journal of Legal Sciences, vol 18 no 1, April 2016, p. 38.

⁷Interview with Notary & PPAT Lydia Hendrawati, SH, M.Kn, on July 10 2023

3.2. Obstacles and How to Overcome Obstacles Faced by Notaries in Making Certificates of Inheritance Rights for Disbursement of Time Deposit Savings Funds by Heirs

A Certificate of Inheritance is made with the aim of proving who is the heir to the inheritance which has been opened according to law from several portions or parts of each heir to the inheritance which has been opened. A Certificate of Inheritance is a letter of proof of inheritance, namely a letter that proves that those mentioned in the Certificate of Inheritance are heirs and heirs. The Inheritance Certificate is also used to change the name of inherited assets received, and in the name of the heir it becomes the name of all the heirs.⁸

In connection with the disbursement of bank deposits made by the heirs, there are still problems experienced by the heirs, the Bank and the Notary in the implementation of making inheritance certificates.⁹

Obstacles faced by Notaries in making certificates of inheritance rights for disbursement of time deposits by heirs include:

- a. Notaries have difficulty ensuring that the witnesses they present must know about the family of the heir who has died, for example the witness really knows the number of heirs' children, so that there are no heirs whose names are not included in the certificate of inheritance rights.
- b. It is still common to find witnesses or heirs who are dishonest in providing information. This is also one of the obstacles in making heir certificates where witnesses and heirs should be able to provide honest information regarding the data needed to make heir certificates as well as the completeness of each party making the power of attorney.
- c. There is no unification regarding the implementation arrangements for making certificates of inheritance rights in Indonesia. The meaning of the word Unification itself is to impose a certain type of law on all the people in a certain country. If a law is declared to apply in Unification, then in that country only one particular type of law applies and not various types of law.

In essence, a notary as a public official is a constantizer or relayer or records in writing and authentically the legal actions of interested parties. The notary is not in it, the notary is an outside party, the person carrying out the legal action is the interested party. The initiative in making a notarial deed or authentic deed lies with the parties. Therefore, a notary or authentic deed does not guarantee that

⁸Effendi Parangin, 2003, *Inheritance Law*, Rajawali Press, Jakarta, p. 27.

⁹J. Satrio, 1992, *Inheritance Law*, Alumni, Bandung, p. 8.

the parties are "telling the truth" but what is guaranteed by an authentic deed is that the parties are "truthfully saying" as stated in the deed.

The truth of the heir's words in the process of making a certificate of inheritance before a notary as contained in the deed is not the responsibility of the notary, on the contrary the notary states that the parties or heirs are correct in saying that, what is said in the certificate of inheritance submitted to the notary contains the truth or lies, this is not the responsibility of the notary. The notary only records what is said by the parties who appear before the notary, if what is said is not true or contains falsehoods or falsities, then the deed or certificate of inheritance remains genuine, not fake, invalid or fake and the lie is the statement of the party submitted to the notary, which is then stated in a deed or inheritance certificate.

Responding to the obstacles that occur regarding the preparation of inheritance rights statements by Notaries, there are solutions to the problems that occur, namely:

- a. The need for accuracy on the part of the notary as the document maker so that there are no errors in filling out the document and the need to apply the principle of accuracy in every document creation that is being worked on.
- b. Notaries need to know and understand all the provisions that apply to certificates of inheritance rights in Indonesia so that the notary can more easily control legal events and express them in certificates of inheritance rights.
- c. Regarding the honesty of witnesses and heirs, the notary needs to ensure the completeness and honesty of a document and ensure that the words of the witnesses and heirs can be accounted for so that in the future there will be no problems related to making a certificate of inheritance rights regarding the deposit that will be shown to the heirs, from the statements of the heirs and witnesses under oath.
- d. Present all the heirs who have explained everything under oath, as well as 2 witnesses who have a close relationship with the heir or the deceased or who have known the deceased for a long time, even before marriage, who can testify to the truth about whether or not there may be other children. the birth certificate is not shown, whether or not there is a marriage agreement, and whether or not there is another marriage entered into by the testator and so on.
- e. The function of the two corroborating witnesses is to strengthen documents or information from the heirs, in order for the corroborating witnesses to provide truthful information, the notary must include at the end of the body of the deed a statement that the reinforcing witnesses know and confirm the contents of the deed, if they are willing to accept an oath before an authority to further ascertain

the number of witnesses. The obligation of witnesses to take an oath is regulated in Article 1911 of the Civil Code: "Every witness is obliged, according to his religion, to swear or promise that he will tell the truth."

f. There needs to be a unification of laws and regulations in making certificates of inheritance rights which will make it easier for notaries to make certificates of inheritance rights.

4. Conclusion

The role of a notary in making a certificate of inheritance rights for the disbursement of time deposit savings funds by the heirs is to carry out the preparation of a certificate of inheritance rights according to procedures. The notary must first confirm the correctness of the heir, check the death certificate, check whether there is a will from the heir. Next, a thorough examination of the facts was carried out on all documents, such as the heirs' KTPs, Family Cards, Marriage Certificates, Birth Certificates, and matching them with what was explained by the witnesses. Notary responsibilities include the Notary's civil responsibilities regarding the material truth of the Deed he or she makes, in the construction of an unlawful act. Acts against the law here are active or passive, Notary's criminal responsibility for material truth in the Deed he makes, Notary's responsibility based on the Notary's Position Regulations for material truth in the Deed he makes, Notary's responsibility in carrying out his office duties based on the Notary's code of ethics. Obstacles faced by notaries in making certificates of inheritance rights for disbursement of time deposit savings by heirs include legal substance, legal structure and legal culture. The way to overcome the obstacles that occur is that the Notary as the letter maker is more careful, the Notary needs to know and understand all the provisions that apply to certificates of inheritance rights in Indonesia, there needs to be legal and regulatory coverage in making certificates of inheritance rights.

4. Refences

Dahlan, "Kewenangan Majelis Kehormatan Notaris Terkait Aspek Pidana Dibidang Kenotariatan", *Jurnal Ilmu Hukum*, vol 18 no 1, April 2016.

Effendi Parangin, 2003, *Hukum Waris, Rajawali Pers*, Jakarta.

Habib Adjie, 2007, *Hukum Notaris Indonesia; Tafsir Tematik Terhadap Undang-Undang Nomor 30 Tahun 2004 tentang Jabatan Notaris*, Cetakan Pertama, Bandung, Refika Aditama.

J. Satrio, 1992, *Hukum Waris*, Alumni, Bandung.

Liliana Tedjosaputro, 1991, *Malpraktek Notaris Dan Hukum Pidana*, Semarang, Agung.

M. Natsir Asnawi, 2013, *Hukum Pembuktian Perkara Perdata diIndonesia*, UII Press, Yogyakarta.

Muh Idris, "Implementasi Hukum Waris Dan Pengajarannya Pada Masyarakat Kec. Poleang Tengah Kab. Bombana (Perbandingan Antara Hukum Adat, Hukum Islam Dan Hukum Perdata), *Jurnal Al-'Adl*, Vol. 8 No. 1, Januari 2015.

Mukti Fajar ND dan Yulianto Achmad, 2010, *Dualisme Penelitian Hukum Normatif dan Empiris*, Yogyakarta, Pustaka Pelajar.

Ropaun Rambe, 2010, *Hukum Acara Perdata Lengkap*, Sinar Grafika, Jakarta.