LEGAL IMPLEMENTATION OF A DEED OF TESTAMENTARY GRANT IN CASES WHERE THE BENEFICIARY IS AN UNREGISTERED LEGAL ENTITY

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Abstract

The Aim of this research is to identify the essential aspects that must be verified by a notary in the process of drafting a deed of testamentary gift, to ensure that an individual or legal entity meets the criteria as a beneficiary under the provisions of the Indonesian Civil Code. Furthermore, the research aims to gain a deeper understanding of the notary's responsibilities in carrying out duties related to testamentary deeds. The research method employed in this study is a normative juridical approach combined with empirical data, utilizing a conceptual approach, a statutory approach, and a case-based approach. The Novelty of this research lies in the confirmation that, under inheritance law, a legal entity may indeed be designated as a beneficiary of a will. However, in its implementation, certain documentation and clear legal status of the legal entity are required, as stipulated in the Indonesian Civil Code. The findings of this study, referring to the case concerning the deed of testamentary gift in Decision No. 52/Pdt.G/2020/PN.Bgr, indicate that the beneficiary of the will, a foundation, had been established and possessed Articles of Association but had not yet been officially approved by the Ministry of Law and Human Rights. As a result, the legal certainty regarding the foundation's existence was brought into question. Consequently, the notary may be held administratively and civilly liable if their actions are deemed to fulfill the elements of an unlawful act as stipulated in Article 1365 of the Indonesian Civil Code. This research is conducted with the expectation that in the future that The notary must exercise greater diligence in drafting testamentary deeds and must fulfill all obligations related to their preparation as stipulated by law. This ensures that the testamentary deed created by the notary provides legal certainty and does not cause harm to any party.

Keywords: Notary; Legal Entity; Testament

INTRODUCTION

In essence, humans are bound by death, as it is an integral part of life. Upon passing, a person leaves behind possessions accumulated during their lifetime, known as inheritance. Linguistically, "inheritance" refers to the transfer of assets from a deceased individual to another person or group. This process is governed by clear legal foundations (Hadjon, 1997). According to Prof. Dr. Wirjono Prodjodikoro, inheritance law comprises the legal rules concerning a person's assets after death (the testator) and the manner in which those assets transfer to heirs. (Prodjodikoro, 1966)

In Indonesia, three main inheritance systems apply: Islamic inheritance law, customary inheritance law, and civil inheritance law. Under civil law, inheritance matters are regulated in Book II of the Civil Code (Kitab Undang-Undang Hukum) (Meliala, 2018), which stipulates that inheritance is permissible only when the following conditions are met:

1. the testator has died, either in fact or by legal declaration;
2. the heir was alive at the time of the testator's death; and
3. the identities and respective shares of the heirs are clearly defined. (Kitab Undang-Undang Hukum Perdata) (Meliala, 2018)

These legal provisions take effect immediately upon the testator's death. At that time, it must be determined who the rightful heirs are and which assets qualify as part of the inheritance and which do not.

Apart from inheritance, individuals may express their final wishes, known as a will. A will is the last intention conveyed by someone regarding their assets—movable or immovable, tangible or intangible, including debts—intended either for specific persons, groups, or charitable causes. Wills can be made orally or in writing, but to ensure clarity and legal integrity, it is strongly recommended that they be documented in written form. (Margono, 2019) J. Satrio explains that, formally, a testament or will is an instrument that complies with legal formalities; materially, it is a declaration of intent that takes effect only after the testator's death. While alive, the testator retains the right to revoke or amend the will unilaterally (Satrio, 1992). Thus, the legal effect of a will is contingent upon its existence in the proper form; absent a valid will, all assets will pass to heirs according to intestate succession rules.

A notary, as a public official authorized to draft authentic deeds, plays a vital role in the creation of testamentary deeds (Ramadhan & Lukman, 2021). Under Article 938 of the Civil Code, a will executed via a public deed must be made before a notary and two witnesses.

1. In exercising this authority, a notary must also comply with obligations outlined in Article 16 of Law No. 2 of 2014 (amending Law No. 30 of 2004 concerning Notarial Office). These obligations include: Compiling a monthly record of wills based on chronological order;
2. Submitting this record to the Central Will Register within five working days during the first week of the following month;
3. Entering the date of submission in the notarial repertory at the end of each month.

Additionally, if a will is prepared privately (underhand), the notary is authorized—and indeed required—to receive and officially store the document through a storage deed.

Hibah wasiat (testamentary gift) differs from the appointment of heirs in that the former specifies the exact assets to be gifted to certain individuals, whereas the latter merely allocates shares without detailing the assets. Indonesian civil inheritance law addresses not only the types of wills but also who may create or receive them and other binding conditions. The beneficiary's right to receive under a will is contingent upon fulfilling the requirements set out in the Civil Code. (Syahrani, 1989)

Article 899 of the Civil Code states : "To enjoy something by virtue of a will, a person must have existed at the time of the testator's death and must comply with the provisions set forth in Article 2 of this Code. This provision does not apply to persons granted rights under foundations." (Kitab Undang-Undang Hukum Perdata) (Meliala, 2018)

As the official empowered to draft testamentary gift deeds, a notary must fulfill their responsibilities correctly. Failure to do so may subject them to legal liability and sanctions.

A pertinent case is Decision No. 52/Pdt.G/2020/PN.Bgr dated October 7, 2020, involving an inheritance dispute between SS (plaintiff), Yayasan DCL (first defendant), FKS (second

defendant), and Notary BTDN (co-defendant). SS, an heir to GS and LL, sued after GS and LL executed Wills No. 88 and No. 89 on December 14, 2009, before Notary BTDN, naming Yayasan DCL as the recipient of the testamentary gift and FKS as substitute recipient. However, Notary BTDN failed to submit the wills to the Central Will Register, violating his obligation. The wills involved three parcels of land and buildings jointly owned by GS and LL. Because Yayasan DCL lacked legal entity status and FKS's whereabouts were unknown, legal uncertainty arose, preventing SS from transferring the titles.

To resolve this, SS filed a lawsuit seeking a declaration that Wills No. 88 and No. 89 were invalid and unenforceable. Since only a court decision can annul a will, SS sued the foundation, the substitute, and the notary. The Bogor District Court accepted the claim, finding that it met both formal and substantive legal requirements.

RESEARCH METHOD

According to Peter Mahmud Marzuki, as explained in his book, legal research is a process of discovering legal rules, legal principles, and legal doctrines in order to address legal issues that arise. Thus, literally, the term "method" originally refers to a path that must be followed so that an investigation or research can proceed according to a specific plan (Salim & Nurbani, 2014).

Therefore, in this study,authors employs a normative juridical approach, which focuses on the analysis of written legal norms as stipulated in legislation, court decisions, and relevant legal literature (Marzuki, 2017). The research steps undertaken in this writing involve a literature study, which begins with the inventory of all legal materials relevant to the core issues being addressed.

In analyzing the problems presented, the method used is deductive reasoning, which begins with a discussion of general statutory provisions and proceeds to their application to specific cases, thereby allowing for the formulation of specific answers to the issues discussed. In line with this deductive reasoning, the author employs authentic interpretation by examining the formulations contained in the statutory provisions and their respective explanatory notes. Additionally, systematic interpretation is used by analyzing the structure and interrelation of relevant articles within the same law, as well as by correlating provisions across different laws.

RESULTS AND DISCUSSION

Legal Entities as Beneficiaries of a Will

A legal entity is an organization that can possess rights and obligations to act on its own behalf. A legal entity is a subject of law, just like a natural person (Kansil, 1979). The philosophical foundation of establishing a legal entity is that, even upon the death of its founder, the entity's assets are expected to continue benefiting others. In order to be categorized as a legal entity, the requirements are stipulated in Article 1653 of the Indonesian Civil Code (KUHPerdata), which states: *"Every association that has a purpose not prohibited by law or contrary to public morals shall obtain the rights of a legal entity, provided that the association has been recognized as a legal entity by the Government."* (Suparji, 2015)In practice, a legal entity is deemed to exist once it has a deed of establishment executed before a notary and has received approval from the competent authority. (Kartikawati, 2021)

One type of legal entity is a foundation, which is essentially a separated pool of assets that is granted legal entity status by law. As a legal organism, a foundation is managed, administered, and supervised by its governing organs in both routine and specific activities. Pursuant to Article 2 of Law Number 16 of 2001 concerning Foundations, it is stated that: *"A foundation shall have governing organs consisting of the Board of Supervisors, the Board of Management, and the Board of Trustees."* As a legal entity, a foundation is established by one or more persons by separating a portion of their assets as initial capital, in accordance with Article 9 of Law Number 16 of 2001 concerning Foundations (BPK RI, 2005).

Furthermore, Article 9 paragraph (2) of the Foundation Law stipulates that a foundation obtains its legal entity status upon the approval of its deed of establishment by the Minister. A foundation that has fulfilled the requirements to be recognized as a legal entity may act as a beneficiary of testamentary grants, as regulated under Article 26 paragraph (2) of the Foundation Law, which states: *"In addition to the assets referred to in paragraph (1), a foundation's assets may be derived from: (1) non-binding donations or aid; (2) waqf; (3) grants; (4) testamentary grants; and (5) other acquisitions that do not conflict with the foundation's Articles of Association and/or prevailing laws and regulations."*

However, in Case No. 52/Pdt.G/2020/PN.Bgr, the foundation that was supposed to receive the testamentary grant had not yet been validly established as a legal entity and its existence was unclear. This is because the foundation's Articles of Association had not been approved by the Ministry of Law and Human Rights. Consequently, the foundation lacked binding legal status and was considered an incompetent legal subject.

The Role, Authority, and Responsibility of a Notary in Drafting a Deed of Testamentary Grant

As stipulated in Article 1 paragraph (1) of Law Number 2 of 2014 on the Amendment to Law Number 30 of 2004 concerning the Office of Notary (hereinafter referred to as the Notary Law or UUJN), "A Notary is a public official who is authorized to draft authentic deeds and has other authorities as referred to in this Law or other laws and regulations." Furthermore, according to Abdul Bari Azed, "An authentic deed drawn up by a notary constitutes conclusive evidence for the parties executing a specific legal action, clearly describing the rights and obligations of each party involved." (Azed, 2005)

A notary is a person authorized by the government to legalize and witness various agreements, wills, deeds, and other documents. A notary is a state or public official appointed by the state to carry out official duties in providing legal services to the public, with the aim of ensuring legal certainty as an official authorized to draft authentic civil deeds. (Meutia, 2022) Several key points define the nature of a Notary:

1. Public Official, A notary is a public official granted authority by the government to perform certain legal duties. They are appointed following specific examinations and training. One of their main responsibilities is drafting authentic deeds, which are legal documents made by or before a notary that hold strong evidentiary value. These documents are often used in property transactions, loan agreements, marriage contracts, wills, and more.
2. Ensuring Legal Compliance, Notaries are responsible for ensuring that all transactions and documents they handle are in accordance with applicable laws. They must ensure that the parties involved are legally competent, understand the legal implications of their agreements, and that the agreements are valid and binding.
3. Neutrality, Notaries must remain neutral and impartial in the transactions they handle. They are expected to maintain independence and objectivity and avoid conflicts of interest.
4. Archiving and Registration,Notaries are also responsible for archiving the documents they create and registering them with the relevant authorities to ensure transparency and future legal accessibility.

In addition to their legal authority, notaries have obligations as outlined in Article 16 paragraph (1) of the Notary Law, which states that notaries must:

1. Act honestly, meticulously, independently, impartially, and protect the interests of the parties involved in the legal act;
2. Draft deeds in the form of minute deeds and store them as part of the notarial protocol;
3. Issue grosse deeds, certified copies, or excerpts based on the minute deed;
4. Provide services according to legal provisions, unless there is a valid reason to refuse;
5. Maintain confidentiality of all matters related to the deeds and information obtained in the course of drafting them, in accordance with their oath of office (unless otherwise mandated by law);

6. Bind deeds monthly into books containing no more than 50 deeds per book, or bind them into multiple books if necessary, and record the number of deeds, month, and year on the cover of each book;
7. Maintain a register of protest deeds related to dishonored negotiable instruments;
8. Maintain a register of wills in chronological order each month;
9. Submit the list of wills or a nil report to the Central Registry of Wills (DPW) under the Ministry responsible for notarial affairs within the first five days of each following month;
10. Record the date of submission of the will list in a repertorium at the end of each month;
11. Possess a seal or stamp bearing the national emblem of the Republic of Indonesia and inscribed with the notary's name, title, and office location;
12. Read out the deed before the appearing parties in the presence of at least two witnesses, and have it signed immediately by the parties, witnesses, and the notary.

As a public official, a notary is legally responsible for the deeds they prepare.(Rahardjo,2003) Article 65 of the Notary Law affirms: "A notary, substitute notary, and interim notary are responsible for the deeds they make even after their notarial protocols have been handed over or transferred to another custodian."

Notaries are also authorized to store privately written wills. When a will is written privately by the testator, the notary must store the document and create a deed of safekeeping. A will prepared as an authentic deed carries full evidentiary strength and does not require additional proof (Laily, 2024).It offers external (formal), procedural (legal), and material (substantive) evidentiary value, serving as conclusive legal proof for the parties and their heirs. (Anshori, 2009)

A testamentary grant (hibah wasiat) differs from a testamentary appointment of heirs. In the latter, the testator does not specify the exact items to be granted but instead indicates the portion to be received. In contrast, in a testamentary grant, the testator clearly specifies the items or assets to be given to a particular recipient.Civil inheritance law (Hukum Waris Perdata) governs not only the types of wills but also who may create them, who may receive them, and other binding provisions for both the testator and recipient. Enjoying benefits based on a will is a right of the recipient, but that recipient must also comply with the requirements of the Indonesian Civil Code (Subekti, 1978). According to Article 1320 of the Civil Code, one of the conditions of a valid agreement is that the parties must be legally competent.

In reference to Case No. 52/Pdt.G/2020/PN.Bgr, a notary drafted a testamentary grant naming a foundation (yayasan) as the recipient, even though the foundation had not yet received official approval from the Minister. The notary had also drafted the deed of establishment for the foundation, but failed to complete the approval process. As a result, the foundation lacked legal standing and was not considered a valid legal entity capable of receiving a bequest. This created problems in executing the will, as the foundation's existence was unverified and inactive.

In this case, the notary's negligence in drafting the deed caused potential loss or legal complications, for which the notary is legally responsible. According to Article 16 paragraph (1) of the amended Notary Law, violation of these duties can result in administrative sanctions, including:

1. Written warning;
2. Temporary suspension;
3. Dismissal with honor;
4. Dismissal without honor. (BPK RI, 2014)

If the notary's actions constitute an unlawful act (onrechtmatige daad), civil liability under Article 1365 of the Civil Code applies. This article requires proof of fault and actual damage (liability-based fault). The elements of an unlawful act under Article 1365 are:

1. Violation of a legal obligation;
2. Infringement of another person's subjective rights;
3. Violation of moral norms or public decency;
4. Breach of the principle of legal certainty, accuracy, and caution expected in society and in handling others' property.

A notary may be deemed to have committed an unlawful act if all elements outlined in Article 1365 of the Civil Code are fulfilled

1. The existence of an act.
2. The act is unlawful.
3. There is fault or negligence on the part of the perpetrator.
4. The victim suffers a loss.
5. There is a causal relationship between the act and the resulting loss

In addition to administrative liability, a notary may also be held criminally responsible if it is legally proven that their actions in drafting a partij deed fulfill the elements of a criminal offense as stipulated in the Indonesian Criminal Code (Kitab Undang-Undang Hukum Pidana or KUHP). The Notary Position Act (Undang-Undang Jabatan Notaris or UUJN) does not regulate criminal sanctions but only provides for administrative and civil penalties. This is due to the fact that the duties and functions of a notary fall within the scope of administrative and civil law.(However, when a notary commits a criminal act in connection with the preparation of an authentic deed, the criminal provisions under the KUHP apply.

One example of a criminal offense that may be committed by a notary is the unlawful disclosure of confidential information. Notaries are obligated to maintain the confidentiality of all information contained in the deeds they prepare, as stipulated in Article 4 paragraph (2), Article 16 paragraph (1) letter f, and Article 54 paragraph (1) of the UUJN. A notary who violates this obligation may be subject to penalties under Article 322 paragraph (1) of the KUHP, which reads:

"Any person who intentionally discloses a secret which he is obliged to keep by reason of his office or employment, either present or past, shall be punished by a maximum imprisonment of nine months or a maximum fine of nine thousand rupiah." (Meliala, 2018)

Furthermore, based on Article 322 paragraph (2), this provision constitutes a delik aduan (complaint-based offense), meaning that a notary can only be held criminally liable if a complaint is filed by the aggrieved party or a person with legal interest in the deed. The articles most commonly used to prosecute notaries for violations committed in the exercise of their official duties are those concerning document forgery, namely Articles 263, 264, and 266 of the KUHP, particularly in cases involving falsification or the inclusion of false statements in notarial deeds.

CONCLUSION

As a public official, a notary must be held accountable for the deeds they prepare in the course of their duties, and such deeds must have legal validity. Therefore, if a notary is negligent in drafting a will to the extent that it causes harm to one of the parties, the notary must be held responsible for their actions. The notary's liability as a public official—especially when proven to have committed an unlawful act (*onrechtmatige daad*)—is governed by the notary's obligations under Article 16 (1) of the Law on Amendments to the Notary Office Act. Referring to the case of the testamentary gift deed in Decision No. 52/Pdt.G/2020/PN.Bgr, the notary (BTDN) failed to properly consider the legal status of the beneficiary, which in this case was a foundation. The foundation in question had not yet been officially recognized as a legal entity, as it had not been approved by the Ministry of Law and Human Rights. This resulted in a legal defect in the testamentary gift deed and subsequently led to legal disputes following the testator's death. Consequently, the notary may be held both administratively and civilly liable if their conduct is found to meet the elements of an unlawful act as defined in Article 1365 of the Indonesian Civil Code.

Therefore, it is imperative that a notary exercise greater caution and attention in ensuring all legal elements required in the drafting of a notarial deed are fulfilled. Moreover, the notary must carry out all obligations related to the execution of a will as mandated by law so that the resulting deed provides legal certainty and does not cause harm to anyone.

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