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THE RIGHT TO IMMUNITY AGAINST NOTARIES DUE TO LAWSUITS AGAINST DEEDS OF GRANT THAT VIOLATE THE LEGITIMACY OF THE PORTION (Study Of Supreme Court Decision Number 2892 K/Pdt/2021)

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ABSTRACT

The act of giving during life or commonly called a grant by the testator that violates the legitimacy of the testator's legitimacy is often a problem because the act is an unlawful act so that the grant deed is canceled. The results of the research and discussion show that the legal position of a deed of gift made before a notary that violates the legitime portie is that the deed of gift is considered null and void by law by itself and is considered to have no binding force from the start. However, in practice, a deed of gift is valid even if it contains a violation of the legitime portie of the heir, as long as it has not been canceled by the injured heir, so that its nature is no longer null and void but can be canceled. The legal remedy of the injured party against a deed of gift that violates the legitime portie is to take legal action to sue. In principle, a gift cannot be canceled or withdrawn. Analysis of the judge's decision regarding the deed of gift that violates the legitime portie in the Supreme Court decision Number 2892 K/Pdt/2021 is a deed of gift made before Notary Sabrina Askandar Tjokroprawiro, contrary to the provisions of the legitieme portie (absolute share) of the heirs as regulated in Article 913 of the Civil Code.

1. Introduction

A notary public is authorized to draw up authentic deeds concerning all acts, agreements, and stipulations required by law and/or desired by the interested party to be stated in an authentic deed. It also guarantees the certainty of the date of the deed's creation, stores the deed, provides a grosse, copies, and extracts of the deed, all of which are performed as long as the creation of the deed is not delegated or excluded to another official or person designated by law.

The success of a notary's performance is determined by the value of honesty. In other words, the relationship between a notary and their client requires honesty and trust. Client honesty is the most fundamental value in supporting the

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success of a notary's performance in drawing up the deeds entrusted to them. As a trusted public official, their deeds must serve as strong evidence in the event of a legal dispute in court, unless their inaccuracy can be proven. This means that the notary provides the parties who draw them with perfect proof.

In addition to providing assurance, order, and legal protection to the public using notary services, notaries also need to be supervised in the implementation of their duties. Another aspect of notary supervision is the legal protection they receive in carrying out the duties and functions entrusted to them by law. As stated in the considerations and considerations, letter b of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Office of Notaries, to ensure legal certainty, order, and protection, authentic written evidence is required regarding acts, agreements, decisions, and legal events made before or by authorized officials.

The discussion of the issue of gifts becomes increasingly interesting when the gift must be withdrawn or canceled for a specific reason, such as if the gift was not executed in accordance with the terms and conditions or did not fulfill the elements required for a gift according to applicable laws and regulations. Upon withdrawal of the gift, all donated items must be immediately returned to the donor, free of any encumbrances.

If any of the terms and conditions of the gift are not met, the gift agreement can be canceled. This is in accordance with the requirements for a valid agreement as stipulated in Article 1320 of the Civil Code, namely, the agreement of the parties; the capacity of the parties to make the contract; a certain thing; and a lawful cause. The agreement of the parties to make the contract is an objective requirement, while a certain thing and a lawful cause are subjective requirements.

Based on the decision in this case, the cancellation of Deed of Grant Agreement No. 42 and Deed of Power of Attorney to Grant No. 43, both dated September 18, 2012, drawn up before Notary Sabrina Askandar Tjokroprawiro, is not only due to the Notary's error or negligence in drafting the deed. The cancellation of a Notarial deed can also be caused by errors or negligence of the parties to the deed, thus giving rise to a lawsuit by one of the parties.

In a civil lawsuit for the cancellation of a deed of gift, the Notary is in the position of co-defendant, which is given as a forced effort, because in a notarial deed, especially a partij acte which then becomes evidence for a civil case, the Notary is not involved and is prohibited by law from being involved in a legal act as explained in the notarial deed he formalized. The Notary's involvement is limited to formulating the legal actions of the parties into his deed and then formalizing the deed. The forced placement of the Notary as a co-defendant is an

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effort to force the Notary to make a statement regarding his deed which is now evidence in the court process.

2. Research Method

This research is descriptive and analytical, that is, it describes, examines, explains, and analyzes laws and regulations related to the objectives of this study. The primary purpose of analyzing legal materials is to conceptually understand the meaning of the terms used in the laws and regulations, while also understanding their application in practice.

The legal research in this thesis utilizes legal materials, consisting of primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials are the legal materials primarily used in research and serve as a source of information. Primary legal materials include judicial decisions and statutory regulations. Secondary legal materials, which explain primary legal materials, include books, legal journals, dissertations, theses, and internet articles. Tertiary legal materials include legal dictionaries and encyclopedias.

The technique for obtaining data related to the research problem is carried out using a single research stage, namely library research. This literature review seeks concepts, theories, opinions, or findings closely related to the subject matter. This literature includes laws and regulations, scholarly works, and other sources.

The data collection tool used to gather the necessary supporting data is a document study, which is used to obtain secondary data by reading, studying, researching, identifying, and analyzing secondary data related to the research object. This secondary data is obtained by examining books, research results, and legal documents related to legal protection for notaries in the event of a lawsuit against a land deed they drafted.

3. Results And Discussion

Results

The heirs of the grantor cannot file a lawsuit unless the original grantor has filed a lawsuit or the grantor has died within one year of the alleged event. Gifts between husband and wife during marriage are not permitted, except for tangible movable property of modest value. Likewise, gifts to unborn children are not permitted unless the child's interests require it.

The act of gifting is formalized through a deed or gift agreement. A gift agreement is a formal agreement that requires a notarial deed or authentic deed. Therefore, it can be concluded that a notarial deed or authentic deed is an

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absolute requirement for a gift deed or agreement. The function of a gift deed is not only to declare the existence of a legal act but also to serve as the sole means of proof.

The transfer of rights has two meanings: transfer and assignment. Transfer is the act of transferring rights that occurs unintentionally through a specific act, but occurs by law. This transfer of rights is called inheritance. The transfer of rights through inheritance to heirs is governed by the inheritance law of the deceased or testator. Considering the transfer of rights through inheritance, when the testator dies, when linked to the definition of a bequest, which is a gift made while the giver is still alive, but the transfer of rights occurs after the giver's death. Therefore, when viewed from the timing of the transfer, the bequest is considered a transfer of rights through inheritance.

The definition of "transfer" is an act of transferring rights that occurs intentionally so that the rights are released from their original holder and become the property of another party. In other words, the transfer of rights occurs through a specific legal act. This transfer of rights is called a transfer of rights. When linked to the definition of a bequest, where the granting of rights is done intentionally, it can be said that a bequest is a transfer of rights.

Based on the explanation above, it is clear that, when viewed from the timing of the transfer of rights, a bequest differs from a bequest. The most prominent difference between a bequest, a bequest, and a testamentary bequest is the timing of their implementation. A gift becomes effective while the grantor is still alive, while a will and testamentary gift become effective only after the testator or grantor has died.

Regarding the transfer of land rights through inheritance, Article 42 of Government Regulation Number 24 of 1997 concerning Land Registration stipulates that if there is only one beneficiary, proof of the transfer of rights is a certificate of heirship. Registration of the transfer of rights is accompanied by a death certificate of the testator and a certificate for the land that has been registered.

If it has not been registered, a certificate of title or a statement from the village/sub-district head stating that the person in question controls the land and a certificate stating that the land in question has not been certified by the Land Office is required.

4. Discussion

When donating property, donors often neglect the provisions regarding the absolute share (legietime portion) that their heirs are entitled to before granting

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the property to any recipient. This will have legal consequences if the donor fails to comply, as it violates the provisions of Article 913 of the Civil Code, which regulates the absolute share.

Violation of the legitimacy of a gift will have legal consequences, but this depends on the legitimacy's stance. The legitimacy can simply accept the fact without suing or filing a lawsuit based on their absolute share. Referring to Article 920 of the Civil Code, if a gift is made to an heir but is found to violate the absolute share provisions, the heir receiving the gift will be subject to a deduction or incorting if proven to have violated the absolute share provisions. However, if the gift is given to someone other than the heir, it is reasonable that the gifted property must be returned to the heir without incorting.

The method for calculating the absolute share must comply with Article 916a of the Civil Code. According to this article, if there are absolute heirs and non-absolute heirs, the gift must not violate the determined absolute share. The determination of the absolute share does not take into account the non-absolute heirs. If the gift exceeds the determined absolute share without taking into account the non-absolute heirs, the excess can be claimed by the absolute heirs.

Legal protection for the beneficiary due to unlawful acts in the creation of a deed of gift that violates the plaintiff's right to an absolute share (legitime portie) as one of the heirs is a legal guarantee that provides legal certainty for the beneficiary. If legal certainty is achieved, legal protection can be granted. The benchmark for legal guarantees is the existence of laws and regulations that can provide the beneficiary with rights to face improper actions/deeds by the testator.

The protection provided by law to the beneficiary, in the form of legislation, can provide justice for the parties, with rights and obligations that must be fulfilled so that any violations can be enforced. Legal enforcement for the parties will create legal certainty in grants, while for the legitimate party, there will be certainty of legal protection in obtaining a share of the inheritance in accordance with Article 920 of the Civil Code.

The legal remedy that can be taken by a party whose rights are violated by a grant exceeding the legitime portie limit is to file a lawsuit with the court, requesting a judge to examine and rule on the disputed case, so that the grant granted by the grantor is annulled by the judge and returned to the grantor. The revocation and cancellation procedures run concurrently, namely in a lawsuit for cancellation of the grant and revocation of the grant from the grantee to be returned to the grantor.

The plaintiff must prove the truth of the events they have alleged. Both the plaintiff and the defendant have equal standing before the court. The plaintiff

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seeks to claim their rights in the form of a performance that is their right, while the defendant seeks to withhold performance or reject the plaintiff's demands. This is intended to ensure that the judge's evidence and decision-making process provide justice for the parties in the case, with the goal of achieving legal certainty. The court is considered the final resort for those seeking justice and is considered capable of providing legal certainty, as its decisions are legally binding and binding on the parties.

Litigation is a legal remedy for disputes arising from grants exceeding the legal limit. According to Frans Hendra Winarta, the litigation process pits the parties against each other. Furthermore, litigation is the final remedy (ultimum remidium) after alternative dispute resolution efforts have failed.

Resolving disputes arising from grants exceeding the legal limit through litigation has advantages and disadvantages. The process of resolving inheritance disputes through the courts results in adversarial decisions that fail to embrace the common good, resulting in a win-lose solution.

The Supreme Court of the Republic of Indonesia, which rejected the cassation petition filed by Notary Sabrina Askandar Tjokroprawiro, based on the plaintiff's evidence that the creation of Deed of Gift Number 42 violated the plaintiff's right to an absolute share (legal portion) as one of the heirs of the deceased Arianto Pratiknjo. A gift made by a parent to only one child would reduce the share of the other children, requiring the law to protect children who were not granted a gift.

The Supreme Court concluded that the decisions of the Surabaya District Court and the Surabaya High Court in this case did not conflict with the law and regulations. Therefore, the cassation petition filed by Notary Sabrina Askandar Tjokroprawiro must be rejected.

Based on the above case, it is clear that a deed of gift can be declared null and void if it fails to meet objective requirements, including a specific matter and a lawful cause. If the essential conditions of the agreement are not met, and if the formal form required by applicable laws/provisions is not met, the agreement is null and void, meaning it was deemed never to have been created in the first place.

The Supreme Court's ruling states that a deed of gift can be annulled because the extent of each heir's absolute rights is established by law, and cannot be deviated from or reduced by the testator (even the deceased testator). Legally, a deed of gift that violates the legitieme portie is automatically considered null and void and has no binding force from the outset. However, in practice, the Supreme Court has established a new rule that a deed of gift is valid even if it violates the

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legitieme portie of the heir, as long as it has not been revoked by the aggrieved heir. Therefore, it is no longer null and void, but rather revocable.

Therefore, the deed remains valid as long as it is not challenged by the heirs, and any provisions made by the heirs regarding the legitime portie are subject to the provisions of Article 920 of the Civil Code and therefore remain valid until the legitimarise challenges them.

As public officials, notaries, in carrying out their profession and office, must provide legal services to the public and have obligations stipulated by law to achieve legal certainty and protection. Notaries are public officials authorized to create authentic deeds that serve as evidence. This authentic notarial deed encompasses all acts, agreements, and provisions required by law.

All acts related to the notarial office are regulated in Law Number 2 of 2014 concerning the Notarial Office, which is a form of preventative legal protection granted to notaries, meaning legal protection provided by the government before a violation occurs. The provisions contained in the laws and regulations aim to prevent violations, as well as provide limitations on the exercise of their authority and regulate related obligations.

The product of a position within an agency must conform to the authority held by that position, and the product remains valid even if the official concerned is no longer in office. If a party feels aggrieved by a product of a position issued by an authorized official, even if the official concerned is no longer in office, the aggrieved party can file a lawsuit with the State Administrative Court, with the object of the lawsuit being the subject of the lawsuit. This does not apply to notaries; the product produced by a notary is an authentic deed executed pursuant to their authority based on the wishes of the parties. Therefore, if a party feels aggrieved regarding a deed prepared by a notary, they can file a lawsuit with the General Court.

Notaries provide legal certainty to the public regarding the creation of authentic deeds required for community activities, whether economic, social, or political. The service provided by a notary in this regard is that the authentic deed is acceptable to all parties involved and has legal certainty. A deed is a written document deliberately created to serve as evidence in the event of an event and is signed.

5. Conclusion

The author disagrees with the legal validity of a deed of gift drawn up before a notary that violates legitime portie and is annulled by a judge. The judge erred in applying the law. According to Article 920 of the Civil Code, a deed of gift

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that violates legitime portie cannot be annulled but rather subject to incorting, which involves withholding, reducing, appointing heirs, and making gifts between surviving parties because it reduces the inheritance portion of the absolute (legitimate) heir.

The legal remedy for a grantee whose deed of gift is annulled by the court is to file a lawsuit. In principle, a gift cannot be canceled or revoked. However, as stipulated in Article 1688 of the Civil Code, a gift may be annulled if the grantee fails to fulfill the conditions under which the gift was made, if the grantee is guilty of committing or participating in a crime to take the life (murder) of the grantor, or if another crime is committed against the grantor. The grantor may file for annulment of the gift if it can be proven in court that the grantee has not fulfilled the conditions under which the gift was made. The process of canceling a gift must use a court decision, and with a final and binding court decision, the gift is null and void.

Analysis of the judge's decision regarding the gift deed that violates the legitime portie in Supreme Court Decision number 2892 K/Pdt/2021 is that the gift deed made before Notary Sabrina Askandar Tjokroprawiro was annulled by the panel of judges because it violated the provisions of legitieme portie (absolute share) of the heirs as stipulated in Article 913 of the Civil Code. In this case, the author disagrees with the judge's decision because the gift deed cannot be canceled but rather reduced, and the judge in this case misapplied the law.

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