LEGAL CONFERENCE OF GRANT ASSETS ARE MADE IN THE NOTARY OF THE NOTARY

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A. Introdiction

In legal terms, of course we are familiar with the term proof, where: law is a reflection of the values that exist in society. In general, there is an opinion stating that good law is what the social community aspires to, so rules (law) are needed as a tool (Soerjono Soekanto, 2002). The law of proof is "a set of legal rules governing proof". (Munir Fuady, 2012). Furthermore, proof in legal science is a process both in civil and criminal proceedings, as well as other means where by using valid evidence, an action is taken with a special procedure to find out whether a fact or statement, especially a disputed fact in court, has been filed. and it is declared by a party in the court process to be true or not as stated. In civil law, what is known is "a system of positive proof, or where what the judge is looking for is formal truth." Because what the judge is looking for is only a formal truth, so it is not the real truth, even a "probable" truth is sufficient, a truth that is actually difficult to be realized in practice. From here, there is an opening for cheating.

One of the evidences in a civil court is a deed, including a grant deed. A grant is a gift from someone during his lifetime to another. Regarding what is meant by a grant, it can be seen in Article 1666 of the Civil Code, a grant is an agreement whereby the grantee, at the time of his life, freely and irrevocably hands over something for the needs of the grantee who receives the delivery.

The law does not recognize other grants other than grants between living persons. "(Subekti, R, 2008) If a gift is given by someone after he/she has passed away, this is called a will grant, which is regulated in Article 957- Article 972 of the Civil Code. Article 957 of the Civil Code: "A will grant is a special stipulation, in which the inheritor gives one or several people certain items, or all certain goods and kinds; for example, all movable or permanent objects, or usufructuary rights for some or all of the goods."

The problem that often occurs actually comes from will grant, this is because the grant has been strictly regulated by the temporary Civil Law even though the will is regulated in the Civil Code but the problem is that one of the parties has passed away, this encourages one or more several parties commit fraud, whether massive fraud or personal fraud, as well as other frauds that have the potential to cause problems in the future. Examples p a da case the author encountered in Decision No. 273/PDT.G/1998/PN.JKT.PST Court Jakarta Center, will grant deed No. 72 dated May 10, 1996 the Notary Abdul Latif be as if is meaningless and does not constitute authentic evidence on the dispute over the transfer of rights to a plot of land located on Jalan Samanhudi, Central Jakarta. In this case, the heir does not have a wife and children, so then he will grant all his assets to the person he chooses with provisions arranged in such a way by the heir. On the way, the assets that had been granted a will became a polemic and a dispute among the grandchildren of will grant recipients. The grant deed made before the Notary is merely a decoration which is meaningless in proving the case. Deeds which are supposed to be authentic deeds have no meaningful value so this is certainly an important spotlight for the author how a deed made in front of an authorized official seems as if it could not be a sharp knife in cutting down the root of the problem or dispute that occurred in the District Court. Central Jakarta.

B. Legal Certainty Theory

Legal certainty means "the legal instrument of a State capable of guaranteeing the rights and obligations of every citizen."Legal certainty or *rechtszekerheid* according to J. M Otto, as quoted by Tatiek Sri Djatmiati (2002) is stated to consist of the following elements:

a. The existence of consistent and enforceable rules established by the State;
b. The government apparatus establishes the law consistently and adheres to the law;
c. The people are basically subject to the law;
d. Judges who are free and impartial consistently apply the law;
e. The judge's decision was implemented in real terms.

Other opinions regarding legal certainty can be found in the book M. Yahya Harahap (2006) entitled Discussion, Problems, and Application of the Criminal Procedure Code, which states that legal certainty is needed in society for the creation of order and justice. "Legal uncertainty will create chaos in people's lives and every member of society will do as they please and act as vigilantes." If we

relate JM Otto's theory with what was reviewed by the author, the writer argues that the theory of legal certainty helps the author to emphasize more on legal certainty from the emergence of wills to recipients from the issuance of the deed and the transfer of rights onwards. The theory of legal certainty can be applied when the author examines the problem of legal protection for the recipient of wills, which then causes a civil dispute. On that basis, it must be found the basis, legal certainty and legal protection for the rights and obligations of each party.

C. Legal Protection Theory

Legal protection when described literally can lead to many perceptions. Prior to parse legal protection in the actual meaning of the law, also interesting to unravel a little bit about the notions that may arise from the use of the term legal protection, legal protection could mean that the protection afforded to the law from being interpreted differently and do not pitch to harm by officers law enforcement and can also mean the protection provided by law against something . Legal protection can also raise questions that then cast doubt on the existence of the law. The law must provide protection for all parties according to their legal status because everyone has an equal position before the law. Law enforcement officials are obliged to enforce the law and with the functioning of legal rules, the law will indirectly provide protection for every legal relationship or all aspects of community life that are regulated by law. (Sudikno Mertokusumo, 2009)

According to the opinion of Phillipus M. Hadjon (1987), legal protection for the people is a government action that is preventive and repressive in nature. Preventive legal protection aims to prevent disputes, which direct the actions of the government to be cautious in making decisions berity discretion and protection of repressive aims to resolve the dispute, including handling in the judiciary. In accordance with the above description, it can be stated that the function of law is to protect the people from dangers and actions that can harm and tell their life from other people, society and the authorities. Besides that, it also functions to provide justice and become a means of creating welfare for all people.

D. The Relation of JM's Legal Certainty Theory. Otto with Legal Certainty of the Will as Proof of Authenticity

In carrying out his duties and positions, a notary must be guided normatively by the legal rules relating to all actions taken and then set forth in a deed. Acting on the basis of the applicable legal rules will provide assurance to the parties that the deed made: before "or" by "the notary is in accordance with the applicable legal rules, so that if a problem occurs, the notary deed can be judged as a guide.

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1. The existence of consistent and applicable rules established by the State;
2. The government apparatus determines the law consistently and adheres to the said law;
3. The people are basically subject to the law;
4. Judges who are free and impartial consistently apply the law;
5. The judge's decision is implemented in a real way.

In this case, a notary is a public official who is authorized to make authentic deeds that have perfect evidentiary power. A notarial deed must be made in the form determined by the notary office law which is the character of a notary deed. If the notary deed has been drawn up in accordance with the provisions, the notary has provided legal certainty as well as legal protection for the parties involved in the deed. Then what about JM's theory of legal certainty. Otto against a certainty deed made by a notary as the authorized public official for this as evidence in a civil case. In the example of the case that the author presented in the previous chapter, there are several points which the author deems incompatible with the theory of legal certainty. Like, " rules that are consistent and workable set of State government sets the legal rules in a consistent and stick to the rules of the law , h independent and impartial consistently apply the law. Consistent rules are clearly not implemented in the case decision making that the author presented in the previous chapter. There are many cases that have arisen regarding deeds made, whether the matter comes from parties with bad intentions or from notaries who do not make deeds in accordance with the provisions of the notary office law. In practice, when a deed is made in accordance with the provisions, but is not used as strong evidence, the consistency of judges in applying decisions is still very doubtful because it is possible to take sides with one of the parties in the case. In fact, according to JM Otto, for the sake of legal certainty, a judge is prohibited from taking sides or inclinations to one of the parties.

E. The Relationship between Philipus M. Hadjon's Legal Protection Theory and Legal Certainty of Will as Evidence

Notary Deed as an authentic deed has the following evidentiary strengths:

1. *Lahiriah* (*Uitwendige Bewijskracht*) The physical ability of a Notary deed is a deed itself to prove its validity as an authentic deed. If it is seen from its birth as an authentic deed and in accordance with the stipulated legal rules regarding the requirements for an authentic deed, then the deed shall be valid as an authentic deed until proven otherwise. That is until someone proves that the certificate is not authentic act outwardly then the deed remains ot ethnicity.
2. Formal (*Formale Bewisjskracht)* Notary Deed must provide certainty that something of the events and facts mentioned in the deed were properly carried out by the Notary or explained by the parties who attended the time stated in the deed in accordance with the procedures specified in the deed drafting. Formally to prove the truth and certainty of the day, month, year, time to appear, and the parties who appear, witnesses and notaries, as well as prove what the Notary saw, witnessed, heard (on the deed of the minutes), and recorded information or statement of the parties or the parties (on the deed of the parties). If the formal aspect is disputed by the parties, then it must be proven the formality of the deed, that is, it must be able to prove the untruth of the day, date, month, year, and time before it, prove the untruth of what the Notary saw, witnessed, and heard. In addition, it must also be able to prove the untruth of the statements or statements of the parties given or conveyed before the Notary Public and the untruth of the signatures of the witnesses and the Notary or there is a deed making procedure that was not carried out. In other words, the party questioning the deed must perform reverse evidence to deny the formal aspects of the notarial deed. If they are unable to prove the untruth, then the deed must be accepted by anyone.
3. Materill (*Materile Bewijskracht*) Certainty about the material of a deed is very important, that what is stated in the deed is valid evidence against the parties who made the deed or those who get rights and apply to the public, unless there is evidence to the contrary. Information or statements set forth or contained in official deeds (or minutes), or statements of the parties given or submitted before a notary and the parties must be considered true. The words which are then stated or contained in the deed must be deemed to have correctly said so. If it turns out that the statements or statements of the parties are untrue, then this is the responsibility of the parties themselves. Thus the contents of the Notary deed have certainty as to be true, become valid evidence between the parties and their heirs and the recipients of their rights. (Habib Adjie, 2009)

   According to Phillipus M. Hadjon, legal protection for the people is a government action that is preventive and repressive in nature. Preventive legal protection aims to prevent disputes, which direct the actions of the government to be cautious in making decisions be r ity repressive discretion and protection aimed at resolving the dispute, including handling in the judiciary. With the fulfillment of physical, formal and material evidence in a deed, the legal protection of what is in the deed and the parties related to the deed will be protected directly by law. In the example of the case that the author presented in the previous chapter, there were chronic irregularities in the decisions taken by the Panel of Judges, so that it was detrimental to the parties receiving the will which had clearly and clearly stated that the will was made in accordance with the applicable legal provisions and its contents were not. there is doubt in it.

F. Willing Grant Deed as Proof of Right Ownership through the Transfer of Rights Process

Land rights can be transferred by means of inheritance through a will. In the transfer of land rights, land registration must be carried out to ensure legal certainty. Inheritance in the form of land rights must observe several applicable regulations. If we pay attention to the provisions on land registration related to inheritance which are regulated in Article 42 of Government Regulation Number 24 of 1997 concerning Land Registration, Jo Article 112 Regulation of the State Minister for Agrarian Affairs / Head of the National Land Agency Number 3 of 1997 concerning Provisions for Implementing Government Regulation Number 24 of 1997, states that if the rights granted are certain, then the registration of the transfer of rights is carried out by the recipient of the grant and if the rights granted are not certain, the heirs and the grantee request transfer of rights as joint assets.

In Law Number 5 Year 1960 concerning Basic Agrarian Basic Regulations, it is stated that land rights can be transferred and transferred with 2 (two) forms of transfer of land rights, namely as follows:

1. Switching, the transfer of land rights from the right holder to another party because the right holder has passed away, or through inheritance. The transfer of rights like this occurs because of the law, meaning that by the death of the right holder, the heirs have rights to the land. In this case the right recipient must meet the requirements as the holder of land rights;
2. Transferred or displaced. The transfer of ownership rights or rights enforcers to another party due to a legal act that is deliberately carried out in order for the other party to obtain these rights. These legal actions can be in the form of buying and selling, exchanging, giving, giving with wills and also auction. In the transfer of rights here, the party who transfers or transfers the rights must be entitled and have the authority to make the transfer, while the party who receives the rights does not have to have the condition as the holder of the land right. By granting the right to land, a legal relationship has been established between the person and the land so that legal actions can be carried out by those who have rights to the land to other parties, such as buying and selling, exchanging and so on (Wantjik Saleh , 1985).

   In the case of a transfer of land rights, the Land Deed Making Official (PPAT) is a General Official who has the authority to make authentic deeds regarding certain legal actions regarding land rights or property rights over apartment units. The task of the PPAT is to carry out some land registration activities by making deeds as evidence of the fact that certain legal actions have been carried out regarding land rights or ownership rights over apartment units which will be used as the basis for registering changes in land registration data resulting from such legal actions.

   The role of the notary in making a will is to explain to the author of the will the method of keeping the will, the method of keeping, the result of the making of the will and the validity of the will. The notary has the task of recording the final will of the testator. The role of the notary is to provide legal directions so that his will does not cause legal problems in the future. The role of the notary in making a will depends on the form of the will, the forms of will include:

   a. General will, in this case the will maker comes to the notary and asks the notary to make a notary deed for the will according to his wishes by bringing 2 (two) witnesses. The notary's role is to make a will;
   b. Secret wills, wills made by the will maker himself or other people who are ordered according to his wishes, then put it in an envelope and sealed, then handed over to a notary with 4 (four) witnesses. This closure and sealing can be done in front of a notary and 4 (four) witnesses so that the role of the notary is to observe the process of closing and sealing the will that has been made by the testator in the presence of 4 (four) witnesses.

G. CONCLUSION

Potential protective laws for the people as the government's actions are preventive and repressive. As stated by Philip M. Hadjan that protection preventive law aims to prevent disputes, which direct the actions of the government to be cautious in making decisions be r ity repressive discretion and protection aimed at resolving the dispute, including handling in the judiciary. With the fulfillment of physical, formal and material evidence in a deed, the legal protection of what is in the deed and the parties related to the deed will be protected directly by law. A will grant is a legal action that will transfer an ownership owned by the beneficiary to the recipient of the will, so that no problems arise in the future, the testator must make a will assisted by a notary and PPAT so that the making of the will does not violate the rules and regulations. - applicable legislation.

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