Function Of Notary In The Appointment Of Extra-Marital Children As Testamento Heirs

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Abstract

In inheritance law, it has been regulated regarding inheritance for extra-marital children differently in accordance with the principles regulated by civil inheritance law which certainly rests on justice. In a condition where an extra-marital child who does not get recognition, can get inheritance through testamentair or will. The granting of a will containing efrstelling in the form of an openbaar testament to an unrecognized extra-marital child is an effort to fulfill a sense of justice. Justice is basically a relative thing, which does not always have to be the same, something can be said to be fair if it has done something according to the appropriate provisions. As the concept of distributive justice put forward by Aristotle, namely justice that gives everyone a portion according to their achievements. This legal research method is normative legal research. The approaches in this research are statutory, and conceptual approaches. The results of this study state that wills containing efrsteling against unrecognized extra-marital children in the form of openbaar terstamen have provided a sense of justice. This is because the Openbaar testament to an unrecognized extra-marital child has fulfilled the provision of rights to all heirs including extra-marital children who get a share in the inheritance, in other words, the principle of justice has been fulfilled due to the openness of the testator made before a notary and in the presence of witnesses. The notary plays a role in providing legal counseling to the person who will make a testament on an extra-marital child. The granting of Openbaar Testamen to extra-marital children has fulfilled a sense of justice. This is because the Openbaar Testament is an open form of testament so that the child outside of marriage can know the part to which he is entitled.

Keywords: Notary Function, Extra-marital Children, Testamento Heirs

INTRODUCTION

Through a marriage, it is expected that there will be offspring, namely children. However, children are not always born from a legal marriage, there are also many phenomena that occur in society where children are born outside of marriage. This happens a lot and results in various child statuses. If the marriage is valid, the child born is certainly categorized as a legitimate child. If the result of an invalid marriage, it will give the newborn child the status of an unmarried child. The birth of a child ultimately has legal consequences, one of which is related to inheritance from his parents.

As stated in Article 43 of Law Number 1 Year 1974 states that:

1. Children born outside of marriage only have a civil relationship with their mother and their mother's family.
2. The position of the child mentioned in paragraph (1) above will be further regulated in a Government Regulation.

Based on Article 43, it is known that extra-marital children only have a civil relationship with their mother, this means that the inheritance of extra-marital children is only entitled to the inheritance of their mother. However, according to the Civil Code, the legal position of an unmarried child is obtained if recognition is made.

Constitutional Court Decision Number 46/PUU-VIII/2010 states that there is a relationship between an extra-marital child and his biological father if proof is carried out through science and his parents have a marriage. Based on some of the explanations above, the recognition of extra-marital children is an important thing, because the recognition and validation of these children will have legal consequences. One of these legal consequences is related to the emergence of inheritance rights to these extra-marital children.

A Notary is a public official who is authorized to make authentic deeds regarding all deeds and agreements regulated by law and agreed upon by the parties to ensure the certainty of the deed, store the deed to provide a copy of the deed, has a big role in ensuring legal certainty of the deed he has made. The position of Notary is held or its presence is desired by the rule of law with the intention of assisting and serving people who need written evidence that is authentic regarding circumstances, events, or legal acts (Adjie, 2014). In accordance with the applicable legislation, the assistance of a notary from the beginning to the end of the process of making a will deed is needed so that it obtains binding legal force. The responsibility of a notary in making a testament deed covers the entirety of the duties, obligations, and authority of a notary in handling the issue of making a testament deed, including protecting and storing letters or authentic deeds.

According to its content, a will is divided into three based on Article 876 paragraph (2) of the Civil Code, namely (Bachrudin, 2021):

1. Testament for the appointment of inheritance (efrstelling)
2. The will of giving a certain object or hibat will (legaat)
3. A will by any other name, which includes the granting of an order or burden or in short, a will granting an order or burden (last).

The testator can choose one of the forms of will given to an unmarried child. Thus, at the time of the execution of the Testament (will), an unmarried child can fully inherit the property owned by his parents, especially his father's inheritance. The form of Testament used is an appointment, because if the testator uses a legaat, it means that the father's inheritance will not fall entirely to the extra-marital child. By using legaat, the inheritance will only be given to the extra-marital child in the form of certain objects from the testator's inheritance.

The granting of a will containing efrstelling in the form of an openbaar testament to an unrecognized extra-marital child is an effort to fulfill a sense of justice. Justice is basically a relative thing, which does not always have to be the same, something can be said to be fair if it has done something according to the appropriate provisions. As the concept of distributive

justice put forward by Aristotle, namely justice that gives everyone a portion according to their achievements (Friedrich, 2004). Therefore, to provide an overview of the justice of the distribution of inheritance property to children out of wedlock or adultery, it is necessary to conduct research on this matter.

METHOD

This research is normative legal research. Normative legal research is research that examines legal norms (Muhjad, dkk, 2012). The type of research used in this study is Theoretical Research, which is research that adopts a more complete understanding of the basic concepts of legal principles and the combined effects of a series of rules and procedures that touch certain areas of an activity (Muhammad. 2004). This research also uses a conceptual approach that departs from the views and doctrines that develop in legal science in building an argument in solving the issue under study (Muhammad. 2004). This research is prescriptive analytical. Types and sources of legal materials consist of primary legal materials, secondary legal materials and tertiary legal materials:

a. Burgerlijk Wetboek (Civil Code, Staatsblad 1847 No. 23), promulgated on April 30, 1847.
b. Law of the Republic of Indonesia Number 1 of 1974 Concerning Marriage (State Gazette of the Republic of Indonesia Number 1 and Supplement to the State Gazette of the Republic of Indonesia Number 3019)
c. Law Number 30 of 2004 Concerning the Position of Notary (State Gazette of the Republic of Indonesia of 2004 Number 117 and Supplement to the State Gazette of the Republic of Indonesia Number 4432);
d. Law Number 16 of 2019 Concerning the Amendment to Law Number 1 of 1974 Concerning Marriage (State Gazette of the Republic of Indonesia Year 186 and Supplement to State Gazette of the Republic of Indonesia Number 6401)
e. Law Number 2 of 2014 Concerning the Amendment to Law Number 30 of 2004 Concerning the Position of Notary (State Gazette of the Republic of Indonesia of 2014 Number 3 and Supplement to the State Gazette of the Republic of Indonesia Number 5491);

In general, the technique of collecting legal materials through document studies and literature studies (Erliyani, 2020).

DISCUSSION

Provisions for Inheritance of Unmarried Children According to the Civil Code and the Constitutional Court Decision

The Civil Code only states that inheritance only takes place due to death as stipulated in Article 830 of the Civil Code. Article 584 of the Civil Code replicates Article 711 of the Civil Code stipulating that:

Article 584

"The right of ownership of an object cannot be obtained in any other way, except by ownership, by attachment, by expiration, by inheritance either according to law, or according to a will".

The provision of Article 584 of the Civil Code implies that inheritance is one of the ways that are limitatively determined to obtain property rights, and because the object (right) of ownership is one of the main elements of the object which is the most basic object among other objects, the inheritance law is regulated in Book II together with the regulation of other objects.

Anisitus Amanat, said that in terms of inheritance there are three important elements, namely

1. Heir (erflater).

2. Heirs (erfgenaam).
3. The inheritance (boedel).

Based on the formulation of Article 250 of the Civil Code, it can be said that the relationship between the child and the father is a legal relationship. That a child is born of a mother, it is easy to prove. But that a child is really the child of a father, it is rather difficult to prove, because it could happen that the person who gave birth to the child is not the husband of the mother. So in this case the relationship is intended for legal certainty specified in Article 250 of the Civil Code.

The position of extra-marital children in the law turns out to be inferieur (worse / lower) compared to legal children. Legal children are basically under the authority of parents (Article 299 of the Civil Code and Article 47 of the UUP), while extra-marital children are under guardianship (Article 306 of the Civil Code and Article 50 of the UUP). The right of legitimate children to share in the inheritance of their parents is greater than that of extra-marital children (Article 863 of the Civil Code) and the right of extra-marital children to enjoy inheritance through a will; limited (Article 908 of the Civil Code).

As a result of the recognition of an unmarried child, namely the emergence of a civil relationship between the child and the father or mother who recognizes him. With the emergence of this civil relationship, the status of an extra-marital child changes to a recognized extra-marital child, whose position is much better than an unrecognized extra-marital child.

Constitutional Court Decision No.46/PUUVIII/2010 makes extra-marital children a party who has legal standing (persona in judicio) in inheritance cases in court and is entitled to inherit the property of their biological father. Extra-marital children inherit together with the first group, which includes children or all their descendants (Article 852 of the Civil Code) and the husband or wife lives longer (Article 852 A of the Civil Code), therefore, the share of the extra-marital child is one third (1/3) of the property left behind with the requirement to be able to prove the existence of blood relations based on science and technology and / or other evidence according to law.

Based on this description, an extra-marital child can become the heir of his parents, so there must be a legal relationship between the extra-marital child and his parents. The legal relationship between an unmarried child and his or her parents arises with the recognition and or legalization of his or her parents. The legalization of an extra-marital child is carried out by the marriage of the two parents of the extra-marital child with the conditions of legalization based on prior recognition by the parents of the extra-marital child.

Granting a Will to an Unrecognized Extra-Marital Child

A will or testament is a statement from a person about what he wants after he dies. In principle, such a statement comes from one party only (eenzijdig) and can be withdrawn at any time by the person who made it (Oemarsalim. 1991). It follows that not everything that a person wishes to do, as set out in the will, is also permissible or enforceable. Article 872 of the Burgerlijk Wetboek states that a will or testament must not contradict the law.

The definition of a will is implied by the definition of "testament" as contained in Article 875 of the Civil Code which states that a "will" is a deed containing a person's statement of what he wants or his last will and testament to happen after he dies and which he can revoke.

People who may not be used as witnesses in the making of a general will are the heirs or beneficiaries of the will (legataris), both their blood relatives or relatives up to the sixth degree, as well as children or grandchildren or blood relatives or relatives up to the same degree of the notary, before whom the will is made.

One of the intended public wills or openbaar is a public will contained in Article 938 of the Civil Code, namely a will made by the testator (testateur) in the presence of a notary and 2

(two) witnesses, meaning that the making of a will which is the delivery of the intent, will, and information of the testator (testateur) about what is his last will, is conveyed and made by him in the presence of a notary and 2 (two) witnesses (instruentair). "General Will" or Openbaar in Notary practice is commonly referred to as "General Testament Deed" (Oemarsalim. 1991).

Article 939 of the Civil Code explains the procedure of making Openbaar and its notification to the interested persons (heirs) after the death of the testator (Article 943 of the Civil Code). Making a will with Openbaar is more advisable with the consideration that a notary as a public official who has legal expertise and knowledge in the field of civil law, can provide instructions so that a will to be made can be carried out as closely as possible in accordance with the will of the testator (testateur) (Oemarsalim. 1991).

With regard to extra-marital children according to the Civil Code, it is the opposite of (a contrario) the concept of legal children as contained in Article 250 of the Civil Code. A legitimate child is born during a valid marriage, so an extra-marital child is born "before" the marriage is held or outside a valid marriage not as a result of a valid marriage.

Restrictions on the rights of unmarried children based on the provisions of Article 908 of the Civil Code do not only apply in relation to gifts through wills, for example legaat, but also apply to grants given by the testator during his lifetime. Restrictions on grants by referring to or pointing to the applicability of the provisions of Article 908 are contained in Article 1681 of the Civil Code.

Based on this explanation, it is found that the granting of a will containing legaat in the form of openbaar tertemen to an unrecognized extramarital child has fulfilled a sense of justice because the general or openbaar will is a will made before a notary and 2 witnesses, which in this sense is the making of a will which is the delivery of the intention, will, and information of the testator (testateur) about what is his last right, delivered and made by him before a notary and 2 witnesses.

The Granting of Wills to Unmarried Children and the Theory of Justice

A will or testament is a statement from a person about what he wants after he dies. By itself, it can be understood that not everything that a person wants, as put in the will, is also allowed or can be implemented. Article 872 of the Burgerlijk Wetboek states that a will or testament must not be contrary to the law.

The word will comes from Washaya, which means that the person who makes a will connects his property during life with after death. According to Sajuti, a will means a statement of will by a person regarding what will be done with his property after he dies. Therefore, the will is one way that regulates the transfer of property from one person to another. In its development wasita regulates the transfer of property with family relationships both due to marriage, descent and recognition (Thalib. 2008). In making a will (testament), a Notary has the authority and obligations which include (Bayusuta. 2016):

1. inquiring about the client's will;
2. give consideration to the client's will based on applicable legal provisions;
3. requesting proof of ownership of the assets to be listed and the client's personal data;
4. requesting the correct data on the beneficiary;
5. drafting the will and checking it with the person concerned before it is made into a deed;
6. make the will in the form of a general deed;
7. make a deed of deposit of the olographic will;

So that in the matter of making a testament, the Notary acts as an independent and impartial party, and must pay attention to the interests of all parties involved, in order to provide legal certainty and guarantee. In addition, it can also be explained about the procedures to fulfill the making of a testament acte, namely (Prastuti. 2006): Open or General Testament Procedure (Openbaar Testament)

The maker of the will appears before a Notary to state his/her will without the presence of witnesses. The Notary then drafts the will on a piece of paper. After that, the maker of the will again states his will in front of the Notary and witnesses. Then, the Notary reads the will and asks the maker of the will whether it is true that the draft is his/her last will. The reading, questioning and answers are also done in the presence of witnesses.

In addition to the above testament, there is an oral testament where the will can only be made if the testator is in a state of death, or in an emergency, where the making of the will must be done with a minimum requirement of 2 witnesses who are in good faith and there is no bad faith (Prastuti. 2006).

The extra-marital child who is entitled to inherit is an extra-marital child in a narrow sense, considering that the doctrine classifies illegitimate children in 3 (three) groups, namely extra-marital children, adulterous children, and discordant children, in accordance with the mention given by the legislator in Article 272 jo 283 of the Civil Code (concerning adulterous and discordant children). Extra-marital children who are entitled to inherit are in accordance with the arrangements in Article 280 of the Civil Code. Such division is done, because the law itself, based on existing provisions, does provide other legal effects (individually) on the status of children as above.

Extra-marital children are children born as a result of a relationship between a man and a woman, both of whom are not bound by marriage to another person and there is no prohibition to marry each other, such children can be legally recognized by their father (Article 280 of the Civil Code) (Wijayanthi. 2016).

In the principle of justice put forward by Murthahhari explains that the concept of justice is known in four ways as follows (Muthahhari, 1995).

First, justice means balance in the sense that if a society is to survive and be established, then the society must be in a state of balance, where everything in it must exist at its proper level and not at the same level.

Secondly, justice is equality and the negation of any differences. Justice means maintaining equality when the possessions are equal, because justice requires equality.

Third, justice is preserving individual rights and giving rights to everyone who deserves them. Social justice in living in society and the state.

Fourth, justice is maintaining the right to continued existence.

Based on the explanation above, extramarital children are entitled to get a will from their father because of the recognition of extramarital children and proof of blood relations with extramarital children, both of which are legal solutions in order to provide legal protection for extramarital children to obtain their rights, both in the form of the right to obtain care, maintenance, and education including the right to inherit when their parents die, but with restrictions regulated by civil law.

The principle of justice towards the granting of wills to children outside marriage has fulfilled the value of certainty in law and certainty contains several meanings, including clarity, does not cause multiple interpretations, does not cause contradictions, and can be implemented. The granting of this open will applies strictly to the parties involved, containing openness so that anyone can understand the meaning of a will (Atmajaya. 2013).

So that based on the granting of an open will or Openbaar Testement, it has fulfilled the granting of rights to all heirs including extra-marital children who get a share in the inheritance that the principle of fairness is fulfilled because of the openness of the testator made before a notary and before witnesses.

Duties and Authorities of Notary According to Laws and Regulations

The definition of Notary according to the Big Indonesian Dictionary is a person who is authorized by the government to certify and witness various agreements, wills, deeds and so

on. Notary is a profession that is appointed by the State to create authentic evidence (Sumaryono. 2008)**.**

Notary in English is called notary, while in Dutch it is called van notaris. Notaries have a very important role in legal traffic, especially in the field of civil law, because Notaries are public officials who have the authority to make deeds and other authorities (Salim Hs, 2015).

Article 1 Staatsblad 1860 Number 3 concerning the Regulation of the Office of Notary in Indonesia (reglement op het notaris-ambt in indonesie) has formulated the definition of Notary. Notaries are public officials, specifically authorized to make authentic deeds concerning all stipulations, agreements and decrees, which are to be ordered by a general law or desired by interested persons, which will be proven by an authentic writing, guaranteeing the day and date, keeping deeds and issuing grosse-grosse, copies and excerpts, all that to the extent that the making of such deeds by a general law is not also assigned or assigned to other officials or persons (Salim Hs, 2015).

The authority of a Notary according to Article 15 paragraph (1) of the Notary Position Law is also authorized:

a. To certify signatures and determine the certainty of the date of letters under the hand by registering in a special book;
b. To record letters under the hand by registering in a special book;
c. Make a copy of the original letter under the hand in the form of a copy containing the description as written and described in the letter concerned;
d. Attesting the suitability of the photocopy with the original letter;
e. Providing legal counseling in connection with the making of the Deed;
f. Making deeds related to land; or
g. Making a deed of auction minutes.

In addition to the above authorities, Notary also has 4 (four) authorities, namely (Lubis):

1. Notaries must be authorized to do everything related to the deed they are making, as stated in Article 15 of Law Number 2 of 2014 on the Amendment to Law Number 30 of 2004 on the Office of Notary;
2. Notary must be authorized to the persons for whose benefit the deed is made contained in Article 52 of Law Number 2 of 2014 on the Amendment to Law Number 30 of 2004 on the Position of Notary;
3. Notary shall be authorized to the place where the deed is made as contained in Article 19 of Law Number 2 of 2014 on the Amendment to Law Number 30 of 2004 on the Position of Notary;
4. Notary is authorized to the time of making the deed.

Based on Article 15 of the Notary Position Law above, it can be seen that notaries are authorized to make both authentic deeds and underhand deeds. Underhand deed An underhand deed is a deed made between the parties making the deed, without the involvement of an official authorized to make deeds (Adjie. 2011). Regarding underhand deeds are also regulated in the Civil Code in article 1874 that "What is considered as writing under the hand is a deed signed under the hand, letters, lists, household affairs letters and other writings made without the intermediary of a public official". Underhand deeds have several characteristics, among others (Pradnyana):

1. Free form
2. It does not have to be made before a public official
3. Still has evidentiary power as long as it is not denied by the maker, meaning that the contents of the deed do not need to be proven again unless someone can prove otherwise (deny the contents)
4. In the event that it must be proven, the proof must also be completed with witnesses and other evidence. Therefore, usually in a deed under hand, two adult witnesses should be

included to strengthen the proof.

Habib Adjie argues that what is meant by confrontation is physical confrontation. However, Edmon Makarim argues that there should be an expansion or shift in the meaning of the word face-to-face, that face-to-face does not necessarily have to be physical as it is done today. Physical presence can be replaced by electronic means. By looking at the development of mobile communication (3G) today, anyone can make a video conference call and can embed his signature on the phone card chip (SIMcard) or on the handset concerned, and can be known the real facts where the person concerned is with satellite facilities through GPS or map utilities provided (Makarim. 2013).

So, according to the explanation above, there are three things that must be fulfilled in making an authentic deed, namely made by an authorized official, the form is in accordance with the law, and made in front of the authorized official. Authentic deeds made by notaries are divided into two, namely Ambtelijk Acte / Akta Relaas (Official Deed) and Partij Acte (Deed of the Parties) (Anshari).

Specifically, Article 15 paragraph (2) letter e of the Notary Position Law states that Notaries are obliged to provide legal counseling in connection with the making of deeds. Therefore, notaries are obliged to provide legal counseling and explanations to interested parties in connection with the making of authentic deeds that will be, are being and / or made until the deed is completed (Anand, 2018).

Article 16 letter a of the Notary Position Law, Notaries are required to act honestly, carefully, independently impartially and safeguard the interests of the parties involved in legal actions. As explained in Article 16 paragraph (1) letter a of the Notary Position Law, in terms of taking legal actions for their clients, Notaries must also not take sides with one of their clients. Notaries are expected to provide legal counseling for and on legal actions taken by notaries at the request of their clients.

The purpose of legal counseling by notaries is to provide understanding related to the making of authentic deeds. The legal counseling provided by the notary is very useful both to the notary and the faces who will make the deed. This usefulness is in order to provide legal certainty in making a deed, where the parties will understand the legal provisions that are mandatory in the fulfillment of making a deed, so that no violation of the law occurs because it has been informed by the notary through legal counseling. In addition, notarial deeds made must have evidentiary power (Arliman, 2004).

It is very important for the Notary before making an authentic deed to the parties to provide legal understanding or legal counseling to the parties before making an authentic deed, on matters that the parties do not understand, or matters that are very important in making an authentic deed, so that there is no confusion with the notary and the face itself. So that the confronter is more aware of the losses that will occur in the future.

Notaries in carrying out a legal action must always act carefully so that the Notary before making a deed, must examine all relevant facts in his consideration based on the applicable laws and regulations. Examining all the completeness and validity of the evidence or documents shown to the Notary, as well as hearing the testimony or statements of the confrontants must be carried out as a basis for consideration to be stated in the deed.

One of the authorities of a Notary is to be able to make a deed of will as mandated in the Notary Office Law, including the making of a will in the presence of witnesses as stipulated in Article 939 paragraph (4) of the Civil Code and the making of a deed of will outside of witnesses as stipulated in Article 939 paragraph (2) of the Civil Code (Arkan, 2020).

a. Based on the explanation above, the role of Notary in making a will before a Notary refers to the provisions of Article 1 number 1 of the Notary Position Law which states,
b. "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."

c. Notaries are expected to provide legal counseling for and on legal actions performed by notaries at the request of their clients. The purpose of legal counseling by notaries is to provide understanding related to the making of authentic deeds. The legal counseling provided by the notary is very useful both to the notary and the confronters who will make the deed. This is where each will or testament must be in the form of a deed in order to obtain legal certainty as a binding authentic deed. With the making of the testament deed, the parties can understand and can know the basis of the consequences of their actions can be arranged in such a way that the interests concerned get reasonable protection as known by the Notary. In this case the notary only has the authority to express the wishes of the parties and the Notary can first explain what a will is and how to give a will, so that the confronter really understands and understands what the confronter wills. Then, the Notary examines the evidence of the letter/object to be given whether or not it is true in detail about the existence of the object and ensures that it has been/is or has not been made previously on the object in accordance with the wishes of the confronter, as well as reading and signing the deed.

Notary's Responsibility in Providing Legal Counseling

Making a deed without legal counseling is very vulnerable to causing legal problems, such as the emergence of party disputes and lawsuits against notaries. Therefore, in making an authentic deed, the Notary must provide legal counseling for and on the legal actions taken by the Notary based on the will of the parties in making the deed. Notaries must not take sides in carrying out legal actions related to the making of authentic deeds to avoid disputes.

Legal counseling conducted by notaries in connection with the making of deeds is needed to provide legal understanding to the public about authentic deeds, so that the realization of a law-aware society and making law a necessity, because people's understanding of the law varies, depending on their education/knowledge and experience (Nofiardi. 2015). Legal counseling is an activity to provide legal understanding to the public about laws and regulations in order to create a law-abiding society and avoid legal sanctions (Iskandar. 2013).

Notaries are morally obliged to resolve disputes due to the negligence of Notaries who do not provide legal counseling properly to the parties, resulting in disputes, this is done as a reason to avoid the accumulation of cases in court, besides that in the Notary Position Law and the Notary code of ethics there is also no prohibition for Notaries to become mediators.

Notaries are required to provide legal certainty and professional services in realizing 2 (two) sides of work that contain many risks and require sufficient legal knowledge, accuracy and high responsibility. Notaries are required to uphold the law, principles and act in accordance with the meaning of the oath of office which prioritizes service to the interests of society and the state. Notaries are not allowed to do things and/or actions that are not in accordance with the dignity and honor of the office of notary.

The responsibilities of notaries include 3 (three) things, namely ethical responsibility, professional responsibility, and legal responsibility. The responsibilities of notaries in making authentic deeds include 3 (three) (Adjie, 2013).

1. Ethical responsibility, is an assessment of the right and wrong or good and bad actions of notaries in making authentic deeds.
2. Professional responsibility is related to giving demands to Notaries to always have to increase their insight and knowledge in making authentic deeds, so that the deed is no longer in doubt.
3. Legal responsibility relates to the ability to take responsibility for the authentic deed that has been made if there are problems in the future.

The absence of standard rules governing the procedures for legal counseling by Notary, causes obstacles in the supervision process carried out by the Notary Supervisory Council,

namely whether a Notary has provided legal counseling or not. Based on Article 17 paragraph 1 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary, if a Notary commits a violation or error in carrying out his/her duties, he/she may be subject to sanctions in accordance with applicable laws and regulations. Notaries who make mistakes in carrying out their official duties cannot escape the existing sanctions. Sanctions can be in the form of administrative sanctions, civil sanctions or criminal sanctions, depending on what mistakes have been made by the notary while carrying out his duties. Some sanctions that can be imposed include:

Provisions regarding civil sanctions against Notary are also seen in the provisions of Article 44 paragraph (5) of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Position. Notary who violates the provisions as referred to in paragraph (1), paragraph (2), paragraph (3) and paragraph (4) of Article 44 of Law Number 2 of 2014 on the Amendment to Law Number 30 of 2004 on the Position of Notary may be sued for compensation and interest by the party who due to the negligence of the Notary the party suffers loss. Article 41 of Law Number 2 Year 2014 on the Amendment to Law Number 30 Year 2004 on Notarial Position also contains provisions regarding the invalidation of a Notarial deed if it does not comply with the provisions of Article 38, Article 39, and Article 40 regarding the form, capacity to act of the parties and witnesses in making a Notarial deed. Notarial deeds that only have evidentiary power as deeds under the hand due to Notaries not making deeds in accordance with the provisions of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notarial Offices certainly affect the interests of the parties who appear before the Notary, considering that Notarial deeds are authentic deeds and have perfect evidentiary value.

Although Article 41 of Law Number 2 of 2014 on the Amendment to Law Number 30 of 2004 on the Position of Notary does not contain a provision that the parties can claim compensation and interest, if the parties suffer losses due to the deed made before the Notary only applies as a deed under the hand instead of an authentic deed, then according to the perspective of civil law, this can be used as an excuse for the parties to claim compensation from the Notary concerned. The Notary in this case is obliged to be civilly responsible for the parties who feel harmed (Haiti, dkk, 2023).

Notary is given a written warning so that the Notary can correct the mistakes made so that the Notary can carry out his/her position in a legal order. Sanctions in the form of warnings given to Notaries do not hinder the authority of Notaries in making authentic deeds, meaning that Notaries who are sanctioned in the form of written warnings can continue to carry out their positions, but must correct mistakes and act carefully so that these mistakes are not repeated (Haiti, dkk, 2023). Every violation committed by a Notary, Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary only provides sanctions in the form of civil sanctions and administrative sanctions. Criminal sanctions can be given to a Notary, one of which is if the Notary discloses secrets that he must keep in carrying out the Notary position. Criminal sanctions are the ultimum remedium, which is the last remedy, if sanctions or efforts in other branches of law do not work or are considered ineffective.

Notary obligations have been specifically and in detail regulated in Article 16 paragraph (1) letters a to m of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Offices. One of them is in Article 16 paragraph (1) letter a of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary that notaries must act trustworthy, honest, careful, independent, impartial, and safeguard the interests of parties involved in legal acts. Meanwhile, the provisions of sanctions in Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Positions are regulated in Articles 84 and 85. Regarding sanctions imposed

on Notaries as individuals according to Article 85 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Positions can be in the form of:

1. Oral reprimand;
2. Specific reprimand;
3. Temporary dismissal;
4. Honorable dismissal;
5. Dismissal with dishonor;

Based on this description, in the absence of standard rules governing the procedures for legal counseling by Notaries, the Notary Law does not include sanctions related to violations of Article 15 Paragraph (2) letter (e). However, Notaries who do not provide legal counseling in the process of making deeds that result in losses to other parties, may be subject to the provisions of Article 84 of the Notary Position Law which explains that if the Notary in performing his duties violates Article 16 paragraph (1) letter (k), Article 41, Article 48, Article 49, Article 50, Article 51, or Article 5 which results in a deed only having evidence as a deed under the hand or the deed becomes null and void, then this can be a reason for the party who suffers a loss to claim reimbursement of costs, compensation, and interest to the Notary, and the Notary can also be sued for compensation as referred to in Article 1336 of the Civil Code, namely due to negligence.

In relation to the Granting of Wasiat, because it is not the authority of the notary, the notary who provides the facility can be subject to civil sanctions, if the parties feel harmed by the error of his negligence. The notary is given a written warning with the aim that the notary can correct his mistakes and can carry out his position in an orderly manner. Sanctions in the form of warnings do not hinder the authority of the Notary in making authentic deeds, meaning that Notaries who are sanctioned in the form of written warnings can continue to carry out their positions, but must correct mistakes and act carefully so that these mistakes are not repeated.

CONCLUSION

Wills containing efrsteling against unrecognized extra-marital children in the form of openbaar terstamen have provided a sense of justice. This is because the Openbaar testament to an unrecognized extra-marital child has fulfilled the rights of all heirs including extra-marital children who get a share in the inheritance, in other words, the principle of justice has been fulfilled due to the openness of the testator made before a notary and in the presence of witnesses.

The notary plays a role in providing legal counseling to the person who will make a testament on an out-of-wedlock child. The granting of Openbaar Testamen to extra-marital children has fulfilled a sense of justice. This is because the Openbaar Testament is an open form of testament so that the child outside of marriage can know the part that is his inheritance right. In addition, the Openbaar Testament is made in front of a Notary and Witnesses, this further gives a sense of security to children outside of marriage to obtain their rights.

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