

# **The Imposition of Sanctions For Delay Reporting of A Will Deed To The Center For The Will List**

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## **ABSTRACT**

Humans from birth are destined to have property attached to themselves to be used as a means of carrying out life. These assets can be traded, donated, pledged, or even given to the heirs when he dies. A person may make a will before a notary as a general official who can record the final will of the testator and keep the will and report it to the register of the will center. The main purpose of making a will is related to the distribution of the property of the testator to the beneficiary so that there will be no disputes regarding inheritance in the future. In making a will, the notary plays a very important role from pre-making to the opening of the will before the heirs or testament. However, sometimes a notary can be negligent of the provisions of reporting each month to the list of will centers. This study examines the concept of a will more deeply, and how the notary's responsibility for negligence in registering a will with a will center register. The formulation of the problem in this legal research is the concept of a will and the role of a notary in storing and reporting to the center of the will list, the second problem formulation is the provision of sanctions against a notary who is negligent in reporting a will to the center of the will register. The conclusion in this study is that a will is a form of legal action carried out by the heir regarding the final will which in this case is assisted by a notary as a public official who is authorized to assist the process of issuing a will and keeping a will, as well as other obligations attached to reporting to list of will centers regarding the presence or absence of a will. The legal consequences for a notary who are negligent in reporting the presence or absence of a will in the central will list system, the notary must be responsible and accountable for his actions. With regard to the type of sanctions, that in PERMENKUMHAM No. 60 of 2016 does not clearly regulate what sanctions are given to a notary if he is negligent in carrying out his duties, therefore the inherent sanctions refer to the provisions of the Notary Position Act and may be subject to civil sanctions.

**Keywords:** Notary, Will, List Of Will Centers

## **1. INTRODUCTION**

Referring to Article 1 Number 1 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Positions (UUJN), Notaries are public officials authorized to make authentic deeds and have other authorities as stipulated in the regulations legislation. A deed made by a notary is also referred to as an authentic deed, which means a deed made by or before a notary according to the forms and procedures applied in the UUJN. According to Article 15 Paragraph (1) of the UUJN, a Notary is authorized to make an authentic deed regarding all acts, agreements, and stipulations required by laws and regulations, which are desired by the interested parties to be stated in an authentic deed, one of which is a will. A will deed is Article 16 Paragraph (1) letter i of UUJN requiring Notaries to make a list of deeds relating to a will according to the order in which the deed was made every month, which according to the next letter, namely letter j, the Notary is obliged to send the list of deeds to the will register center. in 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 obligation to register this will is a form of protection for the



interests of the heirs, who at any time can track the truth of the will that has been made before a notary. When the will is not registered, this can be used as a basis for the parties who suffer losses to claim reimbursement of costs, compensation, and interest from a Notary. If the notary is negligent or forgets to report the will, then referring to Article 16 Paragraph (11) UUJN, the notary is also faced with sanctions in the form of a written warning, temporary dismissal, honorable discharge, or dishonorable discharge. Based on the thoughts that have been stated above, the author is interested in conducting further studies on this issue in writing with the title "Legal Consequences and Responsibilities of Notaries for Wills Not Reported to the Central List of Wills".

## **2. RESEARCH METHODS**

The type of research in this legal research is normative legal research, which is a process to find the rule of law, legal principles, and legal doctrines in order to answer the legal issues faced (Peter Mahmud Marzuki, *Legal Research*, 2011 ). The researcher uses a normative type of research because this study aims to find coherence, namely whether there are legal rules in accordance with legal norms and are there norms in the form of orders or prohibitions in accordance with legal principles, and whether someone's actions are in accordance with legal norms or legal principles (Peter Mahmud Marzuki , *Legal Research Revised Edition*, 2014) As this research finds. In this study, the researcher used three problem approach methods, namely, the statutory approach, the conceptual approach. The statutory approach is carried out by reviewing all laws and regulations related to the legal issue being researched. The conceptual approach departs from the views and doctrines that develop in the science of law. Studying the views and doctrines in legal science, researchers will find ideas that give birth to legal understandings, legal concepts, and legal principles that are relevant to the issues at hand. In the conceptual approach, it will be possible to find the concept of responsibility attached to the position of a notary if there is negligence in reporting the will. In this study, researchers used legal sources, including:

- a. Primary legal materials are legal materials that are authoritative, meaning they have authority. Primary legal materials consist of legislation, official records or minutes in the making of legislation and judges' decisions.
- b. Secondary legal materials are all publications on law that are not official documents. Publications on law include textbooks, legal dictionaries, legal journals, and commentaries on court decisions. In this study, the secondary legal materials used include books in the field of law, papers, articles, and theses.

The formulation of the problems that will be discussed in this paper can be formulated as follows:

1. The concept of wills and the role of the notary in storing and reporting to the center of the will list
2. Giving Sanctions to Notaries who are Negligent in Reporting Wills to the Center for the Will List

### **3. RESULTS AND DISCUSSION**

#### **The concept of a will and the role of a notary in storing and reporting to the center of the will register**

Birth and death are human nature, from birth humans have natural rights inherent in humans. According to John Locke, natural rights are the right to life, property rights, and the right to freedom. With regard to the right to own is interpreted broadly as the right to own objects and be able to use them. Ownership of an object can be transferred to the heirs when a person dies. According to civil law, there are two kinds of inheritance, namely:

1. Inheritance by law or by death or *ab intestato* or without a will
2. Inheritance by testament or testament.

Making a will or *testament* is a legal act that is carried out by a person in determining what will happen to assets after death. Inheritance often raises various legal and social problems, as recently with the inheritance of the late. Vanessa Angel and Alm. Febri, which until now has not found a bright spot. Making a will is the last will of the testator before he dies. The concept of a will is a statement of will by a person regarding what is done to his property after he dies (Sajuti Talib: 2000). In Article 171 letter (f) KHI, what is meant by a will is the giving of something to another person or institution that will take effect after death (Amir Hamzah & A. Rachmad Budiono: 1994). A will or also called a testament is regulated in the second book of the Civil Code (KUHPperdata), considering that the arrangements in the second book of BW are closed, then the arrangement of wills cannot be carried out according to the wishes of the parties like the third book of BW (R. Subekti and Tjitrosoedibio: 1996). Referring to the provisions of Article 875 BW it is explained that: "As for what is called a will, it is a deed containing a statement by a person about what he wants will happen if he dies and which he can revoke during his life." Then in Article 876 BW it is explained that:

Provisions with wills regarding property can also be made in general, can also be based on general rights, and can also be based on special rights. Each such decision, whether made in the name of appointment of heirs, or under the name of a testamentary grant, or under any other name, has force according to the regulations set forth in this chapter.

According to Lumbantobing that there are 4 (four) kinds of wills including:

1. General Will (*Openbaar Testament*)



namely a will made before a notary in accordance with Article 938 BW, that someone who will leave his inheritance goes to the Notary and declares his will, then the notary makes a deed in the presence of 2 (two) witnesses. Notaries can provide legal counseling so that the making of a will does not conflict with the applicable legal regulations.

#### 2. Written Will (*Olographis*)

is a will made by a person (written by the testator himself and submitted to a notary to be kept in accordance with the provisions of Article 932-937 BW. Submission of this kind of will is witnessed by 2 (two) witnesses and set forth in the deed of deposit or called the deed of *Van depot*. The submission can be done in an open or closed manner, if the submission is closed, then if the testator dies, it must be submitted to the Balai Harta Peninggalan which will then open the will until the specified time. But before the handover is made then the notary reports in the Central List of Wills. If the testator wants to withdraw his will, then he can ask for it back to the notary who keeps it

#### 3. Secret

Will A secret will is a will made by the testator himself or can also be written by someone else but a testament must be closed and sealed and sealed the movement must be witnessed by 4 (four) witnesses in accordance with Article 940BW.

#### 4. Emergency

Wills Emergency wills are regulated in Article 946-948 BW, emergency wills are wills made in an emergency. For example soldiers who are at war, people who are on a voyage and are seriously ill and quarantined.

#### 5. Kodisil

Wills Codial wills, namely wills that contain things that must be done specifically that the heir wants after he dies, is not a transfer of property rights to assets, but arrangements regarding burial or burial or the appointment of heirs to take care of the distribution of assets. his legacy. (GHS Lumban Tobing: 1982).

In making a testament, a notary has a very important role. Based on Article 943 BW it is stated that "Every notary who keeps wills among the original documents, even in whatever form, must after the beneficiary dies, notify all interested parties. "Notaries are required to pay attention to identification cards to determine the identity of the testament maker (appearing), in order to ensure that there is no falsification of the person of the testament maker. In addition, the specific duties and roles of a notary in making a testament include:

##### 1) a notary providing input and legal counseling to testament makers

. The notary can explain the law of inheritance to the prospective testament maker before the will is made.

2) A notary can open a testament if desired by the legal parties.

Not everyone is allowed to see or know the contents of the deed, because the notary has an obligation to keep everything confidential. If the heirs wish to open a will, the notary can first ask for a certificate of heirs to avoid things that are contrary to the confidentiality of the deed.

3) Notaries are required to make a list of wills according to the order in which the deed was made every month.

4) The notary reads the testament before the audience in the presence of at least 2 witnesses. To find out whether the final will of the heir is in accordance with what was written by the notary in the testament made, the notary is obliged to read the deed before the appearer in the presence of at least 2 (two) witnesses and signed at the same time by the appearer, the witness, , and a notary.

5) Submit a testament to be opened by the Heritage Hall if it is known that the testator has died.

In connection with the testament deed which is confidential, it is the obligation of the notary to submit it to BHP for safekeeping. The Minister of Law and Human Rights of the Republic of Indonesia has stipulated the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 60 of 2016 concerning Procedures for Reporting Wills and Applications for Issuance of Electronic Will Certificates. In PERMEN there are several definitions including:

- a. List of Deeds is a Notary's report on the deed he made in relation to a Will according to the order in which the deed was made each month;
- b. Nil List is a report in which there is no Will deed made before a Notary;
- c. The List of Will Centers is the List of Will Centers of the Directorate General of General Legal Administration of the Ministry of Law and Human Rights;
- d. Will Reporting is the submission of a monthly Notary report in the form of a List of Deeds or a List of Nil or Will reports made abroad to the Register of Wills Center

In PERMENKUMHAM No. relating to a Will”, then in paragraph (2) that the Register of Deeds or the List of Zero as referred to in paragraph (1) must be reported to the Central Register of Wills. The legal consequence is that it is an inherent obligation for a notary to keep and report to the Central List of Wills regarding the presence or absence of a will every month. In carrying out their duties, the notary may neglect to report on the will, regarding the negligence of the notary in making a report will be discussed in the next chapter. From the description above, a will is a form of legal action carried out by the testator regarding the final will which in this case is assisted by a notary as a public official who is authorized in assisting the process of issuing a will and keeping a will, as well as other obligations attached to it in the form of reporting to the central register. will regarding the existence or absence of a will.

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### **Imposing Sanctions on Notaries who are Negligent in Reporting Wills to the Center for the Will List**

In the previous discussion, it is the obligation of a notary to make a report regarding the presence or absence of a will that is kept by a notary. Based on Article 3 paragraph (1) of PERMENKUMHAM No. 60 of 2016 that:

"Reporting of the Deed List or Zero List is carried out electronically through the official website of the Directorate General of General Legal Administration of the Ministry of Law and Human Rights".

Then in paragraph (2) of the article that the Reporting of the Register of Deeds or the List of Zero as referred to in paragraph (1) is submitted within a period of no later than 5 (five) days in the first week of each following month". Article 4 of PERMENKUMHAM No. 60 of 2016 states that the Reporting List of Deeds includes:

1. general wills;
2. olographic will;
3. will grant;
4. Secret or secret will; or
5. revocation of will.

The format for the report is as referred to in Article 5 (1) of the Minister of Law and Human Rights, that Reporting on the Register of Deeds is carried out by filling in the form containing:

1. identity of the testator which includes:  
full name, formerly named or alias, place and date of birth, occupation, address, identity card number ;
2. number, date and month, as well as the year the will was made;
3. type of will; and
4. repertoire number of wills.

If in that month, the notary does not keep a will, then the Nil List reporting is done by selecting the statement Nil. List of Deeds or List of Nil that have been reported by a Notary electronically must be stored in the database of the Central List of Wills. The next process described in the PERMENKUMHAM is that a Notary must keep:

- a. proof of electronic reporting on the Register of Deeds or the Zero List; and
- b. proof of payment of non-tax state revenue.

Electronic reporting evidence is then submitted to the local Notary Regional Supervisory Council every month. If things happen that are outside the will of the notary or coercive circumstances, Article 9 (1) of the PERMENKUMHAM states that in certain circumstances, a

notary may submit an electronic application for reporting the Register of Deeds and the List of Nil after the period as referred to in Article 3 paragraph (2). include:

- a. the official website of the Directorate General of General Legal Administration does not function properly based on an official announcement by the Minister or appointed official; or
- b. force majeure.

This situation can be excluded by submitting a Reporting Application by uploading an application letter addressed to the Central List of Wills accompanied by valid reasons, information from the local Indonesian Notary Association Regional Administrator, proof of payment of non-tax state revenues and submitted no later than 7 (seven) days from the date of disturbance occurs. After the process is complete, the proof of reporting is submitted to the local Notary Regional Supervisory Council. In the event that a notary is late in registering a will, the PERMENKUMHAM as referred to in Article 10 states that:

- (1) In the case of a Notary:
  - a. does not report the Register of Deeds or the List of Nil to the Central List of Wills; or
  - b. being late in submitting the Register of Deeds or List of Nil, within the period as referred to in Article 3 paragraph (2), all legal consequences arising in connection with the Willing Report shall be the responsibility of the Notary concerned.
- (2) A Notary who does not report the Register of Deeds or the List of Nil, shall be subject to sanctions in accordance with the provisions of the laws and regulations.

In the event that a notary takes action in accordance with Article 10 of the Permenkumham, he is responsible for what he does. Regarding the responsibilities of a notary, there are two types of responsibility, namely moral responsibility, ethical responsibility, and legal responsibility. Moral responsibility means that the Notary in carrying out his position must comply with the law and do not conflict with public order and decency. While ethical responsibility means that a Notary who carries out his duties must be based on a sense of responsibility for the appreciation of the nobility, dignity of his position, values, and ethics.

Legal responsibility can be seen from two aspects, namely the formal and material aspects. Formal responsibility means that the appearers are those who come before a Notary to make a deed and are not represented. While material responsibility means the obligation of a Notary if he knows someone has died, he must notify or report the will to the Central List of Wills (Mireille Titisari Miarti Prastuti: 2006). As described in the first discussion, a Notary has an obligation to prepare and report a List of Deeds and a List of No Wills to the Central List of Wills based on Article 16 Paragraph (1) letters i and j of the UUJN. If this obligation is not carried out by a Notary, then based on UUJN, there are several sanctions that can be given to a Notary if he neglects this



obligation, namely in the form of administrative sanctions and civil sanctions. Based on Article 16 Paragraph (11) UUJN, this administrative sanction is in the form of:

- a) Written warning;
- b) Temporary suspension;
- c) Dismissal with honor; and
- d) Disrespectful dismissal.

The sanction was imposed by the Central Honorary Council (DKP) (I Gusti Agung Oka Diatmika: 2016). The imposition of sanctions is based on the quality and quantity of violations committed by the Notary. The decision made by the Honorary Council in the form of a warning cannot be appealed. However, the decision of the Honorary Council or Regional Honorary Council (DKW) in the form of temporary dismissal and dismissal with or without respect, can be appealed to DKP. DKP decisions in the form of temporary dismissal and dismissal with or without honor can also be appealed to Congress. In addition, DKP can provide recommendations accompanied by a proposal for the dismissal of a Notary to the Ministry of Law and Human Rights (Annisa et al: 2019). Then the violation of the provisions of Article 16 Paragraph (1) letter c UUJN can be a reason for the party who suffers a loss to demand reimbursement of costs, compensation and interest to a Notary. Thus, it is clear that a Notary who does not carry out his obligations as stated in Article 16 Paragraph (1) letters i and j of the UUJN can be sued for compensation for the losses suffered by the Plaintiff based on Article 1365 of the KUHPer jo. Article 16 Paragraph (11) UUJN. This type of responsibility is known as civil sanctions, where Article 1365 of the Criminal Code stipulates that "every act that violates the law, which causes harm to another person, obliges the person who caused the loss to be wrong, to compensate for the loss". In order to be sued based on Article 1365 BW, it is necessary to pay attention to whether all the elements in Article 1365 BW are fulfilled. These elements are as follows:

- a. The existence of an act carried out by a Notary, the intended act is either active (doing) or passive (not doing).
- b. The act violates the laws and regulations, decency and public order.
- c. There is a loss suffered by a third party (heir)
- d. These actions and losses have a causal relationship.

From the description above, it can be concluded that the PERMENKUMHAM does not clearly regulate what sanctions are given to a notary if he is negligent in carrying out his duties to report to the list of will centers regarding the presence or absence of a will every month, therefore the attached sanctions refer to the provisions of the Act. Notary position and civil sanctions.

#### **4. CONCLUSIONS**





That a will is a form of legal action carried out by the testator regarding the final will which in this case is assisted by a notary as a public official who is authorized in assisting the process of issuing a will and keeping a will, as well as other obligations attached in the form of reporting to the list of will centers regarding the presence or absence of a will. The legal consequences for a notary who are negligent in reporting the presence or absence of a will in the central will list system, the notary must be responsible and accountable for his actions. With regard to the type of sanctions, that in PERMENKUMHAM No. 60 of 2016 does not clearly regulate what sanctions are given to a notary if he is negligent in carrying out his duties, therefore the inherent sanctions refer to the provisions of the Notary Position Act and may be subject to civil sanctions. .

### **Suggestions**

1. In making a will, a notary must pay attention to the identity of the will maker to avoid elements of the crime of forgery and disputes in the future. Before making a will, it is recommended that the notary conduct legal counseling regarding the applicable law regarding property in inheritance according to the applicable law, and then explain in detail how the process of storing and there are legal steps regarding reporting along with the reporting function in the central will list system.
2. Notaries are required to make reminder notes every month in wills reporting, preferably at the end of each month to reduce the risk of forgetting or being late in making a will report.

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