Keabsahan surat wasiat yang mewariskan kedudukan Ketua Pembina Yayasan : studi pertimbangan Putusan Nomor 1546K/Pdt/2017 jo. 398/Pdt/2016/PT.DKI = The legality of testament which legate a Chief Patron position in Foundation : study the consideration of Verdict Number 1546K/Pdt/2017 jo. 398/Pdt/2016/PT.DKI

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Abstrak

Akta wasiat sering dinyatakan batal demi hukum dalam suatu putusan pengadilan. Hal ini terjadi karena pemahaman sebagian besar masyarakat atas pengertian wasiat hanya sebatas berdasarkan ketentuan Pasal 875 KUHPerdata yang bermakna luas dan tidak spesifik menentukan objek wasiat, sehingga secara tersirat menghalalkan segala kehendak yang diinginkan seseorang untuk diwasiatkan. Faktanya, keseluruhan ketentuan terkait wasiat dalam KUHPerdata turut mengatur pembatasan wasiat. Penelitian ini menganalisis keabsahan surat wasiat yang mewariskan kedudukan Ketua Pembina Yayasan dalam pertimbangan putusan nomor 1546K/PDT/2017 jo. 398/PDT/2016/PT.DKI dan seharusnya peran dan tanggung jawab notaris ketika berhadapan dengan klien yang ingin membuat surat wasiat tersebut. Metode penelitian yang digunakan ialah yuridis-normatif dengan studi pustaka dan wawancara. Hasil penelitian yang diperoleh terdiri dari: (1) Pertimbangan hukum majelis hakim dalam putusan nomor 1546K/PDT/2017 jo. 398/PDT/2016/PT.DKI tidak dikaji secara mendalam dan hanya mengacu kepada satu pasal saja dalam ketentuan KUHPerdata, surat wasiat yang dinyatakan batal demi hukum di tingkat kasasi sudah tepat namun penjabaran alasannya kurang mengacu kepada inti daripada pokok permasalahan sehingga perlu dilengkapi, surat wasiat tidak hanya menyalahi ketentuan Pasal 874 namun juga 888, 966, 1254 KUHPerdata serta Pasal 28 ayat (3) UU Yayasan; (2) Notaris dapat menolak membuat akta dan memberikan penyuluhan hukum bahwa objek wasiat yang akan dibuat bertentangan dengan aturan hukum yang berlaku, jika surat wasiat terbit karena ketidaktahuan notaris kemudian dinyatakan batal demi hukum, maka notaris tidak bertanggung jawab selama tidak ada tuntutan kepada notaris yang dapat dibuktikan dengan sanksi berupa penggantian biaya, ganti rugi dan bunga dari pihak yang menderita kerugian.

.....Testaments are often declared null and void in a verdict. It happens because the meaning of a testament is understood by most people only based on the Article 875 of the Civil Code which has a broad and non-specific meaning to determine the object of a testament, so it justifies all wishes that a person wants to be inherited in a testament implicitly. In fact, all the provisions governing testament in the Civil Code also regulate the limitations of testament. This research analyze the legality of testament which legate a Chief Patron position in Foundation based on the consideration of verdict number 1546K/Pdt/2017 jo. 398/Pdt/2016/PT.DKI and what should be the roles and responsibilities of a notary when dealing with a client who wants to make that testament. The research method used is juridical-normative with literature study and interview. The results of research obtained consist of: (1) Legal consideration of the panel of judges in verdict number 1546K/Pdt/2017 jo. 398/Pdt/2016/PT.DKI was not studied in depth and only refers to one article in the provisions of the Civil Code, the testament which was declared null and void at the cassation level is true but the explanation of the reason does not refer to the core of the problem so it needs to be perfected, the testament not only violates the provisions of Article 874 but also 888, 966, 1254 of the

Civil Code and Article 28 paragraph (3) of the Foundation Law; (2) The notary may refuse to make a deed and provide legal counseling that the object of testament to be made is contrary to the prevailing laws and regulations, if the testament was made due to the ignorance of notary then declared null and void in a verdict, so the notary is not responsible as long as there is no claim to the notary that can be proven by sanctions in the form of reimbursement of costs, compensation and interest from the aggrieved party.