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DEGRADATION OF WILLS OF WILLS FROM AUTHENTIC DEEDS BECOME PRIVATE LETTER BASED ON COURT DECISIONS AND IMPLEMENTATION OF IMPLEMENTATION IN THE DIVISION OF INHERITED ASSETS

(Case Study of Supreme Court Decision Number: 3466 K/Pdt/2016)

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Abstract: An authentic deed if the making is not in accordance with the statutory provisions of Law No. 2 of 2014 concerning the Position of Notary Public and the Civil Code, then the deed can be null and void by law, can be canceled or even the deed has decreased strength of evidence to become a private letter or in other words experiencing deed degradation. Formulation of the problem How Does the Degradation of Deeds of Wills Happen From Authentic Deeds to Private Letters Based on the Supreme Court Decision Number 3466 K/PDT/2016. And what is the impact and application of the inheritance from the deed of testamentary grants after experiencing degradation from an authentic deed to a private letter. In writing this thesis using normative research methods. The results of the research were the Degradation of Wills and Grants Deeds from Authentic Deeds to Private Letters Based on the Supreme Court Decision Number 3466 K/PDT/2016. Because in making a deed it does not meet the formal and material requirements and is contrary to the laws and regulations of Law no. 2 of 2014 and the Civil Code, especially Articles 1868 and 1869 of the Civil Code that apply. This resulted in the authentication of the deed as perfect evidence not occurring so that it became an underhanded deed. In the case at the Supreme Court with case number 3466 K/PDT/2016, that the Deed of Willing Grant (lekaat) Number 6 dated 9 December 2005 made before Sigit Siswanto, S.H., Notary in Depok City has been proven not to comply with the provisions of the Law on Notary Position in its making and has complied with the provisions in Article 1868 and Article 1869 of the Civil Code, which causes the legal deed to become a private letter. The Impact of Application of Inheritance From Deeds of Wills After Experiencing Degradation from Authentic Deeds to Underhanded Letters. As a result of the deed becoming a deed under the hand In the distribution of inheritance from a testamentary grant, additional evidence is needed so that the distribution of the inheritance from a will can be carried out. Based on the case in the case at the Supreme Court with case number 3466 K/PDT/2016 due to the Deed of Statement Number 6 dated 8 October 2007 made before Theresia Siti Rahayu, S.H. Notary in Jakarta, and strengthened by a sufficiently stamped statement dated October 8, 2007 which was made privately by the plaintiff, which essentially stated that the defendant was subject to the Deed of Wills and Grants. In accordance with Article 1875 of the Civil Code, that if an underhanded letter is recognized or legally justified, in this case with the presence of other evidence, it will cause complete proof such as an Authentic Deed or become perfect proof.

Keywords: Authentic Deed, Under Hand, Will Grant.

1. Introduction

If we study the will more closely, then we can divide the will into two types, namely:

1. A testamentary appointment (Testamentair Erfrecht/Erfstelling), is a testament in which the person making the will in his will appoints a person or several persons to be his heirs for all or part of his inheritance after he dies (Article 954 of the Civil Code).
2. A will containing grants (Wasiat/Legaat Grants), is a special testamentary determination, in which the person making the will gives some of his goods (all immovable or movable property), the right to all or part of his inheritance), from a certain kind, to one or more.

In the case at the Supreme Court with decision number Number 3466 K/PDT/2016, that the Deed of Willing Grants (legat) number 6 dated 9 December 2005 drawn up before Sigit Siswanto, S.H., Notary in Depok City, has been challenged before the court by the heirs, until the decision of the Supreme Court in legal considerations determines that the aquo deed has lost its authenticity.

Based on the descriptions above, the writer is interested in discussing it in the form of a thesis, which the author gives the title: Degradation of Wills Grant Deeds from Authentic Deeds to Private Letters Based on Court Decisions and the Impact of Implementation in the Distribution of Inheritance (Case Study of Supreme Court Decision Number: 3466 K/Pdt/2016)

From the description of the background above, the authors formulate the problem as follows:

1. How did the deed of testamentary deed degrade from authentic deed to private letter based on the Supreme Court's decision number 3466 K/PDT/2016.
2. What are the Impacts and Applications of Inheritance From Deeds of Wills After Experiencing Degradation from Authentic Deeds to Underhanded Letters?

2. Method

The method used in this research is normative juridical. The approach to the problem of Wills and Grants Deeds From Authentic Deeds to Private Letters Based on Court Decisions and the Impact of Implementation in the Distribution of Inheritance (Case Study of Supreme Court Decision Number: 3466 K/Pdt/2016) uses the related statue approach (statutory approach) Laws relating to the Degradation of Deeds of Wills from Authentic Deeds to Private Letters Based on Court Decisions and the Impact of Implementation in the Distribution of Inheritance (Case Study of Supreme Court Decision Number: 3466 K/Pdt/2016) and the conceptual approach This is done by identifying and understanding all legal concepts found in the doctrines and views of jurists.

1. Primary legal materials are legal materials that have binding legal force¹. In this case, the primary legal materials will be:

- a) The 1945 Constitution
- b) Civil Code [Burgerlijk Wetboek],
- c) Law No. 5 of 1960 concerning Basic Agrarian Regulations
- d) Regulation of the State Minister for Agrarian Affairs/Head of the National Land Agency Number 3 of 1997 concerning Implementing Provisions for Government Regulation Number 24 of 1997 concerning Land Registration.

¹ Suratman and Philips Dillah, Legal Research Methods, Bandung: Alfabeta, 2014, p. 67

e) Government Regulation of the Republic of Indonesia Number 37 of 1998 concerning Regulations for the Position of Land Deed Officials (State Gazette of the Republic of Indonesia of 1998 Number 5, Supplement to the State Gazette of the Republic of Indonesia Number 3746)

f) Law no. 2 of 2014 concerning the Position of Notary

2. Secondary legal materials

Secondary legal materials are materials that are closely related to primary legal materials, and can help analyze and understand primary legal materials². Secondary legal materials in this research are books, literature, papers, research results, articles, and other scientific works related to this research, such as:

- a) Research results;
- b) Scientific works of legal experts.
- c) Legal reading books or textbooks;
- d) Journals;

3. Tertiary legal materials

Tertiary legal materials are materials that provide information about primary legal materials and secondary legal materials³. Tertiary legal materials in this study consist of:

- a. Indonesia Dictionary.
- b. English-Indonesian dictionary.

Data analysis was carried out in a descriptive manner which was used to examine normative or juridical aspects through a descriptive analytical method which describes the description of the data obtained and relates them to one another to obtain a general conclusion.

3. Deeds of Wills and Grants Degraded from Authentic Deeds to Private Letters Based on Supreme Court Decision Number 3466 K/PDT/2016.

According to article 1869 of the Civil Code which reads, "a deed which cannot be treated as an authentic deed, either because of the incompetence or incompetence of the public official concerned or because of defects in its form, has the power of underhand writing if it is signed by the parties". This article requires several provisions if a deed will experience a decrease or degradation if the official who made it is not authorized, if the official who made it is incompetent, and if the making of the deed does not fulfill the conditions specified in the laws and regulations.

1. Provisions on Authority of Public Officials Making Deeds

The authority to draw up a testamentary grant deed is the authority of a notary in accordance with Article 15 paragraph (1) of the Notary Office Law. In relation to case number 3466K/PDT/2016, the person who drew up the Willing Grant Deed (lefaat) number 6 dated 9 December 2005 was a Notary. So this does not meet the provisions of Article 1869 of the Civil Code, in other words the deed is not degraded.

The requirements for making a notarial deed are listed in the Law of the Republic of Indonesia Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Office of a Notary, article 38 which reads:

Article 38

(1) Each Deed consists of:

² Suratman and Philips Dillah, Legal Research Methods, Bandung: Alfabeta, 2014, p. 67

³ Suratman and Philips Dillah, Ibit, p. 67

- a. Initial deed or head of deed;
 - b. Deed Body; And
 - c. End or closing Deed.
- (2) The initial deed or the head of the deed contains:
- a. Deed title;
 - b. Deed number;
 - c. Hours, days, dates, months, and years; And
 - d. Full name and domicile of Notary.
- (3) The Body of the Deed contains:
- d. Full name, place and date of birth, nationality, occupation, position, position, place of residence of the appearers and/or the person they represent;
 - e. Information regarding the position of acting as appearers;
 - f. The contents of the deed which are the wishes and desires of the parties concerned; And
 - g. Full name, place and date of birth, as well as occupation, position, position and place of residence of each identifying witness.
- (4) The end or closing of the Deed contains:
- a. Description of the reading of the Deed as referred to in Article 16 paragraph (1) letter m or Article 16 paragraph (7);
 - b. Description of the signing and place of signing or translation of the Deed, if any;
 - c. Full name, place and date of birth, occupation, position, position and place of residence of each Deed witness; And
 - d. A description of the absence of changes that occur in the making of the Deed or a description of any changes that may be in the form of additions, deletions or replacements and the amount of changes.

2. Procedure for making a testamentary grant⁴

According to Article 839 of the Civil Code, the procedure for making a will must be carried out based on a will and known by a notary or before a notary. The will can be made by hand or typed, after the will is completed, it will be kept by a notary and a deed of storage will be made.

A testamentary grant is the same as an ordinary grant, but there is one important thing that deviates from an ordinary grant, namely the provision that the grantor is still alive. Whereas in a testamentary grant, grants only take effect when the grantor dies. In the testamentary grant statement, the maker or heir must state clearly who will receive the will, the value of the property, and matters related to the delivery of the will.

3. Requirements for making a testamentary grant

One of the procedures for making a will is by following and fulfilling the conditions, the assets to be donated can be in the form of anything, such as houses, movable or immovable objects and other assets, the value of these assets cannot be more than 1/3 of the donated property.

Following are some of the requirements in the procedure for making a testamentary grant:

- The giver or heir is obliged to have legal assets and be given legally
- Giving the treasure without any coercion, or given from the heart

⁴ <https://blog.justika.com/keluarga/prosedur-buat-hibah-wasiat/> accessed on 04 November 2022 at 23.15 WIB

- The giver of the grant must be 21 years of age or older and have sound mind
- The donated assets can be signed after the grantor has died

In the event that the heir or parents are still alive, a division of the inheritance can be carried out by way of making a testamentary grant. A testamentary grant according to Article 957 of the Indonesian Civil Code ("Civil Code") is a special stipulation, in which the heir gives certain items or items to one or several people, or all items and certain types; for example, all movable or fixed assets, or usufructuary rights over some or all of the goods.

Will grant⁵ is the same as an ordinary grant, but there is one important thing that deviates from an ordinary grant, namely the condition that the grantor is still alive. Whereas in a testamentary grant, grants only take effect when the grantor dies.

Making a will is regulated in Book 2 Chapter XIII Part Four concerning Forms of Wills of the Civil Code. The forms of the will include:

- 1) Olographic will, handwritten and signed by the testator himself then entrusted to the notary (see Articles 932-937 of the Civil Code);
- 2) A general will or testament with a general deed must be drawn up before a notary (see Articles 938-939 of the Civil Code);
- 3) Secret will or closed at the time of delivery, the heir must sign the stipulations, either if he himself wrote it or if he ordered someone else to write it; the paper containing the stipulations, or the paper used for the cover, if a cover is used, must be closed and sealed (see Article 940 of the Civil Code).

According to article 931 there are 3 kinds of wills according to form, namely:

a) A olographic will, or a will written by yourself.

Regarding olographic wills, article 932 contains the following provisions:

- 1) Must be fully written and signed by the testator.
- 2) Must be deposited with a notary.

Regarding this event a deed must be made which is called a deposit deed (*acte van depot*).

This deed must be signed by:

- a) The one who made the testament himself.
 - b) The notary who kept the will.
 - c) Two witnesses who attended the event.
- 3) If the will is in a sealed condition (inside the envelope), then the deed must be made on separate paper, and on the cover containing the testament there must be a note that the envelope contains the will and the note must be signed. If the testament is open, the deed can be written under the will itself. Everything that must be done in front of a notary and witnesses. If a circumstance arises that the heir after signing the will cannot be present to sign the deed, then this matter and the reasons why must be stated by a notary in the deed.
 - 4) If the testator's statement is stated outside the presence of witnesses and from a will has been made by a notary, then the testator must explain once again in front of the witnesses what this means. Then the draft is read in the presence of witnesses. The heir was then asked whether the contents were correct. If it is correct, then the testament must be signed by the testator, notary and witnesses.

⁵ <https://blog.justika.com/keluarga/prosedur-buat-hibah-wasiat/> access on 04 November 2022 at 23.15 WIB

5) If the testator is unable to attend, this must be stated in the will, as well as the reason for his absence.

6) The will must also mention that all the full agenda has been fulfilled⁶

b) General will (openbaar testament).

An "openbaar testamen" made by a notary. The person who will leave the inheritance faces the notary and states his will. The notary made a deed in the presence of two witnesses. This form is the most widely used and is also the best, because the notary can oversee the contents of the will, so he can provide advice so that the contents of the testament do not conflict with the law.⁷

The maker of the will must convey his will himself in the presence of witnesses. This cannot be done through the intercession of other people, both family members and the notary concerned. The will must be made in the language used by the testator when conveying his will, provided that the notary and witnesses also understand that language. The requirements for witnesses in a general will include being 21 years old or married. They must be Indonesian citizens and also understand the language used in the will. There are several people who may not be witnesses in making this general will, namely:

- a. The heirs or people who receive wills or their relatives up to the fourth degree.
- b. Children, grandchildren, and children-in-law, and notary's children or grandchildren.
- c. Relevant notary services⁸

c) Secret will or closed will.

A secret testament, also made by the person who will leave the inheritance, but it is not required that he write with his own hand. A secret testament must always be closed or sealed. Submission to the notary must be attended by four witnesses. So it's more than usual that only two witnesses are needed. The person who becomes a witness when making or submitting a testament to a notary, must be an adult, a resident of Indonesia and correctly understand the language used in the testament or deed of submission.⁹

After all the formalities have been fulfilled, the will must then be deposited with a notary and furthermore it is the notary's obligation to notify the existence of the will to the interested parties, if the maker of the will/heritage passes away.¹⁰

4. Provisions on the Proficiency of Public Officials Making Deeds

In general, a person's skills are judged by adulthood and also a healthy and sane mind. According to the Notary Office Law in Article 3 letter c which reads, the requirement to be appointed as a notary is at least 22 (twenty two) years of age. In article 3 letter d which reads, Physically and mentally healthy which is stated by a health certificate from a doctor and psychiatrist.

If the author analyzes from the theory of authority the actual exercise of authority by any sovereign person, especially by parliament, is bound and limited by two power restrictions. regarding these, one is external restriction, and one is internal limitation¹¹

⁶ Ali Afandi, Ibid, pp. 17-19

⁷ Subekti, Op. Cit, p. 109-110

⁸ Eman Suparman, Op. Cit, pp, 99-100

⁹ Subekti, Op. Cit, pp, 109-110

¹⁰ Eman Suparman, Op. Cit, p, 100

¹¹ Budi Parmono, Abuse of Authority in Corruption Crimes, Intelligence Media Pt, Citra Intrans Harmonized, Malang, 2020, p., 28.

Any kind of power still has the potential to have a negative impact, therefore power tends to have a negative impact, so power must be limited, the limitation of power is intended to be in accordance with the development of the meaning of justice (English: Justice; Dutch: gerechtigheid or rechtvaardigheid; German: gerechtigkeit)¹²

By doing so, it is the notary who has the most authority to make a testamentary grant in which the deed is made by interested parties which can lead to positive results. And a notary in making a notarial deed must be guided by statutory regulations, namely No. 2 of 2014 concerning the position of a notary.

In other words, if a person is appointed as a notary public, then that person can be considered competent in general because he has met the requirements of being competent to act. There are several conditions that cause a notary to be incompetent in exercising his authority, namely the notary being temporarily dismissed, and when the notary is taking leave.

5. Provisions for Disabilities in the Form of a Deed

Defect in the form here means that the deed drawn up by a public official or by a notary is not in accordance with the applicable laws and regulations. For the provisions in making a Deed of Wills (legaas) refer to the Notary Office Law, because the public official authorized to draw up the Deed is a Notary.

In decision number 3466K/PDT/2016, Deed of Intent (legaas) number 6 dated December 9, 2005 made before Sigit Siswanto, S.H. The notary in Depok City has been proven not to comply with the provisions of Article 16 paragraph (1), Article 38 paragraph (2) letter C of the Notary Office Law. In which the Judge's Decision makes the deed lose its authenticity or be degraded into private letters.

6. Analysis of the Supreme Court Decision Number 3466 K/Pdt/2016 case

DECISION

Number 3466 K/Pdt/2016

FOR JUSTICE BASED ON THE ONE ALMIGHTY GOD

SUPREME COURT

If the author analyzes the problem of testamentary grants No. 3466 K/Pdt/2016 which was made by a notary (SIGIT SISWANTO, S.H,) so that it becomes a private deed, the factors causing the will deed to fall into the deed under the hand are as follows:

Whereas, the Deed of Willing Grants (Legaas) Number 6, dated 9 December 2005 made before Defendant I (SIGIT SISWANTO, S.H,) residing at Jalan Pangkalan Jati I Number 1 Pondok Labu, Cinere-Depok, there were many violations of the law, both formally or materially which results in the Deed of Willing Grant (Legaas) being legally flawed, invalid, therefore it should have been declared null and void (van rechtswege nietig);

Whereas the legal violations or formal errors in the Willing Grant Deed (Legaas) Number 6, dated 9 December 2005 can be explained as follows:

1. The identity card (KTP) belonging to the donor of the will, Iwan Harto, which was used in the making of the Wills Grant Deed (Legaas), is suspected of using an illegal KTP or a KTP that is no longer valid, with the following reasons:

In making the Willing Grant Deed (Legaas), the KTP used by Iwan Harto is as stated in the head of the Deed in the intended Willing Grant Deed (Legaas), namely: "Mr. Harto

¹² Budi Parmono, Ibit, pp 20 and 21.

Iewan (also written/called: Iwan Harto)...., and using an old address that is no longer valid. then this includes mentioning the basis of rights in the form of forgery, deception which results in the Deed being null and void by law.

Based on these facts, it is clear that the subjective/formal requirements of an Authentic Deed have not been met. Thus the Willing Grant Deed (Legaat), should have been declared null and void (van rechtswegenietig);

2. Defendant I (sigit Siswanto, S.H,) was late in registering the testamentary grant deed (legaat) so that he had violated the applicable law; that the deed of will (legaat) was made by Defendant 1 on December 9, 2005. However, the Defendant only registered the will (legaat) grant deed to the head of the central section on the list of wills at the Ministry of Justice and Hamri on August 22, 2006, through his letter number 03 /SS/I/2006; the actions of Defendant 1 who had just registered the will (legaat) grant deed to the head of the central section of the testament register of the Ministry of Justice and Human Rights of the Republic of Indonesia on August 22 2006, (8 months after the deed was signed) this is clearly contrary to or violating the provisions Article 16 paragraph 1 letter (i), law number 30 of 2004 concerning the position of a notary which regulates as follows: in carrying out his position, a notary is obliged to: "send a list of deeds as referred to in letter h or a list of nil relating to a will to the central register testament of the department whose duties and responsibilities are in the field of notary within 5 (five) days in the first week of every following month"; this clearly resulted in the testamentary grant deed (legaat) that should have been declared null and void (van rechtswegenietig);

3. The Deed of Wills (Legaat) drawn up by Defendant I did not include complete information regarding the time and witnesses as ordered by the Law on Notary Offices Number 30 of 2004, thus the most important element of the Authentic Deed as required in Article 1868 of the Civil Code not fulfilled;

Whereas, regarding the head of the deed, Law Number 30 of 2004 concerning the Office of a Notary in Article 38 paragraph 4 letter (c) orders to include information "Initial deed or head of deed contains: hour, day, date, month and year; And.."; That, at the beginning of the Deed or the Head of the Testament Grant Deed (Legaat) only provides the following information:

"Today, Friday, the ninth of December two thousand and five (9-12-2005)";

By not including "hours", the Deed violates Article 38 paragraph 2 letter (c) which means that it is expressly and clearly made not based on the "form determined by law" as required in Article 1868 of the Civil Code. And this clearly resulted in the Deed of Wills and Grants (Legaat) that should have been declared null and void (van rechtswegenietig);

4. Whereas, regarding the Deed Witness, Law Number 30 of 2004 concerning the Office of a Notary in Article 38 paragraph 4 letter (c) orders the inclusion of information at the end or closing of the Deed as follows:

"full name, place and date of birth, occupation, position, position and place of residence of each deed witness."; However, in the Willing Grant Deed, the information relating to witnesses does not contain information on the place and date of birth of each witness and only contains the following:

".....attended by Mohamad Ansor and Hadi Sutejo Kusumo, both employees of the Notary's office, residing in Jakarta, as witnesses.";

By not including "information on the place and date of birth of work, etc." in the case of a testamentary grant Number 3466 K/Pdt/2016 made by a notary (SIGIT SISWANTO, S.H,) it is proven that the Defendant has knowingly violated Article 38 paragraph 4 letter (c) which means explicitly and clearly that the Willing Grant Deed (Legaat) was made not based on the "form determined by law" as required in Article 1868 of the Civil Code; Therefore, the contents of the Wills Grant Deed (Legaat) clearly violated the law, thus legally the Wills Granted Deed (Legaat) should have been declared null and void (van rechtswege nietig);

5. There is the name Aaron Pan as a beneficiary of a Will that is not registered with the DKI Jakarta Population and Civil Registration Service or in other words the name does not exist legally;

Whereas, Defendant II's son named Aaron Pan as evident in the quotation of Birth Certificate Number 2091/U/JU/1997 dated 5 November 1997 issued by the Population and Civil Registry Office of the Municipality of North Jakarta received 6 inheritances; In fact, in the case of testament grant No. 3466 K/Pdt/2016, Aaron Pan's name was never registered with the DKI Jakarta Population and Civil Registry Service. This is in accordance with the DKI Jakarta Province Population and Civil Registration Office letter, Number 2628/1.755.15, dated March 6 2013, regarding Information on the Legitimacy of Names on behalf of Aaron Pan and Putera Aeron Bongso, Thus in making a wasiah grant deed it must be listed in the KK and the NIK is registered, if not, the Deed of Testament Grant (Legaat) should have been declared null and void (van rechtswege nietig);

In addition, there were errors or violations in the making of a will that were material as follows which were committed by Defendant 1, including the following:

1. There is a clause in the Willing Grant Deed (Legaat) which prohibits the transfer of donated assets thereby violating Article 884 of the Civil Code; Even though the fact is in the case of testamentary grants Number 3466 K/Pdt/2016 that some of the testamentary grant assets have been traded and some have been rented out, if in the will it is prohibited to be sold then it must be carried out.

2. Heirs or people who are given a will by jumping of hands, or as a fidei commis which is prohibited by Article 879 of the Civil Code;

3. Parental authority of the beneficiary who is still underage; this is stated in Articles 308 and 311 of the Indonesian Civil Code (in the case of a testamentary grant Number 3466 K/Pdt/2016 it means that if there is a minor child who is still in custody then those who are entitled to receive a will grant until adulthood are their parents not other people and the proceeds from the rent or since received until adulthood must still be there and given to adults)

4. Giving a grant to someone who is not clear; (meaning the beneficiary of the wasiah grant must be clear; for example the name, address, relationship with the grantor of the will, etc.) This is in accordance with Article 888 of the Indonesian Civil Code.

5. Granting objects whose location or status of legal ownership is unclear;

For example, in the case of testamentary grants No. 3466 K/Pdt/2016, the words below "the land around the PT. Breton in Cibinong, Bogor Regency, both certified and not certified on behalf of me and/or PT. Northeast; I donate this land to:..... words that are not clear on the object will cause controversy and problems. This is in accordance with Article 888 of the Indonesian Civil Code which states:

6. Giving grants to an unknown person or persons; For example, the word below in the case of testamentary grants No. 3466 K/Pdt/2016 has only the name "In addition to the grants I have specified above, I appoint as my only heirs, namely Lina, Juliana, Ieky, Langston Harto, Dexter Harto, Syence Harto, Aaron Pan and Natasha" must be clear, name, address, age, work, etc.

So this is contrary to article 888 of the Indonesian Civil Code which states: "In all wills, every condition which is incomprehensible, or impossible to implement or which is contrary to good morals, must be considered as unwritten";) this becomes a deed declared null and void (van rechtswege nietig);

Thus the Degradation of Wills and Grants Deeds from Authentic Deeds into Private Letters Based on the Supreme Court Decision Number 3466 K/PDT/2016 in terms of making them are not in accordance with the applicable laws and regulations so that the result is that the will deed made is degraded to a deed under hand.

4. The Impact and Application of Inheritance From Deeds of Wills After Experiencing Degradation from Authentic Deeds to Private Letters.

Article 1 (1) of Law No. 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Office of a Notary Public, states that a Notary is a public official authorized to make authentic deeds and has other authorities as referred to in this Law or based on other laws. Notary is a professional designation for someone who has received legal education who is licensed by the government to carry out legal matters, especially as a signatory on documents.

The authority of a Notary includes 4 things, namely¹³

a. The notary must be authorized insofar as it concerns the deed made, as has been stated, not all public officials can make all the deed. A notary is not only a mere maker of deeds, but he must be obliged to prepare an editorial and explain to both parties concerned about the regulations originating from the law.

b. The notary must be authorized as long as it concerns the people¹⁴ for whose benefit the deed was drawn up. Notary is not authorized to make deeds for the benefit of everyone. Article 21 (PJM 1860-3) stipulates that a notary is not allowed to make a deed for himself, his wife, blood relatives or the semanda family of the notary in a straight line and sideways to the third degree¹⁵

c. The notary must be authorized as far as the place where the deed is made for each notary is determined by the legal area (area of office) and only within the area determined for him is he authorized to make authentic deed. Deeds made outside the area of office are invalid deed.

d. The notary must be authorized as long as it is related to the time of making the deed. A notary may not make a deed while he is on leave or dismissed from his position.

If one of the above requirements is not met, then the deed made is inauthentic and only has the power of a deed made under the hand, if the deed is signed. Deed or called "Deed" is writing that is deliberately made to be used as evidence. A deed made before a notary is called a notary deed / authentic deed. Article 1 (7) Law No. 2 of 2014 Concerning the Position of Notary Public that a notary deed is an authentic deed if it is

¹³ GHS Lumban Tobing, Ibid, p.49

¹⁴ R. Soesanto, Duties, Obligations and Rights of a Notary. Pradnya Paramita, Jakarta. 1982. p.88

¹⁵ R. Soesanto, ibid, p.92

made by or made before a notary according to the form and procedure stipulated in the law.

Authentic means valid, so a deed made before a notary of an authorized official is a valid deed. The provisions in making a will so that the will is valid, the conditions that must be met are:

- a. Article 897 of the Civil Code states that a person who makes a will must be 18 years old or married before reaching that age. To prove this age, the notary can look at the KTP of the will maker.
- b. Article 895 of the Civil Code, the testator must have a sound mind. It is clarified in Article 986 of the Civil Code that everyone can make or enjoy the benefits of a will, except for those who, according to the provisions of this section, are declared not competent enough to do so.
- c. Must comply with the procedures set by law. The maker of the will must be competent and able to carry out legal actions
- d. Requirements related to administration must also be fulfilled by the testator when he appears before a notary. The requirement is to bring identity and Family Card. Article 30 (2) Law No. 30 of 2004 Concerning the Position of Notary Public states that the appearer (making a will) must be known by the notary or introduced by 2 (two) witnesses and this identification must be written in a deed. This means that the notary has carried out his duties in accordance with the provisions in the Civil Code and Notary Office Regulations. The procedure for making a will, the maker of the will comes before the notary and then conveys his will by bringing witnesses. Based on Article 7 of the Notary's Office Regulations, a notary is not allowed to refuse to provide assistance, if it is requested of him, unless there is a fundamental reason.

The will may not exceed one-third of the total assets owned. This will applies when the giver of the will has passed away. According to article 875 of the Civil Code: "A will or testament is a deed containing a person's statement about what he wants to happen after he dies, which he can revoke." Making a will can be called making a testamentary grant.

A testamentary grant according to Article 957 of the Civil Code (KUHPperdata) is a special stipulation, in which the heir gives certain items or items to one or several people, or all items and certain types; for example, all movable or fixed assets, or usufructuary rights over some or all of the goods. Basically, testamentary grants are the same as ordinary grants, but there is one important thing that deviates from ordinary grants, namely the provision that the grantor is still alive. Whereas in a testamentary grant, grants only take effect when the grantor dies.

A testamentary grant is a distribution of inheritance to be made while the parents are still alive. Making a will is regulated in Book 2 Chapter XIII Part Four concerning Forms of Wills of the Civil Code. There are four forms of wills, the first is an Olographic will, namely a will that is handwritten and signed by the testator himself and then entrusted to a notary (Articles 932-937 of the Civil Code), second a general will or will with a general deed must be made before a notary (Article 938 -939 Civil Code). Third, a secret or closed will at the time of delivery. The heir must sign the stipulations, either if he himself wrote them or if he ordered someone else to write them; the paper containing the stipulations,

or the paper used for the cover, if a cover is used, must be closed and sealed (Article 940 of the Civil Code).

The process of making a will from the four forms of will, are: First, an olographic will. In making a olographic will, two witnesses are required. The process is as follows, when the heir entrusts the inheritance, then the notary immediately makes a deed of safekeeping (deed of van de pot) which is signed by the notary, the heir, and two witnesses and the deed must be written at the bottom of the will if the will is handed over openly, or in separate paper if it is conveyed to him sealed. Second, when making a will with a public deed, two witnesses are needed. The process of making a will with a public deed is carried out before a notary which is then signed by the testator, the notary and two witnesses. Third, in making a closed will, four witnesses are needed. The process is that at the time of submission to the notary, the testator must submit it closed and sealed to the Notary, in the presence of four witnesses, or he must explain that the paper contains his will, and that the will was written and signed by himself, or written by another person. and signed by him.

As a note, in the case of making a will for a woman's parents while her husband is still alive, it is necessary to have the consent of the husband. This refers to arrangements regarding joint assets, namely Article 36 paragraph (1) of Law No. 1 of 1974 concerning Marriage (Marriage Law), which reads: "Regarding joint assets, husband or wife can act with the agreement of both parties." However, if the house is inherited from the woman's parents, then there is no need for the husband's approval. This refers to the arrangement regarding inherited assets, namely Article 36 paragraph (2) of the Marriage Law, which reads: "Regarding each other's inherited assets, husband and wife have the full right to take legal action for their property." Then in making a will it must be carried out or entrusted to a notary. Thus, the will must be made with an authentic deed in accordance with the provisions in Article 1868

From the description above, the Impact Analysis and Application of the Inheritance of the Deed of Wills After Experiencing Degradation from an Authentic Deed to a Private Letter are as follows:

1. The Impact of Degraded Deeds on Wills (legaat).

From the previous discussion, the Deed of Will and Grant (legaat) has lost its authenticity, where from an authentic deed that has perfect evidentiary power it becomes a private letter, which is preliminary evidence and requires other evidence. And with the existence of other evidence, the aquo deed is deemed to have perfect evidentiary power which has permanent legal force and can be executed. It can be concluded that the beneficiary of the will has the right to the will and can claim his rights from the heirs in accordance with the provisions of the Civil Code.

2. Application of Inheritance Distribution with Wills Grant Deed (legaat).

The process of dividing inheritance begins when the inheritance is open or when the testator dies. in accordance with the provisions in the Civil Code article 830 which reads "Inheritance only occurs because of death.". When the inheritance is open, it is necessary to check with the Ministry of Law and Human Rights of the Republic of Indonesia, Directorate General of General Legal Administration to find out whether the heir has left a will or not.

This is necessary to make a Letter of Inheritance for the transition and confirmation as the heir who receives the inheritance. Or based on Article 942 and Article 943 of the Civil Code, the Notary will notify interested parties about the existence of a will. Or as a beneficiary of a will, you can notify the heirs directly that there is a will, this is in accordance with the provisions of Article 958 of the Civil Code, which reads:

In Article 958 of the Civil Code

All testamentary grants that are pure and unconditional, from the day of the testator's death, entitle the beneficiary of the will (legitarian); to demand the goods donated, and this right is transferred to all the heirs or their successors.

Furthermore, the beneficiary of the will grant can demand the items donated to the heirs, this is in accordance with the provisions of the Civil Code Article 959 first paragraph, which reads:

Furthermore, in Article 959 of the Civil Code;

The beneficiary of the will must ask for the items donated to the heirs or beneficiaries who are required to hand over the donated items.

Regarding the case at the Supreme Court number 3466 K/PDT/2016. this was done by the recipient of the grant, namely Lina in the aquo case (as Defendant II, and as a beneficiary of a will), who after the death of Iewan Harto (heir), informed the heirs, namely Jenny (as plaintiff and wife of the heir) about the Deed Testament Grant (legaat) number 6 dated December 9 2005 made by Sigit Siswanto, S.H. Lina has taken action in accordance with the provisions of the Civil Code Article 959 first paragraph.

Jenny filed a lawsuit against the Unlawful Act at the Depok District Court with case number 85/Pdt.G/2014/PN.Dpk. to cancel the Will Grant Deed (legaat). The decision of the Depok District Court was in the principal case to reject the lawsuit in its entirety. Then Jenny filed an appeal to the Bandung High Court with decision number 116/PDT/2016/PT.BDG. with the decision of the Bandung High Court confirming the decision of the Depok Court with case number 85/PDT.G/2014/PN.DPK.

Then the plaintiff again filed a legal effort with a request for cassation at the Supreme Court on August 5 2016, and it was decided on March 21 2017 by decision Number 3466 K/Pdt/2016, which decided to reject the cassation request. And strengthened the decision of the Depok District Court Number 85/PDT.G/2014/PN.Dpk, and strengthened the decision of the Bandung High Court Number 116/PDT.G/2016/PT.BDG.

From the results of this case, the will deed (legaat) has experienced degradation, and the strength of evidence becomes the strength of initial evidence. With the evidence of the Deed of Statement Number 6 dated 8 October 2007 made by Theresia Lusiati Siti Rahayu, SH., Notary in Jakarta, the Deed of Wills Grants (legaat) number 6 dated 9 December 2005 made by Sigit Siswanto, S.H. even though it is relegated, it has perfect evidentiary power, becomes valid and binds all parties listed therein. Or in other words, the testamentary grant can be carried out in accordance with the applicable provisions. This is in accordance with the provisions of Article 1875 of the Civil Code.

After the case at the Supreme Court number 3466 K/PDT/2016. with the results of decisions that have permanent legal force in which the results of decisions can be executed to give the object of the grant from proof of ownership to the object itself to the recipient of the grant.

Based on decision number 3466K that the Plaintiff and the plaintiff's children have sold the items that have been donated. This can be proven by the Deed of Sale and Purchase Number 80/2007 dated 27 September 2007 made by Titiek Irawati Sugianto, S.H., PPAT in Central Jakarta. Then, Excerpt of Minutes of Auction Number RL-027/PL.II.12/2007 dated 23 November 2007 made by Drs. Harry Hardianto, S.H., MBA., Class II Auction Officer. Thus, the plaintiff and his child have actually received the bequest assets.

In accordance with the definition of a testamentary grant, the object of the grant can be divided into certain goods or certain types in accordance with Article 957 of the Civil Code. In the aquo case, there is a grant object in the form of movable and immovable property. For movable and immovable property refer to the provisions in Article 506 and Article 511 of the Civil Code.

Based on Article 112 of Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency Number 3 of 1997 concerning Provisions for the Implementation of Government Regulation Number 24 of 1997 concerning Land Registration, requires that at the time of registration the transfer of rights to land and buildings at the local BPN Office of Land Affairs according to the object of the land parcel. Namely Deed of Testament Grant, evidence of land rights (land certificate) or other proof of ownership on behalf of the grantor, the grantor's letter of departure, personal data of the grantee, and supporting documents that can be selected, among others¹⁶:

- 1) Decision of the Court or Determination of the Judge/Chairman of the Court regarding the distribution of inheritance which contains the designation of land rights or ownership rights to the respective Flat Unit as having been bequeathed to the applicant, or
- 2) Deed of PPAT regarding the grant made by the executor of the will on behalf of the grantor of the will as an implementation of the will that is authorized to be executed by the executor of the will, or
- 3) the deed of inheritance as referred to in Article 111 paragraph (2) which contains the designation of the right to the land or the ownership right to the apartment unit concerned as having been bequeathed to the applicant.

After the testamentary grant object is received by the grantee and proof of right has been transferred from the grantor to the grantee, and also other inheritance has been received by the heirs who are entitled, then the process of dividing the inheritance accompanied by the Willing Grant Deed (legaat) ends. .

Based on the Positive Law Written above, it is clearly written that a Notary Deed is an Authentic Deed that has perfect Proof power and is made/before a Notary, while an Underhanded Deed is not made by a Notary and does not have perfect evidentiary power, thus if the Notary Deed loses its authenticity and becomes Underhanded Deed, then the Notarial Deed whose authenticity has been lost is null and void by law as a Notary Deed because it has lost its authenticity/is not authentic; "And this is also evidenced by the Supreme Court Jurisprudential Number 3199 K/Pdt/1992 dated October 27, 1994 whose rule of law is: Authentic Deed according to ex. Article 165 H.I.R juncto Rbg juncto 1868

¹⁶ Regulation of the State Minister for Agrarian Affairs/Head of the National Land Agency Number 3 of 1997 concerning Implementing Provisions for Government Regulation Number 24 of 1997 concerning Land Registration, Article 112 paragraph (1) letter a number 3.

BW is perfect evidence for the parties, their heirs and people who have not received the rights from it"; Whereas the Deed of Intent No. 6 dated 9 December 2005 drawn up before Defendant I was linked to the formal requirements of a Notary Deed, the deed remains valid only when its authenticity becomes a private Deed. Likewise, the delay in registering the testamentary grant deed to the Ministry of Law and Human Rights does not cause the deed to be cancelled; Whereas between the Plaintiff and the late Iwan Harto (her husband) a marriage agreement was made with the separation of assets so that the actions of the Plaintiff's husband to make the Willing Grant Deed on his own property were valid and not against the law;

If the author of the analysis is from legal system theory or statutory theory, an official who has authority or a specially appointed position must be based on applicable regulations so that the product issued does not cause problems in the future.

It can be concluded that if the deed of testamentary grants (legaat) which has been degraded into a private letter can be treated as an authentic deed if it is supported by other evidence such as statements, statements of witnesses and so on. And in terms of the implementation of the division and transfer of rights to the testamentary grant, it still follows the applicable provisions. In the case of the Decision of the Supreme Court Number 3466 K/PDT/2016 that the Deed of Wills and Grants Number 6 dated 9 December 2005 made before Defendant I was linked to the formal requirements of a Notary Deed, the deed remains valid only its authenticity becomes a Deed under the hand. Likewise, the delay in registering the testamentary grant deed to the Ministry of Law and Human Rights does not cause the deed to be cancelled; Whereas between the Plaintiff and the late Iwan Harto (her husband) a marriage agreement was made with the separation of assets so that the actions of the Plaintiff's husband to make the Willing Grant Deed on his own property were valid and not against the law;

5. Conclusion

1. Deeds of Wills and Grants were Degraded from Authentic Deeds to Private Letters Based on the Supreme Court Decision Number 3466 K/PDT/2016. Because in making a deed it does not meet the formal and material requirements and is contrary to the laws and regulations of Law no. 2 of 2014 and the Civil Code, especially Articles 1868 and 1869 of the Civil Code that apply. This resulted in the authentication of the deed as perfect evidence not occurring so that it became an underhanded deed. In the case at the Supreme Court with case number 3466 K/PDT/2016, that the Deed of Willing Grant (legaat) Number 6 dated 9 December 2005 made before Sigit Siswanto, S.H., Notary in Depok City has been proven not to comply with the provisions of the Law on Notary Position in its making and has complied with the provisions in Article 1868 and Article 1869 of the Civil Code, which causes the legal deed to become a private letter.

2. The Impact and Application of the Inheritance From the Will and Grant Deed After Experiencing Degradation from an Authentic Deed to a Private Letter. As a result of the deed becoming a deed under the hand in the distribution of inheritance from a testamentary grant requires additional evidence so that the distribution of the inheritance of the will can be carried out. Based on the case in the case at the Supreme Court with case number 3466 K/PDT/2016 due to the Deed of Statement Number 6 dated 8 October 2007 made before Theresia Siti Rahayu, S.H. Notary in Jakarta, and strengthened by a sufficiently stamped statement dated October 8, 2007 which was

made privately by the plaintiff, which essentially stated that the defendant was subject to the Deed of Wills and Grants. In accordance with Article 1875 of the Civil Code, that if an underhanded letter is recognized or legally justified, in this case with the presence of other evidence, it will cause complete proof such as an Authentic Deed or become perfect proof.

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