

## The Role and Responsibilities of a Notary in Making a Certificate of Inheritance for Disbursement of Time Deposit Savings Funds by the Heirs

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**Abstract.** *A notary is a public official who authorized to make an authentic deed. Notaries as public officials play an important role in the banking industry, especially in making authentic deeds, one of which is a certificate of inheritance made by a notary. The role and responsibilities of a notary in carrying out his position that a notary is obliged to carry out the provisions contained in the Law on Notary Positions. The approach method used in this research is sociological juridical, meaning that research is carried out on the real situation of the application of law to society with the intent and purpose of finding facts (fact-finding), which then leads to problem identification and then leads to problem solving. Based on research conducted by the author that the role and responsibility of a notary in making a certificate of inheritance rights, a notary in carrying out his position is obliged to follow the provisions contained in the notary position law. Obstacles faced by notaries in making certificates of inheritance rights include notaries not mastering and understanding the provisions related to certificates of heirs, notaries having difficulty determining whether the witnesses presented are appropriate or not, there is no unification regarding the implementation arrangements for making certificates of inheritance rights, there are witnesses or heirs who are dishonest in giving statements. To overcome these obstacles, namely the need for accuracy on the part of the Notary so that mistakes do not occur in the future.*

**Keywords:** *Certificate; Inheritance; Responsibilities; Roles.*

## 1. Introduction

High legal awareness in the community is one of the factors that encourage people to make an agreement before a notary. High legal awareness in the community is marked by the increasing demand for services to a Notary. The increasing standard of living of the people, the rapidly developing technological advances and the increasing number of available business fields in various fields, give rise to and encourage business people to increase their business activities in various fields. Therefore, it is very necessary to have a Notary deed in the practice of traffic law in an increasingly advanced and complex society.<sup>1</sup>

The emergence of the notary institution is based on the need for a binding evidence other than witness evidence. Considering that the evidence of witnesses is no longer sufficient, because in accordance with the development of the community in terms of making agreements implemented by the community, it becomes increasingly complicated and complex.

Notary is one of the positions given by the state through the Minister of Law and Human Rights as an extension of the State where he carries out part of the state's duties, especially in the field of civil law in accordance with the Law on Notary Positions.

The definition of a Notary is based on the provisions of Article 1 point 1 of the Act No. 2 of 2014 concerning Amendments to Act No. 30 of 2004 concerning the Position of a Notary is, "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".

The state will provide a rule which of course will be equipped with strict sanctions if the rule is violated. Not only with regulations, the state also establishes an agency or institution as a means of supervision for people who carry out these positions.

Notary is a position of trust, this implies that those who carry out the duties of a position can be trusted and because the position of a Notary is a position of trust and people who carry out duties and can also be trusted, both of which support each other. Therefore, in carrying out the duties of his office, the Notary has the

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<sup>1</sup> M. Luthfan Hadi Darus, ( 2017). *Hukum Notariat dan Tanggung Jawab Jabatan Notaris*, Cetakan Kesatu Yogyakarta : UII Press

obligation to maintain and keep everything confidential regarding the deed made and all information obtained for making the deed in accordance with the oath and promise of office<sup>2</sup>.

Notaries as public officials are appointed by the government not only for the benefit of the notary himself, but also for the benefit of the wider community. The services provided by the notary are related to the issue of trust, meaning that the state gives great trust to the notary and the notary has responsibility for it. This responsibility can be in the form of legal or moral responsibility.

The Notary profession plays an important role in making the deed desired by the appearer so that the Notary must really understand and know the contents of the Notary Position Act so that the deed made is not problematic in the future and provides legal protection for the community.

Notary is a public official, authorized to make authentic deeds, regarding all actions and decisions required by general legislation to be desired by those with an interest that it is stated in an authentic deed, guarantees the date, keeps deeds and issue grosse, copies (derivatives) and quotations thereof, all of that if the making of such deeds is devoted to that or is devoted to officials or other people.<sup>3</sup>

Based on Act No. 30 of 2004 concerning the Position of a Notary, it is explained that a Notary only has limited authority based on the Act, meanwhile based on Act No. 2 of 2014 concerning Amendments to Act No. 30 of 2004 concerning the Position of a Notary, there is an expansion

The authority granted to a Notary, namely the Notary's authority is not only limited to the Notary Position Act (UUJN) but also to other powers granted by law outside the Notary Position Act.

The position of a Notary is a public official, a Notary can be said to be a public official because a Notary is appointed and dismissed by the Government. Although Notaries are appointed and dismissed by the government, Notaries cannot be said to be civil servants who are also appointed and dismissed by the

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<sup>2</sup> Maman Suparman, (2015), *Hukum Waris Perdata*, Jakarta : Sinar Grafika,

<sup>3</sup> Muhammad Ali Ash-Shabuni, (1995), *Pembagian Waris Menurut Islam* (Jakarta: Gema Insani Press,

government, but Notaries can be said to be government employees without receiving a salary from the government.

The main task of a Notary is as a maker of written evidence regarding authentic deeds. The deeds made by this Notary must really be accepted as perfect evidence between the parties making the agreement.<sup>4</sup> What is meant by an authentic deed based on Article 1868 of the Civil Code is "an authentic deed is a deed in the specified form. by law, made by or before a public official in power for that at the place where the deed was made.

The elements contained in Article 1868 of the Civil Code are as follows:

- The deed is made and formalized in the form according to the law.
- The deed is made by or before a public official.
- The deed is made by or before an official authorized to make it at the place where the deed was made.

This authority is further elaborated by Article 15 paragraph 1 of the Act No. 2 of 2014 concerning Amendments to Act No. 30 of 2004 concerning the Position of a Notary, that "Notaries are authorized to make authentic deeds regarding all actions, agreements and stipulations required by a general regulation or by those with an interest who are required to declare in an authentic deed, guaranteeing the certainty of the date, keeping the deed and providing grosse, copies and quotations, all as long as the making of the deed by a general regulation is not assigned or excluded to officials or other people.

Notaries as public officials play an important role in the banking industry, especially in making authentic deeds, one of which is a Certificate of Inheritance made by a Notary. With the Certificate of Inheritance, it can be known precisely and with certainty who is entitled to the property left by the testator. These assets include movable and immovable assets, tangible or intangible, all of which involve legal traffic. Including deposits of the deceased's assets in the Bank, either in the form of cash as demand deposits or deposits or assets in safe counters.

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<sup>4</sup> Munir Fuady, (2005), *Profesi Mulia (Etika Profesi Hukum bagi Hakim, Jaksa, Advokat, Notaris, Kurator, dan Pengurus)* Cetakan Pertama, (PT. Citra Aditya Bakti: Bandung,

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

## **2. Research Methods**

This study uses qualitative data analysis methods. This method focuses its attention on the general principles that underlie the manifestation of the units of symptoms that exist in human life or the patterns analyzed by social phenomena. culture, using the culture of the community concerned, to obtain an overview of the prevailing patterns.<sup>6</sup> The processing of the researched data was then analyzed qualitatively, namely the analysis of data for produce data that is systematically arranged based on laws and regulations, expert opinions and the results of the author's research<sup>5</sup>.

## **3. Results and Discussion**

### **3.1. Roles and Responsibilities of Notaries in Making Certificate of Inheritance for Disbursement of Time Deposit Funds by Heirs**

Products from Notaries as the strongest and most complete evidence have an important role in every legal relationship in people's lives. In various business relationships, activities in the fields of banking, land, social activities, inheritance, and others. The need for written evidence in the form of an authentic deed is increasing in line with the growing demand for legal certainty in various economic and social relations, both at the national, regional and global levels.<sup>6</sup>

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<sup>5</sup> Soejono Soekanto, (1986), *Pengantar Penelitian Hukum*, Jakarta : UI Press,

<sup>6</sup> Soetrisno, (2007). *Diklat Kuliah tentang Komentar atas Undang-Undang Jabatan Notaris*, Buku I, Medan,

In Indonesia, in the making of Certificates of Inheritance Rights, for several groups of people in Indonesia, such as the European group and the Chinese group, Notaries have routinely made and until now are still made by Notaries. This information has received full trust from the public, agencies the government, as well as the private sector, even from debtors (those who owe their debts to the heirs), especially banks for deposits of customers who have died. With the Inheritance Certificate, we can know exactly and who is entitled to the assets left by the testator. The treasure includes movable and immovable property, tangible or intangible, all of which involve legal traffic. The Agrarian Office, for example, can know with certainty to whom an immovable property belonging to someone who has died is inherited. The bank that keeps the assets of the deceased, whether in the form of cash as demand deposits or deposits or assets in safe counters, can know with certainty to whom he can pay the money or hand over the assets by freeing or permitting the opening of safe counters. Bonded common property, including inheritance that has not been divided and divided, may only be transferred, reversed or accepted by all entitled parties. In this case, no heir may be left behind, no matter how small his share in the joint property. Anyone who is entitled to the inheritance that has not been divided must be listed in the inheritance statement. In that context, the inheritance statement is also required by a Notary who will make a deed of transfer of rights

Classification population based on ethnicity and the laws that apply to each population group are the legacy of the Dutch colonial government in Indonesia, which until now is still considered a sacred law that cannot be changed by anyone, even the government or the state. In fact, in the context of legal reform and building a dignified and civilized nation, we must immediately abandon such rules, because they are no longer in accordance with our independent nation. The three formal forms of proof heirs and institutions, namely:

- European, Chinese/Chinese, Foreign Eastern groups (except Arabs who are Muslim) based on a Certificate of Inheritance made by a Notary.
- Foreign Eastern Group (not Chinese/Chinese), based on the Certificate of Inheritance made by the Heritage Center (BHP)
- The Indigenous Group (Bumiputera) based on a Certificate of Inheritance made under hand, stamped, by the heirs themselves and known by the Head Village and Head District according to the last place of

residence of the heir.

The three formal forms (letters) of evidence as heirs and institutions that make them need to be studied further and are related to the current legal rules, which in the Citizenship Law no longer recognize the term or division of the Indonesian population based on group or ethnicity. That the status of Indonesian citizens (WNI) is no longer based on certain ethnicities or groups, but is based on law. This is in accordance with the provisions of Article 2 of Act No. 12 of 2006 concerning Citizenship Republic Indonesian citizens, namely those who become Indonesian Citizens are people of the original Indonesian nation and people of other nationalities ratified by law as citizens. 2 paragraph (1), and article 3.

According to the results of interviews between the authors and sources, it is stated that the role of the Notary in making a certificate of inheritance is certainly one of the important things because with the letter, the heirs can be facilitated in the process of searching for deposit funds owned by heirs who have died. As for the certificate, it is also an important requirement in the ongoing process with the Bank. Therefore, the Notary must bridge the process to facilitate the heirs in the process of disbursing the deposit funds.<sup>7</sup>

In general, time deposits are a product of money diversion provided by the bank with an initial deposit system and have withdrawal provisions that can only be made according to a certain period of time that has been agreed upon by the customer and the bank. Even though the funds deposited can only be withdrawn after a certain period of time, time deposits have their own advantages compared to savings accounts<sup>8</sup>. The interest rates provided by banks for deposits are more competitive than ordinary savings. However, if the customer decides to withdraw the deposited funds before the agreed time period expires, some banks allow the customer to withdraw the deposited funds, but are subject to a number of penalties or discounts that the customer bears.

### **3.2. Obstacles and How to Overcome Obstacles Faced by Notaries in Making Certificate of Inheritance for Disbursement of Time Deposit Deposits by Heirs**

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<sup>7</sup> Omear Moechthar, (2019), *Perkembangan Hukum Waris Praktik Penyelesaian Sengketa Kewarisan di Indonesia*, Jakarta: Prenadamedia Group,

<sup>8</sup> R Soetojo Prawirohamidjojo, (2007), *Hukum Waris Kodifikasi*, Surabaya: Airlangga University Press, and see to R. Soegondo Notodisoerjo, (1993). *Hukum Notariat di Indonesia : suatu penjelasan*, Jakarta : Raja Grafindo Persada,

Information on inheritance rights is a form of proof from the heirs about the truth that the right person and has the right to inherit from the heir, which in its contents explains the position of the heir and the relationship with the heir. Certificate of inheritance rights is made with the aim of proving who is the legal heir of the inheritance, which has been opened according to law and how many portions or parts? each expert inheritance against the inheritance that has been opened. Information on inheritance rights is also known as Certificate of Inheritance Rights (SKHW). Letter description right inheritance is a proof of inheritance, namely a letter that proves that those mentioned in the inheritance certificate are the heirs of a certain heir. Information on the right of inheritance to transfer the name of the inheritance received and on behalf of the testator becomes on behalf of all heirs.

The making of a certificate of inheritance rights is carried out by different officials based on the population group. Mentioned, there are three officials authorized to make a certificate of inheritance. Each of them is a notary for the Chinese group, *Balai Harta Peninggalan* (BHP) for the non-Chinese Foreign Eastern Group or made by the heirs on paper witnessed by the Head Village and confirmed by the Camat for the Indonesian Bumiputera group. While the Certificate of Heirs issued by the Village Head is as a basis for rights in determining the heirs who are entitled to an inheritance.

Article 15 paragraph (2) letter b, it is stated that the Notary in his position is also authorized to record letters under the hand by registering in a special book. The book in particular is called the Underhand Letter Registration Book<sup>9</sup>.

The previously conveyed authority is also known as underhand letter registration with the *Waarmerking* register code. It is the process of registering or registering private documents in a special book made by a Notary, in which the document has been prepared and signed by the Parties beforehand. Its function is to the agreement or agreement that has been agreed and signed in the letter, apart from the parties, there are other parties who are aware of the existence of the agreement or agreement. This is done, either to negate or at least minimize denial of one of the parties. The rights and obligations between the parties are created at the time of signing the letter which has been carried out by the parties, not at the time of registration with a Notary. Therefore, accountability of

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<sup>9</sup> Soejono Soekanto and Sri Manidji, (2003), *Penelitian Hukum Normatif Suatu Tinjauan Singkat*, Jakarta: Raja Grafindo Persada, Jakarta, p. 38.



notary is limited to confirming that the parties made an agreement or agreement on the date stated in the letter registered in the Underhand Letter Registration Book.<sup>10</sup>

The notary deed contains a statement of the parties' statements and is made at the will or request of the parties, the notary makes it in a form that has been determined by law, the notary is not a party contained in the deed, the inclusion of the notary's name in the deed because of a statutory order.

Based on the description above, of course there are obstacles and obstacles in the process of making a certificate of inheritance rights related to the disbursement of time deposit funds by the heirs.<sup>11</sup>

Lack of thoroughness of a Notary in checking and ensuring the completeness of the documents that are the requirements for making a Certificate of Inheritance. In this case, it is a human error on the part of the Notary as a general official who carries out the making of documents related to the heir deposit. This is one of the obstacles that can cause problems in the deposit disbursement process and is quite detrimental to the heirs. For the sake of carrying out the duties of a good Notary, the Notary must follow one of the principles, namely the principle of accuracy. Notaries in taking an action must be prepared and based on the applicable legal rules. Examining all evidence shown to the Notary and listening to statements or statements of the parties must be carried out as the basic material to be stated in the deed. This principle of accuracy is the application of Article 16 paragraph (1) letter a, among others, in carrying out the duties of his position, he is obliged to act carefully.

- There are several cases where the obstacles come from the Notary who does not master and does not understand properly all provisions that apply to the Certificate of Inheritance in Indonesia. This is because the Notary is not very familiar with the inheritance law, so that the Notary has difficulty in establishing the law incidentlaw and put it in a certificate of inheritance rights. According to the KBBI, the meaning of constantir is to ask questions about the existence of a symptom and draw conclusions based on real evidence or symptoms.<sup>12</sup>
- A Notary has difficulty ensuring that the witness presented must

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really know about the family of the deceased heir, for example the witness really knows the number of the heir's children, so that there are no heirs whose names are not included in the Certificate of Inheritance.

- There is no unification regarding settings implementation of the making of Certificate of Inheritance in Indonesia. The meaning of the word unification itself is to apply a certain kind of law to all the people in a certain country. If a law is declared valid by unification, then in that country only one particular type of law applies and various laws do not apply.
- There are still often witnesses or heirs who are dishonest in giving statements. This is also one of the obstacles in making a statement of heirs where the witnesses and heirs should be able to provide honest and honest information regarding the data needed for the preparation of the heirs letter and the completeness of each party who makes the power of attorney.

In essence, a Notary as a public official only establishes or relates or records in writing and authentically the legal actions of the parties concerned. Notaries are not in it, Notaries are outside parties, those who carry out legal actions are interested parties. The initiative to make a Notary deed or authentic deed rests with the parties. Therefore, a Notary deed or authentic deed does not guarantee that the parties "say the truth" but what is guaranteed by the authentic deed are the parties who "true to say" as contained in the deed.

The truth of the words of the heirs in the process of making the Certificate of Inheritance before a Notary as contained in the deed is not the responsibility of the Notary, on the contrary the Notary states that the parties or heirs are right in saying so, what is said in the Certificate of Inheritance that is submitted to the Notary? contains the truth or lies, it is not the responsibility of the Notary. Notaries only record what is said by the parties who appear before the Notary, if what is said is not true or contains lies and falsehoods, then the deed or Inheritance Certificate remains original, not fake, invalid or false and the lie is the statement of the parties.

Making proof of heir is a civil right of every citizen, not a gift from a Notary or the state/government or from anyone. Until now, there has been no legal unification (a form of formality of letters and officials or institutions that should or are the only ones to make evidence as the heir. According to the author, the absence of

legal unification is what needs to be a concern for the government and associations and lawmakers in Indonesia).

To eliminate and eliminate discrimination in formal forms and officials/institutions that make proof of heir for Indonesian citizens, the Notary can act as the only party (official or institution) who can make evidence as the heir. As a Notary who lives in an independent country, a Notary must actively participate in implementing the values of independence in a real action.

Notaries must position themselves as officials who are present to serve the interests of the community. Notaries are not good servants, if they still carry the colonial vision and mission, namely they still want to make, maintain and carry out discriminatory legal actions, especially the making of heir evidence. Therefore, it is expected that the Notary will position himself as a Notary to be a good public servant, one way that must be done is to implement the authority of a Notary as an authorized official to make proof of heir for all Indonesian people not based on ethnicity and any class in the form of a party deed.

#### 4. Conclusion

The role of the notary in bridging the interests of the customer's heirs with the bank is to make a Certificate of Inheritance which is required for the disbursement of time deposit funds at the bank. Certificate of Inheritance Rights made by a Notary in it contains information regarding the heir, the heirs, and the parts that are the rights of the heirs based on the Civil Code.

#### 5. References

##### Books:

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### **Regulation**

- [1] Act No. 2 of 2014 concerning Notary Positions
- [2] Article 1 in conjunction with Article 15 of Act No. 2 of 2014 concerning amendments to Act No. 30 of 2004 concerning the Position of Notary.
- [3] Article 60 paragraph (2) of the Law on Notary Positions

### **Interview:**

Result of interview with Dian Eka Ningsih, SH, MKn., Notary/PPAT in Demak Regency, April 9, 2022