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The Role and Responsibilities of Notaries in Making Wills That Have the Potential to Violate the Rights of Heirs Based on Islamic Inheritance Law in Jepara District

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Abstract. *This study aims to determine and analyze the role and responsibilities of Notaries in making wills that have the potential to violate the rights of heirs based on Islamic inheritance law in Jepara District. This research using an empirical legal approach, the research specifications are descriptive qualitative, the data collection method for primary data is by interview and secondary data is by literature study, the data analysis method is descriptive analysis. Based on the results of the data analysis, it can be concluded that Jepara Notaries have a very large role and responsibility in preventing inheritance disputes in the Jepara area, namely that notaries must always educate heirs who want to make a will so that in making the will they do not violate the maximum limit that can be willed.*

Keywords: *Islamic; Notary; Responsibilities.*

1. Introduction

One of the roles of a Notary that the public needs is making a will deed. By making a will a person can ensure that their property and assets are distributed according to their wishes after they die, as well as providing legal certainty for the heirs and related parties. Inheritance law is the law that regulates the transfer of assets left behind by someone who dies and the consequences for their heirs. In principle, only rights and obligations in the field of wealth or property law can be inherited. Some exceptions, such as the right of a father to deny the legitimacy of a child and the right of a child to demand that he be declared the legitimate child of his father or mother (both rights are in the field of family law), are declared by law to be inherited by his heirs.[1]

[1]Tanuwidjaja, TH (2019). Legal Consequences of Inheritance Due to Afwezeigheid on Heirs According to Western Civil Law (BW). Journal of Business Law, 3(1), 21-34.

According to Mr. A Pitlo, inheritance law is a series of provisions in which, in relation to the death of a person, the consequences in the material field are regulated, namely: the consequences of the transfer of inheritance from a deceased person to the heirs, both in the relationship between themselves or a third party.[2]

The definition of a will according to Article 875 of the Civil Code is "A deed containing a person's statement about what he wants to happen after he dies, and which can be revoked."

In general, a will is made with the aim that the heirs cannot know whether the inheritance left by the testator will be inherited by his heirs, or whether it will be inherited by another party who is not his heir at all until the time the will is read. And this often causes problems between the heirs and those who are not heirs, but according to the will, the person who is not the heir gets the inheritance. Of course, there will be parties who feel disadvantaged and submit objections/cancellations regarding the truth of the contents of the will made by the testator. Therefore, the will takes effect after the testator dies, so it is very difficult to prove its validity because there are also wills made without the intervention of a notary. In this regard, based on article 943 of the Civil Code, it is determined that a Notary who keeps wills among the original documents, in whatever form, after the death of the testator, must notify interested persons.[3]

The provisions of a Notary in his authority to make an authentic deed have been regulated in Law No. 30 of 2004 concerning the Position of Notary as amended by Law No. 2 of 2014 UUJN. In Article 1 number 1 UUJN, it has been stated that a Notary is a public official who is authorized to make authentic deeds and has other authorities as referred to in this Law or based on other laws. Regarding the authority of a Notary, Article 15 paragraph (1) UUJN has provided an explanation, that a Notary in his position is authorized to make authentic deeds regarding all acts, agreements, and determinations required by laws and/or desired by the interested party to be stated in an authentic deed, guarantee the certainty of the date of the deed, store the deed, provide grosse, copies and extracts of the deed, all of which as long as the act of the deed is not also assigned or excluded to another official or other person as determined by law.

Notaries as public officials are given the authority by statutory regulations to make all agreements and deeds and as desired by the interested parties. This is in accordance with the provisions in 16 paragraphs (1) to (13) of the UUJN. One of the authorities of a Notary is to be able to make a will as mandated in the UUJN, including making a will before witnesses as regulated in Article 939 paragraph (4)

[2]Sagala, E. (2018). Inheritance Rights According to Civil Inheritance Law Provisions. Scientific Journal of Advocacy, 6(2), 116-124.
[3]Simanungkalit, R., Purwanti, E., & Maharani, C. (2023). Wills Not Reported by Notaries to the Central Will Register. Tanjungpura Acta Borneo Journal, 2(1)

of the Civil Code and making a will without witnesses as regulated in Article 939 paragraph (2) of the Civil Code.

Notaries in carrying out a legal action must always act carefully so that the Notary before making a deed, must examine all relevant facts in his considerations based on applicable laws and regulations. Examining all the completeness and validity of the evidence or documents shown to the Notary, as well as hearing the statements or statements of the parties must be done as a basis for consideration to be stated in the deed.[4]In practice, the making of a will by a Notary must pay attention to all provisions regulated or determined in the provisions of the laws governing the implementation of wills. So that in the future nothing happens that can harm the parties which can then also harm the Notary who made the will.[5] In relation to the duties and responsibilities of a Notary, the researcher is interested in conducting research on the Role and Responsibilities of a Notary in Making Wills That Have the Potential to Violate the Rights of Heirs Based on Islamic Inheritance Law in Jepara District.

This research aims toto know and analyze the role and responsibilities of Notaries in making wills that have the potential to violate the rights of heirs based on Islamic inheritance law in Jepara District.

2. Research Methods

The research methods consist of: the approach method is empirical juridical, the research specification is descriptive qualitative, the data collection method for primary data is by interview and secondary data is by literature study, the data analysis method is descriptive analysis.

3. Results and Discussion

3.1. The role of a notary in making a will that has the potential to violate the rights of heirs based on Islamic inheritance law in Jepara District

The most essential thing in inheritance issues, whether in Jepara District or in all other areas in Indonesia, is the existence of a deceased person. Inheritance issues only arise when someone dies, without someone dying there will be no discussion and discussion of inheritance issues. Therefore, a person who is still alive may not distribute his/her assets to his/her heirs (children, husband/wife, parents) on the basis of inheritance, because according to the law, gifts made by the testator while the testator is still alive cannot be categorized as inheritance, but rather categorized as grants, or gifts. In addition to grants, the distribution of assets to heirs during the testator's lifetime can also be done by appointing heirs

[4]Setiawan, K., Prakoso, B., & MOH ALI, MA (2021). Notary in Making Contract Deeds Based on the Principle of Prudence. Journal of Notary Science No. 2 Vol 2. Page 43
[5]Arkan, MH (2020). The role of notaries in making wills that conflict with the compilation of Islamic law (study of notary deed number 12 dated October 27, 1984 concerning wills). Lex Rennisance Journal. No 3 Vol 5. Pages 626-643.

(erfstelling) based on a will or testament which is also often called testamenter heirs. If someone is appointed as an heir, then it is as if he/she has the same status as an heir under the law.

In Islamic inheritance law, there is no concept of designation or appointment of heirs (erfstelling) but only a gift from one person to another that applies when the giver dies. "Giving" in special circumstances like this in the context of inheritance, according to the concept of the Civil Code can be known as a will. In inheritance law, the Civil Code is called a will grant or commonly called legaat. In general, a will is a release of inheritance from a person (the testator) to another person or institution that will apply after the person's death. According to the origin of the law, a will is an act that is done with a will in any circumstances. While a gift or giving something to another person as a legal act, where the legal act has been recognized both in the Customary Law community, Islamic Law and in the Civil Code.

The grant itself must have an agreement, made while the grantor is still alive and must be given for free. Based on Article 1666 of the Civil Code, a Grant is an agreement by which the grantor, during his lifetime, for free and irrevocably, hands over something for the needs of the grantee who receives the transfer. While the definition of testamentary inheritance is the distribution of inheritance to people who are entitled to receive inheritance based on the last will (Will) of the testator, which is stated in writing, for example in a notarial deed (testamentary inheritance).

According to Article 874 of the Civil Code, all assets inherited from a deceased heir belong to his heirs, unless the heir has legally determined this in a will (testament). What is meant by a will (testament), based on Article 875 of the Civil Code is a deed containing a person's statement about what will happen after he dies, and which can be withdrawn. Furthermore, Subekti said: "A testament is a statement from someone about what they want after they die." Basically, a will must be made to another person and not to the heirs. In several hadiths we find regulations regarding making wills to heirs, such as the confirmation of Rasullullah SAW in a hadith narrated by Ahmad and Tirmidhi, which means: "Indeed, Allah has given everyone who has the right their rights, so it is not permissible to make a will for heirs." In another hadith narrated by Daraquthni, it is stated: "You cannot make a will for an heir unless you get the consent of the other heirs."

Regardless of the differences of opinion of the scholars on this matter, the positive law of Indonesia in the contents of Article 195 paragraph (3) states that: "a will to an heir is valid if approved by all heirs." With the provisions of Article 195 paragraph (3), a legal line can be drawn, that the law in force in Indonesia is to allow a will to an heir if it receives approval from the other heirs. Then the Supreme Court of the Republic of Indonesia, referring to the provisions of Article 211 of the Compilation of Islamic Law, stated that gifts and wills to heirs can be counted as inheritance. The term "can" in the article legally means that the heir

who receives the property that has been willed or donated by the testator has no full guarantee that he will receive double the inheritance of the testator. Because if among the heirs who have given their approval at the time the will or gift was made, they want the object of the will or gift to be counted as inheritance, the article provides the widest possible opportunity. But what is guaranteed is that even though the object of the will or gift is counted as an inheritance, the object no longer falls into the share of other heirs.[6]

In Islamic law, there is no mention of a specific way to make the last wishes of the deceased. However, it is stipulated that the statement must be clear and firm and attended and witnessed by people who also act as witnesses to the truth of the statement. Like ordinary gifts, this will grant requires acceptance, namely the ability of the person who is given the gift to accept the gifted item.[7]Regarding this acceptance, it is carried out after the donor dies, therefore as long as the donor is still alive, this gift can be revoked.

People who own property sometimes want their property to be used according to their needs when they die. For this reason, the law allows the owner of the property to give their property according to their own wishes, in this case known as a will. In general, a will is a gift of property from one person to another or to several people after the person dies. Thus, the possibility of disputes between the heirs can be avoided, because with the last message (will) from the deceased and the awareness of the heirs to respect the last wishes of the deceased. However, what if the last wishes of the deceased regarding the distribution of inheritance are in fact unfair and this may happen because of coercion from other people or trickery that will benefit him. For this reason, the law limits the right to determine these last wishes. Restrictions in Making Testamentary Grants Based on Islamic law, after the inheritance is deducted to pay off the deceased's debts, 1/3 (one third) of the inheritance can be given to someone other than the heirs based on Islamic inheritance law or not based on inheritance law in the distribution of the inheritance (heirs ab intestato), meaning heirs without a testamentary grant. Or in other words, that at least 2/3 (two thirds) of the portion to be distributed to the heirs must be available, even for underprivileged families it is recommended that the assets given to others be less than 1/3.

The limitation system in making a will based on the Burgerlijk Wetboek regarding the amount of inheritance to be distributed to the heirs, is about "legitiemeportie" or "wettelijk erfdeel" (the amount determined by law). According to Prof. Subekti, SH, a national civil law expert, Legitieme Portie is "a portion of the inheritance that has been determined to be the right of the heirs. The heirs are people who at the

[6]Muliana, M., & Khisni, A. (2017). Legal Consequences of Will and Gift Deeds That Violate the Absolute Rights of Heirs (Legitieme Portie). Jurnal Akta, 4(4). Pages 739-744.
[7]Jannah, AR, Abdullah, Z., & Anggraeni, R. (2019). Islamic Law View on Grants, Wills and Will Grants Study of Decision Number 0214/PDT. G/2017/PA. PBR. Journal of Legal Reasoning, 1(2). Pages 81-105.

time of death have a blood relationship or marriage relationship with the testator, are Muslim and are not prevented by law from becoming heirs. The legal relationship between the heirs and the testator is only determined by two lines of kinship, namely:

1) Kinship due to marriage relations; and

2) Kinship through blood relations.

Heirs in the long line cannot be removed by the person who left the inheritance. The purpose of the law maker in establishing this legitiemie portie is to avoid and protect the deceased's children from the tendency of the deceased to benefit others. So if we examine it further, this is actually the same as customary law and Islamic law where in this case it also limits the right of the grantor to make a will grant.

From the aspect of the amount that is permitted to be willed, the Compilation of Islamic Law emphasizes that the amount of inherited assets that may be bequeathed is a maximum of one-third of the total inherited assets as regulated in Article 195 paragraph (2), of course after other obligations such as debts have been incurred. heirs, funeral costs for corpses. It is certain that the provisions of this Compilation of Islamic Law refer to the hadith of Rasulullah SAW, including the hadith narrated by the Jama'ah from Sa'id bin Abi Waqash when he came to Rasulullah asking for instructions regarding his property which he would donate/bequest as his only heir. just his daughter. In the dialogue, Rasulullah SAW answered that bequeathing 1/3 (one third) of the assets was the maximum amount because that amount would not be detrimental to the acquisition of other heirs. The Ulama agree that people who leave heirs should not give a will of more than 1/3 (one third) of their assets. This is in accordance with the Hadith of Rasulullah SAW. which means: that one day Rasulullah SAW came to visit me (Sa'ad bin Abi Waqas) in the year of Hajji Wada', then I asked Rasulullah SAW: O Rasulullah! My illness is very serious, as you can see, and I am a rich man, but no one can inherit my property except a daughter. Can I give charity (make a will) with two-thirds of my wealth (for charity)? So said Rasulullah SAW. to me, "No." So Sa'ad said to him, "What if it's half?" Rasulullah SAW. said "Don't". Then the Messenger of Allah also said, "a third" and a third is many and large. Indeed, if you leave your heirs as rich people, it is better than leaving them as poor people who beg from the people (HR. Bukhari and Muslim).

Based on the above hadith, it can be understood that, to protect the heirs so that they do not become poor after being left behind by the heir, the assets that can be bequeathed (maximum amount) cannot exceed one third of the total assets left behind. This in Islamic inheritance law is to protect the heirs. In the Civil Code, what is emphasized is the minimum amount that must be received by the heirs, or what is commonly called the absolute share (legitieme portie).

Basically, a deed of will and testament serves as the last wish of a person to another person regarding his/her inheritance. Thus, disputes between the heirs can be avoided, because with the last message or deed of will and the awareness of the heirs to respect the last wishes of the deceased. Especially if the last wishes of the deceased regarding the distribution of inheritance are in accordance with justice. However, it is possible that the last wishes of the deceased regarding the distribution of inheritance are in fact unfair or exceed 1/3 (one third) of his/her assets.

The results of the study show that the practice of granting a will that exceeds the maximum limit has been found several times in the Jepara area, where the testator sometimes bequeaths his assets exceeding the maximum limit for granting a will, which is more than 1/3 of the assets left by the testator when the testator dies. There are many things that cause the testator to give a will to someone else exceeding the maximum limit for granting a will (more than 1/3 of his assets). Among them is the lack of knowledge that the testator has regarding the rules for granting a will to someone else, or sometimes because of a misunderstanding between the testator and his heirs who are considered not devoted to the testator so that they tend to punish them by eliminating the rights of the heirs by making a will to give all their assets to someone else who is considered more devoted to the testator in the last days of the testator's life. Things like this will often cause inheritance disputes in the future, especially if the legitimaries cannot accept the contents of the will that has been made.[8]

In the event that the heirs are unable to accept or give up their absolute share given to the recipient of the will, the testamentary gift deed can be cancelled, because the amount of the absolute rights of each heir has been determined by law, the nature of which cannot be deviated from or reduced by the heir (deceased giver of the inheritance). though. In legal terms it is known as "legitieme portie".

According to written law, a will or testamentary gift that violates the "legitieme portie" is considered "null and void" by itself and is considered to have no binding force from the start. However, in practice, the Supreme Court has made a new rule that a will/testamentary gift is valid even if it contains a violation of the legitieme portie of the heir, as long as it has not been canceled by the injured heir, so that its nature is no longer "null and void" but becomes "can be canceled".

Thus, the deed remains valid as long as it is not challenged by the legitimaris. And every provision taken by the testator regarding the legitieme portie is subject to the provisions of Article 920 of the Civil Code, and therefore remains valid until the legitimaris challenges it."[9]

[8]The results of the interview with Mr. Fatkhrurrohman, SH, M.Kn. as a Notary in Jepara, on Wednesday, November 13, 2024, at 09.00 WIB
[9]*ibid*

The definition of legitimaris according to Pitlo is: "Heirs ab intestato who are guaranteed by law that they will receive a minimum share in the inheritance in question. Either by way of a gift or by way of a gift after death (making bijdode) the heir may not revoke this legitimate right."

The conditions for a person to be able to claim his absolute share (legitime portie) are that he must fulfill the following conditions/criteria:

1) The person must be a blood relative in a straight line up and down. They are called: "Legitimary". So, in this case the position of the husband/wife is different from the children and parents of the testator. Although after 1923 Article 852a of the Civil Code equalized the position of husband/wife with children (so that the husband/wife gets the same share as the child), the husband/wife is not Legitimate. Likewise, the testator's siblings are not Legitimate. Therefore, the wife/husband and siblings do not have legitime portie or are called non-legitimate (do not have an absolute share).

2) The person must be an heir according to the law (ab intestato). Given these requirements, not all blood relatives in a direct line have the right to an absolute share. Only those who are also heirs according to the law (ab instestato) have it.

3) These people, even without considering the testator's will, are legal heirs (ab intestato).

They are the parties who are allowed and given the right to claim their absolute share rights (legitieme portie). Especially if the parties who have absolute share rights (legitimaris) do not know beforehand and are not involved at all in the process of granting a will that violates their absolute share rights.

Legitimaries who are unable to let their absolute share be given to another person are allowed to file a lawsuit against the beneficiaries of the will who received the will in an amount that exceeds the maximum limit for granting a will (exceeding 1/3 of the assets left behind).

The incident of suing, especially in the Jepara District Area, should have been avoided considering the costs that would be incurred were not small when the parties had to be involved in a court battle. A smart and wise heir should know what consequences would occur in the future if the heir gave a will exceeding the absolute rights of the legitimaries because this often has the potential to cause disputes in the future, especially if the will was given secretly without the knowledge of the legitimaries.

For heirs who are aware that inheritance can potentially cause disputes that can threaten the harmony and integrity of the family, they will be more careful in preparing everything, especially about the inheritance that they will leave after they die. Starting from discussing verbally with their children (potential heirs)

regarding the portions that they will receive later, to some who have prepared the distribution of inheritance through grants during the testator's lifetime or testamentary grants, either verbally in front of two witnesses, or testamentary grants with an authentic deed made before a notary, a deed made before a notary will have more power and provide legal certainty regarding the status and portions that will be received by the heirs after the testator's death. Therefore, a Notary as a public official who makes authentic deeds has an important role in preventing potential inheritance disputes between heirs.[10]

The results of the study show that, in carrying out their services to the community, Notaries must always act in accordance with applicable regulations. This is very important because Notaries who carry out their functions are not only for their own interests but also for the interests of the community and have an obligation to guarantee the truth of their actions are more sensitive, honest, fair and transparent in forming a behavior to ensure that all parties directly involved in forming a behavior that is directly related to the making of authentic deeds and prioritize mutual agreement.[11]

In carrying out its function, the Notary said that notaries must respect the code of ethics of the notary profession, because without it, the dignity of the profession will be lost and public trust will be lost. Notaries must also have high morals, because with high ethics, notaries will not abuse their power, so that notaries can maintain their dignity as public servants who provide services in accordance with applicable regulations and without prejudice.[12]

Komar And asasmita stated that "every notary has knowledge and skills that are deep and broad enough to be the mainstay of the community in designing, compiling and carrying out various authentication works, so that the language structure, legal techniques are neat, good and precise, because besides skills there is also a need for honesty or sincerity and fairness or objective opinions.[13]

Notary comes from the Latin word notariat, while notary from notarius (notarui), is a person who carries out writing work. Since the law of evidence, the notary institution not only writes, but also as an institution of evidence that requires an authentic deed. The law brought by the Netherlands (Civil Code) in certain articles requires an authentic deed for certain acts.

Article 1870 of the Civil Code states that what can be a perfect evidence is an authentic deed, thus giving birth to the notary institution. In regulating the social

[10] ibid
[11]Results of the interview with Mrs. Ir. R.Rr. Emiliani Setjadiningrat, SH, as a Notary in Jepara, on Thursday, November 14, 2024, at 10.00 WIB
[12]Komar Andasasmita. (1981). Notary with History, Role, Duties, Obligations, Secrets of His Position. Bandung: Sumur Bandung, p. 14.
[13]Ibid

life of fellow individuals who need evidence regarding the legal relationship between them.

The position of notaries in society is still respected today. Notaries as officials are places where someone can get trusted advice. Everything that is written and determined (constant) is true, it is a strong document in a legal event. The role of notaries is very important in helping to create legal certainty and public protection, because notaries as public officials are authorized to carry out authentication behavior, as long as authentication behavior is not carried out.

Certainty and legal protection are seen through the authentic deed he made as perfect evidence in court. Perfect evidence because authentic deeds have three evidentiary powers, namely external evidentiary power (uitwendige bewijsracht), formal evidentiary power (formele bewijskracht) and material evidentiary power (materiele bewijskracht).

Notary is a form of manifestation or embodiment and is the personification of the law of justice, truth, and even a guarantee of legal certainty for society. The position of a notary as a functionary in society is still respected until now.

A notary is usually considered an official from whom one can get reliable advice. Everything written and stipulated is true.

Notaries are powerful document makers in a legal process. Basically, the form of a deed is not a problem, whether it is a deed under hand or an authentic deed made by or before a notary, as long as the parties remain committed to carrying out the obligations and rights stated in the deed. It will be a problem for the parties if later one of the parties who agreed breaks the agreement and a dispute arises that can harm many parties. This risk can occur due to differences in interests of each individual, unclear identity and denial of an achievement which ultimately leads to conflict between individuals.[14]

Considering that notaries are considered an important profession because they have the responsibility to serve the interests of the community. The honorary title gives a burden and responsibility to every notary to maintain the good name and honor of the notary profession. The reputation and honor of a notary must be maintained in carrying out their functions as public servants, because it contains rules that regulate, limit, and guide notaries in carrying out their functions.

When associated with the process of making a will submitted by the person appearing to the Notary, of course there is no obligation for the Notary to fulfill every wish of the person appearing without first ensuring whether the formal and material requirements can be fulfilled by the person appearing. Based on the results of the Author's research, it is necessary for the Notary to be careful and

[14]Ira Koesoemawati & Yunirman Rijan. (2009). Notary. Jakarta: Achieve Hope of Success. p. 6

understand the law before deciding to fulfill the wishes of the person appearing in making a will.

The first step that the Notary needs to pay attention to is to confirm the religion of the person giving the will. If the person giving the will is Muslim, the Notary must also refer to the provisions of the Compilation of Islamic Law. If the giver of a will makes a will that does not comply with the applicable provisions, the Notary is obliged to reject the wishes of the giver of the will, but the Notary is also obliged to provide legal advice or counseling to the giver of the will and does not necessarily reject the person who comes to the Notary.[15]

One of the authorities of a notary is in terms of executing a deed. Article 1 paragraph (7) of Law No. 2 of 2014 amending Law No. 30 of 2004 stipulates that a notary is a means of ratification made by or before a notary according to the form and procedures determined in this Law. Furthermore, according to Article 1868 of the Civil Code, "authentication is an act determined by law, carried out by or before a public official who is authorized for that purpose in an area that is authorized for that purpose."

An authentic deed is a deed that is made and formalized in a legal form, by or before a public official, who is authorized to do so, at the place where the deed is made.[16] A deed made by a Notary can be a deed that contains an authentic description of an action carried out or a condition seen or witnessed by the maker of the deed, namely the Notary himself, in carrying out his position as a Notary.[17]From the description above and in line with the opinion of Abdulkadir Muhammad, it can be seen that basically there are 2 (two) groups of notarial deeds, namely:

1) Deed made by a Notary (door) or what is called a relaas deed or official deed (Ambtelijken Aden);

2) A deed made before (ten overstaan) a Notary or what is called a party deed (partij-acte).

An authentic deed is perfect evidence for both parties and their heirs and all those who receive rights from it. What is stated in it regarding the main issue and the contents of the authentic deed are considered undeniable, unless it can be proven that what the public official recorded as true is not the case. The perfect evidentiary power of an authentic deed for both parties is intended if a dispute arises before a judge regarding a matter and one party submits an authentic deed, then what is stated in the deed is considered perfectly proven. If the opposing

[15]Ibid
[16]Amin, F., Busthami, D., & Ramadani, R. (2023). LEGAL REVIEW OF PEACE DEEDS MADE BEFORE A NOTARY IN THE SETTLEMENT OF CIVIL DISPUTES. Qawanin Journal of Legal Science, 4(1), 18-33.
[17]Wiradiredja, HS (2015). Criminal Liability of Notaries in Making Deeds Based on False Information Related to Law Number 30 of 2004 Concerning the Position of Notary in conjunction with Law Number 2 of 2014 and the Criminal Code. Jurnal Wawasan Yuridika, 32(1), 58-81.

party denies the truth of the contents of the authentic deed, then he is obliged to prove that the contents of the deed are not true.

This Authentic Deed has three evidentiary powers[18], that is:

1) The power of external proof, meaning the ability of the deed itself to prove itself as an authentic deed, is not possessed by deeds made privately.

2) Formal evidentiary power, meaning that the official concerned has stated in writing, as stated in the deed and apart from that, the truth of what is described by the official in the deed as what he did and witnessed, namely what was seen, heard and done by the Notary himself as a public official in carrying out his position.

3) Material evidentiary strength, meaning that the deed provides in-depth proof of the truth of what is stated in the deed. Therefore, authentic deeds can be used as strong evidence before a judge. A judge in court does not need other evidence if he has been given an authentic deed as evidence. The deed is proof of whether it is true that they have explained what is written there, but does not provide evidence of whether what they have explained is true. This opinion has long been abandoned. Now what is correct is that the authentic deed not only proves that the parties have explained that what was written in the deed, but also proves that the parties have explained that what was written actually happened. The evidentiary power of a letter lies in the original deed. If the original deed exists, then its derivatives and summaries can only be trusted according to the original which can always be ordered to be shown.

In the case of a person visiting a notary to discuss the separation and distribution of inheritance, the notary will try to find out as much information as possible about the person's time of death, if an inheritance deed is given. carried out, who the heirs are and other parties related to the deceased. He must show the death certificate of the deceased and the identity cards of the parties involved, the inheritance certificate and other documents related to the deceased that are notarized. Notaries should understand all the rules related to this so that when serving the public they do not make mistakes that can harm certain parties.

As stated in Article 16 paragraph 1a UUJN, "In carrying out his duties, a Notary must act honestly, seriously, independently and impartially, and protect the interests of the parties to the case." If the person appearing comes to discuss inheritance issues involving adopted children, the Notary will provide advice and legal counseling related to grants or wills that have been regulated in the Compilation of Islamic Law, especially Article 209 which states that Grants or Will Grants to adopted children or adoptive parents may not exceed 1/3 of the portion. So if someone wants to make a will that exceeds the limit, the Notary acts as a party who can prevent disputes by providing an understanding that if this is still

[18]GHS Lumban Tobing. (1996). Notary Position Regulations. Jakarta: Erlangga, 4th ed., pp. 55-59.

done, it will violate the maximum limit for granting a will which has the potential to cause problems and disputes in the future. However, if the testator still wants to make a will that exceeds the maximum limit of 1/3 that can be given, then to prevent inheritance disputes in the future, the Notary will direct them to involve and include other heirs as parties who agree or simply know about the implementation of the grant or writing of the will.

Making a will (testament) is a legal act, a person is allowed to determine what happens to his/her assets after the person dies. Inheritance often causes various legal and social problems, therefore it requires orderly and regular arrangement and resolution in accordance with applicable laws and regulations.

Basically, the Will, even though the testator did not leave a will to the adopted child or adoptive parents, the Compilation of Islamic Law still requires the testator to provide a mandatory will to them through article 209. Therefore, without an oral will or a will made using an authentic deed before a notary, they should automatically receive a portion of the will with a maximum total will limit of 1/3 of the testator's inheritance. If they do not receive this portion, they should ask for help from legal experts to explain to the heirs that they should automatically receive a mandatory will even though the testator never made a will during his lifetime. However, if the heirs are not cooperative in discussing the issue of the will, the adopted child and adoptive parents are welcome to file a request for a court ruling so that with the issuance of a court ruling that they should be the recipients of the mandatory will, they have the legal power in the eyes of the law to obtain the portion of the rights that should have been received even though the other heirs do not agree.

One way that can be done to prevent inheritance disputes from happening again in the future is by making a will with an authentic deed made before a Notary before the heir dies. The role of a Notary is related to the position of a Notary in the distribution of inheritance in a friendly or family manner. The position of a notary in the field of inheritance is also regulated in the compilation of Islamic law, which includes:

1) Article 195 paragraph (1); A will is made orally in front of two witnesses or in writing in front of two witnesses or in front of a notary.

2) Article 195 paragraph (4); the statement of agreement in paragraphs (2) and (3) of this article, is made orally in the presence of two witnesses, or made in writing in the presence of two witnesses or in the presence of one witness.

3) Article 199 paragraph (2); the revocation of a will may be done verbally in the presence of two witnesses or in writing in the presence of two witnesses, or based on a notarial deed if the previous will was made verbally.

4) Article 199 paragraph (3); if the will is made in writing, it can only be revoked in writing witnessed by two witnesses or based on a notarial deed.

5) Article 199 paragraph (4); If the will is made based on a notarial deed, then the deed can only be revoked based on a notarial deed as well.

6) Articles 203 and 204, concerning the procedures for storing wills and with the authorities held by a Notary, the will has definite legal force.

As for the authorities of a Notary as stated in Article 15 paragraph (2) of Law No. 30 of 2004 concerning the Position of Notary, a Notary has the authority to:

1) Validate the signature and determine the certainty of the date of the private letter by registering it in a special book.

2) Recording letters under hand by registering them in a special book; In making a will, there is an agreement and contract between the Notary and the person making the will, as well as between the person making the will and the person receiving the will, therefore trust is highly prioritized and each Notary is required to keep the will among other documents.

3) A Notary is required within one month after the testator dies or the circumstances are unknown, to describe the derivation of the will to the Inheritance Hall which has an interest in storing the testament. In making a will, a notary has a very important role. Thus, the responsibility of a notary in making a will includes all the duties, obligations and authority of a notary in handling the issue of making a will, including protecting and storing authentic letters or deeds where every month the Notary is obliged to make a report to the Center for Wills Registration. Department of Law and Human Rights regarding whether or not a will was made. Apart from that, it also protects the interests of the parties, especially the weak, by providing correct information regarding the status and position of each person under the law.

Philosophically, notaries have a very important role in helping to create legal certainty and protection for the community, because notaries as public officials are authorized to make authentic deeds, as long as the making of authentic deeds is not specifically for other public officials. This legal certainty and protection is seen through the authentic deeds they make as perfect evidence in court. Perfect evidence because authentic deeds have three evidentiary powers, namely external evidentiary power (uitwendige bewijsracht), formal evidentiary power (formele bewijskracht) and material evidentiary power (materiele bewijskracht).

b. T*assume the responsibility of a Notary in making a will deed which has the potential to violate the rights of heirs based on Islamic inheritance law in Jepara District*

Considering that notaries are considered an honorable profession because they serve the interests of the general public. The honorable position gives a burden and responsibility to every notary to maintain the dignity and honor of the notary profession. The dignity and honor of the notary profession in carrying out their

duties as public officials must be maintaine, therefore regulations are needed that regulate, limit and serve as guidelines for notaries in carrying out their positions and behaving.[19]

The position of notary is a position of trust, it must regulate the obligations of notaries carefully and in depth. In carrying out their position, notaries are obliged to always base themselves on high ethical standards, both those determined by law and the code of ethics of notary organizations. The making of a mandatory will for adopted children is a form of deed made before (ten overstaan) a notary or called a partij deed (partij akten).

The obligation of a notary to be able to know the legal regulations in force in the Republic of Indonesia and to know what laws apply to the parties who come to the notary to make a deed. This is very important so that the deed made by the notary has its authenticity as an authentic deed because it is a perfect evidence. According to Mudofir Hadi, in practice a notary can make mistakes in carrying out his duties. The mistakes that may occur are:

1) Typographical errors in the notary's copy, in this case the error can be corrected by making a new copy that is the same as the original and only a copy that is the same as the original has the same force as the original deed;

2) Error in the form of a notarial deed, in this case where minutes of the meeting should have been made but the notary made it as a statement of the meeting's decisions;

3) Errors in the contents of the notarial deed, in this case regarding the statements of the parties who appeared before the notary, where when the deed was made it was considered correct but later turned out to be incorrect. Errors that occur in the deeds made by the notary will be corrected by the judge when the notarial deed is submitted to the court as evidence. The authority of the judge to declare a notarial deed null and void by law, can be canceled or the notarial deed is declared to have no legal force. Everyone must be responsible (aanspraklijk) for their actions, therefore being responsible in the legal sense means a bond. Thus legal responsibility as a bond to legal provisions. If legal responsibility is only limited to civil law, then people are only bound by the provisions that regulate the legal relationship between them.[20]

So here only the notary and the parties are bound in the context of making an authentic deed. Here the notary is absolutely responsible for the mistakes made by him. For violations committed by the notary that cause a deed to only have the power of proof as a private deed or the deed to be null and void by law, then the

[19]Achmad Rustandi & Muchjidin Effendi. (1991). Commentary on Law Number 7 of 1989, Concerning Religious Courts and Compilation of Islamic Law. Jakarta: Nusantara Press. p. 27.
[20]Bernadette M. Waluyo. (1997). Consumer Protection Law. Jakarta: Rajawali Press p.15.

party who feels aggrieved can sue for reimbursement of costs, damages and interest from the notary. In the event that a notarial deed is canceled by a judge's decision in court, then if it causes losses to the interested parties, the notary can be sued to provide compensation, as long as it occurs due to the notary's error, but in the event that the cancellation of the notarial deed by the court does not harm the interested parties, the notary cannot be sued to provide compensation even though he loses his good name.

Generally, a notary can be sued to pay compensation in the following cases:

1) There was an error made by the notary
2) There is a loss suffered
3) There is a causal relationship between the losses suffered and the negligence or violation of the notary.

In the event that the deed issued by the notary contains defects, then the losses caused by the defects are the responsibility of the notary. Even clearly in the decision of the Supreme Court with decision number 1440 K/Pdt/1996, dated June 30, 1998, it is emphasized that an authentic deed only contains one legal act. If there is a deed containing two legal acts (for example, acknowledgment of debt and granting of power to sell), then this deed has violated the adage, and such a deed does not have the power of execution (executory title) ex article 244 HIR, not invalid.

A notary has a moral responsibility and can be sued to provide compensation to the injured party due to the notary's negligence in the deed he made. In Law Number 2 of 2014, if a notary in carrying out his duties has committed a violation that causes a deviation from the law, the notary can be subject to sanctions in the form of civil sanctions, administrative sanctions or a notary's code of ethics. Although the Notary Law does not mention the application of criminal sanctions, if a legal action against a violation committed by the notary contains elements of forgery due to intention or negligence in making an authentic letter or deed whose contents are false and the notary is proven to have participated in, ordered to do and assisted in making a deed whose contents are incorrect, then after being subject to administrative sanctions/notary's code of ethics and civil sanctions, it can then be withdrawn and qualified as a criminal act committed by the notary.

In any form of notarial error, if proven, it is the notary's obligation to be responsible for the deed made by or before him that contains the error. In the Notary Law, there are only civil and administrative sanctions where these sanctions are considered less effective for parties who feel disadvantaged. However, notaries as public officials who carry out their profession in providing legal services to the community need to get protection and guarantees in order to achieve legal certainty. Notaries strive to provide the best service for clients who come to request services in making authentic deeds based on agreements

between the parties, but these efforts cannot be separated from certain threats or risks that cause problems in the future related to the party deeds made. Notaries are responsible for everything related to the deeds made by the notary. The professional responsibility of notaries includes[21]:

1) Responsibility for oneself Before carrying out his/her position, a notary is required according to Article 4 of Part One of Law Number 3O of 2OO4 concerning the position of a notary, to take an oath or promise according to his/her religious beliefs before the minister or appointed official. This oath or promise is a depiction of the notary's determination to carry out the duties given to him/her as a public official authorized to make authentic deeds. When the parties appear with a high economic value for the deed to be made, the notary must not have an attitude of prioritizing the client or the parties. The notary's attitude when carrying out his/her duties is not oriented towards the amount of money that will be obtained based on the economic value of the deed but rather based on a professional attitude, namely responsibly providing the best possible service to the parties who appear before him/her regardless of the economic value of the deed to be made. This is in accordance with Article 16 paragraph (1) letter a of Law Number 3O Year 2OO4 concerning the Notary Position, namely that notaries are obliged to be able to provide services proportionally. Notaries are required to have high idealism based on the demands of their profession, not to lower the standards of each provision that has been made according to the Law or joint regulations that have been made by notaries in one job formation in their respective regions and have the courage to be responsible for each of their actions for actions taken regarding the deeds made. Notaries are also responsible for improving their abilities by following upgrading and refreshing courses conducted by the existing Notary Organization for understanding the developing law related to the duties and positions held by Notaries.

2) Responsibility to clients As an official who is given the task and authority to make party deeds in carrying out his profession, a notary is faced with different characters of people because the parties who require services in making authentic deeds are not only one or two people, so that notaries are required to provide the best possible service and must have a responsible attitude towards clients or parties who appear for the making of party deeds. Notaries carry out their profession and position honestly and do not side with any of the parties who appear in the making of party deeds according to Article 16 paragraph (1) letter a of Law Number 3O of 2OO4 concerning the position of notaries. Notaries position themselves as parties in the middle, and do not interfere with the wishes of one of the parties so that notaries in this case are independent parties and are not influenced by other parties. If an agreement is considered by a notary to be an agreement that is contrary to the Law, then the notary has the right to reject the request of the parties with the obligation to provide reasons and explanations as

[21]Candra, INW, Asikin, Z., & Suhartana, LWP (2023). Forms of Legal Violations and Notary Law Enforcement in the Province of West Nusa Tenggara. Journal of Notary Treatises, 4(1)

to why the agreement requested by the parties is not authenticated in the form of a deed, in accordance with Article 16 paragraph (1) letter d of Law Number 30 of 2004 concerning the Position of Notary. In making a notary deed, notaries not only validate a deed based on the trust of the parties who appear, but also consider the substance of the agreement in the deed to be made so that the making of the deed does not violate the Law and does not cause problems in the future. Notaries in providing services to clients in making notary deeds are not permitted to prioritize services to certain parties, but provide services based on a professional attitude. The parties who appear according to Article 37 of Law No. 30 of 2004 concerning the Position of Notary are permitted by law not to make payments for services performed by the notary. This applies if the party appearing is a party who is unable and can be proven by providing a certificate of inability or in other words the notary provides services for the preparation of authentic deeds and/or free legal consultations. The confidentiality of the deed must also be maintained by the notary in accordance with the oath of office spoken, this is regulated in Article 4 of Law Number 3O of 2OO4 concerning the Position of Notary,According to the information provided by the parties in making a party deed, it is mandatory to maintain confidentiality from other parties who are not directly interested in the deed. The most important thing in the responsibility for the deed made related to the making of a party deed is the reading of the finished deed to the parties before signing a party deed or deed of the parties in accordance with Article 17 paragraph (7) of Law Number 3O of 2OO4 concerning the Position of Notary. The notary reads the deed containing the wishes of the parties to the interested parties or those who will sign the deed, then the deed that has been read is signed by the person appearing, witnesses and notary in accordance with Article 44 paragraph (1) of Law Number 3O of 2OO4 concerning the Position of Notary. If there is someone who cannot sign, then another way can be done, namely by fingerprinting. In this case, the notary is responsible for ensuring that the party signing is the person listed in the authentic deed and guaranteeing the certainty of the date on which the authentic deed was made.

3) Responsibility for any problems in the future regarding the deeds made. Notaries in carrying out their profession in their position as officials who have the duty and authority to make authentic deeds, notaries should as far as possible carry out their duties professionally, act carefully and take into account every action taken related to making authentic deeds. However, the careful and vigilant attitude taken does not guarantee a notary to always be perfect in carrying out their profession. The threat of problems in the future regarding the party deeds made by the notary is very large. Not only that, notaries who do not carry out their profession properly are very likely to get problems in the future, not only regarding the deeds but also regarding their daily attitudes and behavior related to their profession as a notary. Violations committed by notaries, both regarding the making of deeds and the behavior of notaries, can be subject to sanctions in accordance with Article 85 of Law Number 3O of 2OO4 concerning the Position of Notaries in the form of:

a) Verbal warning

b) Written warning

c) Temporary suspension

d) Honorable discharge

e) Dishonorable discharge

The Role and Responsibilities of Notaries in Jepara are in accordance with the Role Theory used as an analytical tool in this study. Notaries in Jepara have carried out their roles as optimally as possible, namely as legal counselors and public officials as authentic deed makers. Where when the heir wants to carry out a legal act, namely in the form of making a will whose contents exceed the maximum limit for granting a will (exceeding 1/3 of the assets he owns), the Notary will carry out his duties as a legal counselor who will provide education to the heir that what he does will potentially cause disputes in the future.

The legal counseling provided can be in the form of an explanation of the maximum limit that can be given to the beneficiary of his will, which is a maximum of 1/3 of his inheritance. Then the Notary explains the consequences if there is a violation of the maximum limit rule for granting a will, for example if the testator insists on giving ½ of his assets to be willed, then there will be the potential for a dispute that will trouble the heirs in the future because the authentic deed containing the portion of the will that exceeds the legitieme portie of the heirs is "can be canceled". The beneficiary of the will has the potential to be sued in court by his heirs when the heirs cannot accept the decision to grant a will that violates their legitieme portie (absolute share rights). However, when none of the legitimaries have a problem and all of the legitimaries have agreed to the testator's decision regarding the granting of a will that violates their legitieme portie, then the authentic deed of granting the will will remain valid.

Notaries can provide input to heirs who insist on making a will that exceeds 1/3 of their inheritance, namely by including approval and involving legitimaries as parties who provide approval regarding the granting of a will that exceeds their absolute share because when they agree to the granting of a will that violates their absolute share, then they are considered to know and give up their share to be given to the recipient of the will so that it is hoped that there will be no lawsuits suing for leitieme portie in the future. This can only be done if the Notary carries out his role as a legal advisor properly because many members of the general public do not know how to make a correct will according to applicable regulations so that many members of the public make wills as they please without paying attention to and obeying applicable regulations.

Legal counseling and education conducted by Notaries in Jepara regarding the correct methods and rules regarding the provision of wills also play a role in

preventing inheritance disputes in the future which used to be rampant in Jepara District. However, after the legal education and counseling provided by Notaries, it was effective in reducing the number of inheritance disputes caused by wills that violate legitieme portie.

Next, regarding the Theory of Legal Certainty. The role and responsibility of a Notary as a maker of authentic deeds will provide legal certainty to the Community because when a will is made using an authentic deed, the will will be strong evidence that a will has been made that provides strong legal force and is legally recognized in the eyes of the law so that legal certainty regarding the status of who gets the will will be easier to achieve as long as the contents of the will made do not violate the rules for granting a will, one of which is not exceeding 1/3 of the assets left behind.

4. Conclusion

Notaries in Jepara District have a very important role in preventing the making of wills that have the potential to violate the absolute rights of the legitimary in the Jepara District area. Notaries must never tire of always educating heirs who want to make wills so that in making the will they do not violate the maximum limit that can be willed, which is 1/3 of the assets to be inherited because if this maximum limit is violated, then the legitimary has the right to claim his rights over his portion taken to carry out the will. In making a will, a Notary has a great responsibility to make a will whose contents are correct and in accordance with the rules so that the deed he makes is valid in the eyes of the law as an authentic deed and so that it does not cause disputes in the future. Notaries should be able to carry out their role and responsibilities as public officials who serve their clients as well as possible so that the deeds they make have legal force and prevent the potential for disputes in the future.

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