

Notary Liability for Violations of the Legitime Portie in the Testament Acte

Article History

Received: 20.06.2022
Revision: 30.06.2022
Accepted: 10.07.2022
Published: 20.07.2022

Author Details

Alfina Tarnisa Putri¹, Burhanudin Harahap²
and Supto Hermawan³

Authors Affiliations

¹Alfina Tarnisa Putri, Student of Notary, Sebelas Maret University of Surakarta, Indonesia

²Burhanudin Harahap, Lecturer of Law Faculty, Sebelas Maret University of Surakarta, Indonesia

³Supto Hermawan, Lecturer of Law Faculty, Sebelas Maret University of Surakarta, Indonesia

Corresponding Author*

Alfina Tarnisa Putri

How to Cite the Article:

Alfina Tarnisa Putri, Burhanudin Harahap & Supto Hermawan. (2022). Notary Liability for Violations of the Legitime Portie in the Testament Acte. *IAR J Agri Res Life Sci*, 3(4), 1-4

Copyright @ 2022: This is an open-access article distributed under the terms of the Creative Commons Attribution license which permits unrestricted use, distribution, and reproduction in any medium for non commercial use (NonCommercial, or CC-BY-NC) provided the original author and source are credited.

Abstract: The author in this study analyzes how the responsibility of the notary towards the deed made and ratified by him. Where the problems in this study focus on violations of testament, especially on the legal rules of legitime portie. Legitime Portie is the share of heirs guaranteed by law. This research is a normative legal research using data collection techniques is literature study. The results of this study are notaries are only subject to civil sanctions by only providing compensation in the form of administrative costs because in making the testament the notary only makes the deed by pouring the testament of the testator and ratifying it.

Keywords: Liability, Legitime Portie, Testament Act.

INTRODUCTION

A testament is an important thing or must exist when the inheritance distribution process testament be carried out, because the testament includes what the testator wants as the last mandate to manage his assets after Jesus dies (Sibarani, S. 2015). Anyone who is subject to the Civil Code then the making of a testament can be made before a notary or by a testament made under the hand either by writing it yourself or written by someone else or in typed form signed by the heir itself, then submitted to the Notary for safekeeping and by making a deed of deposit (Alwesius. 2011).

A testament is a form of an authentic deed. A testament includes a gift to a person who has been mentioned or included in the testament regarding the assets he owns in the form of a testament (Alwesiaus. 2011). Even though the testator has made a testament according to his testament, in the testament it is not allowed to override the rights of the legitimate heirs in the form of an absolute part or a legitimation portie. Civil law recognizes a testament as a tool that can be used for the distribution of inheritance, as long as the testament does not violate the

law and follows the rules that have been set regarding the limits that may be obtained by the heirs (Sibarani, S. 2015).

In making a testament, heirs often do not pay attention to the existence of this Legitime Portie rule so that regarding who should be worthy of being the heir, besides that the number of parts that should be received by each heir is not in accordance with the rules. It is based solely on the wishes of the testator. In fact, the heirs have the right to receive an inheritance, namely the property of the heir in accordance with what is his share in the applicable law. Thus, if the testament grant deed does not pay attention to the absolute or legitimate part of the testament, then the testament contains deviations from the legal rules of the legitime portie.

The deviation referred to in this testament is that the heir gives his share of the inheritance to other people, either excessively or not according to their respective portions and or to other people who are not heirs determined by law or heirs ab intestato. So, after the opening of the inheritance, the distribution of the inheritance is not in accordance with the amounts stipulated in the law.

Heirs who feel aggrieved by the existence of a testament that is not in accordance with the provisions of the legitime portie can ask for accountability to the notary who made and ratified the testament. Because in this case the notary has responsibility for all the deeds he made. Accountability by a notary is related to civil responsibilities in a profession when carrying out his duties and positions (Utama, I. W. K. J. 2019).

RESEARCH METHODS:

The type of research used by the author in this research is normative legal research. This research has the meaning as a normative legal case study in legal behavior which is carried out by reviewing the draft law, this legal concept as a norm or rule that applies in society so that it can be a reference for people to behave (Abdulkadir, M. 2004). The data collection technique used in this research is library research technique or literature study and the legal material analysis technique used in this research is descriptive analytical.

Meanwhile, the research approach used in this research is the case approach and the statutory approach. Where the researcher analyzes the legal case in this research problem then all relevant laws and regulations are linked. This legal research was conducted with primary legal materials, namely: Law Number 2 of 2014 concerning amendments to Law Number 14 of 2004 concerning the Position of Notary, Law Number 14 of 2004 concerning the Position of Notary, and the Civil Code (Civil Code). For secondary legal materials, namely theses, legal journals, and books related to research, as well as tertiary materials, namely other supporting materials.

RESEARCH RESULTS AND DISCUSSION:

Notary is a profession and is said to be a public official authorized by the government to carry out some work in the field of Civil Law, the job is to make authentic evidence or called a notary deed. This notarial deed can be in the form of a party deed or a relaas deed, the notary has the responsibility in making each deed can be authentic as referred to in Article 1868 of the Civil Code (Civil Code). The responsibility of the Notary in the process of making a testament from beginning to end, the Notary has an obligation to be the executor of the testament (Lay, 2019).

The responsibilities of a Notary are explained in Article 65 of Law Number 2 of 2014 on Amendments to Law number 30 of 2004 on the Notary's Office, including the replacement Notary, i.e., the Notary is responsible for each deed he makes, even if the Notary Protocol has been submitted and transferred to the custodian the new Notary protocol (Anshori, 2009). This is important to do because an authentic deed can be used as a perfect tool of evidence, including in the case of a testament (Panjaitan, 2016).

The notary deed in a civil lawsuit has perfect legal force of proof, it has consequences if the Notary violates the law in making it then the proof value of the deed can be degraded its legal force the proof becomes a deed under hand or the deed is void by law and can cause loss to the party interested in the deed. Therefore, a Notary who commits an error that results in the matter, the aggrieved party can claim responsibility for the error by asking for compensation, costs, and interest (Afifah, K. 2017).

A Notary as a Public Official in relation to his authority to make an Authentic Deed, a Notary is responsible for all his actions and work in making an Authentic Deed. This responsibility is part of the responsibility of a profession itself. The Notary's responsibility for the deed he made is due to the non-fulfillment of the conditions as stated in the law which can lead to a civil lawsuit, or the actions taken by the Notary that can be categorized as actions that can be threatened with a criminal lawsuit (Candrata, Y. F. 2009). Thus, a violation of a deed made by or made before him is a civil matter and the Notary's responsibility is also civil.

Meanwhile, the role of a notary in making a testament is to record or rewrite the legal actions taken by the prospective heir into an authentic deed. The notary gives a statement about the evidence of what happened, what was seen and experienced based on the real symptoms of the appearers or heirs or prospective testators by referring to the formal requirements in making an authentic deed which can then be put into the form of the deed for being neutral and assisting clients as a face-to-face by providing legal advice or advice before the deed is made (Afifah, K. 2017).

Related to the discussion in this study, the heirs' absolute right to a testament or testament that deviates or violates the provisions of the legitime portie is a phenomenon that often occurs in society, where an heir as the owner of the property wants a testament that contains according to his testament without referring to the rules and regulations existing rules. Therefore, there are many cases that occur in the community related to the heirs' dissatisfaction with the contents of the testament, especially fellow heirs who feel that each has rights in the inheritance because they have blood relations with the heir and while on the other hand there are also heirs the recipient of the heir is not someone who has blood relations with the heir (Lay, 2019).

In order to find out the extent of the Notary's responsibility in relation to the grant deed of testament that violates the Legitime Portie, it can be explained that the notary's liability arises when the legitimate heirs do not get the inheritance in accordance with the legal rules of the Legitime Portie and the heirs feel aggrieved over this ask for their rights in accordance with the

court's lawsuit or not with the lawsuit. There are three types of notary liability for losses incurred, namely:

❖ **Liability of the Notary in Civil:**

Civil law liability can be in the form of legal liability based on default and unlawful acts. The definition of default is explained in Article 1243 of the Civil Code (KUHPerdata), namely as a reimbursement of costs, losses, and interest as a result of non-fulfillment of an engagement whose obligations have begun, where if the debtor is declared to have failed to fulfill the engagement, or if the something that must be given or done is not given or done beyond the agreed time limit.

Civil law liability based on default arises because of an agreement or engagement, it is stated in Article 1233 of the Civil Code that an engagement is born because of an agreement or law. The agreement is described in Article 1313 of the Civil Code (KUHPerdata), which is an act between 1 (one) or more people who bind themselves to 1 (one) or more other people.

According to (Abdulkadir, M. 2004), there are 3 (three) elements of civil wrongdoing associated with unlawful acts, namely:

- Violation of Rights is a law that recognizes the existence of certain rights, both personal rights and material rights and testament protect these rights by forcing the violator to make compensation to the party whose rights have been violated.
- The element of error is responsibility for a person's civil wrongdoing. The party who commits a civil wrong requires an element of error or intent, even though the level of error or intentionality is only small.
- Loss suffered, this is an essential element of the existence of a civil error. Losses suffered by a person as a result of an unlawful act, losses from civil wrongdoing are not always side by side because this needs to be proven true for the losses he suffered (Muhammad, 2006).

The form of the Notary's responsibility for errors in making the deed that causes losses is divided into two, namely:

- Material loss, i.e. the loss is actually suffered by a person in the form of costs, losses, and interest.
- Immaterial losses are losses suffered by a person for the benefits to himself that allow him to formalize future losses or lose profits that may be received by that person (Marpaung, 2018).

Compensation arising from a default as stated in the Civil Code (KUHPerdata) is the same as that stated in the compensation arising from an unlawful act. For this reason, with material and immaterial losses, the form of compensation for the compensation can be in the form of money (in kind) or in kind (innatura) (Marpaung, 2018).

❖ **The Notary's Criminal Responsibility:**

The notary's criminal liability arises because the notary has been proven to have committed a criminal act. Moeljanto argues that a criminal act is a result of an act that is prohibited because it violates the law and it is threatened with criminal sanctions (Sianturi, 1998). In the event that a crime committed by a Notary is not specifically regulated in the Law on the Position of a Notary, it refers to a crime in the Criminal Code because it is based on the principles of the Criminal Code, namely (Harahap, M. Y. 2000):

- The state of Indonesia is a state based on Pancasila and the 1945 Constitution.
- The state guarantees that every citizen has the same position in law and government;
- Every citizen without exception is obliged to uphold the law and government.

The conditions that can make a notary subject to criminal law are as follows:

- If a Notary intentionally and consciously participates together with one of the parties, he takes legal action against the formal requirements of a deed made before or made by a Notary with the aim of providing benefits to one party and causing harm to the other party.
- If the deed made before or made by a Notary can be proven in its making it is contrary to the Law on Notary Positions.
- If the Notary acts not in accordance with the values of the Notary Supervisory Council, it must be included as information in the identity (Sulihandari and Rifiani, 2013).

❖ **The Notary's Administrative Responsibilities:**

The responsibilities of a Notary in Administrative are related to the duties and obligations that must be carried out in accordance with the provisions of the law, so that all actions and behavior of a Notary related to his duties and obligations can be legally accounted for with all the consequences or sanctions that follow (Farokah, F. 2016).

Based on Article 85 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of a Notary, it explains that there are 5 (five) types of administrative sanctions, namely:

- verbal reprimand,
- written warning,
- temporary suspension,
- Dismissal with honor.

The contents of the testament that violates the legitimacy of the portie are included in acts against the law without error (without error or negligence). This is based on the making of a testament, the Notary only makes a deed based on what is the last wish of the testator. Although the Notary has the obligation to inform the truth about the rules and laws that apply in

the making of a testament to the client, but the final decision on how the contents of the testament remains with the client.

As in the explanation above that any act against the law that causes loss to another party is obliged to compensate for such loss. Thus, the Notary is absolutely responsible (without error) as described in Article 1367 of the Civil Code (KUHPperdata) which states that a person is not only responsible for his own actions but also the actions of others who are dependent or under his control, p. this means that a person can be civilly liable for losses due to violations committed by another person but only to a person who is his or her dependent or in his or her supervision.

So that the form of civil liability of the Notary to compensate for losses suffered by heirs due to testaments that violate the legality of the portie, can be done in the form of material compensation in the form of money by reimbursing the cost of making the deed or by re -making the deed at a different Notary office which is funded by the Notary who made the previous testament.

CONCLUSION:

In connection with the making of this testament, the notary only expresses the testament and wishes of the testator regarding what testament be done to his property and to whom it testament be given, if there are problems caused by accountability. The notary's responsibility can be seen from what mistakes were made and first it is proven whether there are losses caused by the existence of these actions. In this study, the Notary is responsible civilly because the responsibility for making the deed testament always be attached to the Notary profession itself.

Thus, the Notary testament be subject to civil sanctions in the form of reimbursement of costs or providing compensation to parties who feel they have been harmed by refunding the costs at the time of making the deed or it can be in the form of making the deed back at the Notary's office different from the Notary's fees that caused the loss.

REFERENCE:

1. Harahap, M. Y. (2000). Discussion of Problems and Implementation of the Criminal Procedure Code (Investigation and Prosecution). Jakarta: Sinar Graphic, second edition.
2. Abdulkadir, M. (2004). Law and Legal Research. Bandung: PT. Image of Aditya Bakti.
3. Afifah, K. (2017). Responsibilities and Legal Protection for Notaries in Civil Law Against the Deeds He Made. *Lex Renaissance*, 2(1), 10-10.
4. Sibarani, S. (2015). Application of Legitime Portie (Absolute Part in the Distribution of Inheritance. *Journal of Legal Studies: Faculty of Law, University of Riau*. 5(2).
5. Utama, I. W. K. J. (2019). Liability of Notaries as General Officials in Making Banking Credit Agreements. *DiH: Journal of Legal Studies*. 15(1).
6. Candrata, Y. F. (2009). Responsibilities of Notaries for Making testaments (Case Analysis Based on Supreme Court Decision No. 387 PK/Pdt/2007). *Jakarta: UI*.
7. Farokah, F. (2016). Responsibilities of Notaries for Reporting Copies of the Register of Deeds to the Regional Supervisory Council (Article 61 of Law Number 30 of 2004). *Malang: Faculty of Law, Universitas Brawijaya*.
8. Code of Civil law.
9. Law number 30 of 2004 concerning the Position of a Notary.
10. Law Number 02 of 2014 concerning the Position of Notary Amendments to Law Number 30 of 2004 concerning the Position of Notary.
11. Alwesius. (2011). Imposition of BPHTB on testament Grants according to Law 28 of 2009. <http://alwesius.blogspot.com/2011/07/pengenaan-bphtb-terhadap-hibah-wasiat.html>. Accessed July 20, 2020.