

Legal Protection Of Heirs Testamenter To Testament Agreement Which Not Registered (Case Study Testamenter Without Heirs)

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Abstract. Law of inheritance only happens because the person died. In BW there are two ways to get wealth, that is: as heirs according to the provisions of law and as a person appointed in the will. What is meant by the will itself according to Article 875 BW is an agreement that make statements about what he wished someone would happen after he died, and that by her to pull back. In general, people make a will before a Public Notary. According to article 1 paragraph 1 of Act No. 2 of 2014 concerning On Notary (now referred to UUJN). Notary is a public official who is authorized to make authentic agreements and other authorities referred to in the Act, where each testament must be shaped agreement in order to obtain certainty law as an authentic agreement binding. With the creation of the will meant that the parties can understand and be able to know the basic result of the offense can be arranged so that the interests of the concerned receive proper protection as known by the Notary.

Keywords: Inheritance; Heir; Testament; Authentic Agreement.

1. Introduction

Inheritance is generally regulated in the Civil Code Article 830 which states inheritance occurs due to death⁴. Inheritance law is the law governing the transfer of the assets left behind someone who died as well as the consequences for the heirs⁵, The Book of the Civil Law has seen inherit rights as the right material on the wealth of the people who died (Article 528 of the Civil Code)⁶.

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⁴Ni Putu Yuli Kartika Dewi Ni Putu Purwanti *Tata Cara Penuntutan Hak Waris Oleh Ahli Waris Yang Sebelumnya Dinyatakan Hilang Berdasarkan Kitab Undang-Undang Hukum Perdata (Kuhperdata)*" Kertha Shemaiah vol. 03 no. 05 September 2015 p. 03, <http://ojs.unud.ac.id/index.php/kerthasemaya/article/view/15351/10193>.

⁵Effendi Perangin 2001 *Hukum Waris* Raja Grafindo Jakarta Pg. 3

⁶Djaja S. Meliala 2012 *Hukum Perdata Dalam Perspektif BW* Nuansa Aulia Bandung p.196

Notary authority to make authentic act on a matter desired by stakeholders as mentioned in Article 15 UUJN one of which is the agreement will. Agreement will (testament acte) generally is an expression of one's will to be done after he died.

The importance of the role of the Notary in the agreement will be seen from the provisions set forth in article 943 BW, which provides that: "Every Notary store testament letters between the original letters, though in any form should be after the testator dies, notify interested parties."

In general, in the process of making a will, probate providers often do not tell their heirs or to the beneficiary will be the testament made by the giver will. The absence of an obligation for providers to notify their wills probate will he make make givers will be directly facing the notary to make or simply store and register the agreement of his will.

The condition where the heirs and beneficiaries will not know the existence of a will at the time of the opening of the will is certainly very, very detrimental to the receiver and cause discomfort testamentary heir due to the loss of legal certainty of inheritance before. This condition also creates uncertainty as to who is responsible for the problem does not foresee their wills, whether the beneficiary is obliged to check their wills to List Center Testament or the duty of every law enforcement manufacturer's certificate of heir check their wills to List Center Testament, because it is not No explicit normative requirement related to who are required to check for the existence of a will. Problem Formulation: How will the registration mechanism which is not registered if the testator has no heir and How enforceable against the will agreement that is not registered.

Research Methods

The method used in this research is a normative legal research methods. Normative legal research is legal research yagn made by reviewing the materials that come from the various laws and regulations and other materials from the literature that have a correlation and relevance to the issues to be studied, as well as the legal theories and opinions of the scholars.

Specifications This study used a descriptive analysis tipi research that in addition to providing an overview, written and reported an object or an event will also take the general conclusions of the issues discussed.

Method of collecting data. This study is a library reasearch that collected material of the ruling made by the technical documentation, which is collected from a study of the legislation, the Book of Civil Law, Compilation of Islamic Law, The Act of Notary, literature such as books, papers, articles , journals, papers experts.

Methods of data analysis. All the data obtained during the interview by asking questions of the Notary as a resource and the data collection by reading books or literatures then analyzed. The analytical methods used are qualitative analysis, to

describe the exact nature, circumstances, and the symptoms of a particular individual or group and then obtain a systematic overview.

2. RESULT AND DISCUSSION

Notaries have the authority and its obligations include:

- Will ask the client;
- Giving consideration to the client will accord based on the applicable law;
- Requiring proof of ownership of the property will be listed and personal data of the client;
- Ask for the correct data on recipients of inheritance;
- Making the concept will be created and launched back to the relevant checks before being made as a agreement;
- Make a will shaped public agreement;
- Make a deposit certificate olografis their wills;

2.1.Registration Mechanism the Agreement which Not Be Registered If The Testament Who Has No Heirs

Article 16 paragraph 1 letter j Act No. 2 of 2014 on Notary which states that:

"Transmit Agreement list referred to in the letter i or register zero with respect to the will to probate register at the ministry center that held government affairs in the field of law within five (5) days of the first week of next month"

Thus it can be understood that this administrative responsibility shall be performed by a Notary, the Notary negligent because when run, it can be detrimental to the recipient's will and consequently Notary concerned could demanded upfront probate court by the recipient.

In order to realize the efficiency of the registration system, on March 28, 2014, the Ministry of Justice and Human Rights of the Republic of Indonesia (now is referred to Kemenkum) issued a registration system will be online by the Notary. Furthermore, there was published the Ministry of Justice Regulation No. 60 of 2016 on Procedures for Reporting Application Wills and Probate Electronic Publishing Certificate (now referred Permenkumham No. 60/2016) as the basis for reporting will that be done online.

However, in practice there are still many who have not registered Notarial wills online to Kemenkum Human Rights. Whereas Article 16 paragraph (1) letter j Act No. 2 of 2014 on the Amendment of Act No. 30 of 2004 concerning Notary (now referred UUJN) states that in carrying out his post, a notary must send a list of the Agreement referred dalamhuruf I or nil list will list on the ministry held government affairs in the field of law within five (5) days of the first week of next month. However, in the Notary Act's new no mention of fines from each of delay, whether delay on the list of

certificates testament to Kemenkum Human Rights and the delay of the delivery of the recording Repertorium.

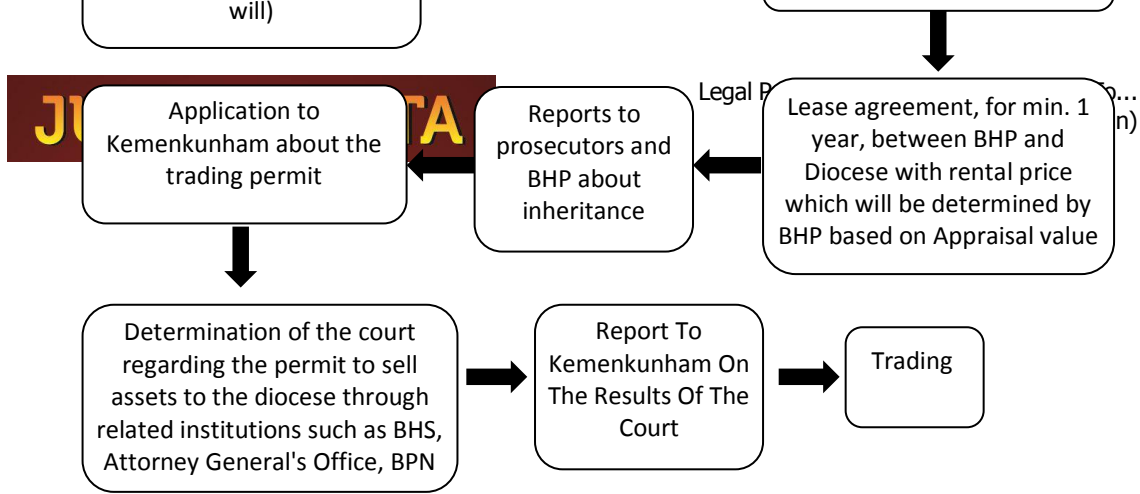
Each type and testament form above can be made either in an authentic agreement or agreement before a Public Notary under his hand. Notary duty and responsibility to save and send a list of wills that has been made to the Heritage Hall (BHP) and list the Miraculous Center (DWP). In the draft Law Center for Heritage in Article 3 letter b mentioned that the Heritage Center has the task of carrying out the completion of the opening and registration of wills in accordance with the legislation.

From the research that I received for registration mechanism will that is not registered if the testator has no heir is as follows: Suppose that A has made a will whose content agreement his entire estate consisting of a house, land, savings, car, etc. will be provided to B. While the B is not the heir of A. A is not married and no one knows the whereabouts of his brother. So that A does not have an heir. Then after the dies A, B will take care of the Transfer of Rights over land is still registered in the name of A, but after doing the checking center to your will. The notary agreement will not register the will to List Center Testament.

To resolve the above problems B must first submit a Court Decision on the absence of an heir, after the determination is hit, the whole treasure A will be submitted to the Center for Heritage and will happen lease for the property is between the Department of Heritage and B for approximately 1 years. And implemented a newspaper announcement 2 times and made the Official Gazette of the Republic of Indonesia.

The lease term extension of the lease will be executed within a period of 1 month in a row with the price of the lease and Non Tax Revenue to be determined based on the value of the entire wealth appraisal. After a lease for more than 1 year old the next step is a trial to the court ruling concerning permits Sell on properties A, after the establishment of pegadilan hit, Hall Heritage will submit an application to the Ministry of Justice and Human Rights to issue a letter of permit the sale of all assets to B.

And if the application was hit, along with Heritage Hall appraisal team will count for the sale and purchase price of the transaction, then the Treasure Hall relics will issue a letter to the Land Board to allow the transfer of rights to the land to B to be carried out.



2.3. Legal Power Against The Testament Agreement Which Not Registered

Just because the notary agreement neglect to register a testament to your Testament Center the way for the realization of the contents of the will is so complicated, and therefore the Notary should notice about the rules for reporting the will agreement to list Testament Center.

In Making agreement will (testament), a notary has a role that is more specific than the legislation in force, the role that makes the Notary as a party that acts as the independent and impartial, and shall take into account the interests of all parties involved, in order to provide certainty and legal guarantees, which in the subject matters that must be met in making testament, the manufacture is always preceded by a Notary ask his client wishes to give part of his property to another person who has a close relationship with the client, which is then followed by a Notary notify the legal consequences. Read before the two (2) witnesses, which at a later stage is done according to the type testament respectively.

BW Article 943 stipulates that every Notary store wills between the original letters, in any form shall also, after the passing of the deceased, notify all concerned. Under these provisions, it can be concluded that the Notary has an important function in agreement testament of the process beginning to end so that the certificate will have binding legal force.

But if the will agreement is not registered then there will be various problem arising thereafter.

3. Closing

3.1. Conclusion

- Due to negligence report agreement resulted List Testament Center of the transition process rights be long and gradual.
- Regulation Legislation so that when these provisions violated the legal consequences are testaments can be the basis of a lawsuit by the heirs.

3.2. Suggestion

- Notary should comply with the rules on the reporting of the agreement testament to your Testament Center in order to avoid lawsuits or problems in the future.

- It would be better if there is a sanction given to the notary who did not report a testament to your agreement to be notarized Testament Center deterrent and let adhere to these rules.

4. References

Djaja S. Meliala 2012 *Hukum Perdata Dalam Perspektif BW* Nuansa Aulia Bandung.

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Ni Putu Yuli Kartika Dewi Ni Putu Purwanti "Tata Cara Penuntutan Hak Waris Oleh Ahli Waris Yang Sebelumnya Dinyatakan Hilang Berdasarkan Kitab Undang-Undang Hukum Perdata (KUHPerdata)" *Kertha Shemaiah* vol. 03 no. 05 September 2015

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