

POSITION OF A NOTARY IN THE MAKING AND REVOKING OF A WILL

(Study at the Notary Office of Herry Aprizal, SH,Sp.N)

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Abstract

Notaries play an important role in the preparation and revocation of wills due to their authority as the official who makes authentic deeds that guarantee legal certainty regarding the testator's last wishes. This study aims to examine the position and duties of notaries in this process through normative and empirical methods, including analysis of regulations, literature, and field data at the Notary Office of Herry Aprizal, SH, Sp.N. The results of the study indicate that notaries are authorized to prepare and store wills and are required to report the preparation, changes, and revocation of wills to the Estates Office and the Central Wills Register. Revocation is only valid if carried out by the maker in a competent state, and the notary must ensure that the procedure meets legal requirements. The study confirms that notary professionalism is a key factor in ensuring legal certainty and order regarding the implementation of wills.

Keywords: Notary, Will, Making a Will, Revocation of a Will, Legal Certainty.

1. INTRODUCTION

The presence of law in society demands certainty and order, including in legal actions related to a person's assets after death. Notaries, as public officials who create authentic deeds, play a crucial role in ensuring the legality of the testator's final wishes through the creation of a will. Increasing public legal awareness has made authentic deeds increasingly necessary as strong evidence and able to minimize the potential for disputes. In the context of inheritance, a testament serves as a legal instrument that allows an individual to legally determine the distribution of their inheritance, as it is understood that a will is unilateral and can be revoked at any time (herroepelijk) by its maker. However, the creation and revocation of a will are inseparable from the strictly regulated functions and authorities of a notary, including the obligation to store, report, and disclose the testament to authorized authorities such as the Estates Office and the Central Wills Register. The provisions of the Civil Code and the Notary Regulations stipulate that all actions related to the testament must be processed in an orderly administrative manner, making the notary's role crucial in ensuring the validity of such actions. However, in practice, variations in the understanding and application of notary authority are still found, so a more specific study at the empirical level is needed.

Based on this context, this research focuses on two main questions: (1) what is the position of a notary in the making and revocation of a will; and (2) what are their duties and authorities in implementing the making and revocation of a will. This question is important because it concerns legal certainty for parties interested in the testator's inheritance. This study aims to systematically analyze the role of notaries in the process of making and revoking wills and to identify their duties and authorities based on normative provisions and field practice. This focus is expected to provide a comprehensive overview of how notaries perform their public service functions in the context of inheritance law. Academically, this research contributes to enriching the study of the role of notaries in inheritance law, particularly regarding testaments, which are still relatively rarely studied empirically in Indonesia. This research also fills a research gap regarding the implementation of notary duties and authorities in daily practice, particularly in the management of will administration and reporting mechanisms. Furthermore, the findings of this study are expected to serve as a reference for the development of notarial practices and increase legal certainty in inheritance processes.

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2. LITERATURE REVIEW

2.1 Concept and Function of Notary

According to Adjie (2010), a notary is a public official appointed by the state to create authentic deeds as strong legal evidence. A notary's authority includes drafting agreements, validating documents, and reporting deeds to state institutions. In the context of inheritance law, a notary's function is to ensure that wills are prepared in accordance with formal and material requirements.

2.2 Definition and Types of Wills

A will is a written statement of a person's final wishes and is effective after the testator's death. The Civil Code regulates three forms of testament:

1. Openbaar testament (open will), made in the presence of a notary and two witnesses;
2. Olographis testament (handwritten will), written and signed by the testator himself;
3. A secret will (geheime testament) is submitted in closed form to a notary. (Hartono, 2010; Civil Code Articles 931–940)

2.3 Revocation of a Will in Civil Law

Revocation of a will can be done explicitly or tacitly. Article 993 of the Civil Code states that the testator has the right to revoke or amend the contents of his will at any time. This is in line with the nature of herroepelijk, namely the testator's freedom to change his will while still alive and legally competent.

2.4 Previous Research

Research by Lubis (2013) and Junaidi (2013) shows that in notarial practice, the revocation of a will is often accomplished by creating a new testament that revokes the old one. However, there has been little empirical research examining the implementation of notary reporting obligations to the DPW and BHP, so this study fills this gap.

3. RESEARCH METHODS

The research method in this study is structured using **an empirical legal research approach** combined with **normative studies** to produce a comprehensive analysis of the relationship between written legal provisions and their implementation in practice. Empirical legal research was chosen because the focus of the study lies not only on the textual validity of regulations, but also on how these provisions are translated into the actions, customs, and practices of law enforcers in the field. Meanwhile, a normative approach is used to provide a theoretical, dogmatic, and juridical basis for the relevant rules, so that the research is able to integrate aspects of legal theory and empirical facts in a balanced manner.

Data collection was conducted through **primary data and secondary data**. Primary data was obtained through **direct observation** and **semi-structured interviews** with two main informants, namely: (1) **Notary Herry Aprizal, SH., Sp.N**, and (2) **Randa Cakra Buana Karim, SH**, as Legal Staff at the Notary and PPAT Office of Herry Aprizal, SH., Sp.N. The selection of informants was based on considerations of competence, professional experience, and direct involvement in notary and PPAT practices that were relevant to the research problem. The semi-structured interview technique was chosen so that the researcher had a guideline for questions, but still provided space for informants to provide more in-depth and developed explanations according to the context of the discussion. Secondary data was obtained through **literature review**, which included a review of laws and regulations, law books, national scientific journals, academic articles, legal documents, and previous research related to the topic. All sources were selected by considering their relevance to the problem formulation, the credibility of the author or publishing institution, and the recency of the literature to ensure that the research has a current theoretical basis and is academically sound.

The data processing process is carried out through three main stages. The first stage is **editing**, which checks the completeness, consistency, and clarity of field and literature data. At this stage, corrections are made to parts of the data that are incomplete, ambiguous, or irrelevant to the research focus. The second stage is **classifying**, which groups data based on themes, legal categories, and the data's relationship to the problem formulation. This grouping helps organize the analysis flow so that the data can be processed systematically. The third stage is **verifying**, which re-examines using the cross-check method to ensure the validity and accuracy of the primary and secondary data. Verification is carried out continuously from the data collection process to the analysis stage to ensure that the researcher's interpretation remains within the boundaries of scientific objectivity. The data analysis in this study employed a **qualitative descriptive method**, an analytical technique aimed at describing and explaining legal phenomena as they exist based on the collected data. This approach enabled researchers to conduct in-depth

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interpretations of notary and PPAT practices, linking them to normative provisions, and mapping the gap between legal theory and empirical reality. In drawing conclusions, the study employed a **deductive method**, deriving specific conclusions from general legal principles, theories, and statutory provisions. The deductive method ensures that research arguments remain within a logical, systematic, and scientifically justifiable framework.

4. RESULTS AND DISCUSSION

4.1 Overview of Research Location

The Notary & PPAT Office of Herry Aprizal, SH, Sp.N. is one of the notary offices that exercises authority based on the Notary Law (UUJN). The establishment of this office began with the submission of the Notary Oath/Promise of Office Minutes to the Minister of Law and Human Rights, the Regional Supervisory Council (MPD), and other interested parties. After the oath of office was delivered, Notary Herry Aprizal also provided the office address, sample signatures and initials, and a red notary stamp to the Minister, land officials, notary organizations, the Head of the District Court, the MPD, and the Regent of Tangerang Regency.

Based on the **Decree of the Minister of Law and Human Rights of the Republic of Indonesia Number C-94-HT-03.01 of 2001** and the **Decree of the Head of the National Land Agency Number 5 IX of 2001**, Notary Herry Aprizal officially obtained the authority to open a notary office and carry out his duties. Currently, the office is located at **Jl. Jend. Sudirman No. 7, Gapura City, Kotabumi District, North Lampung Regency, Lampung 34516**, and is one of the notary offices that actively serves the public regarding legal acts that require authentic deeds. As a public official, Notary Herry Aprizal exercises his authority to issue authentic deeds, including land deeds and wills. This office also serves as a legal service facility for the public who require legal certainty and protection in the form of notarial deeds, as mandated by Law No. 30 of 2004 in conjunction with Law No. 2 of 2014 concerning the Position of Notary.

4.2 The Position of a Notary in the Making and Revocation of a Will

4.2.1 Position and Function of Notary in Making Testaments

A notary is a public official authorized to issue authentic deeds, including wills (testaments). This is affirmed in Article 1, number 1 of the UUJN, which states that **a notary is a public official authorized to issue authentic deeds and exercise other powers in accordance with the law**. Because a will is a unilateral legal act and requires complete evidentiary force, a testament must be drawn up or retained by a notary to be valid and enforceable by the parties involved. In practice, a notary not only acts as a deed maker, but also provides legal advice to clients regarding the form and legal consequences of the will they wish to make. The notary ensures that the testator's wishes do not conflict with legal provisions, especially those relating to **legitime portie**, which is the absolute portion for certain heirs that may not be reduced by the testator. According to Randa Cakra Buana Karim, SH, a legal staff member at the Herry Aprizal Notary & PPAT Office, a notary, as the official who makes the deed, must authentically record the testator's final wishes. A holographic testament, or secret testament (geheime), is initially a private deed. However, after being submitted to a notary and a deed of deposit is made, the document becomes an authentic deed with the same evidentiary power as a public testament (openbaar testament).

4.2.2 Notary Duties Regarding the Preparation of a Will

In carrying out the authority to make testaments, notaries have several main tasks, including:

1. **Providing legal advice and advice** to heirs regarding will provisions, limitations on heirs' rights, as well as legal risks that may arise.
2. **Reading the testament** in front of the person appearing and at least two witnesses to ensure that the contents of the deed are in accordance with the wishes of the testator.
3. **Make a list of wills** every month in accordance with Article 16 paragraph (1) letters h and i of the UUJN.
4. **Report the list of wills or nil list** to the Central List of Wills (DPW) within five days of the first week of the following month.
5. **Storing and maintaining wills**, both open, closed and holographic wills.
6. **Issuing a copy or extract of the testament** to the heirs or interested parties after the testator dies.
7. **Submitting a testament** to the Inheritance Hall (BHP) if the heir has died, especially a closed or holographic testament.

Each of these obligations aims to provide legal certainty for the heir and heirs, and to ensure that the process of implementing the testament does not give rise to disputes.

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4.2.3 Obligation to Report and Store Wills

Notaries are required to report their wills to the Regional Representative Council (DPW). This reporting does not include the contents of the will, but rather the testator's identity, the date of the deed, and the deed number. This obligation serves as an administrative oversight to prevent duplicate wills or conflicting wills from the same testator. If the notary does not report the will, then the testament **does not have legal force as an authentic deed** and is only valid as a private deed, and can even be declared **null and void by law** according to the provisions of Article 84 and Article 85 of the UUJN.

4.3 Procedures for Making and Revoking a Will

4.3.1 Procedure for Making a Will

According to the Civil Code, there are three types of testaments:

1. **Open Testament** (open will)
2. **Olographis Testament** (handwritten will)
3. **Geheime Testament** (secret testament)

In practice in North Lampung, as found in field research, notaries more often make testaments in the form of **openbaar testaments**, because notaries can ensure that the contents of the deed do not conflict with the law or harm heirs who have absolute rights.

4.3.2 Competence of Heir and Witness

The making of a testament requires that the testator:

- at least 18 years old or married,
- be in a state of physical and mental health,
- understand the legal consequences of the testament he made.

Witnesses in making a testament must also fulfill the provisions of Article 944 of the Civil Code, namely they must not be heirs, legatees, or blood relatives up to the sixth degree.

4.3.3 Revocation of a Will

Revocation of a testament can be done in two ways:

1. **Explicit revocation (uitdrukkelijk)**

Done through:

- making a new testament that expressly revokes the previous testament, or
- making a special notarial deed containing the revocation of the testament.

Example of a revocation clause:

"I revoke and declare invalid all wills or other documents that have the same power as the will that I have previously made."

2. **Quiet revocation (stilzwijgend)**

Occurs when:

1. There is a new testament whose contents contradict the old testament (Article 994 of the Civil Code).
2. The object of the will is sold to another party while the testator is still alive (Article 996).
3. The heir requests the holographic testament from the notary (Article 934).

In modern practice, notaries more often make a new testament with a revocation clause rather than making a separate deed of revocation.

4.4 Duties and Authorities of a Notary in Executing a Will

The execution of a will involves a notary, a testator, and the Estates Office (BHP). The notary's duties include:

1. Supervise the reading and signing of the testament.
2. Submit a closed or holographic testament to the BHP to be opened after the testator dies (Articles 937 and 942 of the Civil Code).
3. Providing a copy of the will to the heir or legatee after the testator dies.
4. Supervise the process of implementing the testament to ensure it is in accordance with the testator's final wishes.

Meanwhile, the testator (executeur testamentair) has the following duties:

- Controlling and managing inherited assets,

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- Carrying out asset registration,
- Announcing the heir's receivables,
- Carry out calculations and accountability within a period of one year,
- Sealing inherited assets if there are underage heirs or under guardianship (Article 1009 of the Civil Code).

4.5 Researcher Analysis of the Position of Notaries in the Making and Revocation of Wills

Based on the research results, the author concludes:

1. **Notaries have a central position** in the making and revocation of wills as public officials authorized to make authentic deeds.
2. **The notary's obligations do not stop at making deeds**, but also include storing documents, reporting to the DPW and BHP, and supervising the implementation of the testament.
3. If the notary does not carry out these obligations, then the testament can be declared **invalid or not binding on the heirs**, and what applies is the previous testament.
4. **Revocation of a will is an absolute right of the heir**, but must still be carried out through a mechanism determined by law so as not to cause disputes between the heirs.
5. **The most common reasons for revoking a will** according to the notaries interviewed include:
 - the beneficiary of the will rejects the assets,
 - the beneficiary of the will dies first,
 - the recipient commits an inappropriate act,
 - the object of the will is destroyed or transferred.

5. CONCLUSION AND SUGGESTIONS

5.1 Conclusion

Based on the results of research regarding **the position of a Notary in the making and revocation of a will at the Notary Office of Herry Aprizal, SH, Sp.N**, the following conclusions were obtained:

1. Position of Notary

Notaries play a strategic role in the preparation and revocation of wills, including: periodically compiling a list of wills, archiving the deeds, and reporting the deeds to the Estates Office and the Central Wills Registry if changes occur. The notary's role is to ensure that the will is legally valid and binding on all parties.

2. Duties and Authorities of a Notary

The notary is tasked with providing legal input, reading the deed of will in the presence of at least two witnesses, making a list of wills, issuing copies or extracts of the deed to interested parties, and submitting the deed to be opened by the Inheritance Property Office if the testator has died.

3. Revocation of a Will

The revocation of the testament must be carried out by the maker in a physically and mentally healthy condition, under the supervision of a notary so that the action is valid and does not give rise to legal disputes.

Overall, this research confirms that a Notary has the function of **guaranteeing legal certainty and protecting the rights of the parties** in making or revoking a will.

5.2 Suggestions

Based on the research results, regarding **the position of the Notary in the making and revocation of wills at the Notary Office of Herry Aprizal, SH, Sp.N.**, several conclusions can be drawn as follows:

1. Legal Certainty of Wills

Notaries should always ensure that the will-maker's final wishes are conveyed clearly and legally. This can be done by providing legal input and advice before the deed is drawn up, as well as explaining the notary's role as the official making the authentic deed, to avoid errors or disputes later.

2. Protection of Heirs' Rights

When making a will, the Notary is advised to explain the importance of paying attention to the rights of legitimate heirs, so that the distribution of the will remains fair and in accordance with legal provisions.

3. Revocation of the Testament

A notary must ensure that the revocation of a will is carried out legally, clearly, and without pressure from any third party. A notary can also provide legal advice or solutions to the testator regarding the consequences of revoking the will, so that the testator's actions do not lead to future legal disputes.

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4. Monitoring and Archiving

Notaries should routinely monitor the progress of the will that has been made, update information from the testator and heirs, and maintain the will archives properly to ensure legal certainty and avoid disputes.

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