THE CONCEPT OF STATEMENT OF HEIRS TO SUPPORT LEGAL CERTAINTY IN INDONESIA

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ABSTRACT

With regard to the concept of the statements of heirs to provide legal certainty, the notary is the only person authorized to draft the statements of heirs for all Indonesian citizens regardless of their classes. It is based on the UUJN (Law on the Role of Notaries) which states that notaries are authorized to establish evidence in the form of authentic deeds, including the statements of heirs. Notaries are legally established as the only officials or institution which is authorized to create the statements of heirs for all Indonesian people contained in Article 15 paragraph (1) of UUJN, on the authority of notaries to make authentic deeds. The position of Notary has its own authority, and the position itself must have legal rules, as a limitation so that the office can run well and not conflict with the authority of other positions. Making an heir's statement by a notary for all Indonesian citizens without any discrimination is in line with the concept of state law, and fulfills the legal certainty and equality before the law. Likewise, the notary's authority in making evidence as an heir or an heir's statement is also protected by UUJN, a step in line with Development Law Theory.

Keyword: Law, Role Notary and UUJN.

INTRODUCTION

The state law adopted by Indonesia is in line with the concept of a modern state law aimed at organizing public welfare. The state is active and quick in regulating and handling every field or sector of life for its citizens, solely for the purpose of the welfare of its people. In social life, the purpose of law is to achieve order. As Mochtar Kusumaatmadja said that apart from all the longing for other things that are also what law aims to provide for, order is the main goal of law. This is an objective fact that applies to all human societies of all forms. Mochtar Kusumaatmadja himself put justice as the goal of law after order. Furthermore Mochtar Kusumaatmadja said that achieving order in this society requires certainty (law) in the association between human beings insociety. Without the certainty of law and the social order which it embodies, humans cannot develop their God-given talents optimally in the society where the community lives. In this case, legal certainty becomes the most measurable legal objective to bridge the realization of order along with justice in society.

According to Gustav Radbruch, as quoted by Satjipto Rahardjo, legal certainty is one of the basic values of the law. Legal certainty is a general legal principle which underlies the rule of law. The main thing for legal certainty is the existence of regulations (rules) of the law itself. The question of whether the regulations are fair and beneficial for the community is outside the scope of the values of legal certainty. Legal certainty requires the creation of general regulations or generally accepted rules. In order to create a general and peaceful atmosphere in society, these regulations must be enforced and implemented strictly. For this purpose, the legal rules must be known in advance with certainty.

The concept that must be carried out in the framework of an heir's statement that is uniform and meets the principle of legal certainty is to make a notary the only official authorized to

make heir's statement for all classes of Indonesian citizens regardless of class and ethnicity based on the stated reasons and legal basis and described later. The public recognizes a notary as a public official, especially those who are authorized to make authentic deeds of all actions, agreements and decisions, which are required by public legislation desired by the parties concerned that those stated in the authentic letter, guarantee the date, and also not required or specific to officials or other people.

The notary as a public official means the notary is a state organ equipped with legal authority to provide public services to the general public, especially in making authentic deeds as final evidence regarding legal actions in the civil field. Authority is a basis of legal action that is regulated and given to a certain position based on statutory regulations or legal rules. Therefore, each authority has its own scope as stated in laws and regulations.

CONCEPTUAL FRAMEWORK

Theoretically, the authority that comes from laws and regulations is obtained in three ways, namely:

1. Attribution
   Attribution is the granting of government authority by lawmakers to government organs. Attribution involves the granting of a new governmental authority by a provision in the legislation (a new authority is created). In this case, the recipient of the authority can create new authority or expand the authority that already exists. Internal and external responsibility for the implementation of the authority which is attributed lies on the recipient of the authority.
2. Delegation
   Delegation is the allocation of governmental authority from one government organ to another government organ. Delegation involves the allocation of authority that already exists (by an organ that has gained attributive authority to others), so delegation is logically always preceded by attribution. In delegation there is no creation of authority, but only delegation of authority from one official to another. Juridical responsibility does not rest with the delegate, but rather on the recipient of the delegation.
3. Mandate
   A mandate occurs when a government organ allows its authority to be carried out by another organ on its behalf. In a mandate there is no transfer of authority and no delegation of authority. Mandate recipients only act for and on behalf of the mandatary. The final responsibility for decisions taken by the mandatary remains with the recipient of the mandate (there is no transfer of responsibility). Mandates do not have to be carried out based on laws and regulations, but can be done in writing or verbally. The position of a notary as a general official is as a state organ which has an abundance of part of the duties and authorities of the state, namely in the form of duties, obligations, authority, and responsibilities in service to the general public in the field of civil service, especially in the making of, and inauguration of the deed.

As a public official, the notary is appointed by the government to provide assistance to members of the public who want written evidence to be made regarding the occurrence of a legal event. Written evidence or a letter is anything that contains writing intended to pour out the contents of the heart or to convey one's thoughts, and is used as proof. Drafting has 2 (two) functions as follows:

1. Formal function (formalities causa), i.e. the deed is a formal condition for the existence of a legal act, so to be complete or perfect (not valid) a legal act must be made a deed.
2. Function as evidence (probationis causa). A deed was made deliberately as a proof at a later time. This function as evidence is the most important function of a deed. In Article 1868 of the Civil Code, what is meant by authentic deed is : "An authentic deed is a deed which is in a form determined by the law, made by or in front of public officials in charge for that in the place where the deed was made".

So to be classified into an authentic deed, a deed must fulfill 3 (three) elements as follows:
1. Deed must be made "by" (the door) or "before" (ten overstaan) a public official.
2. Deed must be made in the form determined by law.
3. Public officials by or before whom the deed was made must have the authority to make the deed.
   Sudikno Mertokusumo argued that an authentic deed is a deed made by an official authorized for this purpose by the authorities, according to the stipulated.

The source of authority possessed by a notary is obtained by way of attribution, because the granting of authority to the notary public in making an authentic deed is done through legislation, namely UUJN. The authority that is in the notary to make an authentic deed in the framework of evidence needs to be considered in relation to making the heir's statement.

DISCUSSION

Considering that the notary deed as an authentic deed is the strongest and most complete written evidence, the UUJN regulates the form and nature of a notary deed, original deed, grosse deed, copy of deed, copy of notary deed. The notaries in carrying out their daily duties related to making authentic deeds concerning all acts, agreements and provisions required by legislation or desired by the interested parties are divided into 2 (two) notary deed groups as referred to in Article 1 number 7 of the UUJN , namely:
1. Relaas Deed or Official Deed (ambtelijke akten), i.e. a deed which is made by "the door" a Notary.
   In a relaas deed, the notary explains / gives in his position as a public official a witness of all that the notary has seen, witnessed and experienced, which was carried out by another party.
2. Party Deed (partij deen), i.e. the deed which is made "before" (ten overstaan) the Notary.

In the party deed is stated authentically about the statements of those who act as parties to this deed, besides the relaas from a notary that states that the people present have stated their will as stated in the deed. So based on UUJN there are only 2 (two) types of deeds which are within the authority of a notary, namely the Relaas Deed and Party Deed. Notary deeds must be accepted, unless interested parties can prove the opposite satisfactorily before a court hearing. A deed made by an official without authority and without the ability to make it or does not fulfill the conditions, cannot be considered as an authentic deed, but has the power as a private deed if signed by the parties concerned.

According to Tan Thong Kie, in the practice of notaries in Indonesia, the heirs' statements are generally made as private deeds. The contents contain the private information of a notary who believes that the people mentioned in it are the heirs of the deceased. Whether authentic or not, a deed is not valid if it is only considered to be made by and/or in the

presence of officials; moreover, the way to make an The order in legal procedure requires that after someone dies, every effort is made to obtain certainty about the identity (identiteit) of those who are heirs who will inherit the deceased's role,authentic deed must be according to the provisions stipulated by the law. Which in legal practice has developed as the statement of heirs. The making of an heir's statement before and or/by a notary can establish the legal basis of Article 15 paragraph (1) of the UUJN, where the notary is authorized to make an authentic deed regarding all acts, agreements, and provisions desired by the parties concerned to be stated in an authentic deed. In terms of proof, the deed of heir's statement which is made by a notary has perfect proof value because it was made before public officials who are authorized to make an authentic deed. Another case is an heir's statement which is only in the form of information, although made by a notary it lacks power of proof that is perfect because it does not meet the for the perfection of making an authentic deed, the notary examines the material truth to prove the truth of the information given by the parties. The notary, of course, must be sure of the truth both about the testator and the heirs.

The notary has the obligation to provide legal certainty by making a deed by basing and examining existing documents, such as death certificates, proof of marriage, birth certificates for children, statements of whether or not there is a marriage agreement, statements of having adopted children or not, and also information on the presence or absence of a will. The existence of a will is found out by checking the Section of Testament List Center of the Ministry of Justice and Human Rights. This is what distinguishes the making of an heir's statement by a notary compared to other agencies. Tan Thong Kie argued that the making of an heir's statement for all legal groups is entirely left to the notary. The problem is submitted to the District Court or the Syariah Court only when a dispute does occur. In view of these requirements of an authentic deed, that is, not made in the form determined by law. Matters, if the time has come to coordinate among the parties concerned in the context of the formation of National law, it is necessary to pay attention so that the work of making heirs' statements in Indonesia does not continue to float without a legal basis.

In connection with the development of the community at this time, where relatively more people are making wills, there is a positive aspect of making an heir's statement by a notary, namely the testament to the existence of a will through checking Section of Testament List Center of the Ministry of Law and Human Rights. The process of checking the will is not found in the institution making statements of other heirs outside the notary, such as the District Office, Probate Court and the Religious Court or District Court.

1. **The Concept of Statement of Heir Made by a Notary.**
   For legal certainty, the making of heir's statement should be made in the form of an authentic deed as mentioned in Article 15 paragraph (1) of the UUJN. The heir's statement made by the substance of the notary is only about who the heirs are from and how the composition of the heirs is explained or stated before the notary. Regarding the part or rights of each heir, it depends on the testament law that they will use, according to testament law based on Civil Code, Islamic testament law or customary testament law, and for the distribution of inheritance, a separate deed of inheritance can be made which shows a certain part of the assets existing inheritance. Therefore, a notary must have extensive knowledge in making statements of heirs and must pay attention to the necessary conditions so that in the future there will be no mistakes that can be detrimental to the heirs and the notary itself.

a) There are important matters in making statements of heirs, especially those mentioned in Article 14 Wet op de Grootboeken der Nationale Schuld must be stated in the heir's statement, which henceforth must be retained and become a concept that must still be used in making heir's statement in Indonesia, namely: Name, the nickname and last place of residence of the testator.
b) The name, nickname, place of residence and if it is underage, the date and year of birth of those who are entitled to mention their part according to the law, and wills or letters of separation and distribution (boedelscheiding).
c) As far as possible the names, nicknames and residences of the representatives of underage (ie trustee, parental authorities), including special administrators (bewindvoerder).
d) A precise breakdown of a will, or in the case of inheritance according to the law, the relationship between the testator and the heirs, on which the rights are obtained.
e) All restrictions imposed by the testator on the right to transfer what is obtained, by mentioning the name, nickname and place of residence of those subject to the restrictions, as well as those who can accept it and those who must help if transfer handling must be done.
f) As well as the statement of the official who made the heir's statement that he had convinced himself of the truth of what he had written.
The procedure for making an heir's statement carried out by a notary is as follows:

First Stage

- Notary requests application from the applicant / heir or attorney on the stamp;
- Request a death certificate from the testator;
- Conducting a testament to the Testament List Center, whether an heir has ever made a will or not, this is closely related to the distribution of inheritance, whether done with ab-intestato or testametair or to avoid conflict.

Second Stage

- The notary makes the heir's statement The making of an heir's statement that gives more guarantee about the legal certainty, also requires in addition to the accuracy of the notary who made it and the cooperation of the heirs to prove from their civil registration deeds as well as the participation of the government which organizes:
  - accurate / credible data contained in the deeds of civil registration.
- accurate and orderly data from the Ministry of Law and Human Rights regarding the registration of a properly and nationally managed testament (throughout Indonesia) in cooperation with notaries throughout Indonesia based on Article 16 paragraph (1) letter h of the UUJN, which requires notaries to make and submit a list of wills no later than on 5th (fifth) every month.

2. The Requirement of Checking the Wills in Testament List Center Before Making a Statement of Heir.

In making the heir's statement, the notary must always check at the Testament List Center, because if the notary does not do the checking, the probability of claims from heirs who feel disadvantaged in the future if it turns out that a will was made by the testator during the lifetime governing the distribution of the legacy from the inheritance if the person concerned has died. The existence of a will, will affect the contents of the heir's statement made by a notary, because one or several heirs can be set aside as heirs based on a will or part of the inheritance of the testator at all, or will only obtain an absolute part of it. As is well known the husband or wife of the testator can be cancelled as heir, and does not obtain any part of the inheritance of the testator because neither the husband or wife of the testator cannot claim an absolute share (legitieme portie) from the inheritance of his/her partner.

While blood relatives in a straight line up and down if the portion set aside will still receive an absolute share and inheritance from the testator. If it turns out that this matter is neglected it will be fatal because the absolute part that should have been obtained cannot be removed just like that. On the basis of Article 15 paragraph (1) of the UUJN, the notary has the authority to make an heir's statement in the form of an authentic deed not only to those who are subject to the Civil Code, but also to all Indonesians. The distribution of inheritance prior to the unification of testament law is carried out in accordance with the applicable law for the "population class" of the testator. Which form of authentic deed is most suitable with UUJN as a legal discovery can be studied together. To eliminate and dispel discrimination in making heir's statements, the notary may act as the only person who can make the statement of heir. The notary must actively implement the values of independence in a concrete action that is to build and make the notary the only authorized official to make the heir's statement for all Indonesian citizens, without being based on group / ethnicity / tribe or religion. Notary as a position that has its own authority and the position itself must have legal rules, as a limitation so that the position can run well and not conflict with the authority of other positions, and each authority must have a legal basis. Authority is a limitation about who may take action, limited to a particular position based on the legal rules governing the position.

The making of an heir's statement for all Indonesian people by a notary is in line with the concept of the state law in meeting the elements of legal certainty and equality before the law, and the authority of the notary in making evidence as an heir or an heir's statement is also protected by UUJN is a step in accordance with the Development Law Theory from Mochtar Kusumaatmadja, which until now is a legal theory that exists in Indonesia because it was created by Indonesians by looking at the dimensions and culture of Indonesian society. Therefore, by measuring the dimensions of the development, law theory was born, grew and developed in accordance with the conditions in Indonesia, and its application is in accordance with Indonesia's pluralistic conditions and situation.

CONCLUSION

In practice, the heir's statement is made privately by heirs by being strengthened by the Village Head and Sub-District Head for the native Indonesian citizen, made by a notary for the Indonesian citizen descendant of Chinese and made by BHP for other Foreign Eastern Indonesian Citizens with a different and inconsistent legal basis, so that it does not fulfill the principle of legal certainty mandated by the concept of the State Law. The heir's statement which is a very important instrument in testament law so that the laws governing it must be consistent as referred to in Mochtar Kusumaatmadja's Development Law Theory, where there is regularity or order in the development effort which is desirable, so that the legal function guarantees certainty, and order can be achieved.

Pluralism of testament law in Indonesia still exists, and unification of testament law cannot be directly made in full force throughout Indonesia; but in relation to making heir's statements, it can be made by making an heir's statement by notary, because even though there is pluralism of testament law in family law and testament law for Indonesian citizens do not have to be officials or institutions that make the heir's statement also varies. The pluralism of making an heir's statement is one form of legal uncertainty and is one that should be avoided by Indonesia as a state law. Indonesia as a country states that the state law seeks the unification of testament law. However, because at present it is not yet possible to identify the national testament law, matters that are formalities in testament law, namely the heir's statement should be made the same formality for all Indonesian people, without distinction. The authority of a notary in making heir's statements for all Indonesians regardless of class can nullify the existence of legal pluralism in making heir's statements, and the regulations must be carried out in accordance with the Development Law Theory from Mochtar Kusumaatmadja.

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