

**The Notary's Liability Against the Cancellation of the Will by the Court
which is detrimental to the Heirs
(Study Case Decision Court No. 1398/PDT.G/2017/PAJP)**

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Abstract

A will is one method of inheritance. In the Civil Code Article 875, a will is a deed containing a statement by somebody about what he wants to occur after he dies and could be revoked. Giving will be given at a time when the giver will still be alive , but implementation will be done at the time the giver will die. The deed will be authentic . A Notary Public is an office general or office given public authority by the state to make deeds authentic . A Notary Public must make it good and true . If somebody feels harmed by the deed of a will made by a notary , then he could submit a lawsuit to the notary. A deed made by a notary could be null and void or revoked by a decision court if the material and formal requirements are not fulfilled . If revoked by a court decision, they lose their legal force, and if revoked by the parties involved, the deed becomes null and void. If you're a Notary Public, To make an error in making a deed so could bring penalty good in the form of penalty civil , sanctions administrative , sanction code ethics, even penalty criminal.

I. Introduction

As a social creature, man could not live alone because he needed help from other people, even since he was born and died . Basically, all men experience incident law . Where the law will experience creature life, that is, from birth to death, this is something that happens in the community that moves something regulation law specific, so that the provisions contained therein are then realized. Something governing law_ about inheritance because the dead will cause inheritance problems. Inheritance is governed by law inheritance, which is a set of rules governing the transfer of a deceased person's treasure riches to one or more beneficiaries.

Inheritance is a governing law about transitional treasure, the wealth left behind by someone who died, as well as consequently, according to the Law of Western Civil Code. In essence, the only things that can be inherited in field law are rights and obligations¹. For Indonesian citizens, it is known that there are 3 kinds of legal inheritance, namely²:

- a. According to the law book law civil,
- b. Islamic Law: Inheritance is provided from the Quran and Hadith .
- c. Inheritance customs depend on which environment is the problem, and inheritance is open .

What will emerge to finish it is in environment family, law, inheritance, civil, law, Islamic inheritance, or law inheritance. The custom is given to the will in question . Like case law marriage, the law on inheritance in Indonesia is also diverse³.

In the field of law inheritance, there is pluralism in Indonesia. This thing caused the existence of a distribution group population since the reign of the Indies and the Netherlands . The Indonesian population is divided into three (three) groups that are subject to the different civil code as set in Article 131 and Article 163 of the Indische Staatsregeling . The classification population in Indonesia is as follows :

1. On the basis of principle concordance, Group Europe and those equated with Europeans _ enforced the law in force in the Netherlands.including the Civil Code (Burgerlijk Wetboek) and the Book of Laws: Trade (Wetboek Van Koophandel).
2. Foreign Easterners divided once more into two groups:
 - a. Foreign East Chinese apply applicable law for group Europe, namely the Book of Laws Law Civil (except regulation ceremony before ongoing marriage, note civil, rapture child, or adoption) and the Code of Law Law Trade.
 - b. Others (Arabs, Indians, Pakistanis, and others) in the Foreign East apply parts of the Book of Laws Civil (except law family and law inheritance, which apply law custom respectively) and the Code of Laws Law Trade.
3. Native Indonesians, or natives, apply the laws and customs that apply in the area each.

¹ Efendi Perangin, *Hukum Waris*, Rajawali Pers, Jakarta, 1997, hlm 3-4.

² Ahmad Budi Cahyono dan Surini Ahlan Sjarif, *Mengenal Hukum Perdata*, ed. 1, cet. 1, (Jakarta: CV. Gitama Jaya, 2008), hlm. 99.

³ R.Soebekti, Kaitan Undang-Undang Perkawinan dengan Penyusunan Hukum Waris, Kertas Kerja, Simposium Hukum Waris Nasional (Jakarta: Badan Pembinaan Hukum Nasional, Departmen Kehakiman, 1989,),hlm 98.

The law of inheritance for groups of Europeans and Chinese residing in Indonesia is regulated in the Civil Code . For population natives who don't have Islam, it applies to law inheritance custom , while it applies to Muslims __law Islamic inheritance. Besides Chinese, other foreign countries also apply law inheritance custom. Everyone who dies leaves a treasure trove known as an heir. As for the existence of rights and or the amount of obligations that must be fulfilled on phak, the third one can be rated with money .

The main condition for coming on stage as an expert inheritance in Act __ is with existence connection blood. Inheritance is property left by the person who dies (heir) or as a gift heir to the rightful heirs , which is determined by law or because of a will or testament⁴. Counted since the death of the heir , then there are rights and obligations by law that will switch to the recipient of the inheritance . So, using this method, this heir could identify who has recently become an expert in inheritance as well as how much of their legacy will be accepted by experts in inheritance.

In-Law Inheritance The Civil Code also states that the heir is not distinguished based on gender, as is the case in many other legal inheritances, such as Islam and customary law. According to Civil Law Inheritance, someone said expert inheritance caused by existence, marriage, and relationship blood ok_ or no (Article 832 paragraph 1 of the Civil Code). People who have a connection by blood are entitled to inherit .

According to the Civil Code, there are two methods for getting inheritance , namely :

- a. As expert inheritance according to provision law . this way called expert heir ab interest.
- b. Because appointed in letter will (testament), way this called expert inheritance by testamentair .

According to R. Subekti, a testament is defined as a testamentary statement about his will if he has died⁵ . Will this letter apply if the maker of the will or an heir has died? According to Article 875 of the Civil Code, a will or testament is defined as "a statement someone leaves in deed about his will after he dies, which later regarding revocation can only be done by the person who made the will." Making a will could be made by a competent party according to civil law. skills subject law in making a will could be seen in Article 897 of the Civil Code which states: that a child under the age of who has not yet reached the age of 18 years is not allowed

⁴ Subekti, *Pokok-Pokok Hukum Perdata*, (Jakarta: Intermasa, 2003), hlm. 95.

⁵ *Ibid*, hlm 106.

to make a will. Then in Article 895 of the Civil Code, it is explained that subject law must have the ability reason for making a will or his soul healthy.

Article 49 paragraph 3 of The Law Number 7 of 1989 concerning The Religious Courts stated: "Field inheritance as intended" in paragraph (1) letter b is determination of anyone who becomes an expert in inheritance , determination about treasure legacy , determination part each expert inherits, and carrying out distribution of treasure relics. If there is no legal decision in the form of a letter will, then all treasure relic heirs are owned by all expert inheritance. However, if there is a letter will that becomes a legal decision, then the letter will be run by expert inheritance . Wills and letters will be two related things one to the other and something that will not be valid unless realized in form.

In implementation, the letter will be a deed of his will regarding his treasure if he has died . The law in question is deed law, one-sided, and has the nature of "herroepelijkheid,"⁶ which is a letter that doesn't have to be formed by more than one person. That thing related to meaning in the future day's letter will not be revoked by the other party . This thing is set in Article 930 of the Civil Code as follows:

"Two or more people are not permitted because equality will be on one deed, ok that for profit party all three or on base lead come back or the specified equation."⁷

will be made or will end by one of the parties who becomes deed law and results in a consequence law in transfer right owned by about his later treasure made by special written will, which could be drawn back and not require existence notification to the party expert in inheritance . Will is a deed formed to own a valid law that can be used as proof in the presence of a third party as an official official.

This is a public notary. Notary Public is a public run_profession in service to the community, using law to give protection and guarantee law in order to achieve certainty in law in public, that is, by making deed authentic. The Notary Public is appointed and dismissed by the State in Things. This is represented by the government through the Minister of Law and Rights Basic Humans (Menkumham)⁸. The Notary Public is the only office authorized to make a deed authentic as a tool with the most perfect proof and/or the strongest and most complete proof in civil procedural law. If a deed is genuine, it becomes tool evidence for the parties engaged in deed law. Deed authenticity is defined as one_

⁶ M. Wijaya, "Tinjauan Hukum Surat Wasiat Menurut Hukum Perdata", 2014, Edisi 5, Volume 2, diakses 25 April 2022, <https://media.neliti.com/media/publications/145937-ID-none.pdf>. halaman 107.

⁷ Lihat Pasal 930 Kitab Undang-Undang Hukum Perdata.

⁸ Budi Untung. 22 Karakter Pejabat Umum (Notaris dan PPAT) Kunci Sukses Melayani. (CV.Andi Offset, Yogyakarta, 2015).hlm. 2

strong evidence, complete proof, and sufficient minimum tool limit valid evidence without the need for tool proof.

The Notary Public is the party who makes a letter in the form of a deed general and encloses a witness when making a deed. The authority of the Notary Public in making a deed general is set forth in Article 907 of the Civil Code⁹. This then can be used as a tool of proof in connection with public law in accordance with Article 1867 of the Civil Code that proves writing authentic or also writing under hand¹⁰, as well as in Article 1868, which explains that a deed authentic formed based on Regulation Legislation in front of the office common to him has authority relative¹¹. Article 1870 of the Civil Code specifies the strength of proof of the authenticity of a deed. A deed authentic gives perfect proof about what is contained in it, as stated in the chapter "for interested parties" with the experts, the heir, or for people it who get right from them¹². The credibility of the evidence attached to the deed becomes perfect (*velledig bewijskracht*) and binds (*bindende bewijskracht*). However, to perfect and bind proof, if the tool proof deed is authentically sued by the party opponent, then strengthen the proof until it becomes proof (begin *bewijskracht*).

In making a deed of inheritance, a Notary Public must notice a number of things as already regulated in the Rules Legislation. However, if a Notary Public fails to pay attention to things that have been established by law inheritance and creation law to deed inheritance with thereby deed will the could It becomes a deed under hand when there is a party the third to sue in court, so the deed could be canceled in court. On Judgment Court No. 1398/PDT.G/2017/PAJP in case civil about the cancellation of a will that violates the Legitime portie made by a notary which has been set in legislation regarding the making of a will. Based on the foregoing, the author chose the title "The Notary's Liability Against the Cancellation of the Will by the Court which is detrimental to the Heirs (Study Case Decision Court No. 1398/PDT.G/2017/PAJP)"

2. Research Method

Research is a scientific activity related to analysis and construction that is carried out methodologically, systematically, and consistently. Methodological means according to a certain method or method; systematic is based on a system;

⁹ Lihat Pasal 907 Kitab Undang-Undang Hukum Perdata.

¹⁰ Lihat Pasal 1867 Kitab Undang-Undang Hukum Perdata.

¹¹ Lihat Pasal 1868 Kitab Undang-Undang Hukum Perdata.

¹² Lihat Pasal 1870 Kitab Undang-Undang Hukum Perdata.

being consistent means the absence of contradictory things in a certain framework¹³.

This research, by its nature, is an explanatory type of research, describing and explaining more deeply the symptoms that arise from the main problems in this study and trying to find answers to problems by examining legal sources related to the subject matter. The form of the research method used in the research is a normative juridical research form, namely, research conducted on written and unwritten positive law¹⁴. In this case, the research is only carried out by examining library materials or secondary data of a legal nature. This research method to answer the problems in this research is based on the existing legal principles and positive law that regulates the problems in this research as well as several other supporting theories.

3. Results and Discussion

Responsibility Notary Public To Cancellation Deed A will that harms the heirs

Philosophical Foundation Constitution Number 2 of 2014 above changes Constitution Number 30 of 2004 concerning the position of Notary Public. It is a realization guarantee of certainty law , order, and protection law based on truth and justice through the deed he made. The notary must give certainty law to public user service notary . This thing also has an impact on improvements in service notary.

A Notary Public is not permitted to refuse assistance related to his profession unless there is a valid reason to do so. This is in accordance with Article 16 paragraph (1) letter d UUN, namely to provide service in accordance with the provision in the Constitution, unless there is reason to reject it. Notaries Public must know the parties/parties facing them when making a deed to which they have legal authority, including deeds of grant will. This could be related to determining the identity of the appearers or requesting a description from other people he knew.

The role of a Notary Public in the civil service sector is to serve the public in the field of civil law, specifically to make deeds authentic. According to Article 15 paragraph 1 of the Law Position Notary (UUN):

“Notary authorized to make deed authentic of all actions, agreements, and provisions required by regulations legislation and/or desired by interested parties to declare in deed authentic, guarantee certainty date, make deed, save

¹³ Soerjono Soekanto, Pengantar Penelitian Hukum, Cet. 3., (Jakarta: Universitas Indonesia (UI- Press), 2010), hlm. 42.

¹⁴ Sri Mamudji et al., Penelitian Hukum Normatif Suatu Tinjauan Singkat, cet.4. (Jakarta: PT. RajaGrafindo Persada, 2006), hlm.13-14.

deed, give gross, copy, and quote deed, and everything else that makes deeds authentic that is not assigned or excluded to other officials or other persons stipulated by law."

There are 2 (two) types of deeds: Notary Public, which is a deed made by a notary that is relaxed or what you like called a deed official, and deeds made before an ordinary notary, called a deed party or deed party . When creating a notarized public good in the form of a party deed or a relaxed deed, the notary is responsible for ensuring that every deed he creates has the nature of authenticity intended by Article 1868 of the Civil Code. A deed authentic is one that has perfect proof, both before the judge and to a third party, unless it can be proven otherwise by the party interested opponent by submitting evidence against another. Strength proof is perfect. This includes:

1. Strength Proof Outwardly (*Uitwendige Bewijskracht*);
2. Strength Formal Proof (*Formele Bewijskracht*); and
3. Strength Material Proof (*Materiele Bewijskracht*).

When the one who made it is an official who isn't competent, authorized, or disabled (Article 1869 of the Civil Code), then :

- a. The deed was authenticated. As a result, no could be enforced as an authentic deed; and
- b. Such a deed has the same score as the deed below, with the condition that it must be signed by the parties.

A notary public is a general or state organ with conditional authority from the country to perform public functions from the country, particularly in the field of civil law for making tool proof authentic. As for what is meant by tool proof based on Article 1866, that is proof writing , evidence with witnesses , allegations , confessions , oaths . Article 1867 of the Civil Code mentions proof with writing conducted with authentic and written writing under hand . Deed authentic is tool perfect proof, which means that if tool proof authentic is submitted as tool proof in trial, then proof from another supporter stating that the deed authentic the right is required.

Based on Article 1 point 7 of the Law Number 30 of 2004 concerning the Position of Notary, " deed" Notary Public is a deed authenticated by or in the presence of a Notary Public according to prescribed forms and procedures in the Constitution this ." The deed will be authentic because it will fulfill terms as determined in Article 1868 of the Civil Code , namely :

- a. Made in the form prescribed by law ,
- b. created by or in front of a powerful general _ to carry out a deed; and

c. At the location where the official general authorized to make the deed.

Will is the letter in it. There is a determination about whether or not somebody will die before he dies. However, that will apply when he has died . In implementation, the letter will have to be explained in writing to have the strength of law in proof . Making a deed will necessitate the involvement of an office general, also known as a notary. In the Book of Law Law Civil explained about will in Article 875, the deed in it's load will somebody after he died. In its implementation, the deed will be drawn back only by the person concerned . will be final before he died, explaining to the other party the property that he later inherited that he desired. The will statement is then entered into the deed authenticated by the Notary Public in the form of a will one-sided .

The notary has an obligation to ensure the implementation of the contents of the will the law that contains transfer rights owned by or his later wealth explained in the deed. As stated in the letter, the deed will be enforceable as a deed. Notary Public in Which Civil Code must be based on things that have already been set as determined in the Constitution Position Notary In making the intended will in deed, we must consider both right and obligation as a form of deed the law that causes consequence; if we only have one quality, we will suffer as a result. Later hands become deed no capable With strong evidence, it becomes a tool.

There are several types that can be seen from side shape , meaning they can be seen from the formation process , whether they are made alone or involve another party. According to shape, there are 3 (three) kinds of testament/will, namely :

Will Olographic (written by Will alone). The legal basis form will be set out in Article 932 of the Civil Code . There are things to do and be fulfilled to make this happen, namely :

1. will be created and signed by the owner in his capacity as his own heir,
2. will be saved by a notary . A notary who saves will must create and sign a deed depository (acta van depot).
3. There are two (two) witnesses who attended and signed the incident report, making will that .

If the will is handed over in a closed state (enter in cover), then the deed must be made above_paper separately, and above_cover containing_will, there must be a note that states_cover that containing_letter will be accompanied by signature. Meanwhile, if the will is given in an open state, the deed could be written below_letter will only that. In principle , making will be olographic. This must be made in front of notaries and witnesses . According to Article 933 of the Civil Code, strength proof from will olographic is the same as his strength with will be completely general_ done or made by someone notary.

The General Will (Openbare Testament) is set forth in Articles 938 and 939 of the Civil Code . There are necessary things to be noticed in making this , namely :

1. will be made in front of the notary.
2. In making testament in the presence of two witnesses,
3. Explain to the Notary Public what you want the desired party to inherit. In principle , a notary with clear words must write what is said by the testator.

In practice , there are two (two) views related to obligation heirs' conveying the things they want to the notary . There are some who believe that the heir must convey the problem to the notary orally, while others believe that if the problem is made in writing by the heir, the contents will be given to the Notary Public to make it general.

will be secret (will be closed) is set in Article 940 and Article 941 of the Civil Code . There are necessary things to be noticed in making this , namely :

will be created and written for him by the heir or others, and the heir will be required to sign it.

The paper (cover) containing the writing will be required to be closed and sealed.

Paper (cover) is given to the Notary Public, who is attended by 4 witnesses and heirs. required confirmatory paper that contains the will that he wrote himself , even though it was written by someone else in her name with a permanent given signature by the heir .

Will this be written by the notary in the deed named deed superscriptie (deed) addressing In principle , the deed must be written on work (cover) containing the address, and the deed must be signed by the notary and 4 witnesses .

In a delivered will, this could be confidential or open. If with a confidential method, when the heir dies, the Notary Public must convey the will in question to Hall Treasure Relics or (BHP), the BHP then open will heir . A will in the form of a statement of his will could be drawn back. In making a will, he must be at least 18 years old with sensible health. If the heir has no sensible health, the will is null and void . The first will is made when the heir is sensible and healthy, but as time goes on, the heir becomes competent because the sensible and healthy no longer have any effect on the validity of the will. That thing is in accordance with Article 898 of the Civil Code.

When making a will, you must consider Legitime portie, which is a type of inheritance in the form of treasure; later wealth will be given to an expert in inheritance in a straight line based on law. It also restricts the gift grant. In legitime portie calculation, expert inheritance is required to give notice as expert

inheritance consequence is dead, but not expert inheritance based on constitution or legitimate. If a previous grant has been set in deed while the heir is still alive or through deed, the total amount that can be given is many, that is with determination if his heir has no existence expert.

The eligible party who becomes an expert in inheritance is the party who has a blood connection with the heir as well as a good husband or wife who was still alive after the heir died. This thing is in accordance with Article 832 of the Civil Code, which explains that the one who has the right to become an expert in inheritance is a legitimate blood relative (based on the Constitution and not from outside marriage) and also applies to the husband as well as the wife who lived the longest. However, if there is no husband or living wife, the treasure relic becomes state property . Civil experts divide absolute inheritance into four categories: first, husband or living wife, children and their descendants; second, parents and biological siblings; third, family with a straight line to the top after father and mother heir; and fourth, uncle or aunt, the heir obtained from party mother or father, uncle and aunt until with degrees six if calculated from the heir.

Regarding the gift limitation, will this be included in the compilation? Islamic law or (KHI) provides an explanation in Article 195, paragraph (2), which states that the maximum inheritance is one-third of total assets. Temporary in the Civil Code about inheritance restrictions is set in Article 914, which explains that in distribution, if an heir only has a legitimate child, line down, so apply Legitime Portie as much as one by two, but if an heir has two Legitime Portie, for each child, heir is two-thirds, and if an heir has three children or more, so apply Legitime Portie as much as three by four. About Legitime Portieyang straight to the top, applying restrictions one by two based on the Constitution to become part of the family in line with Article 915 of the Civil Code . While Legitime Portie, the child born outside of a recognized marriage, is one by two.

In the process of making a deed, you must fulfill provisions in the law according to the type of deed as outlined above . Based on the Constitutional Position Notary Public with Obligation Relevant Notary with a deed governed by Article 16 of the Law Position Notary, namely:

1. Notary Required make a list of related deeds with will according to order time making deed every month ;
2. Submit a list of deeds the to the List of Will Centers Department whose duties and responsibilities the answer in the field notary in 5 (five) days on a week first every month next ;
3. Take notes in repertoire date delivery of wills on each end month .

A notary also has an obligation to tell those who are interested about the existence of a letter saved by him , and within one month after the known death of the heir,

the notary must convey a copy of the completed letter to Hall Treasure Relics (BHP) in the area of the law . The BHP then launched _will heir.

In thing making a deed, a Notary Public has a number of obligations that must be fulfilled , as spelled out before . Which answer is the notary's sole responsible answer limited to the act that caused the loss?The Notary Public is responsible for the deed he made. The reason is that there are no fulfilled conditions determined by law in making a deed that is threatened by civil law , as well as other possible actions just done by a notary who can be categorized as an action with a criminal threat.

A notary has moral responsibility, a code of ethics, legal responsibility, and criminal responsibility when performing the function of public office. Notary Public in charge of moral obligation to obey the state as well as the Constitution of the Republic of Indonesia, as well as respect for court judges and character. In order to do his job, a Notary Public must behave honestly, thoroughly, and not take sides with one party or another . Notaries also have an obligation to keep secret deeds made . Then, the responsibility code ethics notary public is to act like a professional, where notary public must have a good personality, take care of notary dignity, and respect fellow office generals. Following that is responsibility to law, which covers responsibility crime by regulated officials in Book II Chapter XXVII in Articles 413-437 concerning crime by position, as well as violation of position in Book III Chapter VIII in Articles 552-559 concerning violation of position. Then, the responsibility law civil is regarding change loss in the form of money raised _ because the notary public does not operate his job with the right, the loss charged to the notary public is given immediately by a third party as well as the government. Next is administrative responsibility. This arises if the office general does not carry out his obligations in service . The public who violates discipline against position will be given a punishment position or, in more words, an extreme penalty in the form of a stop position .

Making a will that exceeds the Legitime portiemaka Notary Public's obligations as in Article 16 of the Law Position Notary . In deed law, a Notary Public has related obligations _ with deed will, i.e., act trustworthy, honest, thorough, independent, no siding, and guarding interests related parties _ in point one. "Carefully" is a word that begins with "right and right."

In making a deed will , there are conditions the above should be fulfilled. If not, and if considered harmful to the other party, then there is a close possibility the notary involved in making the deed will be sued because doing the deed opposes the law . As a result, if a notary public performs a deed in violation of Legitime portie, it is presumed that he has not exercised due diligence in his position. As in Article 913, Legitime portie is part inheritance based on the law which has an obligation to give to expert inheritance .

Accountability Notary Public has violated things stipulated in the law Position Notary and things stipulated in Article 913 of the Civil Code regarding deed will with exceeding Legitime portie, so Notary Public could be charged with administrative sanctions based on Article 85 of the Law Position Notary Public Number 2 of 2014, which includes warning with method written, oral, dismissed by temporary, suspended with honorable way, or dismissed with no honorable way. In addition to administrative liability, violations against Legitime portie received civil penalties as poured_ in Article 1365 that_ violates the law that causes the other party to experience loss because the action of the mistake causes others to lose, so he sued for replacement of that loss.

Consequence Law To Making Deed A will that harms the heirs with Studies Case (Judgment Court No. 1398/PDT.G/2017/PAJP)

Something is valid if it is created in accordance with legal requirements. In the Civil Code, there are restrictions about grant that will refer to the property that will be shared with experts in inheritance because there is a right absolute (Legitime portie) which has been determined by law . By law if grant will violate legitimacy portie will be null and void , but in decision Supreme Court that if there is violation against Legitime portie expert inheritance , if expert inheritance the feel no harmed so nature Becomes could canceled , if expert inheritance no demand part to court so deed the could considered legitimate .

Article 913 BW, which is meant by Legitime Portie, is part of the treasure relic heir after must die, and given to an expert heir , whose intended inheritance is expert inheritance line straight according to law . So an heir can no longer set something in his will or give the grant to anyone to treasure the legacy that can harm expert heirs who have been determined by law. Article 914 BW discusses Legitime Portie Bagian descendants line from top to bottom, namely :

1. If heir only leave one child legitimate in line straight down so child the will get part half from abandoned treasure _ heir because death ;
2. If heir leave two child legitimate in line straight down so part each child is two-thirds part from heir because death ;
3. If heir leave three child or more so part three quarter part .

According to the law, Article 915 BW contains Legitime Portie Bagian for descendants line straight to the top. Article 916 BW contains a portion for unmarried children who have recognized that half of the portion should be received by unmarried children. Marry according to the law . If the child, as expert inheritance, dies before the heir, Legitime portie his will be transferred to the child as his replacement. If Legitime Portie is not yet fulfilled, it will be taken from the will and will not be taken into account when made, as well as, in comparison, it will be taken from the grant given to the receiver grant with notice

date the gift that is date close. If the legitimacy portie has been fulfilled, there is no need to take from grant another.

Based on Article 921 BW, the amount part absolute or legitime portie is calculated with a method that is as follows:

1. Count all grants that have been given by the heir during his life , including the grant given to one _ or experts _ inheritance absolute or legitimate ;
2. Amount the added with assets existing inheritance ;
3. Then , minus the debts of the testator ;
4. From result addition and subtraction above , then calculated big part absolute or legitime portie from expert inheritance absolute or demanding legitimacy his share .

The size portion is absolute or legitimate portie earned_ the is truly the amount_ received expert inheritance absolute or legitimacy concerned._ The grant of a violation will be against a legitimate portie or part absolute, which will result in legal consequences, but this depends on the attitude of the legitimate, that is, whether the legitimate can accept reality so justly without going to court or submitting a lawsuit to court on the base part absolutely.

According to the Civil Code, something will be certain about absolute or legitime portie and deliver protection individually , the implementation of which is also submitted to each expert interested heir. (_ Part absolute expert heirs are mentioned in Article 913 of the Civil Code, which is about legitime portie, and it states that legitime portie or part absolute is all part of treasure, a must relic given to expert inheritance in line straight according to law, against which part of the person who died did not allow set something good_ as distribution between those who are still living and those who have died, or as will. So it could be concluded that the limit will be that which is legitimized by that alone in the Civil Code, in other words, no more than 1/2 part from inheritance . However, according to Islamic Law and KHI Article 195 paragraph (2), both of you will be limited to a maximum of 1/3 (one-third) of the total treasure inheritance. More than a third of a property must be inherited with the permission of an expert.

If will the violate the legitimation portie then , there is three likely to be happened to the deed the namely :

1. stipulation that is cancel .
2. stipulation that is " eenvoudige " Vernietigbaarheid " (can canceled by simple).
3. stipulation that is legitimate will but si legitimate have right Sue personal for get change loss .

" Gifts" or grants, are good between those who are still living and those who have died, but with letter will , which is detrimental to the Legitime Portie section , OK ? reduced on time open inheritance, but only on the demands of legitimaries and inheritance or replacement experts Legitimaries, on the other hand, cannot enjoy anything and deduct the loss from those who owe to the heir.

The judge 's consideration in Decision Court No. 1398/PDT.G/2017/PAJP regarding a will that violates part absolute (legitimacy) portie) that is, the deed will be canceled and not have the strength of the law that binds and demands party Defendant V to submit or return all certificate ownership object or object existing will_ in mastery party defendant to give to plaintiff even though without condition. Decision Court No. 1398/PDT.G/2017/PAJP is already appropriate because it is in accordance with Book Burgerlijk Weatboek. Because the judge should be able to Which one is there in relation to Article 920 of the Civil Code? To comply with the rules in Civil Code article 920, a solution that is cutting grant will or incorting if it violates part absolute for expert inheritance.

According to Subekti, this resembling right prosecution a owner of something things, and according to meaning prosecution that must be aimed at those in control of something object of sound Article 834 of the Civil Code, cancellation letter will not have consequence to expert inheritance because, basically, cancellation letter will usually only be limited to object partial will is not owned by will, though according to law, expert inheritance A will made before Notary Public can be canceled if there is no material fulfillment. That is, if what is explained or what is written in the letter will truly occur or what is explained in the letter will not be true (material).

So a will made by a notary is a deed that has perfect proof. However, if there are procedures that are not fulfilled, and those procedures that are not fulfilled could be proven, then the deed by court process could be declared as a deed that has strong proof as deed below hand. The deed will be authenticated by a notary who has to do deed oppose law on his negligence in making the deed (content) authenticated and become a deed under hand, and the deed authenticated could be canceled if the party who argues can prove it in court trial. If something like a will made by a notary canceled by a judge's decision in court , then if that causes loss for interested parties , the notary could sue for give change loss , as long as the event was caused by the notary's error. With the filing of a civil lawsuit in court, the cancellation deed gains the authority of civil judges.

4. Conclusion

The conclusions of this study are as follows:

- a. If the making of the will exceeds the legitime portie the notary has not carried out his obligations in Article 16 of the Notary Position Act, namely in

carrying out his position the notary has an obligation to act independently, honestly, thoroughly, safeguarding the interests of the parties regarding his legal actions and impartially. As in Article 913 that the legitime portie is part of the inheritance based on the law which has an obligation to give it to the heirs. So that the notary has violated the matters as stipulated in the Law on Notary Positions and matters as stipulated in Article 913 of the Civil Code so that the notary can be subject to administrative sanctions based on Article 85 of the Notary Position Act Number 2 of 2014 which includes verbal, written, and verbal warnings. temporary dismissal, honorable discharge or even dishonorable discharge. And regarding the legal consequences of a will that exceeds the legitime portie, it is null and void, but based on the decision of the Supreme Court, if in its implementation the excess in the legitime portie is not detrimental to the heirs, then its character becomes null and void, this will result if the heirs do not commit claim against his rights, the will remains legally valid.

- b. The Civil Code provides rights for legitimate heirs with respect to the existence of an absolute share. The right granted by law is the right to file a claim for a reduction or return given to the third party against the property that is an absolute part (legitime portie). There are (2) two ways to obtain inheritance, inheriting under the law, and inheriting based on a will. It should be remembered that, if there is a will that exceeds the provisions of the legitime portie and is detrimental to the legitimacy, the heirs can file a claim to fulfill their legitime portie through incorting/reduction of the will. If at the time of the reduction of the heirs do not agree, the heirs can demand again so that the deed is canceled by the court. As for the limitation of the will, namely the legitime portie itself, in other words, it cannot exceed (half) part of the inheritance.

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