

Legal Implications in The Execution of a Will Without Making a Will Authentic Deed in the Conception of Legal Certainty

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Abstract. *The legal system in Indonesia is pluralistic in nature, in which it applies as a legal system that has its own characteristics and structure, namely the customary legal system, the Islamic legal system, the western legal system (civil). In this case, inheritance law is also regulated in it. Where in Islam, a "will" is an act of someone giving an object or benefit to another person or institution/legal entity, which is valid after the giver dies, the research method uses a normative legal approach. The specification of legal research that will be used in this writing is descriptive research, the method of data collection in this study through literature studies and documentation studies. Data analysis in a systematic way includes data reduction, data presentation and drawing conclusions. Based on the research results, it can be concluded that the Legal Implications for the Implementation of a Will Without Making an Authentic Deed in the Concept of Legal Certainty, namely the legal certainty of a will without a Notary deed in the KHI with the Civil Code is that it has a written legal basis, is the last statement of the testator after before he died and its implementation after the testator dies, can be revoked and can be cancelled or canceled, has the aim of human welfare so that there is no dispute between the heirs. The difference between a will without a Notary deed in the KHI is a minimum age of 21 years while the Civil Code is a minimum age of 18 years, seen from the recipient of the will in the KHI, namely another person or institution while the Civil Code is an outsider and the heir, seen from its form in the KHI, namely oral or written or before a Notary while the Civil Code is written before a Notary or deposited/stored by a Notary. Legal Protection for Will Recipients Who Make Wills Without Making an Authentic Deed If There is a Dispute Between the Parties, namely the legal consequences of wills without a Notarial deed, making the will vulnerable to lawsuits from interested parties because the evidence is not strong enough and there is no legal certainty. According to the KHI and the Civil Code, wills need to be proven authentically, this is intended so that negative things that are not desired by the testator or the will recipient do not occur.*

Keywords: *Certainty; customary; Legal; Notarial.*

1. Introduction

Indonesia as a country with a Muslim majority population added to the diversity of tribes, customs and other beliefs gives rise to a variety of laws that are used. Be it customary law, religious law or state law. The legal system in Indonesia is pluralistic in nature, in which as a legal system it has its own characteristics and structure, namely the customary legal system, islamic legal system, western legal system (civil). In this case regarding the law inheritance is also regulated in it. Where in Islam "will" is an act someone gives an object or benefit to another person or institution/body law, which applies after the giver dies.

The law in Indonesia allows property owners to give away their property. based on his own wishes. This is not in line with the provisions for the distribution of inheritance in Islam. This can be said to be reasonable, because in principle the owner of the property can freely manage the assets he owns according to his wishes. In addition, it is only natural that a person's last wishes are taken into account and respected as far as it can be implemented.²¹ Basically, humans were not created for eternal life, but humans will die leaving behind wealth

objects, and those who have the right to inherit are the heirs in accordance with the legal provisions so the possibility of disputes between heirs can be avoided. Heirs can give some of his wealth to other people with the inheritance distribution being in accordance with justice. In this case the law needs to regulate it. The act of determining the message The last will of the giver of inheritance in Islam is known as a will.

A will is one way of transferring assets from one person to another others. In the Big Indonesian Dictionary, a will is a last message that conveyed by the person who will die (usually regarding assets etc). In the Compilation of Islamic Law (KHI), a will is the gift of a will objects from the heir to another person or institution that will take effect after the heirdie. The matter of wills is also regulated in the Al-Qur'an, among other things, regulated in: Surah Al-Baqarah verse 180, which means: *"it is obligatory upon you, if you are one among you the arrival (signs) of death, if he leaves behind a lot of wealth, making a will for your mother and father and their close relatives in an makruf manner, (this is) an obligation over those who are pious."* Makruf here means fair and good. The will is not exceeding one third of the total assets of the deceased. This is in accordance with Article 195 paragraph (2) of the Compilation of Islamic Law, a will is only permitted as many as-amount to one third of the inheritance unless all heirs agree.

In Surah Al-Baqarah verse 240 also mentions a will, which means it says *"And*

those who die among you and leave wives, let them made a will for his wives, (namely) to be given maintenance for up to one year with not told to move (from their house). However, if they move (themselves) then it is not there is a sin for you (guardian or heir of the deceased) to let them do that good towards themselves. And Allah is mighty and wise. "According to the law

In Islam, the implementation of a will must take precedence over the implementation of an inheritance paying attention to its limitations. Basically making a will is a ikhtiyariah act, namely a person is free to make a will or not to make a will. As for understanding of a will in the Civil Code (Code of Law) is regulated in Article 874, namely all inheritance of a person who deceased belongs to his heirs according to law, to the extent regarding this matter, no valid decision has been made. Article 875 of the Civil Code reads: Wills (*testament act*) is a deed containing a person's statement about what what he wanted to happen after he died, which he could revoke.

The Republic of Indonesia as a state of law based on Pancasila and the Law The 1945 Constitution of the Republic of Indonesia guarantees certainty, order and legal protection for every Indonesian citizen, one form of providing certainty, order and legal protection is through the existence of legal tools written authentically made by or before a Notary. In Article 1 Number 1 of the Republic of Indonesia Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary. A notary is an official general authority to make authentic deeds and has other authority as referred to in this law or based on the law others. The position of Notary is not placed in the Judicial, Executive or Legislative. Therefore, a Notary must act honestly, carefully, independently and impartially. in carrying out legal actions. Notarial Deed is an authentic deed made by or before a notary according to the form and procedures stipulated in the law.

The deed made by the Notary describes authentically all actions, agreements and stipulations witnessed by the presenters and witnesses. In the Article 1 number 7 of Law Number 2 of 2014 concerning the Position of Notary, the deed which made before or by a notary public as an authentic deed according to form and procedures stipulated in the Law. Notarial Deed in Article 1866 and Article 1867 of the Civil Code states that a Notarial Deed is written evidence.

The Notarial Deed authentic according to Article 1868 of the Civil Code *"is a deed in that form determined by law to be made by or in the presence of public officials who has the power to do so in the place where the deed was made."* In carrying out his/her duties, a notary is obliged to make list of deeds relating to wills in order of when each deed was made month, send a list of deeds relating to the will in order of time making deeds every month, sending a list of wills or a list of nil deeds regarding wills to the Central Register of Wills at the Ministry of Government Affairs in the legal field within 5 (five) days in the

first week of each following month, and record the report of the date of sending the list of wills at the end of each month. Thus, it can be concluded that in making a will deed (*testament act*) Notaries have a very important role. From Article 934 of the KUH Civil Law regulates that every notary who keeps the testamentary letters between the original letters, in whatever form, must be after the testator dies, notify the relevant parties. In accordance with the legislation applicable, then the Notary's assistance from the beginning to the end of the deed making process Will (*testament act*) is very necessary so that it obtains legal force binding. Most Indonesian people are still not very aware of making a will using a notarial deed. In fact, with the description above, it can be known that a will using a will deed is very important. The position will deeds need to be known in the legal regulations based on the Compilation of Islamic Law (KHI) and the Civil Code (KUHP) in order to guarantee legal interests.

2. Research Methods

The method used in this research is normative juridical. Research normative juridical research is research conducted by examining library materials (secondary data), which relates to legal issues and norms applies according to the thesis⁸. Normative legal research includes:

- 1) Legal research using secondary data sources;
- 2) Emphasis on speculative, theoretical and analytical steps normative, qualitative;
- 3) Using the legal dogmatic method which is based on the arguments logical argument.

This legal research is a legal research that is carried out with the aim of finding the principles or doctrines of positive law that apply. Research This type is commonly referred to as *dogmatic study* or known as *doctrinal research*.

After all the data has been collected completely, the data is analyzed by using qualitative data analysis techniques, namely data collection by using laws, theories and legal principles. Use of analysis Qualitative data is intended to measure and test data, theories, theory, doctrine, without using mathematical formulas or formulas statistics but by using logical reasoning. With the analysis method It is hoped that this data will provide a clear picture so that it can answer questions existing problems.

3. Results and Discussion

3.1. Legal Implications for the Implementation of a Will Without Making an Authentic Deed in the Concept of Legal Certainty

Will or also called *testament* regulated in the second book of the Code Civil Law (KUHPerdata). Wills or testaments are a problem that often occurs encountered in the lives of the general public. This is because the livelihood society cannot be separated from the desire to fulfill needs or satisfaction

his life, and specifically through a will a person wants to fulfill his wishes in the form of a statement about his assets in the future or in the future. A will is made with the aim that the heirs cannot find out whether the inherited assets left by the will will be passed on to experts his heir or passed it on to another party who is not his heir at all until the time came for the reading of the will.¹¹ These events often give rise to problems between heirs and non-heirs, but according to the letter the will of the person who is not the heir receives the probate property. Of course there will be parties who feel aggrieved and submit objections/cancellations regarding the truth of the contents of the will made by the testator.

The existence of a will (*testament*) this, then often avoids disputes between experts inheritance in terms of the distribution of inheritance, because the heirs respect the will or the last will of the testator. However, in order for the distribution of assets inheritance can be implemented practically and fairly, so the law limits it *testament* that, restrictions must not conflict with the law.

1) Legal Protection for Will Recipients Who Make a Will Without Making an Authentic Deed If a Dispute Occurs Between the Parties Linguistically, the word protection in English is called *protection*. The term protection according to the Big Indonesian Dictionary can be equated with the term protection, which means the process or act of protecting. The definition of protection is a place of shelter, something (an action, etc.) protect. In KBBI, protection means a method, process, and protective action. Meanwhile, law is a regulation made by the government or whose data applies to everyone in society (country). In general, protection means protecting something from dangerous things, something that could be in the form of interests or objects or goods. In addition, protection also contains the meaning of protection given by someone to someone who is weaker.

Thus, legal protection can be interpreted as all government efforts to ensure legal certainty to provide protection to citizens his country so that his rights as a citizen are not violated, and for those who Violation of this will result in sanctions in accordance with applicable regulations.

Legal protection means an action, in terms of protecting, for example providing protection to the weak. Definition of law is a collection of regulations containing commands and prohibitions which regulates the order of society and therefore society must obey it.

Philipus M. Hadjon said that legal protection for the people is related to with the formulation in the Dutch language literature, *rechtsbescherming van de burgers overhead* and in English it is known as the term *legal protection of the individual in relation to act of administrative authorities*. In the protection formulation law for the people, deliberately not included in the government or in the government action, on the grounds that:

- 1) The term people already contain the meaning as the opposite of the term "government". The term people essentially mean those who are governed (*the governed, the geregeerde*), thus the term people has a more specific meaning compared to terms in foreign languages, such as *volks, people*.
- 2) It states "against the government" or against government actions can be gives the impression that there is a confrontation between the people and the governed with the government as the ruler. Such a view, of course is contrary to our country's philosophy of life, which looks at the people and government as a partner in efforts to realize the ideals of national life.

Legal protection according to Philipus M. Hadjon who has his own statement, States that:

"a subjective condition that states the presence of necessity in a number of people legal subjects to immediately obtain a number of resources for the continued existence of legal subjects guaranteed and protected by law so that their power is organized in the process of making political and economic decisions, especially the distribution of resources, both in individual and structural devices". Based on the explanation above, as in Article 1 paragraph 3 of Law- The 1945 Constitution of the Republic of Indonesia, which states "The State of Indonesia

is a country of law", then from the text of the article, it is meant that every State administrator in all fields must not conflict with regulations the laws applicable in the Republic of Indonesia. This is emphasized by Article 28D paragraph 1 of the Law The 1945 Constitution of the Republic of Indonesia, which states that "everyone has the right to has the right to fair recognition, guarantees, protection and legal certainty equal treatment before the law."

Legal protection is protection of dignity and honor, as well as recognition of human rights held by legal subjects based on legal provisions of arbitrariness or as a collection of regulations or rules that will be able to

protect one thing from another. Legal protection is a narrowing the meaning of protection, in this case only protection by law.

The protection provided by law is also related to the existence of rights and obligations, in this case those owned by humans as legal subjects in interactions with fellow human beings and their environment. As a subject of human law have the right and obligation to take legal action.

The definition of protection in legal science is a form of mandatory service. implemented by law enforcement officers or security officers to provide a sense of security safe, both physically and mentally, for victims of sanctions from threats, harassment, terror, and violence from any party that is given at the investigation, prosecution and trial stages or examination in court. Legal rules are not only for long-term interest short term, but must be based on long-term interests. Empowerment society is a concept of economic development that explains the values social.

Legal protection must actually provide legal protection for all parties according to their legal status because everyone has an equal position equal before the law, every law enforcement officer is clearly obliged to uphold the law and with the functioning of legal rules, then indirectly the law will also

provide protection for every legal relationship or every aspect in community life is regulated by the law itself, namely legal protection can means the protection given to the law so that it is not interpreted differently and not injured by law enforcement officers and can also mean the protection provided by law against something.

4. Conclusion

Based on the research conducted by the author regarding the Legal Implications in Execution of a Will Without Making an Authentic Deed in the Concept of Legal Certainty, The author has the following conclusions: Legal Implications for the Execution of a Will Without Making an Authentic Deed in The concept of legal certainty, namely legal certainty of wills without a notarial deed in KHI with the Civil Code has a written legal basis, is the last statement from the will before death and its implementation after the person giving the will dies, can be revoked and can be discontinued or cancelled, has a purpose for the benefit of humanity so that it does not there was a dispute between the heirs. Differences in wills without a notarial deed in The minimum age for KHI is 21 years, while the minimum age for KUH is 18 years, as seen from those who receive the will in the KHI, namely other people or institutions, whereas in the KUH Civil law regarding outsiders and heirs, seen from its form in the KHI, namely oral or written or before a notary, while the Civil Code is written before a notary or deposited/stored by a Notary. Legal Protection for Will Recipients Who Make a Will With out Making an Authentic

Deed If There is a Dispute Between the Parties, namely as a Result testamentary law without a notarial deed makes the will vulnerable to lawsuits from interested parties because the evidence is not strong enough and there is no legal certainty. According to the KHI and the Civil Code, a will needs to be proven authentically, this is intended to prevent negative things from happening. neither the testator nor the testator wants it.

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