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Position of The Will Deed That is not in Accordance with Article 902 of The Civil Code on The Inheritance of The Second Marriage

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A R T I C L E I N F O

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ABSTRACT

A will is the will of the testator that contains the wishes of the testator as long as it is permitted by law and must be used as a basis for carrying out the division of the property he inherits. That the testator in the making of the will often deviates from the provisions contained in the statute, but for heirs in a straight line upwards or downwards cannot be excluded and harmed because they are guaranteed by the existence of an absolute share or legitieme portie which can be prosecuted if his absolute share is violated. And besides that in the will there are restrictions / prohibitions that must be met in its implementation. This study analyzes the decision of the Jakarta High Court Number 246 / PDT / 2020 / PT DKI, regarding a rule regarding the position of the will deed given to the second wife who violates the restrictions / prohibitions that are not in accordance with the provisions of article 902 of the Civil Code, namely that there is an error in the application of the law in the inheritance of the heir. The dispute between the heirs caused the inheritance's estate to have not been divided and the will deed was annulled by a court decision. The annulment of the will deed by the court is incorrect. The research method used in this research is normative juridical research or literature law research with the form of analytical descriptive research. The author uses secondary data types to solve the subject matter that arises.

ABSTRAK

Wasiat merupakan kehendak pewaris yang berisi keinginan dari si pewaris selama diperkenankan oleh undang-undang dan harus dipakai sebagai dasar untuk melaksanakan pembagian harta yang diwariskannya. Bahwa pewaris dalam pembuatan wasiat seringkali menyimpang dari ketentuan yang termuat dalam undang-undang, namun bagi ahli waris dalam garis lurus keatas maupun ke bawah tidak dapat dikecualikan dan dirugikan karena mereka dijamin dengan adanya bagian mutlak atau legitieme portie yang dapat dituntut jika bagian mutlaknya terlanggar. Dan disamping itu dalam wasiat terdapat batasan/larangan yang harus dipenuhi dalam pelaksanaannya. Penelitian ini menganalisa terhadap putusan Pengadilan Tinggi Jakarta Nomor 246/PDT/2020/PT DKI, terkait suatu aturan mengenai kedudukan akta wasiat yang diberikan kepada istri kedua yang melanggar batasan/larangan yang tidak sesuai dengan ketentuan pasal 902 KUHPerdata yaitu bahwa terdapat kesalahan dalam penerapan hukum dalam harta peninggalan pewaris. Sengketa yang terjadi diantara para ahli waris menyebabkan harta peninggalan pewaris belum terbagi dan akta wasiat dibatalkan oleh putusan pengadilan. Pembatalan akta wasiat tersebut oleh pengadilan adalah tidak benar. Metode penelitian yang di gunakan dalam penelitian ini adalah penelitian yuridis normatif atau penelitian hukum kepustakaan dengan bentuk penelitian deskriptif analitis. Penulis menggunakan jenis data sekunder untuk melakukan pemecahan dari pokok permasalahan yang timbul. That there are legal consequences to the making of a will deed that is inconsistent with the provisions of the division of the estate of the testator in the second marriage which causes harm to the other heirs

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I. INTRODUCTION

Human beings are social beings who cannot stand alone in the absence of other individuals. So that each human being has bonds and relationships between other individuals to meet their life needs, one of which is to perform marital ties. That marriage based on Article 1 of Law Number 1 of 1974 concerning Marriage (hereinafter referred to as the Marriage Law) is an inner birth bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family based on the One True Godhead. Meanwhile, the Civil Code (hereinafter referred to as the Civil Code) does not recognize the definition of marriage (Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan, n.d.).

This marriage bond has legal consequences on each husband and wife, as well as the consequences in the form of legal relationships between husbands and wives in the form of rights and obligations. If a child is born in the marriage, the child has the position of a legal child. Marriage as a covenant to live together between a man and a woman with the aim of forming a household based on the One True Godhead.(Amir Syarifuddin, 2006).

Marriage according to Article 1 of Law Number 1 of 1974 concerning Marriage (Marriage Law) is an inner birth bond between the purpose of a man and a woman as a husband and wife with the aim of forming a happy and eternal family (household) based on the One True Godhead.(Soemiyati, 1986) A legal marriage will have the following legal consequences (Salim HS, 2011):

1. The relationship between husband and wife
   The existence of rights and obligations between husband and wife, that is, husband and wife have the right to perform legal acts and are obliged to respect each other, and provide inner birth assistance to each other.
2. Property in marriage
   Property acquired during marriage becomes joint property. Whereas the innate property of each party is under the control of each as long as it is not otherwise specified.
3. The relationship between parent and child.
   Parents are obliged to maintain and educate the child. For children who are immature or have never had a marriage, it is under the control of their parents. Inheritance law is a law that regulates the transfer of property left from the heirs to the heirs due to death and has legal consequences for the heirs left behind. That basically the Civil Code mentions the existence of rights and obligations in the field of property law that can be inherited by the heir·(Supraman, 2005)

In the Civil Code, 2 (two) ways are known to obtain inheritance, namely based on the provisions of the law or ab intestato and from the provisions of the will or *testamentair*. Heirs under the law (ab intestato) are heirs who are entitled to a share of the heirs due to a familial blood relationship, in accordance with the provisions of Article 852 of the Civil Code and the existence of marriage based on the provisions of Article 852a of the Civil Code. Meanwhile, the heir based on the will is in accordance with the provisions of Article 874 of the Civil Code where the heir before death makes a will and appoints in his will whoever is entitled to be the heir (Suparman, 2017). There are basically 2 (two) kinds of wills, viz:

1. The appointment of an heir (*erfstelling),* according to Article 954 of the Civil Code, is a will in the form of an appointment as an heir, in which the heir appoints to one or more persons as heirs for the property he left behind at the time of his death. Either in whole or in part, such as one-second or one-third.
2. A will grant *(legaat),* according to Article 957 of the Civil Code, is the granting of a special will in which the party bequeathed to one or more gives some specific goods, whether movable or

immovable or immovable or the right of use of all or part of the estate. It is required that the objects that are donated must be clearly stated. The person who receives a will or legaat grant is called a legataris, he only receives assets and does not bear the pasiva·(Yulistyaputri, 2021)

In the will it is stated the wish of the testator as long as it is permitted by law and must be exercised as the basis for the division of the property he bequeathed. Heirs in wills often deviate from the provisions contained in the statute. In the Civil Code the testator is restricted to making a will i.e.:

1. A will whose contents contain conditions that are not understood, or are impossible to implement or that are contrary to good decency, shall be regarded as unwritten, in accordance with the provisions of Article 888 of the Civil Code.
2. The will must not offend the absolute part of the legitimaric heirs, i.e. they cannot be excluded and harmed because they are guaranteed by the existence of an absolute part *or legitieme portie* (LP) that can be sued if the absolute part is violated·(Effendi Perangin, 2018) The absolute share or legitieme of the portie is a part of the inherited property that must be given to the heirs in a straight line up or down, according to Article 914 of the Civil Code.
3. There are restrictions in the form of general prohibitions and special prohibitions, namely:(J Satrio, 1992)
   a. Prohibitions of a general nature *fidei commis* (jumping hands)(Afiandi, 1997) Article 839 of the Civil Code.
   b. Prohibitions of a special nature.
      Addressed to a specific person or group:
      a) Husband and wife who marry without permission (Article 901 of the Civil Code).
      b) Wife on second marriage (Article 902 of the Civil Code)
      c) A grant of a will whose amount exceeds the right in marital intervening property (Article 903 of the Civil Code)
      d) Guardians (Article 904 of the Civil Code)
      e) Teachers and priests (Article 904 of the Civil Code)
      f) Notaries and witnesses (Article 907 of the Civil Code)
      g) Out-of-wedlock children (Article 908 of the Civil Code)

Based on the description above, the author is interested in writing a scientific paper with the title "The Position of the Will Deed That Is Not In Accordance with Article 902 of the Civil Code on the Inheritance of Second Marriage" which will be discussed in this journal, namely regarding the provisions of Article 902 of the Civil Code.

Article 902 of the Civil Code provides for:
Paragraph 1 "A husband or wife who has children from a previous marriage, and performs a second or subsequent marriage, shall not give by will to the husband or wife who then has title to a quantity of goods more than what according to Chapter XII of this book is given to the person who is the last."

Verse 4 "What the husband or wife later acquires, because of this chapter, shall be deducted at the time of calculating what may be the right of the husband or wife or promised under Chapter XIII of the First Book."

In the provisions stipulated in chapter XII of Book II of the Civil Code, the heirs argued that what was meant was the provisions of article 852a of the Civil Code. Thus, based on the aforementioned provisions, it can be concluded that the will must not exceed the maximum limit provision of 1/4 (quarter) share of the estate. In the event of a grant of a will whose amount exceeds the provisions of the maximum limit, the excess must be reduced and distributed to the existing legitimized heirs. Thus no provision shall result in the cancellation of the will deed under the provisions of Article 902 of the Civil Code.

That the Decision of the Jakarta High Court Number 246/PDT/2020/PT DKI stated that the will deed made before a notary whose will contents amounted to 1/3 of the heir's estate (exceeding the

maximum limit of 1/4 part of the heritage property) is void and has no legal force, is a wrong decision. The will deed can still be carried out only that the implementation of the distribution of the will for the husband or wife of the second marriage must be carried out a control, that is, it must not exceed the maximum limit of 1/4 (quarter) of the heir's estate.

The decision of the Jakarta High Court Number 246 / PDT / 2020 / PT DKI which declared The Deed of Will No: 02 dated December 03, 2015 made before the notary Mrs. MSS S.H void and has no legal force is an inappropriate matter. The Jakarta High Court invalidated the notarial deed in the form of a will because the will made was deemed to have violated the provisions of Article 852a of the Civil Code and had violated the absolute share of the legitimized heirs (Article 913 of the Civil Code). It should not be irrevocable, because considering that the will is a unilateral statement of the testator and can only be revoked or annulled by the will maker himself, this is in accordance with the provisions of Article 875 of the Civil Code. In line with this background, to find out the problems to be discussed, according to the author, the problem formulation that will be discussed in this study includes: What are the legal consequences of a high court decision that invalidates a will deed that is not in accordance with the provisions of article 902 of the Civil Code and How is the legal protection of the heirs who are harmed because of the decision to cancel the will deed?

II. RESEACRH METHOD

Based on the problems studied, the research method used in this journal is the Normative Juridical research method, which means that the law is seen as the norm or das sollen, because in discussing the problem this research uses legal materials and the methods used in legal research are carried out by researching library materials(Soerjono Soekanto; Sri Mamudji, 2009). This research is carried out to solve problems that arise, while the results to be achieved are in the form of prescriptions about what should be done to overcome these problems. (Peter Mahmud Marzuki, 2007). This study used a secondary type of data with a literature study of legal materials. Secondary data consisting of:

1. This study used a secondary type of data with a literature study of legal materials. Secondary data consisting of:
   a. Civil Code(Burgerlijk Wetboek);
   b. Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary;
   c. West Jakarta District Court Decision No. 206/Pdt.G/2019/PN. Jkt.Brt
   d. Jakarta High Court Decision No. 246/PDT/2020/PT DKI
   e. Supreme Court Decision No 3683K/Pdt/2020
2. Secondary Legal Materials are sourced from legal materials that can help in analyzing and understanding problems in research and obtained by studying books, literature, and research results related to the subject matter.
3. Tertiary Legal Materials are legal materials that support primary legal materials and secondary legal materials. The tertiary legal materials used in the writing of this thesis are: Legal Dictionary, Big Indonesian Dictionary and the internet.

Data analysis is obtained by analysis using qualitative methods. Therefore, the entire data obtained during the research is processed as appropriate in legal research, namely a logical legal reasoning process, so that the analysis taken is based on systematic thinking steps.

III. RESULT AND DISCUSSION

A testament contains a person's will regarding what he wants at death. According to Article 874 of the Civil Code, "all property left by a deceased person, is the property of his heirs according to law, insofar as it is concerning that he has not entered into a valid provision." According to Article 875 of

the Civil Code "a will is a deed containing a person's statement of what will happen when he dies and that he can withdraw."

Article 897 of the Civil Code states the conditions for a person to make a will, that is, he must fulfill the following: Already reached the age of 18; Already an adult; Married.

Under article 874 and article 876 of the Civil Code, a will usually contains a statute of inheritance. An heir by a will may deviate from the statute, but cannot be excluded for the heirs in a straight line up or down because under the statute it is guaranteed by the existence of a legitieme portie (absolute share). Heirs entitled to legitieme portie are called legitimaris. Article 902 of the Civil Code provides for the prohibition of a husband or wife in a second or subsequent marriage it is forbidden to give to the second or subsequent husband or wife, more than what has been provided for in Chapter XII Book II of the Civil Code.

In Article 852a, the husband or wife in the second marriage, shall not enjoy the share of inheritance of the husband or wife, greater than the smallest part, which a child will receive from the proceeds of the first marriage, and the husband or wife in the second marriage shall not be more than 1/4 (one-quarter) share of the estate of the testator. This article only applies if from the first marriage a child has been born. If the content of the will exceeds the right of its share, then the provisions of the testamentair of the testament cannot be fully enforced, so it must be reduced in excess to the extent of the right of its share.(Anisitus Amanat, 2003)

The revocation of the will may be made expressly, if the will conflicts with that made later or because of a certain action. According to Article 992 of the Civil Code "any last will or will may be unilaterally withdrawn except as set forth in a deed of marriage agreement." The revocation of the will must be carried out in the presence of a new will or by a special notarial deed, and the will may be revoked in part or in full.

The Law of Inheritance of the West is regulated in the second book on the treasury in the Civil Code, starting from Article 830 to Article 1130 of the Civil Code. Inheritance under civil law can only occur due to death.(Kitab Undang-Undang Hukum Perdata, n.d.) In the law of inheritance according to Burgerlijk Wetboek applies a principle that, if a person dies, then immediately all rights and obligations pass to all his heirs.(Fajar Nugraha; et.al, 2020)

That it is better that in the making of a will the parties should pay more attention to the conditions for the will, this is aimed at maintaining certainty and order of the law. So that the notary in making the will deed pays proper attention to the wishes and legal ability of the will maker in expressing his last will which is then stated in the will deed, for example before making the deed, the notary should provide legal input and advice, as well as an understanding of the existence of an absolute right part of the legitimized heirs(Nirma Puspita Sari, 2020). This aims to avoid lawsuits in the future against the notary as the maker of the will. Thus the deed remains valid as long as it is not contested by the heirs.

That the content of the will deed, is the will of the parties, so that the Notary is obliged to provide an explanation to the confrontants, so that the action set forth in the deed is in accordance with the applicable rules of law. That the judge's consideration in the Jakarta High Court Decision Number 246/PDT/2020/PT DKI which declared Will Deed No: 02 dated December 03, 2015 made before a notary Mrs. MSS S.H void and has no legal force because the deed is contrary to law and contains legal defects, namely:

1. It has violated a provision in Article 913 of the Civil Code which states: "an absolute part or *legitieme portie,* is a part of the estate that must be given to the heirs in a straight line according to the law, against which part the deceased is not allowed to establish something, either as a gift between the living, or as a will."
2. That the Appellant as executor of the will did not include the two parcels of land which had previously been granted from the Heir into the boedel of the estate, had even reversed his ownership in the name of the Appellant without notifying the Appellants. That these acts of the Appellants may be categorised as acts which violate the subjective rights of the Comparators,

because they should be the objects of the boedel of inheritance which should be distributed to the Comparators. So that this results in causing losses to the Comparators, because they have fulfilled all the elements of unlawful acts as referred to in Article 1365 of the Civil Code.

According to the author, the decision of the Jakarta High Court which has invalidated the will deed with legal considerations as mentioned above is an inappropriate reason to be used as a reason for cancellation of the will. Because a will can only be revoked or annulled by the will-maker himself by the provisions of Article 875 of the Civil Code, which states that "a will or testament is a deed containing a statement of a person as to what he wishes to happen after he dies, and by which it can be revoked again."

So that they will deed should still be enforceable only that the implementation of the distribution of the will for the husband or wife of the second marriage must be carried out with a control that must not exceed 1/4 (one-quarter) of the heir's estate. Cancellation of Will Deed No: 02 dated December 03, 2015, made before notary Mrs. MSS S.H. as decided in the decision of the Jakarta High Court Decision Number 246 / PDT / 2020 / PT DKI is undisputed by applying to cancellation and approved its cancellation by a High Court Judge because according to the law (article 902 juncto article 852a of the Civil Code) the will to be received by the second marriage wife the amount is fixed 1/4 (quarter) of the share of property relics, although according to the will deed the amount received is 1/3 part of the estate.

That the result of the judgment of the court which has annulled the will results for the parties concerned, namely the heirs under the will (testamentair), because the cancellation of a will causes the right of the beneficiary of the will to be lost and the will to be deemed non-existent. Moreover, if the cancellation was due to violating the absolute share of the legitimized heirs, it is not a reason to cancel a will. Because the heirs can still carry out the will by making deductions or inserting in advance the provisions in Article 920 of the Civil Code: "Grants or grants, whether between the living and by will, which is detrimental to the legitieme part of the portie, may be reduced at the time of the opening of the inheritance, but only at the request of the legitimists and their heirs or successors. Nevertheless, the legitimists should not enjoy anything and that deduction for the losses of those who owed to the testator."

This means that the heirs of the legislature who have a total share must still get their share because the share cannot be reduced by anything and by anyone.

IV. CONCLUSION

So it can be concluded that a notary is a certain position that carries out a profession in legal services to the community, so it should create legal certainty and order. It must be based on the principle of prudence in making will deeds to provide legal input and advice, as well as an understanding of the existence of an absolute share for the heirs of the legitimalist.

So if the husband or wife in the second marriage or subsequent marriage receives a will, then if the share obtained by him in the will has exceeded the maximum limit of 1/4 (quarter) of the estate, the spare part must be inserted to be distributed to the legitimized heirs. So this means that the will can be executed as it should and should not be annulled.

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