

A Legal Study on the Notary's Responsibility for Inheritance Certificates that Do Not Include All Heirs from a Civil Law Perspective

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Abstract

This study aims to provide legal protection and assurance for the rights of heirs so that they are not disregarded or deprived of the inheritance to which they are legally entitled. Under inheritance law as regulated by the Indonesian Civil Code (Kitab Undang-Undang Hukum Perdata/KUHPerdata), there are two categories of heirs: those who inherit based on marital and blood relationships (descent), and those who are designated as heirs through a will. This research employs a normative legal research method that emphasizes library research as the primary source of data. The normative approach is carried out by examining various laws and regulations, legal doctrines, and relevant legal literature in order to analyze the legal issues that constitute the object of this study.

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1. INTRODUCTION

Social life requires a legal system and a set of norms that serve as guidelines for regulating relationships between individuals. The existence of law is a crucial and inseparable element of social life, as it plays a role in regulating and limiting various interests, both personal and public, to prevent conflict within society. Therefore, the law must provide certainty, justice, and benefit to be implemented effectively. In this context, law enforcement officials, such as judges, prosecutors, notaries, and police, have a responsibility to uphold justice and truth in accordance with applicable legal provisions. Therefore, the legal profession must be carried out professionally, honestly, and with integrity, given its honorable and noble position in society.

Civil law is part of the legal system that regulates legal relationships between individuals in society. These legal relationships give rise to rights and obligations for the parties involved, which are binding and reciprocal. Therefore, the rights and obligations arising from civil legal relationships cannot, in principle, be unilaterally abolished or revoked without a valid legal basis (Bobihu et al., 2023).

Notaries bear significant personal and social responsibilities, particularly in carrying out their duties and positions in accordance with applicable laws and regulations and the professional code of ethics. Therefore, compliance with established legal norms and professional standards is a crucial aspect in the performance of their notary duties. The existence of authentic written documents with perfect evidentiary power is necessary to guarantee legal certainty regarding an event, situation, or legal act. In this regard, notaries act as public officials authorized by the state to create authentic deeds to meet the public's need for valid, reliable, and legally binding written evidence. Therefore, the services

provided by notaries play a significant role in providing protection and legal certainty for interested parties (Mowoka, 2014).

As previously explained, notaries essentially fulfill part of the state's function of providing legal protection to the public. To meet the needs and interests of the parties, notaries are authorized by the state to create authentic deeds that serve as valid and legally binding evidence. This is where the strategic value and honor of the notary profession lie: providing legal services to the public to achieve justice, legal protection, and legal certainty. Therefore, this authority granted by the state must be exercised responsibly and always guided by the professional code of ethics and applicable laws and regulations.

The authority of a notary to create authentic deeds is regulated in Article 15 of the Notary Law (UUJN). Based on this provision, authentic deeds created by a notary have perfect evidentiary force and are legally recognized. In carrying out their duties, notaries are required to act professionally, independently, carefully, honestly, and impartially in order to safeguard and protect the interests of all related parties. One form of notary professionalism is reflected in their obligation to maintain the confidentiality of all information and data obtained from the parties appearing before them. This obligation is an inseparable part of the responsibilities and ethics of the notary profession (Ghansham & Kn, 2018).

In addition, a notary is obliged to guard, store, and maintain the deeds he has made, ensure the accuracy of the date of creation, record them according to applicable procedures, and provide a copy or gross of the deed to the authorized party (Yustisia, 2016). The deed made by a notary is an authentic deed prepared in accordance with applicable legal provisions and has the position of the strongest and most perfect written evidence. The existence of an authentic deed provides certainty regarding the rights and obligations of the parties, so that it can be the basis for legal recognition of a particular act or legal relationship. Thus, an authentic deed serves to guarantee legal certainty while minimizing the potential for disputes in the future (Moechthar, 2017).

To date, the definition of a certificate of inheritance has varied, both among legal experts and practitioners. However, the substance of these definitions is essentially the same: a document that identifies the parties entitled to inherit from a deceased person. Therefore, to gain a more comprehensive understanding of the meaning and status of a certificate of inheritance, this researcher will outline several definitions and perspectives that have developed in legal doctrine and practice.

A Certificate of Inheritance is a document that can be used as evidence to demonstrate that the parties listed are legally entitled to inherit. This document provides information regarding the transfer of inheritance rights from the testator to the heirs entitled to receive them. Therefore, the Certificate of Inheritance serves as legal evidence confirming that the rights and obligations related to the testator's inheritance have been transferred to all living heirs in accordance with applicable law. Therefore, this document plays an important role in proving the status of inheritance and serves as the basis for various legal actions related to inherited assets (Djayanti, 2017).

When preparing a Certificate of Inheritance (SKW), a notary must adhere to the applicable population classification and ensure that the determination of heirs is carried out in accordance with statutory provisions. The Certificate of Inheritance serves as evidence used to determine the parties legally entitled to receive an inheritance from the testator. Therefore, the SKW plays a crucial role as a legal basis for proving a person's rights to inherited property.

Regarding the issuance of the Certificate of Inheritance, several provisions form the basis for its implementation, including the Provisions of the Directorate General of Agrarian Affairs of the Ministry of Home Affairs Number Dpt/12/63/12/1969 dated December 20, 1969, and the Supreme Court Letter Number MA/Kumdil/171/V/K/1991 dated May 8, 1991. These two provisions serve as guidelines in the process of issuing and proving the status of legal heirs (Wiratama & Ishak, 2020).

The theory of legal certainty emphasizes the importance of guaranteeing legal protection for individual rights and social interests in society. Therefore, if an inheritance deed is prepared and issued in accordance with applicable law, it has significant legal force. The existence of an authentic and valid deed provides legal certainty for heirs and other parties with a legal interest in the inheritance (Yoga et al., 2018).

Provisions regarding inheritance rights are regulated in Article 833 of the Civil Code (KUHPerduta), which states that heirs automatically, by law, acquire ownership rights over all assets, rights, and receivables left by the testator. Furthermore, Article 832 of the Civil Code emphasizes that those entitled to become heirs are blood relatives, whether born within or outside of marriage recognized by law, as well as the husband or wife who survives the longest after the testator's death.

Furthermore, Article 1066 of the Civil Code stipulates that no one may be forced to retain an undivided inheritance. Every heir has the right to request the distribution of the inheritance at any time, even if an agreement otherwise exists. However, heirs are permitted to agree to postpone the distribution of the inheritance for a specified period. This agreement is valid for a maximum of five years and can be extended after that period expires (Suparman, 2022).

Furthermore, Article 20 paragraph (1) of the Basic Agrarian Law (UUPA) stipulates that ownership rights are rights that can be inherited from generation to generation. This provision indicates that land rights can be inherited from one generation to the next in accordance with applicable inheritance law mechanisms. As long as the rights holder is still alive, the ownership rights remain in his or her control. However, after the rights holder dies, the rights are transferred to the heirs who are entitled to receive them according to applicable legal provisions.

Although land ownership rights can be transferred through inheritance mechanisms, heirs must still fulfill certain requirements to become legal subjects as holders of ownership rights. These requirements relate to citizenship status and legal standing as stipulated in applicable laws and regulations. Therefore, land ownership rights obtained through inheritance can only be maintained if the heirs fulfill the established legal requirements. This provision aims to ensure that land ownership rights remain in accordance with the principles of national agrarian law. Based on Article 21 paragraph (1) of the Basic Agrarian Law (UUPA), ownership rights can only be held by Indonesian citizens. In addition, Article 21 paragraph (2) of the UUPA provides the possibility for certain legal entities appointed by the government to own ownership rights by fulfilling the specified requirements (Sidik et al., 2023).

In Indonesian civil law, specifically as stipulated in the Civil Code (KUHPerduta), several circumstances can cause a person to lose their right to receive an inheritance, even if they are legally considered an heir. These provisions are intended to protect the interests of the testator and ensure that inheritance is only given to those deemed worthy and qualified to receive it. Thus, inheritance rights are not only determined by family relationships or status as an heir, but also by the behavior and actions taken towards the testator.

Some reasons that can cause a person to lose the right to receive an inheritance according to Indonesian civil law include murdering the testator, committing embezzlement or fraud related to inheritance, committing serious insults against the testator, falsifying a will, obstructing the implementation of a will, committing acts contrary to propriety and morality, not fulfilling obligations towards the testator, engaging in a marriage that is not valid according to the provisions of the law, expressly rejecting the inheritance given to him, losing inheritance rights due to revocation by the testator based on reasons justified by law, and committing acts that are contrary to the contents or wishes stated in the will (Mirza et al., 2024).

2. RESEARCH METHODS

This research uses a normative legal research method that emphasizes literature review as the primary source for obtaining data and information. The normative legal approach is carried out by examining various legal materials, including legislation, doctrines, and legal literature relevant to the problem being studied. In this research, law is understood as a set of norms, rules, and regulations that function to regulate and direct human behavior in social life. Therefore, normative legal research focuses on the analysis of applicable positive legal norms and various legal products related to the research object. The purpose of normative legal research is to discover legal principles and doctrines that can be used as a basis for analyzing and providing solutions to the legal problems being studied (Marzuki, 2017).

3. RESEARCH RESULTS AND DISCUSSION

Responsibility is essentially a condition that indicates a person's obligation to carry out their duties and authorities with full sincerity and readiness to bear all consequences arising from their actions. In a legal context, responsibility has the consequence that a person can be held accountable, prosecuted, or even prosecuted if their actions cause harm or violate applicable provisions. According to the Big Indonesian Dictionary, responsibility is defined as the obligation to bear all things that are the result of an action, so that a person is obliged to resolve and be accountable for all problems that arise from it (Budiono, 2005). This definition emphasizes that responsibility is not only related to the implementation of an action, but also includes the ability to determine attitudes, resolve the consequences that arise, and accept all risks that arise from the actions that have been taken.

If a deed prepared by a notary does not meet the standards and requirements stipulated by statutory regulations, the notary's responsibilities as a public official cannot be carried out optimally. This situation has the potential to cause losses for the public who use notary services, both in the form of material losses and legal uncertainty. As a result, many parties have filed complaints with the relevant authorities because they feel aggrieved by actions or omissions that occurred during the deed-making process. Therefore, the Notary Law (UUJN) should provide adequate legal protection for the notary profession, both against violations committed by third parties and against errors or omissions made by notaries in carrying out their duties (Nevatiti & Silviana, 2023).

A Certificate of Inheritance is a document containing information and particulars regarding a deceased testator and the parties acting as his or her heirs. This document is essentially based on data, information, and documents submitted by the parties to a notary. Therefore, a Certificate of Inheritance only certifies that the parties listed therein are considered heirs based on the information received by the notary. Therefore, the existence

of a Certificate of Inheritance does not necessarily guarantee absolute material truth if there are facts or data not disclosed by the interested parties.

Legally, a Certificate of Inheritance serves as evidence indicating who is entitled to be an heir. Furthermore, the certificate serves as the basis for the transfer of rights to inherited assets, including changing the name of the owner of the inherited assets or land. Furthermore, the Certificate of Inheritance serves to provide legal protection and prevent abuse of rights or authority over the inherited assets left by the testator (Aprilatama, 2023).

Regarding the legal status of the Certificate of Inheritance, Notary Indrijadi, S.H., thinks that the letter is not an authentic deed. However, he emphasized that the Certificate of Inheritance cannot be made by just any party, considering that the document is related to proving a person's rights to inherited property, whether it has been opened or not. In his opinion, before the Certificate of Inheritance is issued, the heirs and witnesses must first provide information in the form of a statement written before a notary. Thus, the notary has an important role in the process of establishing and proving the status of inheritance.

Furthermore, a Certificate of Inheritance cannot be qualified as an authentic deed because it does not fulfill all the formal elements required by law for an authentic deed. A document can only be categorized as an authentic deed if it is prepared in a form and manner expressly determined by law and by or before an authorized public official. Therefore, despite its important evidentiary function in inheritance law practice, a Certificate of Inheritance still has a different status from an authentic deed as defined in applicable legal provisions (Nugraha & Nelson, 2022).

In civil inheritance law, inheritance is distributed based on the class of heirs still living at the time of the testator's death. This inheritance process requires the existence of an heir, heirs, and inheritable assets. According to the provisions of the Civil Code (KUHPerdata), heirs are divided into four classes, each with a priority order in which to receive an inheritance.

The first group consists of children and their descendants in a direct line, legally recognized children, the longest-living spouse, and adopted children who have received legal recognition in accordance with applicable provisions. Article 852 of the Civil Code emphasizes that there is no difference in inheritance rights between men and women, whether born earlier or later, and is not differentiated based on the first or subsequent marriage. All heirs in this group receive the same inheritance rights based on the principle of head-to-head inheritance (*per capita*), so that each heir receives a portion according to their position in relation to the other heirs. In addition, based on Article 852 paragraph (1) of the Civil Code, the husband or wife who survives the longest receives the same portion as a child. However, if there are children from a previous marriage, the portion received by the widow or widower may not exceed a quarter of the total inheritance.

The second group includes the testator's parents, both father and mother, as well as the testator's brothers and sisters. This group only receives inheritance rights if there are no heirs from the first group. Furthermore, the third group consists of relatives in a more distant ascending line, namely, grandparents from the father's and mother's side. The fourth group includes blood relatives in a more distant lateral line, namely uncles, aunts, and their descendants up to a certain degree, as determined by the Civil Code.

In principle, civil inheritance law does not differentiate inheritance rights based on gender. However, the inheritance system in the Civil Code adheres to the principle of class priority, so that the existence of heirs in a higher class precludes inheritance rights for heirs in the next class. Therefore, as long as there are heirs in the first class, heirs in the second,

third, and fourth classes are not entitled to a share of the inheritance (Suhartono et al., 2022).

The provisions regarding the class of heirs are an important legal basis for the issuance of the Certificate of Inheritance. Through this letter, it can be clearly determined which parties are entitled to receive the inheritance and become the basis for the process of transferring rights to the heir's estate to the legitimate heirs. Thus, the Certificate of Inheritance has a strategic function in providing legal certainty regarding the status and position of the heirs.

Furthermore, the status of a Certificate of Inheritance is closely related to the provisions regarding written evidence in civil law. Article 1870 of the Civil Code states that an authentic deed provides perfect evidentiary force for the matters stated therein. Meanwhile, Article 1868 of the Civil Code emphasizes that an authentic deed is a deed made in a form prescribed by law by or before an authorized public official. Therefore, any document used as a basis for evidence, including those relating to their status, must meet the formal requirements stipulated by law to have valid evidentiary force (Yoga et al., 2018).

The administration of inheritance rights in the Indonesian civil law system is also clearly regulated in the Civil Code. These provisions include Article 832 of the Civil Code, which states that those entitled to be heirs are blood relatives, whether born within or outside of a legally recognized marriage, as well as the longest surviving husband or wife. Furthermore, Article 833 of the Civil Code confirms that heirs automatically, by law, acquire rights to all assets, rights, and receivables left by the testator from the time of the testator's death (Pnh Simanjuntak, 2017).

If a notary fails to list all legal heirs in the Certificate of Inheritance, the document may fail to comply with applicable legal requirements. This could result in a disproportionate distribution of inheritance assets and harm those entitled to the inheritance. In addition to causing harm to the unnamed heirs, this omission could also result in legal consequences for the notary, who is deemed to have failed to carry out their duties diligently and professionally.

From a criminal law perspective, actions related to the creation or use of documents that do not correspond to the actual situation can be linked to the provisions of Article 263 paragraph (1) of the Criminal Code (KUHP) regarding forgery of documents. This article contains objective elements in the form of the act of making a false document or falsifying a document that can give rise to a right, obligation, debt relief, or which is intended as evidence regarding a legal event. In addition, there is a subjective element that requires the existence of an intention to use or order another person to use the document as if it were true and not forged, the use of which can cause harm to another party.

From a civil law perspective, liability for losses arising from unlawful acts is regulated in Article 1365 of the Civil Code. This provision emphasizes that any unlawful act that causes harm to another person requires the perpetrator to provide compensation for the losses incurred (Pnh Simanjuntak, 2017; Livya Asifah Magfira Ngabito et al., 2024). Furthermore, Article 1366 of the Civil Code expands this form of liability by stating that a person is not only responsible for losses arising from his own actions, but also for losses caused by negligence or lack of caution in acting. Article 1367 of the Civil Code stipulates that a person can be held responsible for losses caused by parties under his responsibility or by objects under his control.

In the context of creating a Certificate of Inheritance, the omission of one of the legitimate heirs can result in legal and economic losses for the party entitled to the

inheritance. This situation relates to the subjective element in the use of the document, which can be detrimental to the other party. Furthermore, Article 1338 of the Civil Code regulates the principle that *agreements must be kept*. It affirms that every legally executed agreement is valid as law for the parties who made it. Therefore, if the Certificate of Inheritance is prepared based on inaccurate data, accompanied by concealment of facts, or manipulation of information regarding the entitled heirs, the document is potentially invalidated because it violates the principles of honesty and good faith and causes harm to certain parties.

Based on these provisions, a notary is obligated to carefully verify the identities of the parties, their familial relationships with the testator, and the existence of all heirs entitled to the inheritance. This obligation is part of the notary's professional responsibility to guarantee the formal accuracy of the data and information used as the basis for preparing the Certificate of Inheritance.

Thus, the notary's responsibility in making a Certificate of Inheritance is not only limited to recording the information provided by the parties, but also includes the obligation to ensure that all legal heirs have been listed completely and correctly. If the notary's negligence or error results in the omission of one of the heirs, thereby causing a loss to the entitled party, then this action can be qualified as an Unlawful Act (PMH) as regulated in Article 1365, Article 1366, and Article 1367 of the Civil Code. Therefore, the notary can be held legally responsible for losses arising from the implementation of his/her position that is not in accordance with applicable legal provisions (Meliala, 2014).

4. CONCLUSION

A Certificate of Heirship holds a crucial role as written evidence in civil legal relations. This document serves to prove a person's status as a legitimate heir and is often used as the basis for various legal proceedings, both in and out of court. In practice, a Certificate of Heirship is one of the documents required in the transfer of inheritance rights, such as through sale and purchase, gift, relinquishment of rights, or other legal actions related to the testator's inheritance. Furthermore, this document can also serve as the basis for drafting deeds before a notary.

However, the legal validity of a Certificate of Heirship depends heavily on the accuracy of the data and information contained therein. If the document contains incorrect, incomplete, or erroneous information regarding the identity or status of the heir, it is potentially legally flawed. This situation can reduce or even eliminate its evidentiary value as legal evidence.

Any party who feels aggrieved by an error, omission, or neglect of rights in the Certificate of Heir has the right to file a lawsuit in court for legal protection. During the examination process, the court can assess the validity of the document based on the facts and evidence presented by the parties. If it is proven that some inaccuracies or errors cause harm to a particular party, the court can declare the Certificate of Heir invalid or not legally binding.

Thus, the validity of a Certificate of Heirship is largely determined by the accuracy and veracity of the information it contains. Documents that are proven to be inconsistent with the actual circumstances cannot be used as a valid legal basis for civil transactions or the transfer of inheritance rights.

Therefore, notaries, as public officials involved in the drafting and ratification of these documents, are required to work carefully, thoroughly, and professionally. Verifying the identities of the parties, their legal relationship with the testator, and the existence of all

entitled heirs is a crucial step in ensuring the validity of the Certificate of Heir. This thoroughness is necessary to prevent future inheritance disputes and to provide legal certainty, protection, and justice for all interested parties.

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