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Legal Protection for Notaries in Making a Certificate of Inheritance for the Disbursement of Savings Funds Made Based on False Documents by the Parties

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Abstract: The primary duty of a Notary is to create authentic deeds, and their role is particularly significant in the banking sector. For instance, in matters involving the heirs of bank customers, the preparation of an Inheritance Certificate is necessary for the disbursement of savings funds, even in cases where a false Death Certificate is presented. The purpose of this study is to investigate the legal protection available to Notaries when preparing inheritance certificates for savings disbursement based on falsified documents. A Normative Juridical Method is employed, utilizing normative legal research with a legislative and case-based approach. The findings indicate that when drafting an inheritance certificate for savings disbursement based on a fraudulent death certificate, the Notary must diligently verify the authenticity of the heirs, scrutinize the death certificate, and examine relevant documents such as identity cards, family cards, and the credentials of individuals authorized to sign the inheritance certificate. Additionally, the Notary must corroborate these details with witness statements to ensure accuracy. To address challenges in such cases, it is crucial for the Notary to exercise utmost caution. This diligence helps prevent errors whether intentional or unintentional that could invalidate the authentic deed due to inaccuracies or misrepresentation of facts. Ultimately, the Notary bears responsibility for any inaccuracies in the document they produce.

Keyword: Notary, Certificate of Inheritance, Death Certificate.

INTRODUCTION

The Notary's responsibility follows the principle of fault-based liability. When creating an authentic deed, the Notary is held accountable for any errors or intentional violations made in the preparation of the deed. Conversely, if mistakes or violations stem from the actions of the parties involved, the Notary cannot be held liable, provided they have performed their responsibilities in compliance with relevant laws. In such cases, the Notary's role is limited to recording the information presented by the parties, and any false statements made by the parties are their sole responsibility.

Regarding evidence, Article 1865 of the Civil Code (KUHPerdata) stipulates that anyone claiming a right or asserting an event to support their claim or refute another's right must prove the validity of that right or event. Written evidence is one of the recognized methods of proof, as outlined in Article 1866 of the Civil Code. Furthermore, Article 1867 specifies that written evidence may take the form of original or falsified documents. According to Article 1868, an authentic deed is defined as a document prepared by or before a legally authorized notary at the location where the deed is executed. [Habib Adje, 2012]

The primary purpose of law is to safeguard human interests. Its application ensures the protection of these interests, whether through routine enforcement in peaceful circumstances or as a response to legal violations. [Sudikno Mertokusumo, 2019] Law operates as a structured system designed to regulate human interactions and strike a balance between individual and collective interests, thereby minimizing conflicts that might arise from differing viewpoints. The need for evidence to establish rights or events stems from ongoing human relationships, which persist as individuals exercise their rights and fulfill their obligations. [Ujang Candra, 2017]

In the banking industry, Notaries play a crucial role as public officials. Banks, as financial institutions, collect deposits from the public and channel these funds back into society for broader economic benefit. Historically, banking began as a money-changing service and evolved into an institution for safekeeping, now known as deposit services. The practice of depositing money has adapted over time to meet the increasingly diverse needs of society. Notaries collaborate with banks, particularly in drafting authentic deeds such as Certificates of Inheritance. These certificates are essential in determining the rightful heirs to an inheritance, which may include movable and immovable assets, tangible and intangible properties, as well as funds held in bank accounts of deceased individuals. Bank passbooks, which document the amounts held in savings or investment accounts, are linked to the identity of the account holder and cannot be transferred or used by others. Access to these accounts is restricted to the account holder or their designated representative. For term deposits, funds are locked in for a specified period and cannot be withdrawn prematurely. In cases where the account holder passes away, heirs wishing to access the funds must fulfill certain requirements set by the bank. For instance, if the deposit amounts to Rp. 100,000,000 (one hundred million rupiah), the heirs are required to present a Certificate of Inheritance issued by a Notary.

As a public official, a Notary bears full responsibility for every deed they sign. If a deed becomes the subject of a legal dispute or is found to contain legal defects, it raises questions about its validity. In such cases, it is necessary to determine whether the issue arose from the Notary's own error or from false information and supporting documents provided by the parties involved [Zuliana Maro Batubara, 2011].

The presence of forged documents highlights the distinction between falsifying a letter and creating a forged one. In the former, the document may be partially accurate or entirely false, as in cases where a death certificate is fabricated without the Notary's knowledge, reflecting the Notary's negligence. Criminal cases involving Notaries often stem from forged material evidence, such as falsified identities provided by clients. Instances of Notaries being implicated in crimes related to their deeds are not uncommon, including cases where they have knowingly forged the contents of an authentic deed. Such forgeries are criminal acts that require legal action.

In practice, Notaries are regularly called before the court to explain contested documents or deeds. These legal entanglements may result from errors in the deed caused either by the Notary's oversight or by one or more parties supplying false information or documents. Sometimes, the Notary's complicity, such as agreeing to improper requests from one party, can lead to harm for others. For example, a Notary may record the identity of a person who was not present as if they were physically present for the deed's execution. Such actions,

particularly if paired with the use of falsified identities or forged documents, can implicate the Notary in legal disputes or even accusations of assisting or facilitating criminal activity during the deed's creation. Although Notaries are not legally obligated to verify the authenticity of every document submitted to them, these scenarios serve as critical reminders for Notaries to exercise caution and diligence in their role. If there is no evidence of direct forgery or misconduct by the Notary, they are generally not held liable for legal issues. However, they remain accountable to the court for explaining their actions and ensuring the accuracy of the information recorded in the authentic deed.

METHOD

The research adopts a normative juridical approach, relying primarily on secondary data as the main source of information. Secondary data is gathered from library materials, which include both primary and secondary legal sources [Soerjono Soekanto and Sri Mamudji, 2004]. This legal study uses a qualitative normative method for data analysis. The term "normative" signifies that the collected data is analyzed and interpreted in reference to applicable legal regulations as recognized within the framework of positive law. Meanwhile, "qualitative" refers to the explanation of the data through descriptive narratives or statements, rather than numerical analysis.

RESULTS AND DISCUSSION

Legal protection for Notaries in Making a Certificate of Inheritance for the Disbursement of Savings Funds Made Based on Falsehoods by the Parties

The primary purpose of law is to safeguard and uphold human interests. It serves as a framework that ensures the protection of these interests through its application. Law enforcement may occur in an orderly and peaceful manner or as a response to breaches of legal provisions [Sudikno Mertokusumo, 2019]. As a structured system, the law governs interactions among individuals, aiming to harmonize personal and societal interests. This balance helps to mitigate potential conflicts arising from competing priorities or differing perspectives. The necessity for evidence, which establishes claims to rights or validates events, emerges naturally from the ongoing relationships between individuals as they assert their rights and fulfill their obligations [Ujang Candra, 2017].

A notary is defined as a public official in line with Article 1868 of the Civil Code by Law Number 30 of 2004 as modified and Law Number 2 of 2014 for the Regulation of Notary Positions (henceforth referred to as "UUJN"). According to Article 1, paragraph 1 of the UUJN, a notary is a person who is permitted to draft genuine deeds and carry out other tasks as required by this or other relevant laws. As stated in the rules governing the notary office, a notary's main duties include drafting genuine deeds and performing other duties.

Regarding evidence, Article 1865 of the Civil Code specifies that any individual asserting a right or establishing an event to support their claim or challenge another's rights must provide proof of the claimed right or event. Written evidence, as regulated under Article 1866 of the Civil Code, is recognized as one of the valid forms of proof. Additionally, it is emphasized that written evidence must be documented in a tangible form, either physically or directly. [Habib Adjie, 2017].

As outlined in Article 1, paragraph 1 of the Notary Law, a Notary holds additional authorities granted by this law or other applicable legislation. In their role as a public official, a Notary is tasked with creating deeds, ensuring the certainty of their date of issuance, safeguarding the original documents, and providing copies or excerpts as needed. Beyond these core responsibilities, a Notary also possesses other legal powers specified within the relevant laws [Muhammad Adam, 2015]:

- a) Authenticate the signature and confirm the date of the document by registering it in a dedicated book;
- b) Record the documents in a special register;
- c) Create copies of the original documents, ensuring they match the descriptions in the original text;
- d) Certify that a photocopy is identical to the original document;
- e) Offer legal advice regarding the preparation of deeds;
- f) Prepare deeds related to land transactions;
- g) Draft minutes of auction proceedings.;

The Notary Position Law does not specify the imposition of criminal sanctions, but legal actions may be taken against Notaries involved in violations that include forgery due to intentional actions or negligence in the creation of authentic deeds containing false information. After facing administrative sanctions, professional code of ethics violations, and civil penalties, such conduct can be classified as a criminal offense if evidence of deliberate involvement in the forgery of authentic deeds is found.

As a public official (*openbaar ambtenaar*), authentic deeds can be created by a notary. The Notary bears responsibility for their actions or efforts in preparing these documents in accordance with this authority. The Notary's responsibility includes professional accountability regarding the deed and extends to criminal liability for the deeds they execute. In other words, the Notary's responsibility arises from errors (*schuld*) made while carrying out their duties, which result in harm to those seeking Notary services (*clients*). Therefore, even though the Notary Position Law does not specifically address criminal consequences, the Notary may be held liable for unlawful activities (*wederrechtelijk*) from a civil, administrative, or criminal law standpoint. Forms of accountability for Notaries in the profession include:

1. Notary Administration Accountability

The administrative responsibility of notaries is outlined in the Notary Position Law, which is directly linked to their duties and tasks. In addition to drafting authentic deeds, notaries are also tasked with registering and verifying privately-made documents. If the creation of a deed fails to meet the requirements set forth in Articles 38, 39, and 40 of the Notary Position Law, the authentic deed may be considered a breach of administrative regulations.

The principle of limited authority in deed-making requires notaries to adhere to the rules and ensure compliance, with the legal officer being obligated to approve and enforce these regulations if they are neglected. There are three categories of administrative sanctions that can be applied. [Ibid]:

- a) **Reparative Sanctions:** These sanctions are intended to correct violations of the law. They may involve actions such as stopping prohibited behaviors, requiring a change in attitudes or actions to restore the original state, or correcting actions that contradict the law.
- b) **Punitive Sanctions:** These are penalties that impose additional burdens. Punitive sanctions serve as both retaliatory and preventive measures, designed to instill fear in the violator or deter potential future violations by others. These sanctions can include severe reprimands.
- c) **Regressive Sanctions:** These sanctions are a response to disobedience, involving the removal of certain rights as determined by law. They aim to restore the legal situation to its original state before a judicial decision was made..

2. Notary Civil Liability

In the Civil Code, legal liabilities that result from wrongful acts are:

- a) According to Article 1365 of the Civil Code, if an act breaches the law and harms another person, the person who caused the injury is obligated to make up for the loss. For example, if a notary neglects to secure a copy of a deed in a secure location, and this

action leads to harm to another party, the Notary would fulfill the fault element and could be held liable under Article 1365 of the Civil Code. The elements outlined in Article 1365 include unlawful acts, harm, fault, and a causal link between the unlawful act and the resulting harm [MM Interview, 2024].

b) Accountability due to negligence: According to Article 1366 of the Civil Code, people are liable for losses brought on by their negligence as well as damages brought on by their acts. For example, if a Notary instructs someone to make a copy of a deed, but the copy is leaked and causes harm to another party, this constitutes negligence. The Notary can be held civilly liable under Article 1366 for this act of carelessness in trusting someone with the deed.

c) Strict or no-fault liability: In a more limited scope, According to Article 1367 of the Civil Code, an individual is accountable for damages resulting from both their own conduct and the products they manage. This implies that a notary may be held civilly responsible for errors or damages brought about by their personnel. If the individual who leaks the deed's contents is an employee or subordinate of the Notary, the Notary may still be sued for compensation or sanctions. This concept of civil liability is illustrated in Article 1367 of the Civil Code.

If a Notary's mistake is proven, they may face sanctions as specified by law. Notary MM emphasized the importance of legal protection for Notaries in the following ways: 1. To uphold the dignity and honor of their role, including when providing testimony and participating in examinations and trials; 2. To safeguard the confidentiality of deed information to protect the interests of the parties involved; 3. To preserve the minutes or documents attached to the deed and properly maintain the Notary protocol during storage. Legal protection for Notaries is outlined in Article 66 of the Notary Position Amendment Law.

Article 66 of the UUJNP establishes the Notary Honorary Council (MKN), which is composed of representatives from the Notary community, the government, and academia. The MKN functions as a legal protection body for the Notary role, particularly concerning the deeds created by or before a Notary. The existence of the MKN aims to provide significant legal support to the Notary profession in carrying out its duties. However, the specific regulation of the MKN's position and legal protection form is not clearly outlined in the UUJN or other related legislation.

If a Notary is later suspected of making mistakes or violations in the process of drafting deeds, it would be more assured if all actions such as summons, investigations, and detentions are conducted only after receiving approval from the professional organization that oversees the matter. This process ensures legal certainty for the public in line with the principle of trust that forms the basis of the Notary's authority. The Notary Honorary Council (MKN) plays a key role in providing legal protection for Notaries regarding the deeds they create, especially in terms of their civil liability. The MKN is an independent body, not subordinate to the government entity that appoints it. It exercises its authority in decision-making without being influenced by any external parties or institutions, making its decisions final and non-contestable.

Thus, in order to provide Notaries with legal protection for their actions, especially with regard to civil liability, investigators, public prosecutors, and courts must obtain the MKN's prior consent before summoning Notaries.

CONCLUSION

The author concludes that legal protection for Notaries regarding the deeds they create, especially concerning their civil liability, is ensured through the establishment of the independent Notary Honorary Council (MKN). Functioning independently, the MKN is not affiliated with or subordinate to the government body responsible for its appointment. Its decisions are made impartially, free from external interference by any party or institution, and are considered final and irrevocable.

To minimize risks, such as sanctions or the annulment of authentic deeds due to civil liabilities, the researcher recommends that Notaries adopt a cautious approach, exercise diligence, act in good faith, and adhere to legal provisions, ethics, and moral principles when drafting deeds. Additionally, it is suggested that the MKN structure, as outlined in Article 66 of the UUJN, be organized hierarchically, similar to the Notary Supervisory Council. This would allow for appeals to be filed by aggrieved parties through a tiered process, starting from the Regional MKN and advancing to the Central MKN, with decisions from the Regional MKN serving as the basis for review. Decisions issued by the Central MKN would remain final and binding.

Notaries cannot be held criminally liable for losses arising from false documents submitted by one of the parties, as their role is to document the information provided to them without verifying its authenticity. Responsibility for false information rests with the parties involved. Legal protection for Notaries in their role as public officials is also reinforced through the establishment of a supervisory mechanism under Article 66 of the UUJN. When a Notary is accused of drafting a deed that causes harm, there are specific procedures that must be followed before the Notary can appear in court. This protection aims to uphold the dignity and integrity of the Notary's position while safeguarding their oath-bound duty to maintain the confidentiality of the deeds they have prepared.

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