

## The Juridical Accountability Analysis Notary against the Entry of Criminal Actions Incorrect Information in the Deed of Inheritance

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**Abstract.** *The deed of inheritance is included in the party's deed. A notary who makes a party's deed, may not enter incorrect (false) information in the inheritance deed he makes, but the party facing the making of an inheritance deed does not rule out the possibility of providing incorrect (false) information. Case No. 259/Pid.B/2015/PN.Cjr is one example of a case where a notary is held criminally responsible for entering incorrect (false) information into an inheritance deed. The question is why in this case only the notary is held accountable. The purpose of this study was to analyze the responsibility of a notary in the crime of entering incorrect information in the deed of inheritance case case study No.259/Pid.B/2015/PN.Cjr and find out the legal consequences of an inheritance deed made by a notary based on incorrect information. This study uses a normative juridical approach with a case approach. The case to be studied is case No. 259/Pid.B/2015/ PN.Cjr. The specifications in this study include analytical descriptive and the type of data used is secondary data, with data collection methods including literature studies and documentation studies which are then analyzed qualitatively. Based on the research results it is known that the responsibility of a notary in the crime of entering incorrect (false) information in the inheritance deed in Case No.259/Pid.B/2015/PN.Cjr is based on Article 263 paragraph (1) of the Criminal Code and on the fulfillment of the three elements of error in criminal law, namely: a. the ability to be responsible Defendant, where at the time of making the deed of inheritance false The defendant is in good health; b. the Defendant's inner relationship with his actions which were intentional, where the Defendant's intention to make a fake inheritance certificate was as a basis for making a grant deed and giving power of attorney; c. there are no things that abolish the punishment for the Defendant, either as justification reasons or excuses. The legal consequences of an inheritance deed made by a notary based on incorrect (fake) information do not necessarily make the inheritance deed null and void. The aggrieved parties must submit a lawsuit to the court to cancel the deed. If based on a court decision it is stated that the inheritance deed is cancelled, then the legal consequences arising from the cancellation of the inheritance deed are: deed of grants and power of attorney made under the deed of inheritance by itself null and void. Next because deed of grants and power of attorney null and void, then all*

*forms of legal action against the inheritance of the heir, which is based on the grant deed and the granting of power of attorney become invalid and have no legal force.*

*Keywords: Accountability; Fake; Inheritance.*

## **1. Introduction**

According to Article 874 of the Civil Code, all inherited assets belong to all heirs. Who actually deserves to be the heir. In accordance with applicable law, in order to be able to prove that someone is the legal heir of a deceased person, the heir must have written evidence as proof that his position is really the heir. Evidence of someone as an heir can be in the form of letters as follows:

1. Will from the heir;
2. Sentence;
3. Determination of the judge/chairman of the court;
4. Inheritance certificate.

The certificate of inheritance is thus one proof of someone as an heir. According to the provisions of Article 42 paragraph (1) Government Regulation Number 24 of 1997 concerning Land Registration in conjunction with Article 111 paragraph (1) letter c number 4 Regulation of the State Minister for Agrarian Affairs/Head of the National Land Agency Number 3 of 1997 concerning Provisions for Implementing Government Regulation Number 24 of 1997 concerning Land Registration as amended by Regulation of the Head of the National Land Agency Number 8 of 2012 concerning Amendments to the Regulation of the State Minister for Agrarian Affairs/Head of the National Land Agency Number 3 of 1997 concerning Provisions for Implementing Government Regulation Number 24 of 1997 concerning Land Registration,

1. For Indonesian citizens who are indigenous people, the certificate of inheritance is made by the heirs witnessed by 2 (two) witnesses and confirmed by the Head of the Village/Kelurahan and Camat where the heir lives at the time of death.
2. For Indonesian citizens of Chinese descent, a Notary shall draw up a certificate of inheritance rights (certificate of heirs).

3. For other Indonesian Citizens of Foreign Eastern descent, a certificate of inheritance is issued by the Heritage Treasure Hall (BHP).<sup>1</sup>

This thesis will not elaborate on certificates of inheritance made by the Heritage Agency (BHP) or those made by village/kelurahan heads and sub-district heads, but will be limited to the issue of inheritance certificates made by a notary which is commonly called a deed of inheritance. Based on the Implementation Provisions of Government Regulation Number 24 of 1997 concerning Land Registration, it is known that the making of inheritance certificates in Indonesia is still based on population classification which is carried out by different agencies/officials, whereas for people of Chinese descent, an inheritance certificate is issued by an ordinary notary. called the deed of inheritance.<sup>2</sup>Care must be taken by a notary in making a deed of inheritance, lest there be other heirs whose names are not listed in the deed of inheritance. If this happens, it can be a basis for heirs who feel aggrieved to claim compensation from the notary concerned. In fact, heirs who feel aggrieved can report a notary to law enforcement officials on the basis of making a fake inheritance certificate.

The case that happened to Aceng Wijaya is one concrete example of a notary who was reported to law enforcement officials for allegedly falsifying the contents of an inheritance deed that did not match the truth, by not including a person's name as one of the heirs that should have been entitled to take legal actions on the heir's property. Based on Verdict No. 259/ Pid.B/ 2015/ PN. Cjr, the Panel of Judges stated that Aceng Wijaya as a notary was proven legally and convincingly guilty of committing the crime of forging letters as referred to in Article 263 paragraph (1) of the Criminal Code, therefore he was sentenced to imprisonment for 1 (one) year. Thus, the type of decision in this case is included in the sentencing decision, namely the judge's decision which contains an order for the defendant to serve a sentence for the act he committed in accordance with the verdict.<sup>3</sup>

Based on Supreme Court Jurisprudence No.702K/Sip/1973, it is stated that a notary in carrying out his/her position is only formal in nature, where the notary only functions to record/write down what is desired and stated by the parties who appear before the notary. That is, the notary in this case is not obliged to

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<sup>1</sup>Tengku Erwinsyahbana, "Legal Strength of Heir Certificate for Children Out of Wedlock from Unrecorded Marriages", *Journal of Law Novelty* Vol. 8 No. August 2, 2017, Faculty of Law Muhammadiyah University of North Sumatra, Medan, p. 282.

<sup>2</sup>Habib Adjie, 2008, *Proof of being an heir with a notarial deed in the form of a certificate of inheritance*, Mandar Maju, Bandung, p. 7.

<sup>3</sup>Budi Suhariyanto, "Corporate Criminal Decisions Without Being Indicted in the Perspective of "Vicarious Liability" Study of Decision Number 2239 K/PID.SUS/2012", *Judicial Journal* Vol. 10 No. 1 April 2017, Indonesian Judicial Commission, Jakarta, p 23.

investigate materially the matters raised by the notary's appearers.<sup>4</sup>Referring to the Supreme Court Jurisprudence, a notary basically cannot be held criminally responsible because a notary is only responsible for the formal side of making a deed. Even if there is a statement or statement that is suspected of being false, it is included in an authentic deed, it does not cause the deed to be fake, and it does not mean that the notary enters or includes false information in the notary deed. Materially, the falsification of this matter is the responsibility of the parties concerned, and the legal action that must be taken is to cancel the deed in question through a civil lawsuit.

As is well known, deeds in the notary legal environment are known as "relaas deeds" and "party deeds". Theoretically, a deed made by a notary is known as a relaas deed and a deed drawn up before a notary is known as a party deed. This difference basically has consequences for the use of criminal provisions in the event that the deed is fake and criminal liability. Related to this, Eva Achjani Zulfa said that:

"The thing that generally becomes a problem in seeing a deed as a relaas deed and a party deed is that usually in a notarial deed, this is formulated in the sentence "has been before me". The term "has faced me" when it is associated with the type of relaas deed and party deed, may have a different meaning. The position of a notary in a party deed where the parties come to him and provide information related to what was agreed causes the principle that "what comes is true", as stated above, becomes applicable. In this case the notary acts in a passive position. On the other hand, in a relaas deed, for example in a general meeting of shareholders of a limited liability company, where the notary acts actively, the information obtained is without intermediary parties. If the deed made is fake, the provisions that apply to it are not based on Article 266 paragraph (1) of the Criminal Code, but on Article 264 paragraph (1) of the Criminal Code. Not as a party who was ordered, but a party who "participated" or who made a fake deed.<sup>5</sup>

The inheritance deed which is the topic of this research is included in the partie deed/party deed, namely a deed made by a notary based on the request of the parties to record or write down. If it is related to the position of a notary who makes a partie deed, then it is impossible for a notary to enter incorrect (false) information in the deed he makes, but that is the wish of the parties who order the notary to make the deed.

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<sup>4</sup>GHS Lumban Tobing, 2002, Denial rights of notaries and their relationship with the Criminal Code, Notary Media, Jakarta, p. 121.

<sup>5</sup>Eva Achjani Zulfa, "Destroying Falsehood (A Study of the Crime of Counterfeiting and Its Application Problems)", 48th Year Journal of Law and Development No.2 April-June 2018, Faculty of Law, University of Indonesia, Jakarta, p. 354.

Based on the descriptions that the author conveys, the background why this research needs to be done is to examine the ratio decidendi of Verdict No. 259/Pid.B/ 2015/ PN. Cjr, for then the results of this study are analyzed and used as a basis as a framework or theoretical basis in analyzing the notary's responsibility for the crime of entering incorrect information in the inheritance deed. Therefore, the title chosen in this study is: "Juridical Analysis of Notary Liability for the Crime of Entering Incorrect Information in the Inheritance Deed (Case Study of Decision No.259/Pid.B/2015/PN.Cjr)".

## **2. Research Methods**

This study uses a normative juridical approach with a case approach. The case to be studied is case No. 259/Pid.B/2015/PN.Cjr. From this case study, the authors hope to find out the legal reasons used by judges to arrive at their decisions (ratio decidendi) which form the basis of judges' considerations in deciding cases.<sup>6</sup>

The author in this case examines the ratio decidendi of the decision, then the results of this study are analyzed and used as a basis for a framework or theoretical basis in analyzing the responsibility of a notary in the crime of entering incorrect information in an inheritance deed and legal consequences for an inheritance deed made by a notary. based on incorrect information.

## **3. Results and Discussion**

### **3.1. Notary Liability in the Crime of Entering Incorrect Information in the Deed of Inheritance Case Study Case No.259/Pid.B/2015/PN.Cjr**

The notary's responsibility in the crime of entering incorrect information in the inheritance deed in Case No.259/Pid.B/2015/PN.Cjr is based on Article 263 paragraph (1) of the Criminal Code and on whether or not the three elements or elements of error in criminal law. In case this, the actions of Defendant Notary Aceng Wijaya Fulfill the three elements or elements of error, that is:

1. Having the ability to be responsible Defendant, where at the time of making Deed of Inheritance Number 2 Dated 03 May 1993, Defendant is in good health normal and capable.
2. There is the inner relationship between the Defendant and his actions in the form of deliberate (dolus), namely after making a deed of inheritance, the Defendant transferred the ownership of land rights to the Certificate of Property Rights Number 585/ Bojong Herang Village. In addition to

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<sup>6</sup>Lilik Mulyadi, 2009, Shifting Perspectives and Practices from the Supreme Court regarding Decisions, Citra Aditya Bakti, Bandung, p. 164.

using the inheritance deed as the basis for transferring ownership of land rights, the Defendant also used the inheritance deed as the basis for making grant deed and granting of power of attorney. The Defendant's claim in practice has resulted in losses for other heirs. The intention (dolus) committed by the Defendant in making the fake inheritance certificate can be categorized as intentional as an intention or purpose.

3. During the investigation of this case there are no things or circumstances which negate or can abolish the punishment for the Defendant, either as a justification or excuse. Since there is no excuse that erases the error or no reason to forgive, so Defendant must be held accountable for their actions, found guilty and sentenced to death.

Based on the description of the discussion above, on in principle, Notary Public those who enter incorrect information in the inheritance certificate can be held criminally responsible under Article 263 paragraph (1) of the Criminal Code, when deep in the process of proving in court, the notary's actions are proven to fulfill the three elements or elements mistakes in criminal law, namely: (1). perpetrators have the ability to be responsible, (2). there is an inner relationship between the perpetrator and the action, where the form of error can be intentional (dolus) or negligent (culpa), and (3). no reason erases the error, either as justification reasons and or reasons for forgiveness. Third the elements or elements of the error are a unity that cannot be separated, because one depends on the other. Based on this, the notary's responsibility in the crime of entering incorrect information in the inheritance deed must be based on whether the all three elements or elements the error.

### **3.2. Legal Consequences of Inheritance Deed Made by a Notary Based on Incorrect Information**

Deed of Inheritance Number 2 Dated 03 May 1993 made by a notary Ace Wijaya with enter incorrect information (fake) does not in itself result in the deed being null and void by law. A notarial deed is a product of a public official, so an evaluation of a notary deed must be carried out on the "legitimate presumption principle" (vermoeden van rechtmatigheid)<sup>7</sup> or (presumptio iustae causa)<sup>8</sup>. This principle can be used to evaluate a notarial deed, namely a notary deed must be considered valid until a party declares the deed invalid. To declare or assess that the deed is invalid, a lawsuit must be filed in a public court. As long as and as long as the lawsuit is ongoing, until there is a court decision that has permanent

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<sup>7</sup>Philipus M. Hadjon, 1993, Government According to Law (Wet-en Revhmatige Bestuur), Yuridika, Surabaya, p. 5.

<sup>8</sup>Paulus Effendi Lotulung, 1993, Several Systems Concerning Legal Aspects of Control of the Government - Series 7: Comparison of Administrative Law and Administrative Justice Systems, Citra Aditya Bakti, Bandung, p. 118.

legal force, the notarial deed remains valid and binding on the parties or anyone with an interest in the deed. In a lawsuit to declare the notarial deed invalid, it must prove the invalidity of the deed from the outward, formal and material aspects of the notary deed. If it cannot be proven, then the deed remains legally binding on the parties or anyone with an interest in the deed.

This principle of legal presumption has been recognized in UUJN, which is stated in the General section of the Explanation, it is emphasized that: "The Notary Deed as the strongest and most complete written evidence, what is stated in the Notary Deed must be accepted, unless the interested party can prove otherwise by way of satisfactorily before a trial court". By applying the "principle of legal presumption" for a notarial deed, the provisions referred to in Article 84 UUJN which confirms, if the notary violates or does not carry out the provisions referred to in Article 16 paragraph (1) letters i, k, Article 41, Article 44, Article 48 to Article 52, so that the deed in question only has the power of proof as a private deed is no longer needed, then the cancellation of a notarial deed can only be annulled or null and void by law.

This principle of legal presumption relates to deed which can be canceled, is an act containing defects, namely the notary is not competent to make deed outwardly, formally, materially, and is not in accordance with the legal regulations regarding the making of notary deed. This principle cannot be used to evaluate a null and void deed, because a null and void deed is considered to have never been made. Therefore, with certain reasons as mentioned above, the position of the notarial deed: (i). Can be canceled; (ii). Null and void; (iii). Has the power of proof as a private deed; (iv). Canceled by the parties themselves; and (v). Canceled by a court decision that has permanent legal force because of the application of the principle of legal presumption.

The five positions of the notarial deed as mentioned above cannot be carried out simultaneously, but only one can apply, namely if the notary deed is filed for annulment by the interested party to the general court or district court, and there has been a court decision that has permanent legal force. , or the notarial deed has the position of proof as a private deed, or the notarial deed is null and void, or the notarial deed is canceled by the parties themselves with another notarial deed, then the cancellation of the other notarial deed is not valid. This also applies to the "principle of legitimate presumption".

Based on the description of the explanation, Deed of Inheritance Number 2 Dated 03 May 1993 made by a notary Ace Wijaya with enter incorrect information (fake), does not in itself result in the deed being null and void. The parties are harmed by the existence of deed of inheritance rights like that must file a civil suit to the court to cancel the deed. The deed will be void if it has been decided by the court and the decision is a decision that has permanent legal force.



Based on the results of the discussion above, related to the second problem in this study, namely regarding the legal consequences arising from the deed of inheritance rights made by a notary by entering incorrect (false) information, it can be seen that the deed of inheritance rights is not automatically resulted in the deed being null and void by law. The aggrieved parties can file a civil suit to the court to cancel the deed. The deed will be void if it has been decided by the court and the decision is a decision that has permanent legal force. Furthermore, if based on a court decision that has permanent legal force declares to cancel the Deed of Inheritance Information Number 2 dated May 3, 1993, then with the use of the deed of inheritance rights to make a deed of grants and the granting of power of attorney, there are 2 (two) legal consequences, namely first, the Deed of Grant and Granting of Power of Attorney Number 1 dated 07 May 1993 which was made based on the Deed of Inheritance Information Number 2 dated 03 May by itself null and void. Canceled by law means that from the beginning the deed of grant and power of attorney has been canceled, or is considered to have never existed. Second, the ownership of the land which is the object of the Deed of Grant and Granting of Power of Attorney No. 1 dated 07 May 1993 must be returned to its original legal state, namely back in joint ownership as the property of the heirs.

#### **4. Conclusion**

The notary's responsibility in the crime of entering incorrect information in the inheritance deed in Case No.259/Pid.B/2015/PN.Cjr is based on Article 263 paragraph (1) of the Criminal Code and on whether or not the three elements or elements of error in criminal law. In case this, the actions of Defendant Notary Aceng Wijaya Fulfill the three elements or elements of error, that is: Having the ability to be responsible Defendant, where at the time of making Deed of Inheritance Number 2 Dated 03 May 1993, Defendant is in good health normal and capable and the inner relationship between the Defendant and his actions in the form of deliberate (dolus), namely after making a deed of inheritance, the Defendant transferred the ownership of land rights to the Certificate of Property Rights Number 585/ Bojong Herang Village. In addition to using the inheritance deed as the basis for transferring ownership of land rights, the Defendant also used the inheritance deed as the basis for making grant deed and granting of power of attorney. The Defendant's claim in practice has resulted in losses for other heirs. The intention (dolus) committed by the Defendant in making the fake inheritance certificate can be categorized as intentional as an intention or purpose.



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