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THE LEGAL STATUS OF WILL EXECUTORS IN DEEDS OF BEQUEST UNDER PMNA/KBPN NO. 3 OF 1997 AND ARTICLE 1813 OF THE CIVIL CODE

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Abstract

This research aims to analyze the legal status of the executor of a will (executeur testamentair) in the deed of gift by will (hibah karena wasiat) as regulated in Article 112 paragraph (1) a point 3 letter b of the Regulation of the State Minister for Agrarian Affairs/Head of the National Land Agency No. 3 of 1997 in relation to Article 1813 of the Indonesian Civil Code. The main issue lies in the normative conflict between the concept of a power of attorney, which terminates upon the death of the grantor, and the executor's legal mandate, which remains valid after the testator's death. This study employs a normative legal research method using statutory and conceptual approaches, grounded in the theories of legal certainty proposed by Gustav Radbruch, Van Apeldoorn, and Hans Kelsen. The findings indicate that the executor of a will has a distinct legal position from an ordinary agent, as their authority derives from a legal mandate rather than a contractual relationship. Therefore, the executor's authority does not terminate upon the testator's death, provided that it is carried out in accordance with the will and applicable law. Nevertheless, normative ambiguity persists, leading to interpretative discrepancies among notaries and land deed officials (PPAT). Regulatory clarification is required to strengthen the executor's legal legitimacy and ensure the implementation of the testator's final will in line with the principles of legal certainty and justice.

Keywords: Bequest, Executor Of Will, Legal Certainty, Succession.

INTRODUCTION

In the Indonesian legal system, *hibah* (grant or gift inter vivos) is a legal act that carries significant social, moral, and juridical meaning. Terminologically, *hibah* is defined as a gratuitous transfer from one person to another, conducted while the grantor is still alive. This provision is regulated under various legal systems applicable in Indonesia, including Islamic law, customary (adat) law, and civil law. According to Article 1666 of the Indonesian Civil Code (*Kitab Undang-Undang Hukum Perdata* or KUHPerdata), *hibah* is defined as an agreement by which the donor, during his lifetime, gratuitously and irrevocably transfers an object for the benefit of the donee, who accepts such transfer. Thus, the essence of *hibah* is a unilateral legal act arising from the generosity of the donor toward the recipient, without any compensation or counter-performance (Subekti, 2019).

As a legal act, *hibah* entails the consequence that ownership rights over a certain object are transferred from the donor to the donee at the moment the *hibah* is made. Nevertheless, several requirements must be fulfilled for a *hibah* to be considered valid. One of these is that *hibah* shall only apply to objects that already exist at the time the *hibah* is made. This is emphasized in Article 1667 of the Civil Code, which stipulates that *hibah* may only be granted concerning property that exists at the time of the donation, and if the *hibah* includes something that does not yet exist, then the *hibah* shall be null and void with respect to that part which does not exist (Soeroso, 2020).

Furthermore, Article 1668 of the Civil Code affirms that the donor may not reserve the right of use or enjoyment over the object given by *hibah*, as such a condition would contradict the fundamental principle of *hibah*. Consequently, the ownership rights that have been transferred through *hibah* become entirely the property of the donee, and the donor no longer has any right to sell or re-gift the same object (Sudikno Mertokusumo, 2021). Therefore, every act of *hibah* must be embodied in an authentic deed (*akta otentik*) that carries valid evidentiary value under the law. In practice, a notary plays a crucial role in the drafting of a *hibah* deed. A deed prepared by a notary serves as authentic proof that a valid *hibah* agreement has occurred between the donor and the donee (Habib Adjie, 2017). Apart from the ordinary *hibah*, there also exists the concept of *hibah wasiat* (legacy or *legato*), as

regulated under Article 957 of the Civil Code. *Hibah wasiat* is a special provision in a will whereby the testator grants to one or several persons certain objects, whether movable or immovable, which shall be executed only after the death of the testator (R. Subekti & R. Tjitrosudibio, 2020). Thus, *hibah wasiat* occupies an intermediate position between *hibah* and inheritance, as it is made during the lifetime of the testator but becomes effective only upon the testator's death. In Islamic law, although the term "*hibah wasiat*" is not explicitly recognized, in substance it corresponds to the concept of *wasiat* (bequest), which is also executed after the death of the person making the will (Sudarsono, 2018). In the national legal system, *hibah wasiat* is expressly regulated under the Civil Code and reaffirmed in the Regulation of the State Minister for Agrarian Affairs/Head of the National Land Agency Number 3 of 1997 (PMNA/KBPN No. 3/1997) concerning Provisions for the Implementation of Land Registration, particularly Article 112 paragraph (1) item 3 letters a and b. This regulation governs the procedures for registering land rights acquired through inheritance, including cases where the recipients of *hibah wasiat* are more than one person or where a specific executor of the will has been appointed.

Nevertheless, a juridical problem arises regarding the implementation of *hibah wasiat*, particularly concerning the legal position of the executor of the will (*pelaksana wasiat*) after the death of the testator. Pursuant to Article 1813 of the Civil Code, a power of attorney terminates upon the death of the principal. This provision conflicts with Article 112 paragraph (1) item 3 letter b of PMNA/KBPN No. 3/1997, which stipulates that the executor of a *hibah wasiat* retains the authority to execute the contents of the will after the testator's death. This normative conflict is the central focus of the present research, as it creates legal uncertainty in the execution of *akta hibah karena wasiat* (deed of bequest by will), particularly concerning the legitimacy of the executor's legal actions (Supriyadi, 2021). Several cases in practice demonstrate that this normative ambiguity may lead to legal disputes. For instance, in a *hibah wasiat* case involving land located in Tlogomas Subdistrict, Lowokwaru District, Malang City, the testator granted a *hibah wasiat* of land to an adopted child, which was later challenged by the biological child on the grounds that it violated the *legitieme portie* (reserved portion of inheritance) (Santoso, 2022). Similarly, in another case involving a *hibah wasiat* of a house to a caregiver in Blimbing District, Malang City, the will was contested by the heirs, arguing that the testator was not in sound health when the will was made. These cases illustrate the existing legal ambiguity regarding the implementation of *hibah wasiat* and the legal standing of the executor of a will under Indonesian positive law.

Based on the foregoing, this research is founded upon a juridical analysis of Article 112 paragraph (1) a point 3 letter b of PMNA/KBPN No. 3/1997 concerning the legal status of the executor of a will in a *hibah karena wasiat* deed. Furthermore, it examines the legal consequences of the executor's position in the *hibah karena wasiat* deed in relation to the testator's intent under Article 112 paragraph (1) a point 3 letter b of PMNA/KBPN No. 3/1997 in connection with Article 1813 of the Civil Code. This study is expected to contribute valuable information to the broader body of jurisprudence regarding the position of will executors in *hibah wasiat* disputes. It is further anticipated that notaries will use this framework as a guideline in preparing notarial instruments, including providing more specific provisions concerning the status of will executors in *hibah wasiat* documents. Moreover, it may serve as a reference for the public in reading and studying legal issues, particularly concerning the position of will executors in *hibah wasiat* cases.

LITERATURE REVIEW

In the Indonesian legal system, a *grant (hibah)* constitutes a form of agreement that falls within the category of *gratuitous contracts (om niet)*, namely a legal act carried out without any reciprocal obligation on the part of the recipient. According to Article 1666 of the Indonesian Civil Code (*Kitab Undang-Undang Hukum Perdata* or KUHPerdata), a grant is defined as an agreement by which the donor, during his lifetime, gratuitously and irrevocably transfers an object for the benefit of the donee who accepts such transfer. This provision demonstrates that a grant is a unilateral legal act that creates legal consequences in the form of the transfer of ownership rights from the donor to the donee (Subekti, 2019).

A grant possesses two principal characteristics, namely the elements of *gratuitousness* and *irrevocability*. The gratuitous nature signifies that a grant is not based on any counter-performance by the recipient, while the irrevocable nature means that once the grant has been made, the donor no longer holds any right over the granted object. Article 1667 of the Civil Code affirms that a grant may only be made over objects already in existence at the time the grant is given, whereas a grant of objects not yet in existence is deemed void. This provision reflects the principle of legality of the object in civil law agreements (Soeroso, 2020). Within the context of Islamic law, a grant (*hibah*) is also understood as the giving of property to another person without compensation, motivated by social and humanitarian purposes. However, Islamic law imposes specific limitations, such as the prohibition of grants

intended to circumvent inheritance rules or to reduce the rights of lawful heirs (Sudarsono, 2018). Thus, in both the national legal system and Islamic law, grants are inherently associated with the principles of justice, clarity of the object, and the sincere intention of the donor. Unlike an ordinary grant, a *grant by will (hibah wasiat or legato)* possesses a unique character because it lies between a grant and a testament. Pursuant to Article 957 of the Civil Code, a grant by will is a special disposition by which a testator gives to one or more persons specific items, whether movable or immovable, or a usufruct over part or all of his estate. Although executed while the testator is still alive, the implementation of a grant by will only takes effect after the testator's death (R. Subekti & R. Tjitrosudibio, 2020). Consequently, a grant by will is juridically part of the inheritance system, yet it retains elements of an *inter vivos* agreement.

In practice, a grant by will is often embodied in a notarial deed or a Land Deed Official (*Pejabat Pembuat Akta Tanah* – PPAT) deed, which serves as authentic evidence of the transfer of ownership rights based on the will of the testator. The role of the notary or PPAT is crucial to ensure that the process of a grant by will fulfills both formal and material legal requirements (Adjie, 2017). A *will executor (executeur testamentair)* is a person appointed by the testator to carry out the contents of the will after the testator's death. The legal position of a will executor is governed by Articles 1023 through 1032 of the Civil Code, which vest the executor with the authority to undertake legal actions such as administering the estate, settling the testator's debts, and delivering items to the beneficiaries of the grant by will.

The will executor acts on the basis of a power of attorney granted by the testator. However, this authority is of a special nature, as it becomes effective only after the death of the grantor. Under civil law, generally, a power of attorney terminates upon the death of the grantor, as stipulated in Article 1813 of the Civil Code, which provides: "A power of attorney terminates by operation of law upon the death of the grantor." This provision creates a legal issue when applied to will executors, as functionally, the executor's authority begins only after the testator's death (Mahendra, 2021). Accordingly, the will executor occupies a legal position distinct from that of an ordinary agent. In notarial and land law practice, a will executor is regarded not merely as an agent representing the testator, but as a holder of legal mandate regulated by statutory provisions—particularly Article 112 paragraph (1) subparagraph a item 3 letter b of the Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency No. 3 of 1997 (PMNA/KBPN). This provision authorizes the will executor to continue performing his duties even after the death of the testator, provided that such appointment was made validly in the will.

In legal research, the *theory of legal certainty (rechtszekerheid)* serves as the analytical framework to assess the extent to which a legal norm provides clarity, consistency, and protection for individual rights. Legal certainty constitutes one of the fundamental principles of the legal system, ensuring that law is applied consistently, non-discriminatorily, and provides a sense of security for society against arbitrary actions by law enforcement authorities (Soekanto, 2006). According to Gustav Radbruch (1946), legal certainty represents one of the three fundamental values of law, alongside justice (*gerechtigkeit*) and expediency (*zweckmäßigkeit*). Within the *Rechtsstaat* theory, Radbruch asserts that law must guarantee social stability through clear, written, and understandable norms. He identifies four key aspects underpinning the principle of legal certainty, namely:

1. The law must be positive, i.e., derived from a competent legislative authority.
2. The law must be based on real facts within society.
3. The formulation of legal norms must be clear and unambiguous.
4. Positive law should not be easily altered in order to ensure stability and legal trust (Radbruch, 1946).

Radbruch perceives legal certainty as a product of positive law itself. Within this framework, law is obeyed not necessarily because of its substantive justice, but because it emanates from legitimate authority. Hence, even if positive law is occasionally unjust, as long as it remains in force, it must be applied to maintain order and stability (Marzuki, 2017).

In the context of this study, Radbruch's perspective is essential because the position of the will executor in a deed of grant by will demands legal stability—that is, clarity as to who possesses the authority to execute the testator's intention, thereby preventing a legal vacuum in the transfer of land rights after the testator's death. Van Apeldoorn (1958) stated that legal certainty encompasses two principal aspects. First, the aspect of legal clarity in concrete situations, whereby a person seeking justice (*justiciabelen*) has the right to know which law applies prior to initiating legal proceedings. Second, the aspect of legal security, which provides protection for citizens against arbitrary actions by state authorities. The first aspect requires clear regulation governing the legal position of will executors in deeds of grant, so as to prevent divergent interpretations in practical application. The second aspect emphasizes the importance of legal protection for all parties—both will executors and heirs—against potential abuse of authority or subjective interpretation by land officials.

Both aspects are relevant to the implementation of Article 112 paragraph (1) subparagraph a item 3 letter b of PMNA/KBPN No. 3/1997, which often gives rise to legal ambiguity concerning whether the will executor retains authority after the testator's death. Based on Van Apeldoorn's theory, legal certainty can only be achieved if there is clarity of norms and consistency in their application by competent institutions (Apeldoorn, 1958; Suteki & Taufani, 2019). Meanwhile, according to Hans Kelsen (1961), through his *Stufenbau des Rechts* theory (the hierarchical structure of law), legal certainty is rooted in the principle of attribution. Every legal norm derives its binding force from a higher norm above it, thereby creating a rational and stable hierarchy of law. Legal certainty, according to Kelsen, implies that every legal act is valid only if it is based on a norm established by a superior rule, and that every violation of such a norm must be accompanied by a clearly defined sanction.

In this context, legal certainty is not only concerned with the existence of written rules but also with the coherence of the legal system, which ensures that norms are applied consistently. Kelsen posits that legal norms have two principal functions: as a *guideline of conduct* and as an instrument of *social control* through the imposition of sanctions. Hence, legal certainty will be achieved only if every regulation is enforceable through a clear and predictable sanction mechanism (Kelsen, 1961). The concept of *attribution* in Kelsen's theory is relevant to explain the authority of the will executor in deeds of grant by will, as such authority originates from a higher legal norm—namely statutory provisions contained in PMNA/KBPN No. 3/1997 and the Civil Code. Therefore, so long as the will executor acts in accordance with the authority attributed by these regulations, his actions possess lawful legitimacy and comply with the principle of legal certainty.

Thus, the theory of legal certainty provides the juridical analytical basis for assessing the legal position of the will executor in a deed of grant by will under Article 112 paragraph (1) subparagraph a item 3 letter b of PMNA/KBPN No. 3/1997 and its relation to Article 1813 of the Civil Code. The first aspect of legal certainty—clarity of norms in concrete situations—demands that the rules governing the authority of will executors be explicitly formulated to avoid dual interpretations as to whether such authority terminates upon the testator's death. Meanwhile, the second aspect—protection against arbitrary acts—requires that the implementation of a grant by will follow standardized and transparent procedures, leaving no room for subjective interpretation by officials or parties involved. The definitive provisions within PMNA/KBPN No. 3/1997 serve as instruments of legal certainty to ensure that the execution of the testator's wishes proceeds in accordance with the principles of justice and orderly land administration (Suteki & Taufani, 2019).

From the perspective of modern legal theory, legal certainty also encompasses two essential meanings (Samosir, 2014):

1. The existence of general rules that enable individuals to know which actions are permitted and prohibited by law; and
2. The guarantee of legal protection for citizens against arbitrary acts by the state.

Both meanings emphasize the importance of a legal system that is not only codified but also consistently implemented by competent authorities. In the context of this study, legal certainty serves as a vital instrument to ensure that the execution of grants by will is conducted in accordance with the testator's intent and does not create uncertainty for heirs or will executors. Accordingly, the theory of legal certainty—as articulated by Radbruch, Van Apeldoorn, and Kelsen—collectively forms a solid conceptual foundation for assessing the clarity of norms, legal stability, and protection of the parties involved in deeds of grant by will.

METHOD

This research employs a normative (doctrinal) legal research method, which focuses on the legal norms in force and their application to a particular legal issue. Normative legal research is conducted by examining legal literature and legal documents, such as legislation, court decisions, and legal doctrines. The purpose of this research is to examine and identify gaps, contradictions, or ambiguities within the law, as well as to discover appropriate legal solutions and constructions to the problem being studied, particularly regarding the legal status of will executors in deeds of bequest (*hibah wasiat*) (Soerjono Soekanto & Mamudji, 2015). The approaches used in this research consist of the statutory approach and the conceptual approach. The statutory approach is applied by studying and analyzing the relevant legal provisions necessary to resolve the legal issue, while the conceptual approach derives from legal doctrines and theories developed by legal scholars. Through these two approaches, the researcher can identify both the legal basis and the theoretical concepts that construct legal arguments for addressing the issues under study (Marzuki, 2014). The sources of legal materials in this research consist of primary, secondary, and tertiary legal materials. Primary legal materials include legislation such as Article 112 paragraph (1) subparagraph a item 3 letter b of the Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency No. 3 of 1997, as well as

Article 1813 of the Civil Code. Secondary legal materials comprise books, journals, expert opinions, and scientific articles that provide explanations of the primary sources. Meanwhile, tertiary legal materials include general and legal dictionaries such as *Kamus Besar Bahasa Indonesia* and *Black's Law Dictionary* (Ali, 2011). The data collection technique used is library research, which involves reviewing various legal materials relevant to the topic. The data obtained are then analyzed using a qualitative descriptive method, which includes stages of editing, organizing, and interpreting the data. This analysis aims to provide a comprehensive description of the existing legal conditions and to draw conclusions based on the data examined (Moleong, 2017). Accordingly, this normative legal research emphasizes the importance of synchronizing legal norms hierarchically and applying legal theory as a foundation for finding solutions to the legal issues under study.

RESULTS AND DISCUSSION

1. Juridical Analysis of Article 112 Paragraph (1) Subparagraph a Item 3 Letter b of the Regulation of the State Minister for Agrarian Affairs/Head of the National Land Agency No. 3 of 1997 (PMNA/KBPN No. 3/1997) Concerning the Legal Status of Will Executors in Deeds of Bequest by Will

Article 112 paragraph (1) subparagraph a item 3 letter b of the Regulation of the State Minister for Agrarian Affairs/Head of the National Land Agency (PMNA/KBPN) Number 3 of 1997 plays an important role in the implementation of the transfer of land rights based on a bequest (*hibah wasiat*). This provision affirms that a deed made by a Land Deed Official (*Pejabat Pembuat Akta Tanah* or PPAT) concerning a *hibah* may be executed by the executor of a will (*pelaksana wasiat*) on behalf of the donor of the bequest, as the implementation of a will whose execution has been authorized to him. This formulation provides a legal basis for the executor of the will (*executeur testamentair*) to undertake legal acts in the process of transferring land rights after the death of the testator. Thus, this regulation not only affirms the position of the executor of the will within the agrarian legal system but also strengthens his legal legitimacy in the execution of land administration procedures.

In the context of civil law, the legal position of the executor of a will is based on Article 1005 of the Indonesian Civil Code (*Kitab Undang-Undang Hukum Perdata* or KUHPerdata), which stipulates that the executor of a will is appointed to ensure that the contents of the will are carried out in accordance with the wishes of the testator. This means that the executor of the will does not act merely as an ordinary attorney-in-fact as regulated in Article 1792 of the Civil Code, but rather as a legal officer entrusted with a mandate under statutory provisions. In this sense, the executor of a will acquires his authority automatically upon the death of the testator. Therefore, his authority does not terminate with the death of the testator, as provided under Article 1813 of the Civil Code, which states that a power of attorney ends upon the death of either the principal or the agent. On the contrary, the executor of a will continues to carry out the lawful will of the deceased as expressed in a will made in the form of an authentic deed.

The continuing authority of the executor of a will after the testator's death constitutes an exception to the general principle that a power of attorney terminates upon death, as stipulated in the Civil Code. This is because the executor of a will does not act on the basis of a contractual relationship (mandate agreement), but rather on the basis of a legal mandate (*wettelijke lastgeving*) that derives directly from statutory provisions. Mertokusumo (2021) explains that the executor of a will is not an agent executing the will of an individual, but rather the implementer of a legal command that has been formally established. In other words, the role of the executor of a will does not cease upon the death of the principal, but instead begins at the moment the testator dies. Accordingly, the executor of a will possesses a strong juridical standing to manage the administrative process of transferring land rights through *hibah wasiat*.

In agrarian legal practice, a PPAT deed made by the executor of a will serves as authentic evidence of the transfer of land rights based on a *hibah wasiat*. Pursuant to Government Regulation Number 24 of 1997 concerning Land Registration, the registration of the transfer of rights may only be carried out if evidenced by an authentic PPAT deed. Therefore, the role of the executor of a will becomes crucial in bridging the domains of private civil law and public administration. The executor of a will not only represents the intent of the testator but also ensures that the land registration process proceeds in accordance with applicable legal provisions. In this context, the executor of a will performs a semi-public function because, in addition to carrying out a private function as the executor of the testator's will, he also performs an administrative function in maintaining order within the land law system. However, from the perspective of legal certainty, Article 112 paragraph (1) subparagraph a item 3 letter b of PMNA/KBPN No. 3 of 1997 does not yet provide normative clarity regarding the basis of the executor's authority—whether it originates from a power of attorney granted

by the testator or from a legal mandate specifically regulated by statutory provisions. This ambiguity often leads to differing interpretations among executors of wills, PPAT officials, and land offices. In several cases, administrative rejection has occurred against applications for the transfer of rights submitted by executors of wills on the grounds that their authority had expired with the death of the testator. In fact, when examined from the perspective of the theory of *Sicherkeit des Rechts Selbst* (Radbruch in Rahardjo, 2006), a good law is one that provides certainty, is comprehensible, and is easily implemented. Therefore, to avoid uncertainty, it is necessary to affirm that the executor of a will acts on the basis of a legal mandate that remains valid after the death of the testator.

From the perspective of Islamic law, as regulated in the Compilation of Islamic Law (*Kompilasi Hukum Islam* or KHI), the executor of a will holds a similar position, namely being responsible for carrying out the mandate of the testator in accordance with the provisions of *sharia*. Article 195 of the KHI stipulates that a will may be made orally or in writing before two witnesses or a notary, and its execution shall only be valid if approved by all heirs in cases where the beneficiary is one of the heirs. The KHI also limits the portion of property that may be disposed of by will to a maximum of one-third of the estate, unless agreed upon by all heirs. In this regard, the executor of a will acts as a trustee who fulfills the last wishes of the testator, rather than as a proxy whose authority can be revoked. This demonstrates the harmony between the concept of the executor of a will in Islamic law and that of the *executeur testamentair* in civil law, as both derive their authority from a legal mandate rather than a contractual relationship.

Thus, it can be concluded that under Article 112 paragraph (1) subparagraph a item 3 letter b of PMNA/KBPN No. 3 of 1997, the executor of a will possesses a strong and legitimate legal standing to execute a *hibah wasiat*, including the authority to create a PPAT deed on behalf of the testator. This position cannot be equated with that of an ordinary attorney-in-fact, since it is derived from a statutory command rather than a civil contract. In the context of legal certainty, the executor of a will serves as an extension of the law itself to realize the final wishes of the testator as embodied in the will. Nevertheless, to prevent dual interpretations, further clarification in regulations is needed regarding the nature of the executor's mandate as a form of *juridische lastgeving* (legal mandate) that does not terminate upon the death of the principal, thereby ensuring that the administrative process of land registration due to *hibah wasiat* can proceed consistently and in accordance with the principle of legal certainty.

2. **The Legal Consequences of the Position of the Executor of a Will in the Deed of Bequest Agreement Based on the Testator's Will Pursuant to Article 112 Paragraph (1) Subparagraph a Item 3 Letter b of the Regulation of the State Minister for Agrarian Affairs/Head of the National Land Agency (PMNA/KBPN) Number 3 of 1997 in Relation to Article 1813 of the Indonesian Civil Code**

3. The legal consequences concerning the position of the executor of a will in the deed of gift by will (*hibah karena wasiat*), based on Article 112 paragraph (1) subparagraph a item 3 letter b of the Regulation of the State Minister for Agrarian Affairs/Head of the National Land Agency (PMNA/KBPN) Number 3 of 1997, when associated with the provisions of Article 1813 of the Indonesian Civil Code (KUHPerdata), constitute a legal issue that gives rise to a normative conflict between the concept of "power of attorney" (*pemberian kuasa*) and the "legal mandate of the executor of a will" (*mandat hukum pelaksana wasiat*). Article 1813 of the Civil Code stipulates that a power of attorney terminates upon the death of either the grantor or the attorney-in-fact, such that any legal acts conducted after the occurrence of death are deemed invalid and produce no legal consequences whatsoever. However, Article 112 paragraph (1) subparagraph a item 3 letter b of PMNA/KBPN No. 3 of 1997 expressly affirms that an executor of a will may act on behalf of the donor of the testamentary gift (*pemberi hibah wasiat*) in carrying out the will of the testator in the deed of gift by will. This indicates that the executor of a will (*executeur testamentair*) possesses a legal status distinct from that of an ordinary attorney-in-fact as referred to in Article 1792 of the Civil Code.
4. In the Indonesian civil law system, an executor of a will does not merely act as a recipient of a power of attorney, but rather holds a legal mandate (*wettelijke lastgeving*) that derives directly from the will of the testator as stipulated in Article 1005 of the Civil Code. This provision declares that the executor of a will is tasked with carrying out the contents of the will so that the last will and testament of the deceased may be properly fulfilled. Consequently, the authority of the executor of a will remains valid even though the testator has passed away. This interpretation aligns with the opinion of Mertokusumo (2021), who explains that the executor of a will cannot be equated with an attorney-in-fact because the executor derives legal legitimacy directly from statutory provisions rather than from a contractual civil relationship. Therefore, the acts

performed by the executor of a will after the death of the testator do not constitute the execution of a personal mandate, but rather the performance of a legal obligation to fulfill the testator's final instructions in accordance with the applicable law.

5. From the perspective of legal consequences, the actions of an executor of a will acting under Article 112 paragraph (1) subparagraph a item 3 letter b of PMNA/KBPN No. 3 of 1997 remain valid and binding so long as such actions are performed in accordance with the contents of the will and do not infringe upon the absolute rights of the heirs (*legitieme portie*). This means that every legal act carried out by the executor of a will, including the execution of the deed of gift by will before a Land Deed Official (PPAT), continues to possess legal force and serves as a valid basis for the registration of the transfer of land rights at the Land Office. Conversely, if the provisions of Article 1813 of the Civil Code were to be rigidly applied without considering the special characteristics of the executor of a will, then all legal acts of the executor after the testator's death would be deemed invalid on the grounds that the power of attorney had expired. Such an interpretation would clearly conflict with the principle of fulfilling the testator's final will as recognized under inheritance law and agrarian law (Santoso, 2022).
6. A problem that frequently arises in practice occurs when no executor of a will is mentioned in the deed of gift by will. In such cases, the legatee (*penerima hibah wasiat*) often acts simultaneously as the executor, since no other person has been appointed. In the practice of land registration, this situation poses difficulties because the Land Office (BPN) requires that the deed of gift be signed by all heirs before the transfer of title can be registered. When one or more heirs refuse to sign, the execution of the testamentary gift becomes delayed. This situation creates legal uncertainty regarding the validity of the executor's actions, especially when the testamentary gift has not yet been executed due to administrative reasons. In this context, the executor of a will bears a legal responsibility to deliver the property bequeathed through the testamentary gift to the beneficiary after the testator's death, either through direct delivery or by transferring legal possession of the estate (Supriyadi, 2021).
7. From the perspective of civil law doctrine, a power of attorney (*volmacht*) essentially constitutes a unilateral declaration of intent by one party to be represented by another in performing legal acts for the benefit of the grantor (Subekti, 2001). An essential element of a power of attorney is that it is personal in nature and terminates upon the death of either party, as expressly stated in Article 1813 of the Civil Code. However, unlike an ordinary power relationship, the executor of a will has a legal basis that is public in nature, as the executor's duties relate to the execution of a legal command rather than a private contractual relationship. Therefore, the death of the donor of the gift (the testator) does not automatically extinguish the authority of the executor, since from the outset, the execution of such a mandate was intended to take effect only after the testator's death. This view is also supported by Adjie (2017), who asserts that the executor of a will must be granted strong legal legitimacy to carry out the testator's intentions, as long as they do not contravene inheritance law or the absolute rights of the heirs.
8. In situations where the executor of a will dies before completing his or her duties, Article 1015 of the Civil Code stipulates that the authority of the executor cannot be inherited by his or her heirs. The testator may appoint one or more executors with the intention that, should one die, the other may act as a substitute. This demonstrates that civil law has anticipated such contingencies by allowing for continuity in the execution of wills without involving the heirs of the deceased as new executors. Thus, it can be systematically concluded that the termination of the executor's authority is not governed by Article 1813 of the Civil Code, but rather by Articles 1005–1022 of the Civil Code, which specifically regulate the mechanism for executing wills.
9. Legal uncertainty concerning the position of the executor of a will also affects administrative implementation by PPATs and the Land Office. Many PPATs refuse to execute a deed of gift by will unless there is consent from all heirs or if it is suspected that the gift exceeds one-third of the inheritance without the approval of the other heirs. Moreover, a PPAT cannot execute a testamentary gift over jointly owned property without the consent of the testator's spouse, as such an act would contravene applicable legal provisions. In cases of this kind, the deed of gift by will is potentially legally defective, and the PPAT may be held liable for losses arising from such an instrument (Mahendra, 2021). Therefore, the execution of a gift by will must satisfy both formal and material requirements, including the existence of a valid notarial deed, clarity regarding the object of the gift, and certainty as to the time of execution following the testator's death.
10. Accordingly, the legal consequence concerning the position of the executor of a will in the deed of gift by will, based on Article 112 paragraph (1) subparagraph a item 3 letter b of PMNA/KBPN No. 3 of 1997 in relation to Article 1813 of the Civil Code, is that the authority of the executor does not terminate upon the

death of the testator. The executor acts not on the basis of a power of attorney within the meaning of Article 1792 of the Civil Code, but on the basis of a legal mandate granted by statutory law and the will itself. Therefore, all legal acts performed by the executor remain valid as long as they are carried out in accordance with the contents of the will and the applicable legal provisions. However, in practice, differing interpretations among executors, PPATs, and the Land Office continue to create legal uncertainty. Thus, normative clarification is required within implementing regulations regarding the nature of the executor's legal mandate, to ensure that it is not equated with a civil power of attorney that terminates upon the death of the grantor. Such clarification is essential to guarantee legal certainty, fairness for heirs, and the effective realization of the testator's final will in accordance with Indonesian inheritance and agrarian law.

11.

CONCLUSION

Based on the description and analysis of the legal consequences regarding the position of the executor of a will in the deed of gift by will (*hibah karena wasiat*), as regulated in Article 112 paragraph (1) subparagraph a item 3 letter b of the Regulation of the State Minister for Agrarian Affairs/Head of the National Land Agency (PMNA/KBPN) Number 3 of 1997 in relation to Article 1813 of the Indonesian Civil Code (KUHPerdata), it can be concluded that there exists a fundamental difference between the concept of an executor of a will (*executeur testamentair*) and that of an ordinary power of attorney as referred to in Articles 1792–1819 of the Civil Code. A power of attorney is essentially personal in nature and terminates by operation of law upon the death of either party, whereas the execution of a will constitutes a legal command that remains in force even after the death of the testator. Accordingly, the executor of a will does not lose his or her legal authority upon the death of the testator, since such authority originates from the testator's last will, which must be carried out in order to uphold the principles of legal certainty and justice.

However, the provision in Article 112 paragraph (1) subparagraph a item 3 letter b of PMNA/KBPN No. 3 of 1997 creates legal uncertainty, as it does not explicitly distinguish between an executor of a will and an ordinary attorney-in-fact. This often gives rise to differing interpretations in practice, particularly among Land Deed Officials (PPAT) and notaries when the executor of a will is required to execute a deed of gift after the death of the testator. Therefore, normative clarification within statutory regulations is necessary so that the executor of a will is granted clear legal legitimacy to carry out the will of the testator without being hindered by the provisions of Article 1813 of the Civil Code. Such legal certainty is essential to prevent inheritance disputes, to clarify the authority of the executor of a will, and to ensure the fulfillment of the testator's intentions in accordance with the principles of justice and the utility of law.

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