

Liability notary concerning heritage grants that breach the absolute rights (Legitime portie) of the heritage

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Abstract

The Civil Code authorizes the Heir to give assets to whomever he wants, with a will or testament. But there are parts the legitimate Heir with respect to the absolute share or legitime portie that should not be violated. The purpose of this study is to determine the consequences that will occur on the wills deeds that violate the legitimacy portie and how it will affect the absolute part of the legitimate Heirs. This research method uses normative legal research, performed with literature study of legal materials, both primary legal materials, secondary legal materials, and tertiary legal materials and / or non-legal materials taken through the internet media. Based on the research, it can be concluded that the legal consequences against a will deed that violates the legitimacy portie is null and void as long as the legitimate person demands his rights and the right can be recovered by deduction or incoring.

Keywords: inheritance, legacy grant deed, legitime portie

Introduction

In essence, human life, one must experience legal events, one of which is death, these legal events affect the assets left during a person's life. As a result, a law that regulates the consequences of everything that occurs after the death of a person is inheritance law. According to *Burgelijk Wetboek*, inheritance is divided into two, namely *ab intestato* inheritance (Heir according to law) and testamentary inheritance (Heir due to appointed in a will or testament. Legislative Heirs (*ab intestato*), namely because of their own position according to the law, by law they are guaranteed to appear as Heirs, while Heirs according to a will (*adtestamento*).

Effendi distinguishes a testament based on its contents into two, namely a will which contains the appointment of an Heir (*erfstelling*) and a will (relief) grant. A will grant in Article 957 of the Civil Code is a special determination of will, whereby the person who inherits to one or more people gives some of his belongings of a certain type, such as all movable or immovable property or gives usufructuary rights over all or part of it his inheritance. A will grant has the same meaning as a will inheritance. Inheritance will be the distribution of inheritance to people who are entitled to receive inheritance at the last will (will) of the Heir which is stated in writing, for example in a notary deed (*testamenter inheritance*).

A will is a form of authentic deed. Notary deed according to Article 1 point 7 Law Number 30 of 2004 concerning Notary Position, is an authentic deed made by or before a Notary according to the form and procedure stipulated in this law. A wills grant deed is one form of authentic deed. A will grant is a gift of the Heir's property (the person who owns the property) to a certain person who has been named or determined by the Heir in the will. Although the Heir has made a will, but in its implementation a will is not allowed to override the parties who have an absolute share of the inheritance which is called the Legitime Portie and the

holder of this right is called the Legitimaris. In civil law, this will is recognized as a means of distributing Heirs, as long as the testament does not violate the law and the minimum limits required by an Heir. The meaning of Legitime Portie is explained in Article 913 of the Civil Code, namely, a part of the inheritance that must be given to the Heirs in a straight line according to the provisions of law, to which the Heir is not allowed to reduce it with a gift in life or a gift with a will.

The wishes of the Heir as stated in the will or the will sometimes do not pay attention to who should be the rightful Heir, other than that the amount of share that should be received by each Heir is not taken into account as stipulated in the provisions of the Legitime Portie. The Heirs have the right to receive an inheritance, namely the assets of the Heir in accordance with the portion determined by applicable law. Thus, the will violate the provisions of the Legitime Portie. In this case the Notary concerned can participate to be held accountable by the Heirs. This accountability is a consequence that must be asked of a person with the legal profession in carrying out his duties, while the responsibility is not only based on morals but also based on law.

The problem that is taken from the above background is how the responsibility of the Notary against will deeds which violate Legitime Portie Heirs.

Methods

The type of research used by the writer in this research is normative legal research and by using the analysis of legal materials with qualitative methods. This legal research is research that refers to the norms listed in statutory regulations, legal books, court decisions, and so on. The nature of this legal research is research that provides data about humans, conditions or other symptoms that intend to reinforce hypotheses in order to be able to strengthen old theories or in the framework of drafting new theories is

called descriptive legal research. Normative legal research is carried out by studying literature on legal materials, both primary legal materials, secondary legal materials, and tertiary legal materials and / or non-legal materials taken through the internet media.

Results and Discussion

Hibah will can be made by the Heir himself or made notary, a notary in terms of making a will can provide advice or input to the Heir, so that the will not deviating from the rules that have been set, which can cause defects law on the deed. A wills deed is a form of deed which is submitted to the authorized public official, namely a notary, so that as with other deeds made by fulfilling statutory procedures by a notary, it can be said to be an authentic deed.

From the above understanding, it can be drawn the essence that must be fulfilled from a will that is in accordance with the mandate of the law, namely: a will is in the form of a deed which means written; Contains statements from someone while still alive; His wish after he passed away; and the statement can be revoked. The fulfillment of points (1) to point (3) then the will is legally valid so that it has legal force, and if it has legal force then it is valid evidence in the eyes of the law. Whereas point (4) is a right attached to the maker of the will, if he is still alive, he can revoke the will.

Wasat yang made by the beneficiary may also occur in deviation from existing laws. Deviation here is meant by giving a share to another person who is not an Heir who is entitled to receive an inheritance as regulated in statutory regulations (Heirs ab intestato). This is because, the law provides a limitation as a form of legal protection for the beneficiary who actually has the right to part of the inheritance of the inheritor. This is because in inheritance there are parties who are not entitled to inheritance to inherit based on wills, grants and will grants that exceed the portion that must be received by the Heirs who are entitled to receive the inheritance. For deviations that occur in the event that part of the Heirs are regulated in a law, this cannot be circumvented as already mentioned which is known as the legitime portie (absolute part). Legitimate portie can only be prosecuted if the absolute share is reduced as a result of the actions of the Heir before he dies.

According to Article 913 Burgelijk Wetboek, legitime portie is a part of inheritance that must be given to the Heirs in a straight line according to law, to which the Heir is not allowed to reduce it with a gift during life or a gift with a will. The requirements as an Heir who have the right to claim legitime portie are as follows: People who are blood relatives in a straight line, the wife or husband of the Heir is not included in this, even though Article 852a Burgerlijk Wetboek states that their inheritance rights are the same as that of children. Husband or wife is not including a straight line but including a line to the side; People who are statutory Heirs or intestines, however, not all blood relatives in a straight line have an absolute share; and They, even without regard to wills, remain Heirs by means of ab intestines.

This absolute share trumps both wills and grants ever made by the Heir resulting in a lack of absolute legitime portie. Burgelijk Wetboek's interpretation of the legitime portie of the inheritance left by the Heir, actually the inheritance is divided into two parts, namely: the available part and the absolute part. The available part is the part that can be controlled by the Heir, and can be given to anyone who

wants. While the absolute part is the part that cannot be controlled by the Heir and cannot be given to other Heirs (third parties who inherit based on a will) other than the legitimate Heirs, this has been strictly regulated in the Law, where the absolute part "must be "Owned by legitimaries, provided that if the legitimaries demand to get their rights. But to obtain an absolute share, of course, must comply with the Burgelijk Wetboek and civil procedural law in Indonesia.

The Heirs who can claim absolute or legitime portie or legitime portie (Article 913 of the Civil Code) must meet certain conditions, namely: They must be Heirs in a straight line. The straight line means a family in a straight line up (ascendent) or a family in a straight line down (decendent). So, it can be seen that the legitime portie is only given to the ascendent and decendent Heir; They must be truly called to inherit under the Act, upon the death of the Heir (ab-intestinal Heir); and they, although without regard to the testament of the Heir, are Heirs by ab-intestine.

Violation of the absolute part or the legitime portie does not result in the will become null and void by law (nietigheid), but can only be requested for its cancellation (vernietigbaarheid) simply so that the will deed violating the absolute part or the legitime portie is still considered valid until the legitime portie sues it. In the judge's decision, although the will deed is declared null and void, at the practical level, the cancellation of the will need to be filed a lawsuit for cancellation to the court. A simple request for cancellation of a will grant deed means if the legitimate person demands his rights (absolute part or legitime portie) in a will grant and do not accept the violation contained in the will, then the provisions in a will that violate its absolute portion or legitime portie cannot be enforced. After the provisions that violate the absolute portion or the legitime portie are canceled, the legitimate party gets its absolute share or legitime portie by incoring or deducting the portion given to the inheriting parties in the will.

According to Soerojo Wongsowidjojo, "incoring occurs when the absolute part or the legitime portie is offended, this incident is against the will of the Heir". This is to protect the rights of the Heirs who are entitled to the absolute portion or legitime portie. The law authorizes legitimaries to demand that a deduction of grants and testaments be deducted from those which offend the absolute part or the legitime portie.

Cutting or incoring can be divided into two types, namely as follows: first. Pseudo cutting (oneigenlijke incoring) is also called indirect cutting. This deduction is made from the part of the Heirs who are not entitled to an absolute or legitime portie and deductions from gifts made with a will such as a will grant or appointment as an Heir. The apparent deduction (oneigenlijke incoring) is divided into two, namely: The deduction of the part of the Heirs who are not entitled to the absolute portion or the legitime portie; and testament grants that have been calculated but have not been given, because of the absolute portion or legitime portie being offended, the testament grant is deducted and the amount of the deduction is equalized to cover the lack of an absolute portion or legitime portie.

Second, Eigenlijke incoring is deduction that is actually implemented, such as deductions from a given and received grant. The grantee must return an amount to cover the absolute portion or legitime portie.

Withholding (incoring) can be carried out by referring to

Article 914 of the Civil Code to Article 916 a of the Civil Code. The sequences of the *volgorde der incoring* are as follows: Deductions are made to the remaining inheritance which is not confirmed by the Heir, which is not mentioned in the will (*acquisition ab-intestato*) using the principle of balance; If it is not enough, the deficiency is deducted from the testamentally obtained acquisition, either in the form of a will (relief) grant or the appointment as an Heir (*erfstelling*). This cutting is done on a balance basis; and If the first and second deductions are not sufficient to cover the absolute portion or the *legitime portie*, then deductions will be made from the grants that have been made by the Heir while the Heir is still alive. Deductions are made not on the basis of balance, but based on the age level of the grant. This means that the deduction of the grant is carried out sequentially starting from the grant whose date is closest to the Heir at the time of death and continues until the lack of *legitime portie* is met.

In order to comply with the applicable regulations (Article 920 of the Civil Code), the judge should decide the use of *incoring* or deduction to fulfill the absolute portion or *legitimacy portie* of the legitimaries. In addition, the use of *incoring* or deduction is also considered to better fulfill the sense of justice of the parties concerned, namely the recipients of wills and legitimaries. For legitimaries, a certain portion will be obtained which is an absolute part or the *legitimacy portion* of it, while for the recipients of the will receive the remaining portion after deducting the absolute portion or *legitime portie legitimaris*. The act of cancellation is solely if a deeper examination only considers the interests of one of the parties, namely *legitimacy*.

Fulfillment of the absolute portion or legitimate portion of the absolute Heir or *legitimacy* can be done by first determining how big the absolute portion or *legitimacy portion* in question is. Based on Article 921 of the Civil Code, the absolute portion or *legitimacy portion* is calculated as follows: Calculating all grants that have been given by the Heir during his lifetime, including grants given to one of the Heirs or absolute or legitimate Heirs; The amount is added to the existing inherited assets; Then, deducted by the debts of the Heir; and From the above sum and subtraction results, the absolute portion or *legitimacy portion* of the absolute Heirs or legitimaries who demand their share is calculated.

Conclusions

The wishes of the Heir as stated in the will or the will sometimes do not pay attention to who should be the rightful Heir, other than that the amount of share that should be received by each Heir is not taken into account as stipulated in the provisions of the *Legitime Portie*. The Heirs have the right to receive an inheritance, namely the assets of the Heir in accordance with the portion determined by applicable law, if there is a will that violates the provisions of the *legitime portie*, harm the Heirs, and if the grant is proven to be detrimental to the rights of the Heirs *legitimarity* then the legitimaries can claim or claim their rights (absolute part). Thus, the testament grant deed must be null and void by law and provision in a grant or will that violates the absolute portion or the *legitimacy portie* cannot be implemented and refers to Article 920 of the Civil Code, the portion received by the recipient of a grant or will can be *incorted* or deducted to fulfill the absolute portion or *legitimacy portie legitimaris*.

References

1. Andreas Prasetyo S. Penerapan *Legitime Portie* (Bagian Mutlak) Dalam Pembagian Waris Menurut Kitab Undang-undang Hukum Perdata Studi Kasus Putusan Mahkamah Agung Reg No.148/PK/Perd/1982. Semarang: UNDIP 2010.
2. Anisituas Amanat. Membagi Warisan Berdasarkan Pasal-Pasal Hukum Perdata BW. Jakarta: Raja Grafindo Persada 2001.
3. Effendi Perangin. Hukum Waris. Jakarta: Raja Grafindo Persada 2005.
4. Effendi Perangin. Hukum Waris. Jakarta: Raja Grafindo Persada, 2008.
5. Eko H, Pembatalan Akta Hibah Wasiat Yang Dibuat Dihadapan Notaris dan Akibat Hukumnya. Jurnal Repertorium, ISSN:2355-2646, Edisi 3, 2015.
6. Hery Shietra. Akta Wasiat/Hibah Wasiat yang Melanggar Hak Mutlak Ahli Waris (*Legitime Portie*), Tetap Sah Sepanjang Tidak Terdapat Pembatalan Dari Ahli Waris Sah yang Haknya Atas Warisan Berdasarkan Hukum Berkurang Akibat Akta Tersebut 2015. (<https://hery-shietra.blogspot.com/2015/07/akta-wasiat-hibah-wasiat-yang-melanggar.html>)
7. Komar Andasasmita. Notaris III Hukum harta Perkawinan dan Waris. Jawa Barat : Ikatan Notariat Indonesia 1991.
8. Joshua L. Kedudukan Surat Wasiat (Testament) Sebagai Bukti kepemilikan yang sah menurut pasal 875 KUHPdata, Lex Privatum 2019;III(3),
9. MU. Sembiring. Beberapa Bab Penting Dalam Hukum Waris Menurut Kitab Undang-Undang Hukum Perdata, Program Pendidikan Notariat Fakultas Hukum Universitas Sumatra Utara, Medan 1989.
10. Sulih R. Penerapan *Legitime Fortie* (Bagian Mutlak) Dalam Pembagian Warisan Menurut KUHPdata. Jurnal Ilmu Hukum Legal Opinion Edisi 2015;3(3).
11. R.H. Soerojo Wongsowidjojo. Hukum Waris Perdata Barat (B.W), Diktat Cet.2, Jakarta, 1990.
12. Riven Meyaga Firdausya. Kedudukan Pelaksanaan Wasiat dalam Akta Hibah karena Wasiat (Analisis Yuridis Terhadap Pasal 112 Ayat (1) a butir 3 huruf b Peraturan Menteri Negara Agraria/Kepala Badan Pertanahan Nasional Nomor 3 Tahun 1997 Dalam Kaitannya Dengan Pasal 1813 KUHPdata) JURNAL, Kementerian Pendidikan dan Kebudayaan Program Study Magister Kenotariatan Univ. Brawijaya, Malang, 2014.
13. Sabungan S. Penerapan *Legitime Portie* (Bagian Mutlak) Dalam Pembagian Waris. Jurnal Ilmu Hukum : Fakultas Hukum Universitas Riau 2015;5(2).
14. Suparman Maman,. Hukum Waris Perdata. Jakarta: Sinar Grafika 2015.
15. Anastassia T, Tamara S, Ignasius Christian Z, Chrispinus, Novalita Eka Christy P. Pelaksanaan Hak Mutlak Ahli Waris Terhadap Surat Wasiat/Testamen Yang Menyimpang Dari Ketentuan *Legitime Portie* Burgerlijk Wetboek (BW). Jurisprudentie 2020;7(1).
16. Wayan UI. Tanggung Gugat Notaris Selaku Pejabat Umum Dalam Pembuatan Perjanjian Kredit Perbankan. DiH: Jurnal Ilmu Hukum. 2019;15(1)
17. Yurika Florin C. Tanggung Jawab Notaris Terhadap Pembuatan Akta Wasiat (Analisa Kasus Berdasarkan Keputusan Mahkamah Agung No.387 PK/Pdt/2007). Jakarta: UI 2009.