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Notary's Responsibility in Making Grant Deeds Exceeding One-Third of Inheritance Property: Research at the Regional Supervisory Council Notary of Banda Aceh Municipality

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Abstract

Grant deed is one type of authentic deed made by a notary that has perfect evidentiary power in court. Ideally, the making of a grant deed is carried out in a legal order, one of which is not exceeding 1/3 (one third) of the grantee's property as regulated in Article 210 Paragraph (1) of the Compilation of Islamic Law (KHI) and Article 726 of the Compilation of Sharia Economic Law (KHES). In practice, there are many lawsuits to cancel the grant deed at the Syar'iyah Court on the basis that the object of the grant property in the deed exceeds 1/3 (one third). For this reason, notaries who make grant deeds exceeding 1/3 of the assets certainly have their own reasons. The making of the grant deed will also have an impact on the status and position of the grant deed as well as the responsibilities and legal burdens that can be assigned to the notary.

Keywords: Notary's Responsibility, Grant Deeds, Inherited Assets

Introduction

The implementation of a muamalah contract requires a written deed as proof that the contract has actually been carried out. A deed is written evidence that is signed and contains events that form the basis of an agreement, or form the basis of a right, provided that from the beginning it was deliberately made for the purpose of proof.[1] Legal deeds have two forms, namely authentic deeds and private deeds. An authentic deed is a deed made by or in the presence of an authorized official for that purpose, and a private deed is a deed that is deliberately made for proof by the parties without the assistance of an authorized official. These two types of written deeds can both be used as written evidence.[2]

An authentic deed in an agreement is made by and before an authorized official, namely a notary. Legally, an agreement can ideally be carried out without or with a notary. Agreements made without involving a notary have legal force as private deeds, meanwhile agreements made involving a notary have legal force as authentic deeds.

The implementation of agreements involving notary officials is regulated in Law No. 2 of 2014 concerning Amendments to Law No. 30 of 2004 concerning the Position of Notaries (hereinafter written UUJN). Article 1 UUJN states that a notary is a public official who has the authority to make authentic deeds and has other authorities as intended in the UUJN or based on other laws.

Notary officials who act to carry out authentic deeds between parties entering into an agreement are legally bound by and limited by UUJN. Article 15 UUJN states that a notary has the authority to make authentic deeds regarding all acts, agreements and stipulations that are required by statutory regulations and/or that are desired by interested parties to be stated in authentic deeds, guarantee the certainty of the date of making the deed, store data and provide grosses, copies, extracts of the deed, all of

[1]Laurensius A.S, *Notaris dan Penegakan Hukum oleh Hakim*, Yogyakarta, Deepublish, 2015, hlm. 26: Bambang Sugeng dan Sujayadi, *Pengantar Hukum Acara Perdata*, Jakarta, Kencana Prenada Media Group, 2015, hlm. 65.

[2]Achmad Ali dan Wiwie Heryani, *Asas-Asas Hukum Pembuktian Perdata*, Jakarta, Kencana Prenada Media Group, 2012, hlm. 91.

this as long as the deed is not also assigned or excluded to another official or other person as determined by law. Apart from this authority, the notary also has the authority to provide legal advice regarding making deeds, making deeds related to land, and making auction minutes deeds. The main authority of a notary as mentioned above is to make authentic deeds regarding all agreements desired by those who have an interest to be stated in an authentic deed.[3]

One way to make an authentic deed by a notary is in the form of a gift deed. A gift is a gift from someone to another person in the form of property voluntarily without expecting anything in return, carried out while the grantor is still alive.[4] This can mean that the donor is willing to relinquish his or her rights to the object donated. Islamic law and positive law recognize the law of gifts to be used solely to help and assist relatives, even other people.[5]

The Civil Code and Presidential Instruction No.1 of 1991 concerning the Compilation of Islamic Law regulate provisions regarding grants. Article 1666 of the Criminal Code states that: "Gift is an agreement in which the donor hands over an item free of charge without being able to withdraw it for the benefit of someone receiving the delivery of the item. The law only recognizes gifts between living people." [6] The KHI provisions also regulate grants in Articles 210 to Article 214. The important point here is that this grant agreement is included in a free agreement or in Dutch legal language it is called *om niet*,[7] which means that the grant agreement is only one way or unilaterally (unilateral) without the need for approval from the grant recipient.[8]

One of the conditions that is a condition for donating assets is that it does not exceed one third (1/3) of assets. This is as regulated in Article 210 (1) KHI: People who are at least 21 years old and of sound mind can without any coercion donate up to 1/3 of their assets to another person or institution in the presence of two witnesses for ownership. These provisions are binding, not only binding on the granting party, but also on parties who have an interest in the agreement. To obtain legal recognition and become authentic evidence, the donor can ask a notary to make an authentic deed in the form of a gift deed.

In the context of Islamic law, gifts of assets can be given to other people who are not heirs or can also be given to heirs, such as children and other relatives of heirs. Most scholars agree that it is permissible to grant gifts to heirs. According to the jumhur ulama, it is permissible according to the law (consensus) for a person to give away all his assets to another person (who is not his family) without his children when he is in good health. However, grants are given more to their children than to other people.[9]

The appearance of a figure not exceeding one third (1/3) of assets as regulated in Article 210 paragraph (1) KHI above refers to provisions in Islamic law. The position is the same as bequeathing assets of no more than one-third (1/3) of assets as stipulated in the hadith of the Prophet SAW, that a will must not exceed 1/3 of assets. However, in Islamic will law, it is prohibited to make a will that exceeds one third (1/3) of assets.[10]

The maximum amount of assets that can be bequeathed is only one-third of the assets. This hadith applies generally to every type of will and to anyone who receives it. The provisions of the will above are then analogous (qiyas) to the law of gifts. For this reason, the gift must not exceed one third of the total assets. However, in gift law, especially gift jurisprudence, scholars still differ in determining whether or not gifts of assets exceeding one third (1/3) are permissible, some allow it and some prohibit it.[11] In fact, there are also those who allow the gift of all assets to other people who are not the donor's heirs.[12] The legal provisions that are used and apply positively in Indonesia are following the provisions of Article 210 (1) KHI, namely that you cannot give away assets exceeding one third (1/3) of assets.

Sayyid Sabiq stated that the majority of ulama are of the opinion that the law of giving away all one's assets is permissible, but some other ulama, especially those in the Hanafi school of thought, state that it is not valid to give away all one's assets, and that what is permitted is only 1/3 of all existing assets.[13] Thus, in the context of jurisprudence, giving away all assets or more than 1/3 of assets is still debated by scholars, some allow it and others prohibit it.

However, in reality, carrying out the position and functions of a notary is often hampered by technical problems. For example, in a gift contract package, the notary makes a gift deed without paying attention or researching in depth about the amount of property being gifted. This has implications for the assets that are the object of the gift not complying with the provisions of Article 210 KHI, namely that the

[3]Bachrudin, *Relasi Bahasa Indonesia dan Bahasa Hukum di Indonesia dalam Penyusunan Perjanjian dan Pembuatan Akta Notaris*, Jakarta, Kencana Prenada Media Group, 2023, hlm. 351.

[4]Abdul Aziz Dahlan, *Ensiklopedia Hukum Islam*, Cet. 3, Jilid 2, Jakarta, Ichtiar Van Hoeve, 2009, hlm. 540.

[5] Abdul Manan, *Aneka Masalah Hukum Perdata Islam Indonesia*, Cet. 3, Jakarta, Kencana Prenada Media Group, 2009, hlm. 285.

[6]Purwosusilo, *Aspek Hukum Pengadaan Barang dan Jasa*, Cet. 2, Jakarta, Kencana Prenada Media Group, 2017, hlm. 67.

[7] Jonaedi Effendi, Ismu Gunadi Widodo, dan Fifit Fitri Lutfianingsih, *Kamus Istilah Hukum Popular*, Jakarta, Kencana Prenada Media Group, 2016, hlm. 277.

[8]Zamir Iqbal dan Abbas Mirakhor, *Pengantar Keuangan Islam Teori dan Praktik*, Cet. 3, Jakarta, Kencana Prenada Media Group, 2018, hlm. 123-124.

[9] Mohd Kalam, Gamal Akhyar, dan Annisa Purnama Edward, "Kedudukan Ahli Waris sebagai Penerima Hibah Berdasarkan Putusan Mahkamah Syar'iyah Tapaktuan Nomor. 18/Pdt.G/ 2018/MS.Ttn". *El-Usrah: Jurnal Hukum Keluarga*. Vol. 4, No. 1, Januari-Juni 2021, hlm. 250.

[10]Muhammad Amin, "Studi Komparasi Kekuatan Hukum Hibah terhadap Anak Angkat". *Jurnal Interdisiplin Sosiologi Agama*. Vol. 01, No. 2. Juli-Desember 2021, hlm. 179.

[11]Aulil Amri dan Tajul Iflah, "Hukum terhadap Hibah Harta Bersama kepada Anak Hasil Nikah Siri: Analisis Putusan Nomor 283/Pdt. G/2019/MS. Bna". *Jurnal El-Hadhanah: Indonesian Journal Of Family Law And Islamic Law*, Vol. 2, No. 1, Juni 2022, hlm. 69.

[12]Abdul Rahim, "Pemberian Hibah dari Orang Tua lepada Anaknya dapat Diperhitungkan Sebagai Warisan Analisis Pasal 211 KHI". *Al-Usrah Jurnal Al-Ahwal As-Syakhsiyah*. Vol. 10, No. 01, Juni 2022, hlm. 2.

[13]Sayyid Sabiq, *Fiqh Sunnah*, Terjemah: Abdurrahim dan Masrukhin, Jakarta: Cakrawala Publishing, 2009, hlm. 553.

assets donated exceed one third (1/3) of the grantor's total assets.

According to the statement of a notary in Banda Aceh, the gift deed was made at the request of the grantor, witnessed and signed by the parties, including witnesses.[14] Generally, notaries do not research and analyze in depth the total amount of the donor's assets and how much it compares to what was donated. This is actually contrary to the authority of the notary. Legally, the notary has the authority to require the party giving the gift to obtain prior approval from all his heirs and ensure that the property donated belongs to him and does not exceed more than one third (1/3).[15]

This will of course have implications for at least two aspects. First, making a gift deed without examining the amount of the donor's assets will be detrimental to related parties such as the donor's heirs. Second, the gift deed can potentially be challenged and cannot be used as authentic evidence, so its legal force is not binding and can even be said to be "null and void" because it violates the provisions of article 210 KHI.

There were a number of cases of requests for cancellation of grants in court at the first level, appeal, and at the cassation level. However, here we can take two examples of decisions at the appellate level of Makhamah Syar'iyah Aceh:

1. Appeal level decision decided by the Aceh Syar'iyah Court Number 49/Pdt.G/2020/Ms.Aceh. In this decision, the plaintiff filed a lawsuit for cancellation of the gift on the grounds that the assets donated exceeded 1/3 of the assets as stipulated in Article 210 KHI. This case also has similarities with the previous case, namely that the heir confirmed the gift deed that had been executed by the heir (grantor) to the previous recipient of the gift. In this case, the judge decided to accept the plaintiff's claim, then in the decision dictum canceled the gift made by the donor to the recipient of the gift, and determined that the two gift deeds made by the notary were invalid and had no legal force. This means that the gift deed made by the notary is not in harmony with and is contrary to the provisions of Article 210 KHI, therefore the appeal judge accepted the claim from the appellant and canceled the existing gift deed.
2. Appeal level decision decided by the Aceh Syar'iyah Court Number 7/Pdt.G/2022/Ms.Aceh. In this case, the plaintiff or appellant did not accept the first instance decision, especially regarding the deed of gift which had been made before a notary which actually exceeded 1/3 of the grantor's assets. In this decision, the appeal judge again decided MS's decision. Langsa in the first instance regarding the cancellation of the gift deed. The appeal judge considered that the deed of gift executed by the grantor did not comply with the provisions of Article 210 Paragraph (1) KHI, namely that apart from not being attended by witnesses, the assets donated exceeded 1/3 of the assets. Thus, the deed of gift made by a notary at that time was invalid or had no legal force.

Apart from the problems above, the reality is that it raises problems regarding notary accountability, both from a civil and administrative perspective. A notary who makes a gift deed without complying with the applicable provisions may be subject to administrative sanctions because he violates the principle of prudence and violates his obligations as a notary who must be honest, trustworthy and must also prioritize the interests of the parties to the agreement. Notaries can also be asked for civil sanctions in the form of compensation if the injured party wishes.[16]

Based on the problems above, it is interesting to study further the responsibility of notaries in making gift deeds exceeding one third (1/3) of assets.

Research Methods

To conduct this legal research, an empirical juridical approach was chosen as the method to be used. Empirical juridical approach, namely law as a symptom of society, as a social institution or pattern of behavior. This approach is known as empirical legal research or sociological legal research.[17]

The approach taken in this research is a qualitative approach, according to Cresweell, as quoted by Rukajat, that a qualitative approach is an approach used to build knowledge statements based on a constructive perspective (for example meanings originating from individual experience, social and historical values, with the aim of to build a particular theory or pattern of knowledge). Cresweell explained that in qualitative research, knowledge is built through the interpretation of multiple, diverse perspectives.[18] So the research approach in this study is research aimed at analyzing the Responsibilities of Notaries in Making Grant Deeds Exceeding One Third of the Assets. Research was carried out at the MPD in Banda Aceh Municipality.

Primary data was collected by interview. This form of research focuses on finding data through natural sources, in the form of interviews and documentation studies and is strengthened by several literatures that examine the theme of this research. Meanwhile, the secondary data used are writings in the form of literature, such as books, dictionaries, journals and other data that are relevant to the research.

In selecting the research sample, the researcher determined several important criteria so that the intended sample was considered relevant and competent in providing the information the researcher needed. In this case, information from this research sample was obtained from informants and sources. Informants are parties who have knowledge about the research object but are not directly involved with the object being researched. The panel research informants are:

a. Banda Aceh Municipality MPD (1 person as informant).
b. Notary (1 person as informant).
c. Judge (1 person as resource person).

[14] Hasil Wawancara dengan Oti Pertiwi, Notaris PPAT, Batoh, Kecamatan Lueng Bata, Banda Aceh, Tanggal 20 Juli 2023.

[15] Anidya Khana Vinuris, Nur Chanifah, dan Supriyadi, "Kedudukan PPAT dalam Hibah Hak atas Tanah dengan Persetujuan sebagian Anak dan Perlindungannya". *Notary Law Journal*. Vol. 2, Issue 2, April 2023, hlm. 108.

[16] Olivia Maudira Olanda Dan AR. Nurdin, "Tanggung Jawab Notaris Terhadap Pembatalan Akta Hibah Yang Dibuat Tanpa Persetujuan Ahli Waris". *Jurnal Kertha Semaya*. Volume 10, Nomor 7, (2022), hlm. 1715.

[17] Ronny Hanitijo Soemitro, *Metode Penelitian Hukum dan Jurimetri*, Jakarta, Ghalia Indonesia, 1990, hlm. 34.

[18] Ajat Rukajat, *Penelitian Pendekatan Kualitatif*, Yogyakarta, Deepublish, 2018, hlm. 5.

Results and Discussion

1. Analysis of the Factors that Cause Notaries to Make Deeds of Grants Exceeding One-Third (1/3) of Inherited Assets

The previous discussion has been put forward regarding the gift of property to other people as a legal event which is seen by Islam and positive law as a positive legal action. However, its realization must be bound by and limited by the provisions of the applicable laws and regulations. On the one hand, one of the matters of gift law that should be taken into account here is that the object of the property gifted must be no more than 1/3 of the donor's property. Every person who has the desire to give away assets is required to first calculate the entire amount of their assets, then calculate the maximum amount of 1/3 to be given to other people.

On the other hand, the legal provisions in KHI, KHES and UUJN, as previously stated, do not regulate and do not explain in detail what obligations apply to notaries or PPATs in examining the amount of assets donated by donors. For this reason, a notary or PPAT can make a deed for more than 1/3 of the property. These two sides indicate that there is a separation between the notary's obligations and the grantor's obligations in making a gift deed.

Regarding the making of a gift deed where the object of the gift exceeds 1/3 of the property, it becomes a legal fact and leads to legal problems in society. The problem that arises is the possibility that the heirs could be harmed because the object of the gift exceeds the amount specified in the statutory regulations. There are quite a few legal cases in which the heirs contest the gift deed again and ask the panel of judges to cancel the gift deed that has been made by a notary and/or PPAT. In the two examples of judge's decisions above, it can be seen that the plaintiff is the heir of the donor. The reason for the plaintiff's claim is because the assets donated by the heir exceed the maximum amount of the object of the gift that should be as stipulated in the KHI and KHES provisions.

The notary who acts to make the deed of gift for more than 1/3 of the grantor's assets certainly has his own reasons. According to Gita Melisa, one of the notaries in Banda Aceh, there are quite a lot of legal cases regarding lawsuits regarding cancellation of gift deeds, the main reason is that the object of the grant given by the grantor exceeds the maximum amount stipulated in existing regulations. In this context, a notary can make a deed of gift whose object is in accordance with what the grantor desires. The reason for making a gift deed exceeding 1/3 is generally because the notary does not have the responsibility or obligation to ascertain the actual amount of the object of the gift as a percentage of the total amount of the grantor's assets.[19] This explanation is also in line with the statement of Nurdhani, as a member of the MPD of Notaries in the jurisdiction of Banda Aceh. In the statement it can be understood as follows: "The notary has no obligation to ensure whether or not the object of the gift is less than or equal to 1/3, and the notary does not need this. Apart from that, the value of assets can also change, it can increase and decrease. So when making a deed there is no obligation for us to check whether it is a third, less or more".[20]

In Melisa's explanation, she also stated that the notary only acts to make a deed based on the confessions of the parties. If the confessions of the parties state that the assets donated do not exceed one third of the donor's assets, then that is sufficient. In fact, to strengthen this, the notary here makes a statement acknowledging that the assets donated do not violate statutory provisions, one of which is that they do not exceed one third of the assets. This can be understood from the following information: "So actually, if you say responsibility, it is impossible to be completely responsible to the notary. Because the acknowledgment is from the parties. A notary is a person who only compiles what the parties wish. So the deed is not purely a notary's product, the gift deed is a notary's product but is based on the wishes of the parties. For this reason, do not assume that when a notary has made a deed of gift, this action is not one hundred percent legal responsibility of the notary. When sued, more than 1/3 of the assets are blamed by us (the notary). So, to anticipate this, we made a statement stating that the grantor had indeed donated no more than 1/3 of the assets. The notary does not have the authority to check whether the assets exceed 1/3 of the donor's assets or not, and whether it is right or wrong is not within our authority."[21]

The two statements above show that the notary is not obliged to know the actual conditions regarding the number of assets donated. Notaries here only provide services to the community[22] regarding making grant deeds. When the deed is made, the basis used by the notary is an acknowledgment from the parties. There is no obligation to confirm whether the confession is true or false (lying). The most important thing for the notary is to make a statement acknowledging the condition and condition of the amount of the donated assets which does not exceed one third of the assets. The reasons for making a gift deed that exceeds 1/3 of the assets are basically only two points:

1. Because there is no obligation for the notary to further investigate the object of the gift, especially regarding the amount of assets donated.
2. The making of the deed is in accordance with the grantor's initial acknowledgment that the assets donated do not exceed one third of the assets.

Viewed in the context of positive law and Islamic law, the reason for making a gift deed exceeding 1/3 (one third) as previously explained is in line with the principles of positive law. The most important aspect in examining the truth of an action is from the external aspect only. In Islamic law, there is also a history which states that a person can only legitimize, determine or justify an action only from the external aspect (visible appearance), while something that is abstract, internal or implicit is not an important point in legal matters.

[19] Hasil Wawancara dengan Gita Melisa, Notaris Kota Banda Aceh, tanggal 6 Maret 2024.

[20] Hasil Wawancara dengan Nurdhani, Notaris sekaligus Anggota MPD Notaris Kota Banda Aceh, tanggal 6 Maret 2024.

[21] Hasil Wawancara dengan Gita Melisa, Notaris Kota Banda Aceh, tanggal 6 Maret 2024.

[22] Mariana, Darmawan, Suhaimi, Pengawasan Terhadap Notaris Yang Tidak Membuka Kantor, Kanun Jurnal Ilmu Hukum, Vol. 21, No.3 (Desember, 2019), pp., 473-486.

In one of the rules of jurisprudence it is stated that: *"al-mar'u mu'akhizun bi iqrarihi", meaning: "a person can determine a law according to his own recognition".*[23] This means that the grantor's acknowledgment (that the donated assets do not exceed one third of his assets) is sufficient reason for a notary to make a gift deed. The notary does not need to carry out the process of proving what the grantor admits.

The legal determination process only looks at the external aspects, there is no burden and responsibility for the notary to confirm the quantity of the donor's assets and also the amount of assets donated. The calculation of the amount of assets is basically only the obligation of the grantor. The provisions of KHI (Article 201 paragraph 1) and KHES (Article 726) which require that the maximum amount of donated assets not exceed one third of the assets are obligations imposed on the grantor, not the notary. The notary here can only act to constitute (determine) or reflect and also form the donor's wishes so that the object of the gift is recorded in the form of a gift deed. The notary does not have the qualifications to qualify or assess whether the object of the gift really does not exceed one third of the assets. Giving property to someone verbally has no legal force in the evidentiary process. For this reason, if the grantor has the intention to make a gift deed, then Indonesian law stipulates that services for making a gift deed can be carried out through a public official, namely a notary (Article 16 UUJN). The intention to make a gift deed can be accepted after the grantor has previously met a number of legal requirements that are directly related to the content and material of the deed. In the process, the donor is also required to provide assurance to the notary that the amount of the assets donated does not exceed 1/3. Merely having an acknowledgment and signing a statement of acknowledgment from the grantor is considered sufficient to provide certainty to the notary, without the notary having to check the truth of the acknowledgment.

The reasons for the absence of a law that regulates the limits of a notary's actions and the reasons for the acknowledgment and signing of a letter acknowledging the object of the gift not exceeding 1/3 of the assets are an important part in making the deed of gift. Because, a notary cannot accept and make a deed of gift if the donor directly admits that the object of the gift exceeds 1/3 of his assets. For this reason, the acknowledgment of the grantor and the absence of legal obligations stipulated in the law relating to tracing the correct quantity of the amount of the gift are reasons for the notary to make the deed of gift, even though in real terms and legal facts the actual assets of the object of the gift are more than 1 /3 which violates the provisions of Article 210 KHI and Article 726 KHES.

2. Analysis of the Position of Grant Deeds Made by Notaries Exceeds One Third (1/3) of Inheritance Assets in the Court Lawsuit Process

A gift deed is a form of documentation that is valid in the eyes of the law, where its main function is to show the legality of the gift process from the giver to the recipient, for example the gift of a house, land and vehicle. Because grants generally involve goods or other types of property with a large value, the existence of a grant deed here becomes very crucial, so that the grant deed document itself must be drawn up, containing the signatures of the parties involved in the grant process, namely heirs and recipients, as well as notaries. In the case of making a gift deed, the notary, apart from being bound by UUJN provisions, must also be bound and comply with the provisions of the Notary Code of Ethics. Thus, when making a deed, the notary is obliged to ensure that the deed has been carried out in accordance with the legislation, the Code of Ethics and the requirements of the position of notary. Apart from that, notaries as makers of evidence are obliged to always carry out their position by paying attention to legal rules and moral norms, propriety and decency. The Notary Code of Ethics states several obligations and prohibitions for notaries. The notary's obligations include:

1. Have good morals, morals and personality.
2. Respect, uphold the honor and dignity of the notary position.
3. Maintain, defend the honor of the association.
4. Behave honestly and independently, be impartial, trustworthy, thorough and full of responsibility in accordance with statutory regulations and the contents of the notary's oath of office.
5. Improve the knowledge and professional skills you already have, not limited to legal and notarial knowledge.
6. Prioritize their profession to serve the interests of society and the state.
7. Providing services for making deeds and other authorities for people who cannot afford it without collecting an honorarium.

Previous information has been stated that the notary has no obligation to ensure the truth of the donor's statement regarding the quantity of the assets donated, whether it exceeds 1/3 of the assets or not. An important point in making a gift deed is that the notary must first receive information from the donor that the amount of the donated assets is in accordance with the applicable statutory provisions. Indeed, problems will arise when there is incorrect information from the donor which actually violates the maximum amount of assets that can be donated. This point will actually be detrimental to the grantor himself. There is a big opportunity for a lawsuit to be filed by interested parties, who generally come from the family or heirs of the donor.

In the context of evidence and litigating in court, the plaintiff is charged with the obligation to prove the claims of his lawsuit, because notarial deeds are made for evidentiary purposes and the notary itself is an implementation of the law of evidence.[24] These arguments will later become the benchmark for resolving disputes between the two parties. The position of a deed basically stands alone and will not affect whether the gift is valid or not. However, the gift deed can be challenged and revoked or even canceled if there is a lawsuit from another party. This is in line with Gita Melisa's

[23] Moh. Mufid, *Kaidah Fikih Ekonomi & Keuangan Kontemporer: Pendekatan Tematis dan Praktis*, (Jakarta: Kencana Prenada Media Group, 2019), hlm. 27.

[24]Irma Mulia Fitri, Ilyas Ismail, Suhaimi. 2019. Pengawasan Dan Pembinaan Majelis Pengawas Daerah Terhadap Notaris Yang Melakukan Pelanggaran Di Kabupaten Aceh Timur. *Syiah Kuala Law Journal;* 3(1):53-62.

statement as follows:[25] "A gift deed that exceeds 1/3 (one third) of the assets can basically only be annulled if there is a party who challenges it with other evidence. The principles for making a gift deed also apply the same principles as the principles for making a land certificate, which is called negative publication. In this aspect, the land certificate could be canceled by a judge if someone can prove otherwise. Likewise with a gift deed, it can also be canceled because it is deemed to exceed one third after there has previously been a lawsuit from another party and the plaintiff can prove it.[26]

Similar information was also put forward by Nurdhani as follows: "The deed of gift made by a notary actually exceeds 1/3 (one third) of the assets, then procedurally there is no problem, unless there is a lawsuit from another party or heir, then the position of the deed of gift may be canceled and also its position is no longer binding and can no longer be used. Used as authentic evidence."[27]

The two statements above provide information that the position of the deed of gift is not binding and can no longer be used as authentic evidence if there is a claim from another party who can prove their claim in court. Basically, grants cannot be withdrawn or cancelled, but because the grant deed is a legal product, a legal defect lawsuit can be filed to cancel the grant through the Religious Court or Syar'iyah Court in Aceh. All forms of objects that have been donated with only a difference of the maximum amount of assets donated must be returned if the gift is canceled. Therefore, legal consequences arise for the recipient of the grant if the grant is requested for cancellation in court or the Syar'iyah Court.

Judging from the principle of legal certainty, the law on making gift deeds and the position of gift deeds that exceed 1/3 of the donor's assets can be analyzed from various angles, both from the donor's heirs and from the notary's perspective, as can be analyzed as follows:

1. Viewed from the perspective of the heirs, making a deed whose object is a gift exceeding 1/3 (one third) of the donor's assets could create legal uncertainty for the donor's heirs. However, the heir is the party who has more rights regarding the donor's assets as his heir if at any time the donor dies, especially the rights to the difference in the amount of the object of the gift which exceeds 1/3 of the assets. One example can be taken from the two decisions of the judges at the appellate level at the Aceh Sharia Court as previously mentioned. In these two decisions, the party who suffered losses from the gift deed were the heirs, because the value of the object of the gift was greater than the total amount of the donor's assets. Apart from these two cases, the author also strongly suspects that there are other similar cases, but the heirs do not have access to challenge them in court, this of course means that the status of making a gift deed that exceeds 1/3 of the donor's assets does not provide legal certainty. to the heirs.
2. Viewed from a notarial aspect, making a gift deed that exceeds 1/3 (one third) also does not provide legal certainty. Ideally, a legal provision in a statutory regulation must be clear, specific and unambiguous. This applies so that the legal material contained in the articles is clear and provides legal certainty. It's just that so far, the provisions regarding the duties, responsibilities and authority of notaries tend to be limited, so that the opportunity for a notary to make a deed of donation for more than one third of the assets is very open, moreover there is the possibility that the donor will not be honest in explaining the status and object of the donated assets for which the deed will be made.

The two analyzes above are the result of abstractions from legal cases that have arisen in the field, including analysis of decisions at the Aceh Syar'iyah Court as stated in the previous chapter. This means that making a gift deed along with the legal regulations related to the procedure for making a gift deed tends to still be unable to provide legal certainty to the heirs on the one hand and to the notary on the other hand.

In the evidentiary process, the position of a gift deed that exceeds 1/3 of the assets can legally be challenged and the burden of proof is placed on the plaintiff, the oath is imposed on the defendant, in this case the recipient of the gift and also the notary as the maker of the gift deed. This is in line with one of the rules of jurisprudence in filing a lawsuit in court, which reads: "al-bayyinah lil mudda'i wal yaminu ala man ankar", meaning proof for the plaintiff and the right to deny by oath for the defendant.[28]

As long as the plaintiff is able to prove the truth of his claim, then the law also establishes rights to him. Therefore, the deed of gift that is being sued can be cancelled, or in other words the judge can determine that part of the donated assets be returned to the plaintiff against the difference in the maximum amount of assets. This means that if someone gives a gift to someone who is not his heir and the gift exceeds 1/3 (one third) of the assets, then the gift is still valid for one third of the entire inheritance, the person who was given the gift must return the excess of that third of the assets.

3. Analysis of Notary Responsibilities for Making Grants that Exceed One-Third (1/3) of the Assets

It has previously been stated that making a gift deed is one of the authorities possessed by a notary, because a gift deed is an authentic deed, as regulated in Article 1 point 1 UUJN. Making authentic deeds, including gift deeds, is a form of attributive authority mandated by UUJN provisions to notaries. The procedures and stages for making a gift deed are generally the same as for making other authentic deeds. Any violation of the standards for making gift deeds can result in the notary concerned committing malpractice or bad actions. According to several legal experts in the field of notary law and ethics, including Andyna, Liliana, and Salim, this malpractice action is related to violations of

[25]Hasil Wawancara dengan Gita Melisa, Notaris Kota Banda Aceh, tanggal 6 Maret 2024.

[26]Hasil Wawancara dengan Gita Melisa, Notaris Kota Banda Aceh, tanggal 6 Maret 2024.

[27] Hasil Wawancara dengan Nurdhani, Notaris sekaligus Anggota MPD Notaris Kota Banda Aceh, tanggal 6 Maret 2024.

[28] Moh. Mufid, *Kaidah Fikih Ekonomi & Keuangan Kontemporer: Pendekatan Tematis dan Praktis*, (Jakarta: Kencana Prenada Media Group, 2019), hlm. 27.

professional ethics as well as violations of legal norms.[29] This means that in the event of notary malpractice when carrying out their duties, responsibilities, obligations and authority, the notary can be subject to criminal, civil and administrative prosecution.[30]

Paying close attention to the review above shows that notaries who (whether intentionally or not) do not carry out the obligations stipulated in ethical laws and regulations or legal norms can be held accountable. In the theory of responsibility (obligation or responsibility) there is also a category of legal responsibility for actions that violate legal products. A person is said to be legally responsible, meaning that he or she is responsible for a sanction in the event of an act that is contrary to legal provisions.[31] This means that there is open space for notaries who do not carry out their obligations as stipulated in the UUJN to be legally accountable.

Failure to carry out obligations that have been regulated in law (especially UUJN, KHI, KHES, and Permenkumham) has a correlation with legal subjects that violate the law. For this reason, in reviewing legal responsibility, there is a correlation between the offender's actions and the legal provisions that are violated. Following the theory of responsibility put forward by Hans Kelsen, responsibility related to legal violations is divided into 4 (four) types, namely:[32]

1. Individual responsibility, that is, an individual is responsible for violations committed by himself without involving other parties.
2. Collective responsibility means that an individual is responsible for a violation committed by another person, in this case there is involvement of one individual with another individual so that the mistake is committed collectively and the sanctions are also given collectively.
3. Responsibility based on fault, meaning that an individual is obliged to be responsible for violations committed intentionally and with the aim of causing harm to other people, both in terms of life and property.
4. Absolute liability, which means that an individual is responsible for an offense committed because it was unintentional and unforeseen.

Following the theory of responsibility above, violations of notarial law in making a gift deed include deliberately not reminding the parties (parties, especially the grantor) regarding the amount of donated assets that exceeds 1/3 of the assets, or deliberately still making a gift deed that exceeds 1/3 of the assets even though the notary already knows. This kind of action is certainly not permitted by law.

If an act of violation of notarial law and ethics is committed, then following Hans Kelsen's previous theory, the act of making a gift deed exceeding 1/3 of the assets falls into points 1 and 3 above, namely responsibility for individuals and responsibility for mistakes.

The emergence of legal responsibility is correlated with the ideal concept contained in the law and its relationship to the reality of a person's activities. The provisions of the law (in this case the UUJN) are legal norms which require demands for the implementation of obligations (in this case the notary's authority to make gift deeds). In contextual reality, legal regulations are sometimes not implemented, which can conflict with the ideal values of legal regulations or laws. Failure to implement legal norms results in legal consequences. The legal consequences require that people who violate them be held responsible in the form of sanctions.

Regarding the legal responsibility of notaries for making donations of assets that exceed one third (1/3) of the assets, basically there are no strict regulations either in the UUJN or in the Minister of Law and Human Rights Regulation. However, if the grant deed exceeding 1/3 is made intentionally, there is an agreement between the grantor and the notary to continue making the deed, then the notary's actions are considered dishonest and violate the obligations stipulated in Article 16 paragraph (1) UUJN. In this article, it is clearly stated that one of the obligations of a notary is to be honest in making authentic deeds. This is in line with Bukhari's statement, that a notary who deliberately makes a deed of gift while he knows from the grantor's confession that the assets donated exceed 1/3, then the attitude and actions of the notary who continues to make the deed of gift are considered to be contrary to legal principles, even contradictory with UUJN.[33] As stated by Gita[34] and Nurdhani,[35] that the act of a notary who deliberately makes a gift deed exceeds one third of the assets based on an agreement with the donor, then the party who is harmed, for example the heir can report to the MPD regarding the notary concerned, or the party who feels aggrieved can take legal action by filing a lawsuit for cancellation of the gift by grantor at the Syar'iyah Court.

Conclusion

Legislation, especially Article 210 Paragraph (1) of the Compilation of Islamic Law in conjunction with Article 726 of the Compilation of Sharia Economic Law, stipulates that gifts may only be made not exceeding 1/3 (one third) of the grantor's assets. However, in several cases in the field, including in Aceh and especially in Banda Aceh City, legal decisions have been found regarding the cancellation of gift deeds made by notaries that exceed 1/3 of the assets. The factors that cause a notary to make a gift deed of more than 1/3 of the assets are for two reasons. First, there are no strict rules in the UUJN, KHI, KHES, and related regulations that prohibit notaries from making deeds exceeding 1/3 (one

[29] Andyna Susiawati Achmad, *Tanggung Jawab Profesi Hukum Notaris dalam Tindakan Malpraktik dan Deliberate Dishonesty Action*, Yogyakarta: Jejak Pustaka, 2023, hlm. 44.

[30] Liliana Tedjosaputro, *Etika Profesi Notaris dalam Penegakan Hukum Pidana*, Yogykarta Bigraf Publishing, 1995, hlm. 16.

[31] Hans Kelsen, *General Theory of Law and State*, terjemahan Somardi, Jakarta: Media Indonesia, 2007, hlm. 81.

[32] Hans Kelsen, *Teori Hukum Murni: Dasar-Dasar Ilmu Hukum Normatif*, Terjemah: Raisul Muttaqien, Cet. 2, Bandung: Nusa Media, 2019, hlm. 138-140.

[33] Hasil Wawancara dengan Bukhari, Hakim pada Mahkamah Syar'iyah Kota Banda Aceh, tanggal 6 Maret 2024.

[34] Hasil Wawancara dengan Gita Melisa, Notaris Kota Banda Aceh, tanggal 6 Maret 2024.

[35] Hasil Wawancara dengan Nurdhani, Notaris sekaligus Anggota MPD Notaris Kota Banda Aceh, tanggal 6 Maret 2024.

third). Second, before the deed of gift is made, the grantor acknowledges that the amount of the donated assets does not exceed the maximum limit of 1/3 of the assets. These two reasons are what the notary relies on in making a gift deed exceeding 1/3 (one third).

The position of a notarial gift deed that exceeds one third (1/3) of assets can be divided into two conditions. The first condition is that the gift deed is considered null and void if the donor is honest with the notary that the assets donated exceed 1/3, at the same time the notary knows the true condition and still makes the gift deed. The second condition is that the deed of gift is valid if the donor is dishonest about the assets he has donated which actually exceeds 1/3, in the same situation the notary only accepts the grantor's acknowledgment through a statement of the status of the donated assets. The notary does not know the actual conditions and continues to carry out the process of making the gift deed. These two conditions provide a possible opportunity for related parties, especially heirs, to file a lawsuit for cancellation of the gift deed as long as the plaintiff can provide sufficient evidence that can convince the judge when deciding the case for cancellation of the gift deed. Thus, it is clear that making a gift deed that exceeds 1/3 (one third) of the donor's assets is detrimental to the heirs. Apart from that, so far there are no detailed regulations in KHES, KHI, Civil Code, UUJN and related regulations regarding the obligations and prohibitions of notaries in making gift deeds. This actually opens up opportunities for the emergence of cases of gift deeds exceeding 1/3 of the assets, so that it does not provide legal certainty to the grantor, grant recipient, heirs, or to the notary as a public official in making the gift deed.

The legal responsibility and burden on a notary who makes a gift deed exceeding one third (1/3) of the assets can be in the form of administrative sanctions imposed by the Regional Supervisory Council. For a notary who deliberately agrees with a grantor in making a deed of gift exceeding 1/3 of his property, the notary's actions violate the obligation to be honest as stipulated in Article 16 paragraph (1) UUJN. The aggrieved party or heir can report to the MPD regarding the notary concerned and then provide recommendations to the MPW to MPP and the Minister to be subject to legal responsibility in the form of administrative sanctions, warning sanctions, up to temporary and dishonorable dismissal. Thus, viewed from the theory of obligation and responsibility, it is clear that a notary who knows and deliberately makes a deed of gift exceeding 1/3 of the assets can be subject to a legal burden in the form of a penalty stipulated in the applicable laws and regulations.

Suggestions

For notaries, they should carry out all the obligations stipulated in the UUJN, and carry out all notary codes of ethics in carrying out their functions and duties in making gift deeds. Even though the UUJN does not strictly and specifically regulate the obligations and prohibitions of notaries in making gift deeds, notaries still need to obtain information regarding the status of the gifted assets and the amount of the donated assets. This is done so that the grantor knows about it and minimizes legal cases of grant cancellation.

For MPD, it is necessary to carry out regular and continuous supervision of notaries, carry out supervision and guidance, and follow up on all reports made by injured parties. Apart from that, the MPD should also ideally be given the authority to make special policies regarding the implementation of authentic deeds, especially in grant law, to serve as a special guide for notaries in carrying out their positions.

There is a need for legal policies related to supervision schemes and mechanisms and action schemes against notaries who violate the code of ethics and legal obligations stipulated in the UUJN. Apart from that, there needs to be special rules regarding the procedures for making a grant deed, so that it is provided later in making a grant deed.

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