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# Roles & Responsibilities of Notaries Regarding the Deed of Will which is Made In front of Notary

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**Abstract.** *This legal research aims to know the role of a notary in the settlement of a will made before a notary, the responsibility of a notary to a will made before a notary and how is an example of a testament deed made by a notary. This research is a sociological juridical research with descriptive research specifications. Data sources and data collection methods used primary and secondary data which were analyzed qualitatively. The results of this study indicate that Obligations that must be carried out by a notary after a will is made are obliged to notify all testament acts that he made to the Central List of Wills (DPW) and Heritage Hall (BHP) both open testament (Openbaar Testament), written testament (olographis testament), or closed or confidential testament. Thus the notary has a very important role and the notary's responsibility for the testament act made before him, namely moral responsibility, ethical responsibility, and legal responsibility consisting of formal and material aspects. With respect to a testament act made before him, the notary is responsible for reading it out in front of witnesses. After that, the notary will notify the testament act to the Central List of Wills, the Directorate of Civil Affairs, the Directorate General of General Legal Administration, the Ministry of Law and Human Rights and the Relic Treasure Hall (BHP).*

*Keywords: Notary; Responsibilities; Roles; Wills.*

## 1. Introduction

Notaries in making and keeping a will must comply with the provisions of the legislation. Must always apply the precautionary principle, examine all relevant facts, examine all relevant completeness. Because in the process of making until the implementation of a notary will, it is prone to errors or lawsuits which are usually filed by heirs who do not accept the contents of the will. If there is a lawsuit, a notary will indirectly be involved, whether it is a witness or a suspect. Because there are many legal loopholes that a person will take to fulfill the truth

or fulfill his interests. So it is necessary to pay attention from the beginning of the making of the will[1].

According to the law and of the restrictions imposed by law on the perpetuation of assets, what is important is the limitation on the portion according to the law or legitieme portie (part of inheritance according to the law), namely a certain part of a person's assets over which several inheritances are made. According to the law, they can express their rights which are called legitimaries, because the person who inherits does not have an inheritance or is not allowed to determine something that is free from the object.[2]

A will (testament) is also a unilateral legal act. This is closely related to the "herroepelijkheid" (revocable) nature of the testament. This means that a will (testament) cannot be made by more than one person because it will cause difficulties if one of the makers will revoke the will (testament). This is as evident in Article 930 of the Civil Code, which states that:

"In the only deed, two or more people are not allowed to declare their will, either to give birth to a third person, or on the basis of mutual or mutual declaration." Provisions in a testament have 2 (two) characteristics, namely they can be revoked and are valid in connection with a person's death.[3]

There are several kinds of wills (testament), namely open or public testament (*Openbaar Testament*), written testament (olographis testament), and closed or secret testament. In addition, there is also a so-called codicil.

Notaries have the duty and obligation to keep and send lists of wills that they have made to the Heritage Center (BHP) and the Central List of Wills (DPW), as stipulated in article 36a of PJN which states that: "Notaries are obligated to be subject to a maximum fine IDR 50,- for each violation, to make a list, which is recorded according to its manufacture, the deeds referred to in article 1 of the Ordinance concerning the Central List of Wills that they make in a calendar month." Notaries are obligated within the first 5 (five) days of each month to

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[1] Deen, Thaufiq., Ong Argo Victoria & Sumain. (2018). *Public Notary Services In Malaysia. JURNAL AKTA*: Vol. 5, No. 4, 1017-1026. Retrieved from http://jurnal.unissula.ac.id/index.php/akta/article/view/4135, see to Ong Argo Victoria, Ade Riusma Ariyana, Devina Arifani. (2020). *Code of Ethics and Position of Notary in Indonesia.* Sultan Agung Notary Law Review 2 (4), 397-407, http://lppm-unissula.com/jurnal.unissula.ac.id/index.php/SANLaR/article/view/13536

[2] R. Subekti and R. Tjitrosudibio, (1995), *Kitab Undang-Undang Hukum Perdata,* Jakarta: Penerbit PT. Pradnya Paramita, p. 239

[3] Penerbit PT. Pradnya Paramita
Hartono Soerjopratiknjo, (1982), *Hukum Waris Testamenter*, Yogyakarta: Seksi Notariat Fakultas Hukum Universitas Gadjah Mada, p. iv

send by record to BHP, in whose jurisdiction the domicile of the notary is located, a list relating to the previous calendar month with a penalty of a maximum fine of IDR 50,- for each violation. From each delivery, a record is held in the repertoire on the day the shipment is made, with the threat of a maximum fine of IDR 50,- for each delay. If in the previous calendar month a notary deed was not made, then he must send a written statement regarding it to BHP on one of the days specified for the delivery, which is subject to a maximum fine of IDR 50,- for each month every delay.[4]

Problems that can occur in the role and responsibility of a notary towards a will made before a notary. In accordance with the applicable legislation, the assistance of a notary from the beginning to the end of the testament act is needed so that it has binding legal force. The responsibilities of a notary in making a testament act include the entirety of the duties, obligations, and authorities of a notary in dealing with the issue of making a testament act, including protecting and storing authentic documents or deeds.

## 2. Research Methods

The approach that the author uses in this research is a sociological juridical approach. The Sociological Juridical Approach emphasizes research that aims to obtain legal knowledge empirically by going directly to the object. Sociological Juridical Research is legal research using secondary data as initial data, which is then followed by primary data in the field or on the community, examining the effectiveness of a Ministerial Regulation and research who want to find a relationship (correlation) between various symptoms or variables, as a data collection tool consisting of document studies or library materials and interviews (questionnaires). Research Specifications in this article is descriptive research, namely research that aims to describe the state of things in a certain area and at a certain time. This research is based on its nature as a descriptive analytical research which aims to describe the results of the research in as much detail as possible about the problems above, as well as the obstacles faced and what legal remedies can be taken to resolve these problems. Sources and Types of Data This study uses types and sources of primary and secondary data. Primary data is data obtained from the first hand, from the original source and has not been processed and described by others. Secondary data is data obtained by researchers from the literature which is the result of research. Which is already available in the form of books which are usually provided in the library.[5]

[4]G.H.S. Lumban Tobing, (1982), *Peraturan Jabatan Notaris*, Jakarta: Penerbit Erlangga, p. 237-238

[5]Hilman Hadikusuma, (1995), *Metode Pembuatan Kertas Kerja atau Skripsi Ilmu Hukum,* Bandung: Mandar Maju, p. 65

Secondary data sources used in this research include official documents, books, research results in the form of reports

## 3. Results and Discussion

### 3.1. The Role of Notaries in Making Wills

The Law on Notary Positions is actually regulated regarding the right of a Notary to refuse to provide legal services to appearers, which is regulated in the provisions of Article 16 paragraph (1) letter e of Act No. 2 of 2014 concerning Amendments to Act No. 30 of 2004 concerning Positions The Notary (UUJN) states that, in carrying out his position, the Notary is obliged to provide services in accordance with the provisions of this law, unless there is a reason to refuse it. The explanation regarding the reason for refusal is the reason that causes the Notary to be impartial, such as having a blood or marriage relationship with the Notary himself or with his/her husband/wife, one of the parties does not have the ability to act to do the deed, or other things that are not permitted by law[6].

The notary who will make the will first introduces the appearer. When making an introduction, the Notary must really be able to ensure that the appearer is in good health and able to perform legal actions, then ask and observe the wishes of the appearer. The notary can first explain what a will is and how to give a will, so that the appearer really understands and understands what the appearer wants. Then the Notary checks the evidence of the letter/object that will be given is correct or not in detail regarding the existence of the object and ensures that it has been/was or was not previously made of the object in accordance with the wishes of the appearer, also reads and signs the deed. Notaries make a list of deeds related to wills according to the order in which the deed was made every month. This authority is important to guarantee the protection of the interests of the heirs and heirs, which at any time can be traced to the truth of a will that has been made before a notary. The theory of authority used in the author's research is to test Notaries act to Making a will must also be accompanied by the responsibility to register a will and report any wills made before him. The focus of the study of authority theory is related to the source of authority from the government in carrying out legal actions, both in relation to public law and in relation to private law. Indroharto stated that there are three

[6] Chuasanga A., Ong Argo Victoria. (2019). *Legal Principles Under Criminal Law in Indonesia and Thailand,* Jurnal Daulat Hukum, Vol 2, No 1 (2019) http://jurnal.unissula.ac.id/index.php/RH/article/view/4218 , see to Yaya Kareng, Ong Argo Victoria, R. Juli Moertiyono. (2019). How Notary's Service in Thailand. Sultan Agung Notary Law Review, 1 (1), 46-56, http://jurnal.unissula.ac.id/index.php/SANLaR/article/view/4435

kinds of authority that come from the laws and regulations. These powers include:[7]

a. Attributive Authority

Attributive authority is usually outlined or derived from the division of state power by the Constitution. Another term for Attributive authority is original authority or authority that cannot be distributed to anyone. As for the responsibility and accountability, it rests with the official or as stated in the basic regulations.

b. Mandate Authority

Mandate authority is an authority that comes from the process or procedure of delegating from a higher official or agency to a lower official or agency. At any time, the authorizing authority can use the delegated authority on its own.

c. Delegative Authority

Delegative Authority is an authority that originates from the delegation of a government organ to another organ on the basis of statutory regulations. In the Delegative's authority, the basic regulations in the form of Legislation are the basis that led to the birth of the Delegative authority. Without the laws and regulations governing the delegation of authority, there is no Delegative authority.

The notary who makes a will must always adhere to the principle of this theory of authority, because in his position he must always be subject to the law, and become a guide for notaries so as not to be trapped in the criminal realm caused by negligence on the deed he made.

A Notary who does not make a will must also report a null report every month to the Central List of Wills in accordance with Article 16 paragraph (1) letter j of the UUJN which states that in carrying out his office, the Notary is obliged to send a list of deeds as referred to in letter i or the relevant null list with a will to the Central List of Wills at the Ministry that carries out government affairs in the field of law within 5 (five) days in the first week of each following month.

The focus of the study of authority theory is related to the source of authority from the government in carrying out legal actions, both in relation to public law and in relation to it

[7] Lutfi Effendi, 2004, *Pokok-pokok Hukum Administrasi,* Malang: Bayu media publishing, p. 77-79.

All testament acts made before a notary must be notified to the Central List of Wills, whether open testament, written testament (olographis testament), or closed or secret testament. If the testament act is not notified, the will not be binding. In a written testament (olographis testament), if a person is still alive to make a will and submit it to a notary, the notary must first save the testament act. To make a will notification (testament act),

3.2. The Notary's Responsibility for the Will Deed made by the Notary

The role of the Notary here is only to record or pour a legal action carried out by the parties / appearers into the deed. The notary only checks what happened, what he saw, and experienced from the parties/appearances, as well as adjusting the formal requirements for making an authentic deed and then pouring it into a deed. Notaries are not required to investigate the correctness of the material contents of the authentic deed. This requires the Notary to be neutral and impartial and to provide some kind of legal advice for clients who seek legal advice from the Notary concerned. Except for the contents of the deed, every act committed by a Notary can be held accountable if there is a violation committed and the act causes harm to the parties.

The notary can be held accountable if there is an element of error he did and it is necessary to hold proof of the elements of the error made by the notary, which include:

a. Day, date, month, and year facing;
b. The signature listed in the minutes of the deed; and
c. Time (at) facing.

The will is related to the material truth, the responsibilities of a notary as a public official are:[8] Civil liability is seen from acts against the law, which can be distinguished based on their active nature, namely committing acts that cause harm to other parties. Therefore, in this case the elements of an act against the law are an act against the law, an error and a loss caused.

The notary's civil liability has been regulated in the Civil Code as an act against the law that arises from laws and agreements. Therefore, the model of legal responsibility that arises as a result of unlawful acts according to the Civil Code is:

a. Responsibility with elements of error (intentional and negligence), as contained in Article 1365 of the Civil Code.

[8]Abdul Ghofur Anshori, (2009), *Lembaga Kenotariatan Indonesia Perspektif Hukum dan Etika,* Yogyakarta: UII Press, p. 16.

b. Responsibility with an element of error, especially the element of negligence, as contained in Article 1366 of the Civil Code;
c. Absolute liability (without fault) in a very limited sense is found in Article 1367 of the Civil Code.

Civil sanctions that must be accepted if there are errors that occur due to default or acts against the law onrechtmatige daad can be in the form of reimbursement of costs, compensation and interest. Sanctions can be imposed on a notary who gets a lawsuit from the appearers who feel aggrieved so that the deed has the power of proof as an underhand deed or is null and void as a result of the deed in question being defective.

The explanation of UUJN shows that a notary is only responsible for the formalities of an authentic deed and not for the material of the authentic deed. This requires the notary to be neutral and impartial and to provide some kind of legal advice for clients who seek legal advice from the notary concerned. If a notary gives legal advice, the notary can be held accountable for the material truth of a deed if the legal advice he gives turns out to be wrong in the future. Through the construction of the explanation of the UUJN, it can be concluded that a notary can be held responsible for the material truth of a deed he made if it turns out that the notary does not provide access to a certain law related to the deed he made so that one party feels cheated by his ignorance. For this reason, it is recommended for notaries to provide important legal information that clients should know as long as they are dealing with legal issues. It was further explained that there are other things that the notary must also pay attention to, namely those related to the legal protection of the notary itself, with the notary's carelessness and sincerity. In fact, the notary has brought himself to an act which by law must be accounted for. If an error made by a notary can be proven, the notary can be subject to sanctions in the form of threats as determined by law.[9]If there are parties who feel aggrieved from the deed made by the notary, they can directly file a civil claim against the notary for the deed he made.

## 4. Conclusion

Based on the results of research related to the Role and Responsibilities of a Notary in making a will, it can be concluded several important things related to the main problem formulation in this study. The role of the Notary is only to make an authentic deed in accordance with the notary's duties contained in Article 15 of the UUJN and to formulate the wishes or actions of the parties into

[9] Ima Erlie Yuana, *Tanggungjawab Notaris Setelah Berakhir Masa Jabatannya terhadap Akta yang Dibuatnya Ditinjau dari Undang-undang Nomor 30 Tahun 2004 tentang Jabatan Notaris*, Tesis, p.79-80

an authentic deed, taking into account the applicable legal provisions. The notary's responsibilities are born from the obligations and authorities given to him, these obligations and authorities are legally and bound to take effect since the notary takes his oath of office as a notary. It is the oath that has been taken that should control all the actions of the notary in carrying out his position. The notary is responsible for the formal form of the authentic deed as stipulated by law. However, a Notary is not only authorized to make a will in the sense of Verlijden, namely compiling, reading and signing and which in the sense of making a deed in the form determined by law as referred to by Article 1868 of the Civil Code, but also based on the provisions contained in Article 16 paragraph (1) letter d UUJN, namely the obligation of the Notary to provide services in accordance with the provisions of this law, unless there is a reason to refuse it. The Notary also provides legal advice and explanations regarding the provisions of the law to the appearing parties. After the will is made, the notary must help register it to the Central List of Wills. Wills can be divided into 3 (three) types, namely: a. An open will to the public (*Openbaar Testament*), this will is made before a notary. By appearing before a notary, a will be made in the form of an authentic deed, all of which must be in writing, and affixed and signed by 2 (two) witnesses. B. Written will (Ologrhapis Testament), is a will which is entirely handwritten and signed by the testator himself, then the will is deposited with a notary for safekeeping. The Notary is then obliged to make a deed of custody which is signed by the Notary himself, the heirs, and the witnesses. C. The Secret Will, that is a will made by the testator in a closed letter, then the testator submits the letter to a notary also in a closed state in front of 4 witnesses.

## 5. References

*Journals:*

[1] Chuasanga A., Ong Argo Victoria. (2019). *Legal Principles Under Criminal Law in Indonesia and Thailand,* Jurnal Daulat Hukum, Vol 2, No 1 (2019) http://jurnal.unissula.ac.id/index.php/RH/article/view/4218

[2] Deen, Thaufiq., Ong Argo Victoria & Sumain. (2018). *Public Notary Services In Malaysia. JURNAL AKTA*: Vol. 5, No. 4, 1017-1026. Retrieved from http://jurnal.unissula.ac.id/index.php/akta/article/view/4135

[3] Ong Argo Victoria, Ade Riusma Ariyana, Devina Arifani. (2020). *Code of Ethics and Position of Notary in Indonesia.* Sultan Agung Notary Law Review 2 (4), 397-407, http://lppm-unissula.com/jurnal.unissula.ac.id/index.php/SANLaR/article/view/13536

[4] Yaya Kareng, Ong Argo Victoria, R. Juli Moertiyono. (2019). How Notary's Service in Thailand. Sultan Agung Notary Law Review, 1 (1), 46-56, http://jurnal.unissula.ac.id/index.php/SANLaR/article/view/4435

*Books:*

[1] Abdul Ghofur Anshori, (2009), *Lembaga Kenotariatan Indonesia Perspektif Hukum dan Etika,* Yogyakarta: UII Press
[2] G.H.S. Lumban Tobing, (1982), *Peraturan Jabatan Notaris*, Jakarta: Penerbit Erlangga
[3] Hartono Soerjopratiknjo, (1982), *Hukum Waris Testamenter*, Yogyakarta: Seksi Notariat Fakultas Hukum Universitas Gadjah Mada
[4] Hilman Hadikusuma, (1995), *Metode Pembuatan Kertas Kerja atau Skripsi Ilmu Hukum,* Bandung: Mandar Maju
[5] Ima Erlie Yuana, *Tanggungjawab Notaris Setelah Berakhir Masa Jabatannya terhadap Akta yang Dibuatnya Ditinjau dari Undang-undang Nomor 30 Tahun 2004 tentang Jabatan Notaris*, Tesis
[6] Lutfi Effendi, 2004, *Pokok-pokok Hukum Administrasi,* Malang: Bayu media publishing
[7] R. Subekti and R. Tjitrosudibio, (1995), *Kitab Undang-Undang Hukum Perdata,* Jakarta: Penerbit PT. Pradnya Paramita