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# Legal Protection and Notary Responsibilities: A Review of the Deed of Testament in the Context of Civil Cases

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**Abstract**

A testament deed is an authentic deed that has perfect proof. Testament is a unilateral will, so it does not require agreement with other parties, as a partij deed, the Notary only formulates the wishes of the Testator, because it involves property it often causes problems so that it is possible for a lawsuit against the testament deed. Analysing the decision of the Yogyakarta District Court No. 58/PDT.G/2011/PN.YK.Problem formulation: Legal protection for Notary related to the deed of will in civil case connected with Law No. 2 Year 2014, and Notary's responsibility towards the deed of will in civil case. The purpose of the research: to know the legal protection for Notary related to the deed of will in civil case in relation with Law No. 2 Year 2014. To find out the responsibilities of the Notary towards the testamentary deed in civil cases. The research method used in this research uses a normative juridical approach with additional interviews. The normative juridical approach is sourced from data collection obtained from library materials and then analysed by qualitative analysis method. The conclusion of the research is that the Notary is only responsible for the formal form of the deed he made, and is not responsible for the content of the deed. The protection of the Notary is that the will deed is a unilateral act, does not need the consent of other parties, as a partij deed, the Notary only formulates the wishes of the Testator, not as a party to the deed (Articles 52, 53 UUJN), besides that it is based on Article 66 of the UUJN which previously had to be approved by the MPD, currently replaced by the Notary Honor Council. Notaries are protected if they have fulfilled the requirements that must be met in making a deed of will. The author suggests that in making a deed, it is necessary to be careful, and adhere to the rules of the Notary Office. In addition, the Notary needs to provide information related to the will deed to the maker of the will and the party concerned. The government is expected to form regulations governing the protection of Notaries.

**Keywords: Legal Protection, Responsibility, Notary, Testament Deed**

## Introduction

Laws exist to regulate people's lives, providing certainty for every

citizen. The development of law coincides with the development of human life patterns which always changes and increases from time to time.[1] So is the case with the regulations governing the office of Notary, the development of society as a user of Notary services is also growing, besides that the problems that arise are also increasingly complex.

Initially, Law of the Republic of Indonesia No. 30 of 2004 regulating the Office of Notary (hereinafter abbreviated as UUJN) was formed, with the intention of replacing the provisions of the *Reglement of Het Notaris Ambt in Indonesia* (S.1860 No. 3) concerning the Regulation of the Office of Notary (hereinafter referred to as PJN) which was no longer in accordance with legal developments and community needs. Over time, it turned out that UUJN was deemed necessary to make changes in certain points so that Law No. 2 of 2014 was formed as an improvement to Law No. 30 of 2004 which was promulgated on 15 January 2014. It is expected to provide legal protection, both to the public and to the Notary itself and is also expected to be better than the legislation it replaces. [2]

The position of Notary exists with the intention to assist and serve people who need written evidence that is authentic regarding circumstances, events or legal actions. The position of Notary has become part of the legal needs of the Indonesian people, useful for ensuring certainty, order, and legal protection needed as authentic written evidence. A position that serves the public is not an easy position, but there are risks that must be faced.[3]

Based on the new Notary Position Law No. 2 Year 2014, Article 1 point 1:

> "Notary is a public official authorised to make authentic deeds and has other powers as referred to in this law or a based on other laws."[4]

Furthermore, the definition of an authentic deed is contained in Article 1868 of the Civil Code which states that:

> "An authentic deed is a deed which, in the form prescribed by law, is made by or before public servants authorised to do so in the place where it is made."[5]

Therefore, the role and duties of a Notary are very important, namely as an authentic deed maker. An authentic deed is a product of a Notary, where

[1] Ahmad Muhtar Syarofi, "Kontribusi Hukum Terhadap Perkembangan Perekonomian Nasional Indonesia," *Iqtishodia: Jurnal Ekonomi Syariah* 1, no. 2 (2016): 57–80.

[2] Bagus Gede Ardiartha Prabawa, "Analisis Yuridis Tentang Hak Ingkar Notaris Dalam Hal Pemeriksaan Menurut Undang-Undang Jabatan Notaris Dan Kode Etik Notaris," *Acta Comitas: Jurnal Hukum Kenotariatan* 2, no. 1 (2017): 98–110.

[3] Valentine Phebe Mowoka, "Pelaksanaan Tanggung Jawab Notaris Terhadap Akta Yang Dibuatnya," *Lex Et Societatis* 2, no. 4 (2014).

[4] The New Notary Law No. 2 Year 2014, Article 1 point 1

[5] Article 1868 of the Civil Code

the deed is the strongest and fullest evidence and has an important role in every legal relationship in the life of society. Notary is the only public official authorised to make authentic deeds, as long as the making of certain authentic deeds is not reserved for other public officials. In Article 15 paragraph (1) of Law No. 2 of 2014, related to the authority of Notary are:

> "Notaries are authorised to make authentic Deeds concerning all deeds, agreements, and stipulations required by laws and regulations and/or desired by those concerned to be stated in an authentic Deed, guarantee the certainty of the date of making the Deed, keep the Deed, provide a grosse, copy and quotation of the Deed, all insofar as the making of the Deed is not also assigned or excluded to other officials or other persons stipulated by law".[6]

In addition to those listed in Article 15 of the law, Notary is also authorised to make a testamentary deed. The making of a testamentary deed can be done in the presence of a Notary, as stated in Article 939 of the Civil Code, which states that the Notary must write or order to write the will of the testator in clear words according to what is conveyed by the testator to him.

In relation to a deed of will which is a deed of partij, the duty of the Notary is to formulate the wishes of the confronter into an authentic deed, so the Notary is not responsible for the material aspects because the Notary is not a party to the deed. Based on Articles 52 and 53 of the UUJN in relation to the making of deeds, Notaries are prohibited from making deeds for themselves or taking advantage of the deed. Authentic deeds have perfect evidentiary power, if someone states that the deed is not true, they are obliged to prove it.[7]

A Notary is usually regarded as an official from whom one can obtain reliable advice. Everything he writes down and determines (constatir) is true, he is a powerful document maker in a legal process.[8] What a Notary has put into a deed is considered true, and has the force of law. Therefore, the Notary as a public official has a great responsibility, so that in making a deed, an attitude of caution is needed.

The position of Notary is not far from legal actions carried out by the community, Notary will be useless if the community does not need it. The position that serves the community creates a legal relationship between the Notary and the community as the face or the parties. In this case, the Notary confirms what is the will of the parties into an authentic deed in accordance with the authority and in accordance with the laws and regulations. A person

[6] Article 15 Paragraph (1) of Law No 2 Year 2014

[7] Rio Utomo Hably and Gunawan Djajaputra, "Kewenangan Notaris Dalam Hal Membuat Akta Partij (Contoh Kasus Putusan Mahkamah Agung Nomor: 1003 K/PID/2015)," *Jurnal Hukum Adigama* 2, no. 2 (2019): 482–507.

[8] Tan Thong Kie, *Buku I Studi Notariat Serba-Serbi Praktek Notaris*, (Jakarta: PT Ichtiar Baru Van Hoeve, 2000), pp. 157

who is appointed as a Notary is not for his own interests, but also for the interests of the community he serves. This makes Notary a position of trust that must be legally, morally, and ethically responsible. A profession that deals with the public is not easy, because it is possible that a Notary will intersect with the realm of law. [9]

As an Indonesian nation based on law, in legal relations, legal certainty is needed, this can be seen in the consideration of the new Notary Position Law (Law No.2 of 2014), namely that the Republic of Indonesia as a state of law based on Pancasila and the 1945 Constitution of the Republic of Indonesia guarantees certainty, order, and legal protection for every citizen; ensuring certainty, order, and legal protection requires written evidence that is authentic regarding legal acts, agreements, stipulations, and events made before or by authorised officials. Notary as a public official who carries out the profession in providing legal services to the public, needs to get protection and guarantees in order to achieve legal certainty. The legal relationship between the Notary and the confronters is a unique legal relationship, with character:

a. It is not necessary to make an agreement either oral or written in the form of granting power of attorney to make deeds or to perform certain works.
b. Those who come before a Notary, assuming that the Notary has the ability to help formulate the wishes of the parties in writing in the form of an authentic deed.
c. The final result of the Notary's action based on the Notary's authority that comes from the request or desire of the parties themselves.
d. The notary is not a party to the deed in question. [10]

A person can become a witness, suspect or defendant can arise, for various reasons, it can be intentional or unintentional, but under any pretext, if proven guilty, the Notary has violated his own oath. [11]

In practice, the Notary is often placed as a defendant, related to the deed he made. In fact, it is not uncommon for a party to challenge the content of the deed, as explained above, that the Notary is not a party to the deed, the Notary only formulates the wishes of the confronter. Notaries can be sued civilly if they make mistakes in the formality of the deed. Notary as a public official in carrying out his profession in the field of legal services to the public is covered by law, in the Notary Position Law, Notary is a certain position that

[9] Kartika Sasi Wahyuningrum and Sahuri Lasmadi, "Perlindungan Hukum Terhadap Notaris Dalam Menjalankan Tugas Dan Fungsi Sebagai Pejabat Umum," *Recital Review* 4, no. 2 (2022): 279–98.

[10] Habib Adjie, *Hukum Notaris Indonesia Tafsir Tematik terhadap UU No. 30 Tahun 2004 tentang Jabatan Notaris*, (Bandung: Refika Aditama, 2011), pp. 19

[11] Sudikno Mertokusumo, *Hukum Acara Perdata Indonesia*, (Yogyakarta: Lyberty, 1979), pp. 37

carries out the profession in legal services to the public needs to get protection and guarantees, in order to achieve legal certainty.

According to Habib Adjie, it relates to protection for the benefit of the judicial process, investigators, public prosecutors, or judges: Notaries used to take refuge in the authority of the MPD as stated in Article 66 paragraph (1), but after the Decision of the Constitutional Court of the Republic of Indonesia (MKRI) with Number: 49/PUU-X/2012 decided to negate or terminate the authority of the Regional Supervisory Council (MPD) stated in Article 66 paragraph (1) of the UUJN, it seems that there is no legal protection for Notaries in carrying out their official duties. MPD no longer has any authority related to Article 66 paragraph (1) of the UUJN. Therefore, if the Investigator, Public Prosecutor and Judge will implement the provisions mentioned in Article 66 of the UUJN against the Notary, then the Notary must deal directly with the Investigator, Public Prosecutor and Judge.[12]

The non-authority of the MPD has been formulated into Law No. 2 of 2014, its authority is replaced with the Notary Honour Council. Discussing the definition of a will or testament is contained in Article 875 of the Civil Code, which contains a will or testament is a deed containing a person's statement about what he wants to happen after he dies, and which he can revoke again.[13]

In Hartono Soerjopratiknjo's book: *Ontwerp Meijers* (The New Dutch Law Plan) the testament is formulated: *"een uiterste wilsbeschikking is een eenzijdige verklaring van hetgeen ieamand wil dat na zijn dood met zijn vermogen zal geschienden*". This means that the last will is a unilateral statement of what is desired to happen with a person's property after he dies.[14]

In relation to the legal protection of Notary and Notary's responsibility on the deed of testament made before him in civil case, it is analysed in the decision of Yogyakarta District Court No. 58/PDT.G/2011/PN.YK, in the decision the plaintiff I (sibling of the testator) and plaintiff II (nephew of the testator) filed a lawsuit on tort and will-breaking against the defendants: defendant I (nephew of the testator as the beneficiary of the will), defendant II (Notary). In the decision, the Notary was sued for a will made before him, the will was made by the testator who was unmarried and had no blood relatives in the line up or down. The will was deemed invalid because, according to the plaintiffs, it was made in a state of illness and there was a conspiracy by the defendants. The contents of the will granted the property to the first defendant. Based on the above description, the problems in this article can be formulated as follows:

[12] Habib Adjie, Makalah: *Memahami Kembali: Hak dan Kewajiban Notaris*, p. 4

[13] Ria Trisnomurti, "Tugas Dan Fungsi Majelis Pengawas Daerah Dalam Menyelenggarakan Pengawasan, Pemeriksaan, Dan Penjatuhan Sanksi Terhadap Notaris," *NOTARIIL Jurnal Kenotariatan* 2, no. 2 (2017): 127–40.

[14] Hartono Soerjopratiknjo, *Hukum Waris Testamenter,* (Yogyakarta: Andi Offset, 1984), pp. 6

How is the legal protection for notaries related to the deed of testament in civil cases in relation to Law No. 2 of 2014? How is the responsibility of the Notary towards the deed of testament in civil cases?

## Research Methods

The research method used in this research uses a normative juridical approach[15] with additional interviews. The normative juridical approach is sourced from data collection obtained from library materials and then analysed with qualitative analysis methods.[16] The normative juridical approach is because the research starts from using legal methods, especially in terms of the Notary Position Regulations, Law Number 30 of 2004 concerning the Notary Position and Law Number 2 of 2014 concerning the new Notary Position, the Civil Code. In writing this article, the author can analyse and compile the data that has been collected, to be able to draw conclusions and provide an overview of the legal protection and responsibilities of Notaries related to testamentary deeds in civil cases. Data collection is done by means of: Literature Study Searching for data related to research in regulations, books, case files, documents or other writings. [17]

## Overview of Notaries

In accordance with Article 1 of the Notary Position Regulation Ord. Stbl. 1860 Number 3 (hereinafter referred to as PJN), it states that:

> "Notary is a public official who is solely authorised to make authentic deeds concerning all deeds, agreements and stipulations required by a general regulation or by those concerned to be stated in an authentic deed, guarantee the certainty of the date, keep the deed and provide a grosse, copy and citation, all insofar as the deed by a general regulation is not also assigned or excluded to another official or person".[18]

In addition, the definition of Notary is also contained in Article 1 number 1 of Law No. 2 of 2014 mentioned above. Discussing the authority of a Notary listed in Article 15, the main thing is to make authentic deeds, including making testamentary deeds regulated in the Civil Code. As an official who is authorised to serve the public in relation to the making of authentic deeds, has a great responsibility in addition to maintaining trust, there is also a great risk for the deed he made, it is possible to be sued over it. Notary is not responsible for

[15] Zulfi Diane Zaini, "Implementasi Pendekatan Yuridis Normatif Dan Pendekatan Normatif Sosiologis Dalam Penelitian Ilmu Hukum," *Pranata Hukum* 6, no. 2 (2011).

[16] Meray Hendrik Mezak, "Jenis, Metode Dan Pendekatan Dalam Penelitian Hukum," 2006.

[17] M Jogiyanto Hartono, *Metoda Pengumpulan Dan Teknik Analisis Data* (Penerbit Andi, 2018).

[18] Article 1 of the Regulation on the Office of Notary Ord. Stbl. 1860 Number 3

negligence and errors in the content of the deed made before him, but the Notary is only responsible for the formal form of the authentic deed as required by law. Notaries as public officials in carrying out their profession are covered by law, in laws related to the office of Notary, Notaries get protection and guarantees, in order to achieve legal certainty.[19]

**General Provisions on Deed of Testament and Grant of Testament**

The definition of a will is contained in Article 875 of the Civil Code, which has been mentioned in the background of the problem. A testament is an authentic deed that has perfect evidentiary power, and a deed made unilaterally. If the provisions of the article are examined further, it will be found that what is meant by testament according to Article 875 of the Civil Code is:

1. A letter (deed) that is one-sided
2. Contains a statement of what the author wishes to happen after his death.
3. The letter can be revoked[20]

In general, there are four types of wills regulated in the Civil Code, namely: Secret *Testament* (*Geheim*) Article 940, Public *Testament* (*Openbaar Testament*) Article 938, 939, Self-written *Testament* (Olografis) Article 932, Emergency *Testament, Article* 946, 947, and 948 (no longer used).[21]

Testamentary deeds without leaving blood relatives in the line up and down, regulated in the Civil Code Article 913 which does not apply laterally. Article 917 relates to a will that may cover all of the estate. Wasiat seen from the contents can be divided into: Wasiat (testamentary bequest), Legaat (testamentary bequest) Legaat (testamentary bequest) is regulated in Article 957 of the Civil Code. [22]

There are various types of notary deeds: Partij Deed/ made in the presence of a Notary and Relaas Deed/ made by a Notary. A testament deed is an authentic deed, as a partij deed. A deed made in the presence of a Notary, in this case the Notary formulates what is the last wish of the Heir, not related to the making of the contents of the deed.[23]

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[19] Nawaaf Abdullah, "Kedudukan Dan Kewenangan Notaris Dalam Membuat Akta Otentik," *Jurnal Akta* 4, no. 4 (2017): 655–64.

[20] Liliana Tedjosaputro, *Hukum Waris menurut Kitab Undang-undang Hukum Perdata (BW)*, (Semarang: Aneka Ilmu, 2006), pp. 88

[21] Nur Aisyah, "Wasiat dalam Pandangan Hukum Islam Dan BW," *El-Iqthisady: Jurnal Hukum Ekonomi Syariah*, 2019.

[22] Achmad Jarchosi, "Pelaksanaan Wasiat Wajibah," *ADHKI: Journal of Islamic Family Law* 2, no. 1 (2020): 77–90.

[23] "Jenis-Jenis Akta Yang Dibuat Oleh Notaris, accessed April 7, 2024, https://www.hukumonline.com/klinik/a/akta-notaris-cl1996/.

**Authority of Notary in Making Authentic Deed**

Notaries have several kinds of authority that can be qualified into three types, namely:[24] General/main authority, specific authority, and other authority. Consecutively based on paragraph (1), (2), and (3). The main authority is to make authentic deeds. Regarding all acts, agreements and provisions required by laws and regulations and / or desired by those concerned to be stated in an authentic deed, guaranteeing the certainty of the date of making the deed, keeping the deed, providing a grosse, copy and quotation of the deed, all of which are as long as the making of the deed, the certainty of the not also assigned or excluded to other officials or other people stipulated by law. [25]

> If we examine the last part of Article 15 paragraph (1) "...as long as the making of the deeds is not also assigned or excluded to other officials or other persons stipulated by law". The law has confirmed that there are no other public officials other than Notary, because if there were other public officials, the word public official would have been included in the sentence. Even though the making of authentic deeds is the authority of the Notary, the words "...guarantee the certainty of the date of making the deed, keep the deed, provide the grosse, copy and quotation of the deed...." shows how important this authority is.[26]

Notary authority can be divided into 4 things, namely: A) Notary as a public official, must be authorised as far as the deed made is concerned. This needs to be emphasised, because not every public official can make all deeds, but a public official can only make deeds of himself, his wife or husband, blood relatives or cousins of the Notary in a straight line, without limitation of degree and in a sideways line up to the third degree with the Notary or the parties.[27] B) Notaries must be authorised as far as the place where the deed is made, for each Notary is determined by his jurisdiction (area of office) and only within the area determined for him is he authorised to make authentic deeds. Deeds made outside his area of office are invalid. Article 18 of the UUJN stipulates that the Notary has a domicile in the Regency or City, and the Notary has an office area covering the entire provincial territory of his domicile. C) The Notary must be authorised as far as the time of making the deed is concerned; the Notary may not make a deed while he is still on leave or dismissed from his office, nor may the Notary make a deed before he assumes his office (before

[24] Adrian Djuani, Paper: *Peran dan Kewenangan Notaris sebagai Pejabat Umum dalam Membuat Akta Autentik*, 2013, p. 10

[25] Abdullah, "Kedudukan Dan Kewenangan Notaris Dalam Membuat Akta Otentik."

[26] Article 15 Paragraph (1) of UUJN

[27] Rizka Nurliyantika et al., "Studi Komparasi Tugas Dan Wewenang Notaris Di Indonesia Dan Malaysia," *Repertorium: Jurnal Ilmiah Hukum Kenotariatan* 11, no. 2 (2022): 196–207.

taking his oath).[28]

So from the explanation above, that the main authority and work of Notaries is in terms of making authentic deeds, whether made in the presence of or by Notaries. A Notary has duties and responsibilities in carrying out his profession, the main task of a Notary is to make authentic deeds as stipulated in Article 1868 of the Civil Code.

**Overview of the Authentic Deed**

The authority of a Notary regarding the making of authentic deeds is based on Article 1 point 1 of the old and new Notary Position Law, which reads: "A notary is a public official authorised to make authentic deeds and has other authorities..." . Article 1 item 7 of UUJN states that the definition of a notarial deed is an authentic deed made by or before a Notary according to the form and procedure stipulated in this Law. Based on this definition, it can be concluded about the classification of authentic deeds, namely: deeds made by public officials, and authentic deeds made before public officials.[29]

Theoretically, according to Sudikno Mertokusumo, what is meant by an authentic deed is: "a letter or deed that from the beginning was deliberately officially made for proof. Since the beginning intentionally means that from the beginning of the making of the letter the purpose is to prove in the future if a dispute occurs." [30] According to Soepomo, an authentic deed is: A letter made by or before a public official who has the authority to make such a letter, with the intention of making the letter as evidence. "Meanwhile, in Article 101 letter (a) of Law No. 5 of 1986 concerning State Administrative Courts, it is stated that an authentic deed is a letter made by or before a public official who, according to the laws and regulations, is authorised to make such a letter, with the intention of being used as evidence of the events or legal events contained therein. [31]

The authentic deed has 3 kinds of evidentiary power, namely

1. Outward evidentiary force *(uitwendige bewijskracht) :*
   This external evidentiary power is intended as the ability of the deed to prove itself as an authentic deed.
2. Formal evidentiary power *(formale bewijskracht)*:

[28] Jozan Jozan Adolf and Widhi Handoko, "Eksistensi Wewenang Notaris Dalam Pembuatan Akta Bidang Pertanahan," *Notarius* 13, no. 1 (2020): 181–92.

[29] Paramaningrat Manuaba et al., "Prinsip Kehati-Hatian Notaris Dalam Membuat Akta Autentik" (Udayana University, 2018).

[30] Sudikno Mertokusumo, *Hukum Acara Perdata Indonesia*, p. 143

[31] Soepomo, *Hukum Acara Perdata Pengadilan Negeri*, (Jakarta: Pradnya Paramita), 2005, p. 76.

With this formal evidentiary power to prove the truth and certainty of what is heard, seen, and also done by the Notary himself as a public official in carrying out his position.

3. Material strength of proof *(materiele bewijskracht) :*
   It is valid evidence against the parties who make the deed or those who get the right and applies generally, unless there is proof to the contrary *(tegenbewijs)*, information or statements set out in the deed or party information given before the Notary and the parties, if there are allegations of falsity or forgery in the authentic deed, then the proof (submission of opposing evidence) is placed on who alleges the falsity of the data. ...:[32]

**Terms of an Authentic Deed**

An authentic deed is regulated in Article 1868 of the Civil Code, a deed is called an authentic deed if it fulfils the following conditions:

a. Must be in legal form or prescribed by law;[33]
b. It is made in the presence of or by a public official. In the presence indicates that the deed is made at the request of a person or party, and a deed made in such a way is called a party deed (*partij akte*). The word "by" indicates that the public official makes a deed because of an event, examination, decision and so on. The deed is called a *relaas* deed or an official deed.[34]
c. The official must be authorised for that purpose in the place where the deed is made. Where a Notary has a domicile in a regency or city, and the Notary has an area of office covering the entire provincial territory of his domicile.[35]

In a deed made by a Notary, every word made in the deed must be guaranteed authenticity, so in the process of making and fulfilling the requirements for making a deed requires an adequate level of accuracy. If the accuracy is ignored, then the possibility of factors that eliminate the authenticity of the deed made is higher.[36]

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[32] R. Subekti, *Hukum Acara Perdata*, (Bandung: Bina Cipta, 1989), pp 93-94.

[33] " Akta Autentik: Pengertian, Karakteristik Dan Contohnya," accessed April 7, 2024, https://www.idntimes.com/life/education/kiki-amalia-6/akta-autentik.

[34] "Notary Deed as Authentic Deed," accessed April 7, 2024, https://www.hukumonline.com/klinik/a/akta-notaris-sebagai-akta-otentik-lt550c0a7450a04/.

[35] "Material and Formal Requirements for Notary Deed, What Are They?" accessed April 7, 2024, https://www.hukumonline.com/klinik/a/syarat-materiil-dan-formil-akta-notaris--apa-saja-lt601406afbaaa9/.

[36] "These are the formal and material requirements for an authentic deed," accessed April 7, 2024, https://blog.justika.com/dokumen-bisnis/syarat-formil-dan-syarat-materiil-akta-otentik/.

**Type of Notarial Deed**

To note, that until now there are 2 (two) types of Notary deeds, namely:[37]

a. Akta Partij (*Partij Acte*) or Party Deed, which is a deed made in the presence of a Notary, meaning that the deed is made based on the information or actions of the party facing the Notary, and the information or action is to be statirised by the Notary to make a deed, for example a deed of lease.
b. Akta Relaas or Akta Pejabat (*Ambelijke Acte*), which is a deed made by a Notary as a public official that contains an authentic description of all events or occurrences seen, experienced, and witnessed by the Notary himself, for example the Minutes of the GMS.[38]

The difference between akta partij and relaas according to Victor M. Situmorang and Cormentya Sitanggang, are:

1. The deed of relaas is made by the official, while the deed of the parties before the official, or the parties ask the official for help to make the deed they want.
2. In a deed of parties, the deed official does not take the initiative at all, whereas in a deed of relaas, the deed official sometimes takes the initiative to make the deed.
3. A deed of parties must be signed by the parties at the risk of losing its authenticity, whereas such a deed of relaas signature is not mandatory.
4. The deed of the parties contains the information desired by the parties who make or order to make the deed, while the deed of relaas contains written information from the official who makes the deed itself.
5. The correctness of the contents of the deed of relaas cannot be contested unless the deed alleging that the deed is fake, while the correctness of the contents of the deed of the parties can be contested without alleging the falsity of the deed. [39]

The above distinction is very important in relation to proving the opposite of the contents of the deed, thus the truth of the contents of the official deed or deed of relaas cannot be challenged, except by alleging that the deed is false, while in the deed of partij or deed of the truth party, the contents of the deed of partij can be challenged without alleging its falsity by stating that the information of the party is not true.

According to Liliana Tedjosaputro: Notary can also be said to be one of the law enforcers, because the Notary is authorised to make written

[37] Herry Susanto, *Peranan Notaris dalam Menciptakan Kepatutan dalam Kontrak*, (Yogyakarta, FH UII Press, 2010), pp. 44

[38] "Types of Deeds Made by Notaries."

[39] Victor M. Situmorang and Cormentya Sitanggang, *Grosse Akta dalam Pembuktian dan Eksekoria*l, (Jakarta: Rineka Cipta, 1993), pp 30-31.

evidence that has evidentiary power. Legal experts are of the opinion that a notarial deed can be accepted in court as absolute evidence of its contents, but even so there can be a denial with contrary evidence by witnesses who can prove that what is described by the Notary in his deed is not true. [40]

A testament deed is an authentic deed made by a Notary, including a deed of partij. A deed made before a Notary means that the deed is made based on the information or action of the party appearing before the Notary, and the information or action is to be statirised by the Notary to make a deed.[41]

**Overview of Testament**

Applicability and Definition of a Will Regarding who can make a testament, namely:

a. People of European Descent.
b. People of Chinese descent
c. other foreign Eastern
d. A class of people who are subject in whole or in part to Western Civil Law.[42]

In Article 4 of *Staatblad* 1924-556 it is found that persons of such descent may only make a will in the form of a general will, except for the matters in Articles 946, 947 and 948.[43] The definition of a will is contained in Article 875 of the Civil Code: "a deed containing a statement of a person about what he wishes to happen after he dies, and which can be revoked by him." A will is made before the testator dies and executed after the testator dies. Usually the inheritance is given to heirs or other people who deviate from the provisions of the law or distribution according to the law. Either without reason or for any reason, the testator can revoke the will that he has made. This is because a will is a unilateral wish or statement that does not require the consent of other parties, so that at any time the will can be withdrawn by the maker.

**Types of Testaments**

According to its content, the will (*testament*) is classified into 2 (two) types, namely:

a. A will (*testament*) that contains "*erfstelling*" or a will for the

[40] Liliana, Tedjosaputro, *Mal Praktek Notaris Dalam Hukum Pidana,* (Semarang: CV. Agung, 1991), pp. 4

[41] Mudzakirah Al Mulia, Anwar Borahima, and Winner Sitorus, "Akibat Hukum Akta Wasiat Yang Tidak Dilaporkan Kepada Daftar Pusat Wasiat Oleh Notaris," *Justisi Universitas Muhammadiyah Sorong* 8, no. 1 (2022).

[42] Muhammad Fhadel Usman, "Pembuatan Surat Wasiat Dalam Perencanaan Waris Menurut Kitab Undang-Undang Hukum Perdata," *Lex Privatum* 6, No. 5 (2018).

[43] Mulyadi, *Hukum Waris dengan adanya Surat Wasiat,* (Semarang: Diponegoro University Publishing Board, 2011), p. 2

appointment of inheritance. As stated in the Criminal Code rules that: "A will, by which the testator, to one or more persons, gives the property that he will leave behind when he dies, either wholly or partially, such as, for example, half, one-third."[44] From this limitation, it can be concluded that an *erfstelling is* given on a general basis, meaning that a gift covers the rights (assets) and obligations (liabilities) of the testator, not necessarily covering the entire inheritance, as long as the appointment covers a portion that is proportional to the inheritance. And the person who gets the *erfstelling is* really an heir.

b. A will (*testament*) containing a testamentary bequest or *legaat*. What is meant by testamentary bequest is a special testamentary stipulation, by which the testator to one or more people gives some of his goods of a certain type, for example, all his movable or immovable goods, or gives the right to use the results of all or part of his estate, in accordance with Article 957 of the Civil Code. It can be concluded that a testamentary bequest or *legaat is* given with a special right base, meaning that the goods that are bequeathed are explicitly and clearly mentioned, because it is required to designate certain goods or all goods of a certain type. The *legatee* (the person who receives the testamentary bequest) receives his legatee with a special title so that he only receives certain assets, and he does not bear the liabilities. A testamentary bequest is the same as an ordinary bequest, but one important thing that is different is that the grant is made when the grantor is still alive. Testamentary bequests only take effect when the grantor has passed away (Article 973 of the Civil Code).[45]

**Elements of a will (Testament)**

There are four elements of a will (testament), namely:

a. A will (*testament*) is a "deed". Deed refers to the requirement that the will (*testament*) must be in the form of a writing or something written. A will (*testament*) can be made either by a deed under hand or by an authentic deed. However, given that a will (*testament*) has far-reaching consequences and only takes effect after the testator dies, a will (*testament)* is bound by strict conditions. [46]
b. A will (*testament*) contains a "declaration of will", which means it is a unilateral legal act. A unilateral legal act is a statement of the will of one person that is sufficient to give rise to the desired legal effect.

[44] Article 954 of the Civil Code

[45] Irma Devita Purnamasari, *Kiat-Kiat Cerdas, Mudah dan Bijak Memahami Masalah Hukum Waris*, (Bandung: Khaifa PT Mizan Pustaka, 2012), pp. 78

[46] J. Satrio, *Hukum Waris*, (Bandung: Citra Aditya Bakti, 1st print, 1990), p.165

Thus, a will (*testament*) is not an agreement because an agreement requires an agreement between two parties, which means there must be at least two mutually agreed wills. However, a will (*testament*) gives rise to an obligation, and therefore the provisions regarding obligation apply to the testament, to the extent not specifically provided otherwise.

c. A will (*testament*) contains "what will happen after he dies." This means that the will (*testament*) only takes effect if the maker of the will (*testament*) has passed away. That is why a will (*testament*) is often called a last will and testament because after the death of the *testator,* the will cannot be changed anymore.
d. A will (*testament*) is "revocable." This is the most important element because it is the requirement that is generally used to determine whether a legal act must be made in the form of a *testament acte* or whether another form is sufficient.[47]

**Legal Actions / Een*'zijdige Rechtshandelingen***

Legal acts are all human actions that are intentionally carried out by a person to give rise to rights and obligations, consisting of:

1. Unilateral legal action is a legal action carried out by one party only but gives rise to rights and obligations on one party as well. For example: making a will (Article 875 of the Civil Code), granting an object (Article 1666 of the Civil Code).
2. Two-party legal actions are legal actions carried out by two parties that give rise to rights and obligations for the two parties. For example: sale and purchase agreement (Article 1457 of the Civil Code), lease agreement (Article 1548 of the Civil Code)[48]

Definition of a one-sided public legal act: "a legal act whose occurrence is determined by only one party or one party only without requiring the consent of the other party or the opposite party."[49] Unilateral legal actions are those that are performed by a person through a statement of his or her will, giving rise to legal consequences.[50]

Based on Article 875 of the Civil Code, a will is a deed containing a person's statement about what he wants, from this element it can be concluded that a testamentary deed is a unilateral act without the consent of other parties. A unilateral statement about what he wants to happen after he dies.

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[47] M Sriastuti Agustina, "Tinjauan Hukum Surat Wasiat Dalam Penyerahannya Oleh Orang Lain Ke Notaris," *Yustitiabelen* 6, no. 1 (2020): 48–68.

[48] CST Kansil, *Pengantar Ilmu Hukum dan Tata Hukum Indonesia*, (Jakarta: Balai Pustaka, 1989), pp. 119

[49] Junirahardjo, *Hukum Administrasi Negara*, (Yogyakarta: Atma Jaya University, 1995) pp. 87.

[50] Zainuddin Ali, *Filsafat Hukum*, (Jakarta, Sinar Grafika, 2006) pp. 54.

**Analysis of the District Court Decision. No: 58/ Pdt. G/ 2011/PN.**

Basically, to make a will one must fulfil the following conditions: [51]

Article 895 of the Civil Code, specifies: "to make or revoke a will, a person must be of sound mind." Having a sound mind means that the person making the will must have a sound mind, thus the person is not one who is mentally ill, seriously ill or under guardianship. If the person making the will is in such a state, the validity of the will can be challenged.

In this decision, the plaintiff filed a claim for tort and cancellation of a will against the defendants. The verdict was HR was a testator who was described as follows: HR lives alone because she has never married, has no children, and has never adopted children. In relation to whether or not the testator made a will, the case stated that "from 2008 to 2010 HR was hospitalised twice due to illness and her physical and psychological health condition continued to decline" without a doctor's certificate stating that HR was mentally ill, seriously ill or under guardianship.

In the exception: which denies this, the fact is; on 27 November 2009 HR was registered for the first time as a patient. At that time alm. HR was treated at Hospital X in Yogyakarta. Based on the *medical discharge summary* made by Dr SP, Sp.PD (the doctor at Hospital X who treated alm. HR). Alm. HR at that time only suffered from herpes. Even on 11 February 2010, Dr YL as the doctor who examined HR's health provided a health certificate stating that alm. HR was physically and mentally healthy.

In relation to the health of the mind and reasoning ability of the late HR, based on the response of the second respondent, two points were raised, namely: 1) That there is a medical certificate issued by Hospital X, dated 11 February 2010, which states that at the time of examination the late HR was physically and mentally healthy. 2) That on 15 April 2010 in connection with the process of pensertipatan over his land parcels, Alm HR had taken an oath before an official of the Yogyakarta City Land Office.

Therefore, it can be concluded that at the time of making the will on 23 April 2010, HR granted two parcels of inherited land and the building on it to the first respondent, he was of sound mind, not mentally ill or seriously ill.

As the heir, HR fulfils the legal requirements for making a will. Article 897 of the Civil Code stipulates: Minors who have not reached the age of eighteen years are not allowed to make a will. Article 330 of the Civil Code stipulates that a person is declared an adult if he/she is 21 years old or has entered into marriage.

In the decision, HR was born on 3 September 1937 and died on 2 April 2011. At the time of making the will on 23 April 2010, HR was 72 (seventy-two) years old. This is a mature age to make a will. The conditions of the beneficiary

[51] Mulyadi, *2011, Hukum Waris dengan adanya Surat Wasiat,* p. 21

of the will:[52]

a. The heirs must already exist at the time of the testator's death, this provision can be seen in Article 899 jo Article 2 of the Civil Code. Article 2 of the Civil Code determines:
   1) A child in a woman's womb is deemed to have been born if the interests of the child so require.
   2) Dead when he was born, it is considered that he never existed.
b. Must be capable of being an heir Who is not capable of being an heir is regulated in Article 912 of the Civil Code, namely:
   1) Those convicted of disinheriting an heir
   2) Those who embezzle, destroy and forge wills
   3) Those who by force and violence have prevented the testator from revoking or changing his will
   4) Parents, wives, husbands, children of persons in categories 1 to 3 above.

From the requirements as a beneficiary of the will, it can be said that the respondent I in accordance with Article 899 of the Civil Code, already existed when the testator died. In relation to whether or not the respondent I was capable as set out in Article 912 of the Civil Code, there was no evidence to suggest that the respondent I was in accordance with the points in Article 912. This means that the defendant I is qualified as a testamentary beneficiary. In relation to this decision, HR lived alone, never married, had no children and never adopted children. The will contained "Testament No. 02 made on 23 April 2010 in which HR donated two parcels of land and building thereon located at Jalan Z Yogyakarta, described in measurement letter No. 219/2010 dated 06 April 2010. 219/ 2010 dated 06 April 2010, NIB: 00223, area 109 m2, dated 21 March 1985 and the land adjoining the first land Measurement Letter No. 218/ 2010 dated 06 April 2010, NIB: 00224, an area of 52 m2, both lands were registered in the name of HR to Defendant I. The aforementioned will contained a testamentary bequest made to the 1st respondent. HR as the testator did not have any blood relatives in the line up and down nor were there any legally recognised extramarital children. According to Article 917 of the Civil Code:

> "in the absence of blood relatives in the line up and down, nor the absence of legally recognised children out of wedlock, grants between the living or by will, may cover the entire estate."

**Analysis Related to Wrongful Acts Lawsuit and Cancellation of Will**

The definition of tort in the Civil Code is regulated in Articles 1365 to 1380. The formulation of Article 1365 of the Civil Code is "every unlawful act,

[52] *Ibid*, p. 23

which causes loss to another person, obliges the person who through his fault causes the loss, to compensate for the loss." Article 1365 of the Civil Code stipulates that every unlawful act that causes damage to another person, obliges the person who committed the act to compensate for the damage.[53]

Based on Article 1365 of the Civil Code, an act is said to be a tort if it fulfils the elements:[54]

a. Actions;
b. The act is unlawful;
c. There is an error;
d. There are losses and;
e. There is a causal link between the act and the loss.

The element of action as the first element can be classified into two parts, namely actions that constitute intent (done actively) and actions that constitute negligence (passive/not intending to do so). The act in the first element is said to fulfil the second element, namely against the law, if it fulfils the following conditions:

1) Contrary to the subjective rights of others: violating the subjective rights of others means violating the special authority granted to a person by law.
2) Contrary to the legal obligations of the perpetrator: according to the current view, law is defined as a whole consisting of written and unwritten norms.
3) Contrary to decency: The rules of decency are defined as the social norms of society, insofar as they are accepted by members of society as/in the form of unwritten legal rules.
4) Contrary to propriety, accuracy and prudence (patiha): in this sense humans must have tolerance for their environment and fellow humans, so that they are not only concerned with their own interests but also the interests of others so that in acting they must be in accordance with the propriety, accuracy and prudence prevailing in society.

The element of fault in an act is actually not much different from the element of unlawfulness, this element emphasises the combination of the two elements above where the act (which includes intent or negligence) fulfils the elements of unlawfulness. The element of fault is used to state that a person is held liable for adverse consequences that occur due to his or her wrongful

[53] R.Subekti and Tjitrosudibio, *Kitab Undang-Undang Hukum Perdata, (*Jakarta: PT. Pradnya Paramita, 2003) p.346.

[54] Rosa Agustina et al, *Hukum Perikatan (Law of Obligations*), (Denpasar: Pustaka Larasan, 2012), pp 8-10.

conduct. The element of damages, Article 1365 of the Civil Code determines the obligation of the perpetrator of the tort to pay compensation.

> "The last element that is no less important is the existence of a causal relationship between the act and the loss suffered. In this element, the loss suffered by the victim must actually be the result of the act committed by the perpetrator, not the result of another act".

In the decision of the Yogyakarta District Court No. 58/Pdt.G/2011, according to the Plaintiffs, the actions of the Defendants who were considered to have conspired to make a will, were declared as unlawful acts in violation of Article 1365, because they had harmed other heirs. If analysed from the elements of unlawful act in Article 1365 above: what is meant by the act is that the making of the will was a unilateral act of the testator, where the testator in determining the contents did not require the consent of any party, the making of the will before the second defendant/notary was definitely the initiative of the testator himself, not originating from the notary, there was no conspiracy, and it was made in a state of consciousness by the testator. Looking at the second element against the law, the Plaintiffs' assumption that the making of the will when the testator was ill (not in accordance with Article 895) has been explained above with evidence of a doctor's certificate of health, the actions taken are not contrary to the rules and norms that apply. In relation to the contents of the will given to Defendant I, as a testator who was not married and had no descendants (no class I heirs, no LP), this did not violate the rules (in accordance with Articles 913 and 917). In addition, the making of the will by Defendant II was in accordance with the procedure (Articles 938 and 939). The element of loss, because there were no heirs of the LP, so in this case there was no one who was entitled to claim the loss of the will. From these elements, it is clear that the making of the will was not against the law. Therefore, the deed of testament cannot be cancelled by the existence of the tort claim.

**Analysis of Legal Protection for Notary in relation to Deed of Testament in Civil Case**

Based on the old and new Notary Position Laws, there is no article that specifically regulates the legal protection of Notaries. In practice, it is not uncommon to find a Notary sitting as a defendant or witness because of a deed made by or in his presence. This is what is considered necessary for the legal protection of the office of Notary. Related to protection, an authentic deed is a deed that has perfect evidentiary power, because the authentic deed contains all the elements of other evidence, consisting of: writing, testimony, instructions, confessions and oaths. To make an authentic deed, various requirements and procedures are required. Likewise, the making of a

testamentary deed must be based on requirements and procedures that are not easy, must be in accordance with the Law on Civil Procedure and the Civil Code.

A testament deed as a partij deed, which is a deed made before a Notary, contains a description of what is explained or told by the parties who appear before the Notary. A testament deed contains the last will of the testator, so the Notary in this case formulates what the testator wants to happen after he dies. The notary has nothing to do with the content of the deed. In accordance with Articles 52 paragraph (1) and 53 letter a of UUJN, which basically states that the Notary may not make a deed for himself.

According to Habib Adjie, the legal construction of the position of Notary:[55]

> "Firstly, the Notary is not a party to the deed. Second, the Notary only formulates the wishes of the parties so that their actions are stated in the form of an authentic deed or Notary deed. Third, the desire or intention to make a particular deed will never come from the Notary, it must come from the desire of the parties themselves".

From the description of the position of the Notary, it is clear that the Notary is not a party to the deed, it is actually not justified if the Notary is placed as a defendant in the deed made before him. Basically, Article 66 is about supervision of Notaries which aims to provide legal protection for Notaries in carrying out their positions as public officials. In the case of making a will in this decision, when someone wants to make a will about a matter that is desired after he dies, it has perfect evidentiary power. When the deed is read out, it will often lead to disputes, there are parties who feel aggrieved by the deed. So they filed a lawsuit for cancellation of the deed of testament. Where it denies the content, in addition to denying that the signature in the will deed is not original or made under duress. The will deed in the Yogyakarta District Court's decision is a general testament. The provisions in the general testament can be known from articles 938-939 of the Civil Code. Article 938 reads as follows: "every will by public deed must be made before a Notary, in the presence of two witnesses".

From the description above, the Notary has carried out the procedure for making a will deed properly in accordance with the rules of the Civil Code in Articles 938-939. This is a form of protection that the Notary has carried out his duties according to the requirements and procedures for making a testament deed. In essence, "Notaries as public officials in carrying out their positions need to be given legal protection, including firstly to maintain the dignity of their position, including when giving testimony and proceeding in examinations and trials. Second, to keep secret the deed of information obtained for the

[55] Habib Adjie 1, Paper: *Memahami Kembali: Hak dan Kewajiban Notaris*. pp, 23

purpose of making the deed, and third to keep the minutes or letters attached to the minutes of the deed or Notary protocol in the Notary's storage.[56]

From the description above, it can be concluded that the deed of will in this case is a general deed of will subject to Articles 938 and 939 of the Civil Code, in which the general deed of will must be made before a Notary in the presence of two witnesses. A testament deed made before a Notary in the presence of two witnesses is an authentic deed, which in this case is a deed of partij. So the Notary only formulates the will of the testator who takes the initiative to make a will into an authentic deed. Therefore, based on Articles 52 and 53 where the Notary may not make a deed or take profit for himself on the deed made by or in front of him, it is clear that the Notary is not a party to the deed. And a testament deed is a unilateral act that does not require the consent of the other party, so what the testator did was not against the rules. Because it has entered the realm of judicial review based on Article 66, it must be with the approval of the MPD after Law No. 2 of 2014 the MPD's authority was replaced by the Notary Honour Council. In addition, Notaries who have performed their duties according to the terms and procedures are also a form of protection.

## Conclusion

Notary deed making is only formally responsible, not responsible for the content of the deed because in this case the Notary only constates the wishes of the confronter, as the last will that is expected to occur after he dies related to his property. Those who challenge the authentic deed must prove it in reverse. Protection of the Notary over the deed of will made before him, because the deed of will is an authentic deed made before the Notary / akta partij. The notary only formulates the will of the testator which is then stated in the deed, the initiative to make the deed is not the initiative of the Notary. Based on Article 52 paragraph (1) and Article 53 a: which essentially prohibits the Notary from making a deed for himself as well as the prohibition of obtaining benefits for the notarial deed he made. The article is clear that the Notary is not involved in making the content of the deed. If the Notary is sued for the cancellation of the deed of testament, it is not appropriate. Article 66 paragraph (1) related to the judicial process, investigation, public prosecutor or judge after the existence of Law No. 2 Year 2014 related to protection is not the authority of MPD, currently the Notary Honour Council. In addition, if it has fulfilled the requirements and procedures for making a will deed, it is a form of protection.

[56]Majalah *Renvoi* Edisi Nomor 11 Tahun Ketiga, date, 11 Januari 2006, pp. 611

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