

AUTHORITY OF NOTARY IN MAKING CERTIFICATE OF CHILD'S INHERITANCE BORN IN CONSANGUINEOUS MARRIAGE

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ABSTRACT

Marriage in Article 1 of Law Number 1 of 1974 states that marriage is a physical and spiritual bond between a man and a woman as husband and wife to build a happy and eternal family (household) based on Belief in the One Supreme God. These legal relations include the relationship between husband and wife, property, and children. The research design was normative legal research using an approach relevant to the research problem, namely the statutory approach. Furthermore, this research employed primary and secondary legal materials as research data. The research results showed that the prohibition of marriage was a prohibition against marriage between two people who were still related by blood. When the child's status and position changed, the child's inheritance status also became different. The status of a child as a legitimate child gave him the right to inherit the parent's property, whereas an illegitimate child was not entitled to inherit from his parents. If the contents of the certificate of heirs were incorrect, then it was the responsibility of the parties who appeared before the Notary. There was no need to involve a notary, and if it was to be corrected, then the heirs' deed must be revoked by those who made it, and then a new deed was made under the facts the parties desired.

Keywords: Consanguineous marriage, Notary's Authority, Inheritance Rights of Inbred Children

INTRODUCTION

Marriage is an essential thing in the reality of human life. In the life of the universe, humans consist of men and women, where humans are created to be in pairs which are manifested or carried out in a marriage. The definition of marriage is explained in Article 1 of Law Number 1 of 1974 concerning marriage, which states that marriage is a physical and spiritual bond between a man and a woman as husband and wife to build a happy and eternal family (household) based on the Belief in the One Supreme God. Every marriage that is carried out in achieving happiness wants the presence of a baby or child. The presence of a child in a marriage creates a legal relationship between the child and his parents. The child is a gift from God Almighty, and in him, inherent dignity as a human being and children have rights and positions that every human being must protect.

A legal marriage or the birth of a person in or as a result of a legal marriage will determine the child's status. Conversely, an illegitimate marriage or the birth of a child in (as a result of) an illegitimate marriage will have implications for the unclear status of the child legally and formally (Edyar, 2016). A child can be said to have a legitimate family relationship with his father if he is born in a legal marriage. Children born outside of legal marriage cannot be called legitimate children but are called adulterary children or children outside of legal marriage who have a family relationship with their mother. Inheritance rights are rights included in civil law, which are explained in the law that children have a priority position compared to other heirs because they are essentially the only class of heirs, which means that relatives do not become heirs if the heir leaves the child. Related to evidence that someone is a legal heir, a document is needed proving the position as the heir (Vairus, 2021).

The provision of Article 867 of the Civil Code (KUHPERdata), which regulates the legal consequences of children out of wedlock, states that the law does not provide inheritance rights for children from adultery or inbred children and only provides a living as necessary for the assets owned by their parents. Nowadays, a recent issue is the inheritance rights of children from consanguineous marriages (Inbred Children). Humans tend to no longer obey the norms that exist in society, both religious, social, and moral norms. Pouring out an act, agreement, or stipulation in the form of a notarial deed is considered better than putting it in a private letter, even though it is signed on a stamp duty, which is also strengthened by the signatures of the witnesses. The role of a notary is crucial because seen from the position of a notary in Article 15, paragraph 1 of Law Number 2 of 2014 amendment to Law Number 30 of 2004 concerning the Position of a Notary. It can be seen that it has become the principal Notary's authority in creating authentic deeds (Sanusi et al, 2022).

The authority of a notary is in Article 15 paragraph (1) of the Notary Office Law, hence, the Notary, due to the request of the parties, i.e., heirs, can make evidence as heirs and a deed of inheritance rights in the form of partij deed format. Thus, it can be seen that a Notary's authority in making a certificate of inheritance for Indonesian citizens in the perspective of Article 106 of Law Number 23 of 2006, as amended by Law Number 24 of 2013, concerning Population Administration in the following explanation: "Certificate of Inheritance is the letter as the basis for the existence of rights for the heirs to carry out legal actions on an inheritance left by the heir". To prove a person's position as an heir, a document outlines the inheritance law provisions on this matter, which can be employed as a guide by heirs and officials relating to the implementation of inheritance law (Nugraha et al , 2022). Based on the background above, the research problem is how to regulate the Authority of Notary in Making Certificates of Inheritance for Inbred Children in the future. so that the Notary can be careful in carrying out his duties and authorities. to check the documents of the interceptors are required the thoroughness of the Notary.

METHOD

The research design was normative legal research. Normative legal research was a scientific procedure to find the truth based on the scientific logic of law from its normative side (Ibrahim, 2006). Normative research must employ a statutory approach because what would be examined were various legal rules as the focus and the central theme of the research. Furthermore, this research used a relevant approach to the research problem, namely the statutory approach. The statute approach examined all laws and regulations related to the studied legal issues and then linked them to the issues to be discussed (Marzuki, 2005). This research employed primary and secondary legal materials as research data. Primary legal material consisted of statutes, official records in making laws, and judges' decisions. Meanwhile, the secondary legal material was in the form of all legal publications that were not official documents. The data collection technique used in this research was library research. Library research is research towards documents because this research is mainly carried out on secondary data contained in the library (Suratman dan H. Philips, 2013).

DISCUSSION

1. Inheritance Rights for Children Born from Consanguineous Marriages

Marriages carried out legally before the law will always be accompanied by legal consequences that arise afterward. These legal relations include the relationship between husband and wife, property, and children. The validity of a marriage if it is under the pillars and conditions of a legal marriage. In society, marriages are still not following the pillars and conditions for a legal marriage. With an invalid marriage, the marriage must be legally annulled. According to national marriage law, a legal marriage is carried out according to the rules of law that apply in Islam, Christianity or Catholicism, Hinduism, or Buddhism (Hadikusuma, 2007). The prohibition of marriage is a prohibition to marriage between two people who are still related by blood. The blood relationship is in a straight line downward, upward, sideways, breastfeeding, or *semenda* (related by marriage). In a marriage that violates the prohibition of marriage, one of the effects is the annulment of the marriage. This cancellation is also an action from the court, which states that the marriage was carried out illegally. The court with authority to decide on the annulment of a marriage is the court where the husband, wife, or both live and the court where the marriage occurred. For Muslim people, the annulment is carried out at the Religious Court; for non-Muslims, it is carried out at the District Court.

Before the marriage's annulment, the child's position was as a legitimate child. Article 42 of the Marriage Law has regulated that: a legitimate child is born from a legal marriage. In Islamic Law, inbred children get inheritance rights from their mother's line. It is under Article 186 KHI that "Children born out of wedlock only have a mutual inheritance relationship with their mother and family from their mother's side (Limbong, 2018). Consanguineous marriage is a marriage between a man and a woman where there is a blood relationship between the two (Putri Afifah et al., 2021). The legal basis for a consanguineous marriage (Incest) is regulated in Article 8 of the Marriage Law that marriage is prohibited between two people who:

- a. Have blood-related in a straight line downward or upward;
- b. Have blood-related in a sideways line, namely between siblings; someone and their parents' siblings; and someone and their grandparents;
- c. Have a similar relationship, namely in-laws, step-children, sons-in-law, and stepmother/ father;
- d. Have a relationship with parents-in-law, step-children, son-in-law, and stepmother/ father;
- e. Have a relative relationship with the wife or as an aunt or nephew of the wife, in the case of a husband who has more than one wife;
- f. Have a relationship in which marriage is prohibited by religion or other regulations.

It is also emphasized in Article 30 of the Civil Code, which states that marriage is prohibited between those who have blood relations in the ascending or descending line, either due to legal birth or due to illegitimate birth, or because of marriage in the descending line side, between brothers and sisters, legal or illegitimate. The right to receive care and education from parents is a child's right and is vital for every child to live a daily life and develop their potential. Children, by their nature, physically, psychologically, socially, and economically, are highly dependent on and need attention from other parties, especially their parents, to accompany and care for them as best they can until adulthood. According to Article 42 and Article 43 of the Marriage Law, the position of children consists of legitimate children and children out of wedlock. A legitimate child is born in or as a result of a legal marriage. Children out of wedlock are born outside marriage (Ahmad, 2022). Legal protection in question is an act or arrangement that is useful to provide a sense of security for legal subjects. As a legal subject, the child also deserves and has the right to receive legal protection from the state. Raising children is the responsibility of the father and mother as parents. The law is obligatory when caring for children, even if an event such as an annulment of marriage, divorce, or death occurs.

When the child's status and position change, the inheritance status of the child also becomes different. The status of a child as a legitimate child gives the right to inherit a parent's property. Otherwise, an illegitimate child is not entitled to inherit his parents (Putri, 2022). The legal position of a legitimate and illegitimate child is certainly different from all the consequences that might occur. As a result of the cancellation of marriage, the position of husband and wife in the inheritance law becomes different. Their position due to the cancellation of marriage changes as if there was never a marriage. Inbred children whose legal status is equated with adultery must be treated humanely and given teaching and skills that are useful for their lives in society. Meanwhile, the one responsible for meeting his needs is his mother because the child only has a lineage relationship with his mother. The law does not provide the inheritance right to inbred children. Indeed, it gives the right to demand a living as necessary, the amount of which is not certain, depending on the ability of the parent and the condition of the heir legitimate. In Islamic law, inbred children get inheritance rights from their mother's line. It is following the compilation of Islamic law of Article 186, which contains, "children

born outside of marriage only have a relationship of mutual inheritance with their mother and their mother's family", and do not get inheritance and other rights from a father or a man who caused him to be born. An inbred child is a child whose father or mother cannot recognize as a legitimate child because his parents' marriage is prohibited by Article 283 of the Civil Code. A child born due to blood blasphemy (incest/ discordant) may not be recognized (Hidayati, 2022).

2. Authority of Notary in Making Certificate of Child's Inheritance Born in Consanguineous Marriage

A notary is a public official whose authority to make inheritance rights is based on Article 15 paragraph (3) of the Notary Position Law, and information on inheritance rights made by a notary is an authentic deed that can be employed as perfect evidence in the event of a dispute in court. However, the Notary is not responsible and cannot be prosecuted by the heirs in creating inheritance information as the legal event mentioned above because the Notary in making inheritance rights has been supported by correct and objective data (Setiawan, 2019). In daily practice, the inheritance statement made by the heirs often occurs in an internal conflict between the heirs. In the making of the heir's statement, there is a possibility of not including all the heirs in the statement; hence, inheritance disputes reach the court. Although the Notary is irresponsible for the contents of the deed that has been made by or before it; However, the performance of notaries, in this case, is required to work professionally, independently, and in a fair position, impartial, and master good knowledge, especially in the field of civil law that is being handled including moral quality and compliance with professional ethics; thus, it can carry out its functions and roles properly. In making inheritance information, if the Notary makes a mistake in mentioning the names of the heirs or parts of each heir, causing losses to the client (the heir), the Notary is responsible for the existing losses. Moreover, notaries must be careful in pouring the will of the heirs into a deed because the burden of responsibility continues for a lifetime. It means that the Notary's work is full of risk, and there is no network for notaries to be free from all liability, even though they have emeritus status (TONGGIROH, 2022).

If the contents of the certificate of heirs are incorrect, then it is the responsibility of the parties who appear before the Notary. There is no need to involve a notary if it is to be corrected, then the heirs' deed must be revoked by those who made it, and then a new deed is made under the facts the parties desire. Suppose the contents of the heir's certificate are incorrect. In that case, the Notary cannot revoke or cancel the heir's certificate that he made, and indeed, there must be a party who applies the Notary who made it hence, the heir's certificate is canceled. The certificate of inheritance is the parties' will to prove themselves as heirs. 2. Authority of Notary in Making Certificate of Child's Inheritance Born in Consanguineous Marriage

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Furthermore, the notary will never make a certificate of inheritance when there is no request and will from the parties. A certificate of Inheritance Rights is a deed containing notarial information about the heir's heirs, the amount of each heir's share, and who is authorized to act on the inheritance. By stipulating a particular person as the heir, then he/ she has the right to receive the inheritance from the heir. The main objective of creating a Certificate of Inheritance Rights is to carry out the administration of the transfer of rights over the inheritance of the heir to the rightful heirs, for instance, when the process of transferring the name of the Land Certificate (Sanusi et al, 2022). A certificate of inheritance rights made by a notary due to the information provided by the parties can be employed as evidence before a court as long as those who sign the letter admit their signature. If the Certificate of Inheritance Rights will be canceled, thus its requirement is those who sign it have agreed to cancel the deed and make a new Certificate of Inheritance Rights with the information submitted by the opposing parties. If the contents of the Inheritance Certificate are incorrect, it will cause a problem for the notary, who makes the certificate a co-defendant in cases of transfer of inheritance rights.

CONCLUSION

The Notary will never make a certificate of inheritance if there is no request and will from the parties. A certificate of Inheritance Rights is a deed containing notarial information regarding the heir's heirs, the amount of each heir's share, and who is authorized to act on the inheritance. By designating a person as the heir, that person has the right to receive the inheritance from the heir. The primary objective of making a Certificate of Inheritance is to carry out the administration of the transfer of rights over the inheritance of the heir to the rightful heirs, e.g., when the process of transferring the name of the Land Certificate. As a result of the annulment of marriage, the position of husband and wife in inheritance law is different. Their position due to the annulment of the marriage changes as if there had never been a marriage. An inbred child whose legal status is equated with an adulteress child must be treated humanely, given teaching and valuable skills for his provision of life in society. Meanwhile, the one responsible for meeting their needs is the mother because the child only has a family relationship with the mother. The law does not provide inheritance rights to an inbred child. However, it still gives the right to claim maintenance as necessary, the amount of which is not certain, depending on the ability of the parents and the condition of the legal heirs.

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