

Legal Status of Wills Not Reported by Notaries to the Will Registration Center (Case Study: Decision Number 91/Pdt/2021/PT.PTK)

Utami Dinda Verdilla, Muhammad Hasbi, Yussy Adelina Mannas

Universitas Andalas

dindaverdilla02@gmail.com

ABSTRACT

This study examines the legal standing of a notarial will deed not reported to Indonesia's Central Will Registration Center, with a case study of Pontianak High Court Decision No. 91/Pdt/2021/PT.PTK. Using a normative juridical method—statutory, conceptual, and case approaches—the study addresses two questions: (1) what is the regulatory framework for will reporting by notaries? and (2) what were the judges' considerations in Decision No. 91/Pdt/2021/PT.PTK? The study finds that the reporting obligation rests on a hierarchical normative structure: the Civil Code as material law, Law No. 30/2004 as amended by Law No. 2/2014 on the Notary Profession (UUJN) as the obligation-setter, and Minister of Law Regulation No. 16/2025 as the technical instrument. Despite this clear framework, the Pontianak High Court held that a notarial will retains its evidentiary force as an authentic deed even when not reported to the Will Registration Center, because reporting is an administrative obligation of the notary and its omission does not constitute a ground for nullification under existing law. This creates a normative gap that weakens legal certainty for heirs and beneficiaries.

Keywords: Notary; Will Deed; Central Will Register; Legal Responsibility; Legal Certainty.

INTRODUCTION

Indonesian civil law recognises three inheritance systems—Civil Law (KUHPdata), Islamic Law (KHI), and Customary Law—applicable based on the parties' legal status. For non-Muslim citizens of Chinese descent, civil inheritance law governs, regulated in Articles 830–1130 of the Civil Code. Under Article 874, entitlement arises either by operation of law (*Ab Intestato*, Articles 832–861) or by will (testamentary succession, Articles 875–1004).

A will (testament) is defined by Article 875 of the Civil Code as a deed containing a person's statement of wishes regarding the distribution of their estate after death, revocable during the testator's lifetime. It is a unilateral, private legal act effective only upon the

testator's death. Three forms are recognised under Article 931: the holographic will (entirely handwritten and deposited with a notary), the public will (openbaar testament, made before a notary and two witnesses), and the secret/closed will. Of these, the public will carries the highest evidentiary force as an authentic deed.

Notaries occupy a central role in this system. As public officials authorised by Law No. 30/2004 as amended by Law No. 2/2014 (UUJN) to make authentic deeds, they are required not only to prepare will deeds correctly but also to report them. Article 16(1)(j) of the UUJN mandates that notaries submit a list of will deeds—or a nil list—to the Minister of Law and Human Rights within five days of the first week of the following month. This obligation is elaborated in Minister of Law Regulation No. 16/2025 on the Reporting of Wills and Applications for Will Certificates (Permenkum 16/2025), which introduced a digital reporting system through the AHU Online portal.

The Will Registration Center (Pusat Daftar Wasiat), managed by the Directorate General of AHU, Ministry of Law and Human Rights, serves as a national database enabling heirs and interested parties to verify the existence of a will. Before issuing an inheritance certificate, a notary is required to obtain a Will Certificate (Surat Keterangan Wasiat/SKW) from the Directorate General of AHU confirming whether a will exists.

This study is prompted by a specific legal dilemma exposed in Decision No. 91/Pdt/2021/PT.PTK (Pontianak High Court). In that case, heirs checked the Will Registration Center and found no registered will. After the testator's death, a will was found in a safe. The defendants argued the will was unenforceable because it had not been reported. The High Court rejected this argument and upheld the will's validity. The ruling raises a fundamental question: does an administrative failure to report a will affect its validity? The answer has implications for the legal certainty of heirs, the accountability of notaries, and the coherence of Indonesian notarial law.

RESEARCH METHOD

This study employs normative juridical legal research, examining library materials and secondary data. Three approaches are used: (1) the statute approach, examining the Civil Code, UUJN, Permenkum No. 16/2025, and Minister of Law Regulation No. 61/2016 on administrative sanctions; (2) the conceptual approach, applying the theory of legal responsibility (pertanggungjawaban hukum) and the theory of legal certainty (rechtssicherheit) as analytical tools; and (3) the case approach, analysing Decision No.

91/Pdt/2021/PT.PTK to understand judicial interpretation of the legal status of unreported wills. Data from primary, secondary, and tertiary legal materials were analysed through descriptive qualitative analysis.

RESULTS AND DISCUSSION

Regulatory Framework: Reporting of Wills by Notaries

Material Law: The Civil Code

The Civil Code regulates wills in Articles 875–1004. Article 875 defines a will as a unilateral, revocable deed of final wishes. Article 931 prescribes three forms: holographic, public, and secret. For public wills, Article 938 requires a notary and two witnesses; Article 940 governs secret wills requiring four witnesses at sealing. The Civil Code does not, however, contain explicit provisions on will registration or the administrative consequences of non-reporting, a gap that creates legal uncertainty in practice.

Notary Law (UUJN): The Reporting Obligation

Article 16(1)(j) of the UUJN imposes an explicit obligation on every notary to submit either a list of will deeds or a nil list to the Minister of Law and Human Rights within five days in the first week of each month. This obligation applies regardless of whether a will was made. The norm is not discretionary but imperative: it is classified among the core duties of a notary as a public official.

Article 16(11) provides that violation of the obligations in Article 16(1) exposes the notary to five graduated administrative sanctions: (a) verbal warning, (b) written warning, (c) temporary suspension, (d) honourable discharge, and (e) dishonourable discharge. Article 16(12) adds that violations under Article 16(1)(j) additionally entitle injured parties to claim reimbursement, damages, and interest from the notary. Article 91A delegates the procedural details of sanction imposition to ministerial regulation, giving rise to Minister of Law Regulation No. 61/2016.

Technical Instrument: Permenkum No. 16/2025

Permenkum No. 16/2025 supersedes Minister of Law Regulation No. 60/2016 and introduces a fully digitised reporting regime. Key provisions include:

1. Every notary must report a list of will deeds or a nil list electronically through AHU Online (<https://ahu.go.id>) no later than the 5th day of the month following the month of deed creation or storage.
2. The report must contain: notary identity; deed number and date; testator's full name and NIK; and type of deed (open/closed).
3. Manual (non-electronic) reporting is available only in defined circumstances: AHU system disruption, force majeure, retirement, death of the notary, or office transfer.
4. Notaries must retain proof of reporting as an official archive; the Directorate General of AHU issues digital receipts upon each submission.
5. Article 19(1) states that if a notary fails to report or reports late without valid reason, all legal consequences arising from the Will Report are borne by the notary.

The Directorate General of AHU verifies each report, enters data into the national Will Registration Center database, and—upon application—issues a Will Certificate (SKW). The SKW is the mechanism through which heirs and notaries verify the existence of wills. Without proper reporting, the SKW database will be inaccurate, causing potential harm to beneficiaries and heirs.

Enforcement: Minister of Law Regulation No. 61/2016

Sanctions are imposed through a three-tier Notary Supervisory Board (MPN): Regional (MPD), Provincial (MPW), and Central (MPP). The process begins with inspection at the MPD level and escalates based on gravity and frequency of violation. Sanctions are calibrated: verbal and written warnings for first-time or minor violations; temporary suspension (3–6 months) for serious or repeated violations; and dishonorable discharge for violations that cause substantial harm or demonstrate persistent non-compliance.

Critically, the framework establishes a distinction between (a) administrative sanctions (imposed on the notary) and (b) civil liability (claimable by injured parties under Article 1365 of the Civil Code on unlawful acts). Article 16(12) UUJN expressly links failure to report to civil liability. However, neither the UUJN nor Permenkum No. 16/2025 clarifies whether these sanctions are cumulative or alternative, creating interpretive uncertainty for supervisory bodies.

3.1.5 Normative Gaps in the Framework

Analysis of the regulatory framework reveals four significant gaps that undermine legal certainty:

1. Undefined "valid reason": Article 19(1) of Permenkum No. 16/2025 exempts notaries from consequences if they fail to report "without a valid reason," but Articles 11–12 only list a narrow set of accepted excuses (system disruption, force majeure, retirement). Common real-world obstacles—local network failures, sick leave, internal administrative delays—fall outside the defined categories, creating inconsistency in application.
2. Unclear relationship between administrative and civil sanctions: Article 16(11) and (12) of the UUJN list both sanctions side-by-side but do not specify whether they are cumulative or alternative, nor what threshold of harm triggers civil liability.
3. No explicit norm on the validity of unreported wills: Neither the UUJN nor Permenkum No. 16/2025 states whether an unreported will retains its evidentiary force as an authentic deed. This gap—precisely the gap exploited in Decision No. 91/Pdt/2021/PT.PTK—is the most legally consequential omission.
4. No evidentiary standard for system disruption: Article 11 of Permenkum No. 16/2025 permits reporting delays when the AHU system is disrupted but does not prescribe how disruption must be proven. The absence of a specified evidence standard (e.g., screenshots, official technical reports) produces arbitrary outcomes.

Judicial Considerations in Decision No. 91/Pdt/2021/PT.PTK

Facts of the Case

The testator Soi Tjheng, a Chinese-Indonesian citizen, was married to NG Kim Siang on 28 November 1989. Four children were born: Susiana NG, Surlanti NG, Susan NG (all female), and Agus NG (male). NG Kim Siang died on 29 May 2004; Soi Tjheng died on 5 June 2014. During her lifetime, on 9 September 2005, Soi Tjheng executed Will Deed No. 16 before Notary Effendy Hidajat, SH in Pontianak, granting Agus NG a shophouse located

at Jalan Gajah Mada No. 38, Parit Tokaya, South Pontianak, with SHM Certificate No. 15871/Parit Tokaya (350 m²). Agus NG was also appointed executor of the will (executeur testamentair).

After Soi Tjheng's death, heirs checked the Will Registration Center and found no registered will. The Notary had not reported Will Deed No. 16 to the Center. A Will Certificate was issued confirming the absence of a will. Agus NG then sought to enforce the will—recovering possession of the shophouse and managing associated assets. Defendants I, II, and III (Susiana, Surianti, and Susana NG) contested the will's validity, arguing: (1) the deed was formally defective because it had not been registered with the Will Registration Center; (2) the testator was not fluent in Indonesian and was in poor health when the deed was signed; and (3) Agus NG had abused his position. Notary Effendy Hidajat was included as a co-defendant.

The Pontianak District Court ruled in favour of Agus NG. Defendants appealed to the Pontianak High Court (Decision No. 91/Pdt/2021/PT.PTK).

Key Legal Issues

1. Whether Will Deed No. 16 was valid despite not being registered with the Will Registration Center.
2. Whether non-registration constitutes a formal defect sufficient to nullify the deed.
3. Whether there was abuse of circumstances in the deed's execution.

Judicial Reasoning and Decision

The Pontianak High Court affirmed the district court's ruling and upheld the validity of Will Deed No. 16. The panel's core reasoning rested on four normative foundations:

1. Article 1868 of the Civil Code: an authentic deed is a deed made by or before an authorised public official in a legally prescribed form. The deed's authenticity derives from the process of its creation, not from subsequent administrative acts.
2. Article 875 of the Civil Code: the will was clearly the unilateral final statement of Soi Tjheng, made and not revoked during her lifetime, therefore valid and operative upon her death.
3. Article 938 of the Civil Code: the deed was made before a notary and two witnesses, fulfilling the formal requirements for a public will.

4. Article 957 of the Civil Code: the bequest of a specific asset (the shophouse) to one heir is a lawful *legaat*.

The Court held that the UUJN's provisions on reporting (Article 16(1)(j)) and their associated sanctions do not include deed nullification as a consequence. Because no statutory norm declares an unreported will null and void, the failure to register cannot be treated as a ground for cancellation. The notary's reporting obligation is an administrative duty owed to the state; its breach attracts administrative sanctions against the notary, not invalidation of the deed.

The Court also found no evidence of abuse of circumstances and no formal defect in the deed-making process. Notary Effendy Hidajat was held to have discharged the formal requirements of deed creation; the notary's failure lay solely in the post-execution administrative obligation to report.

On the factual dimension, the Court determined that Agus NG, as the sole will beneficiary and executor, was entitled to full ownership of the shophouse, and ordered the defendants to vacate. The other heirs retained their proportionate rights to the remaining estate (a house on Jalan Budi Karya and former sawmill land) under *Ab Intestato* rules.

Legal Analysis of the Judicial Reasoning

The High Court's reasoning is formally defensible. The Civil Code places authenticity squarely in the process of deed creation (Article 1868 BW), and the UUJN's sanction provisions do not mention deed invalidation. From a strict positivist reading, the court was correct: *lex scripta* does not say unreported wills are void.

However, the decision reveals a critical normative gap when analysed through two legal theories:

Theory of legal certainty (*Rechtssicherheit* — *Radbruch*): Legal certainty requires clear, predictable, and consistently applied rules. The current framework fails on all three counts for the specific question of unreported wills. The UUJN mandates reporting, Permenkum 16/2025 establishes elaborate procedures, and Article 16(12) UUJN creates civil liability—yet no norm addresses the central question: does non-reporting affect the deed's validity? The court's ruling, though legally correct in the absence of a contrary norm, actually exposes the uncertainty rather than resolving it. The public now understands that reporting obligations exist but carry no consequence for the deed's validity, which may reduce notarial compliance and harm heirs.

Theory of legal responsibility: The theory holds that any violation of a legal obligation—including administrative obligations—by a public official that causes harm to another party gives rise to accountability. The notary's failure to report Will Deed No. 16 directly caused the Will Registration Center to issue an inaccurate SKW stating no will existed. This inaccuracy set the stage for the inheritance dispute. While the court correctly maintained the deed's formal validity, it failed to articulate the causal chain between the notary's administrative negligence and the harm suffered by all parties through prolonged litigation. The notary's civil liability under Article 16(12) UUJN and Article 1365 of the Civil Code remained unaddressed.

CONCLUSION

This study leads to two principal conclusions:

1. The regulatory framework for reporting of wills by notaries to the Will Registration Center rests on a hierarchical normative structure: the Civil Code as material law, the UUJN as the obligation-setter, Permenkum No. 16/2025 as the technical instrument, and Minister of Law Regulation No. 61/2016 as the sanction-enforcement mechanism. The framework's primary objectives—legal certainty, administrative transparency, prevention of inheritance disputes, and protection of legatees' rights—are normatively sound. However, the framework contains significant gaps: the definition of "valid reason" for late reporting is too narrow; the relationship between administrative and civil sanctions is unclear; no norm specifies the effect of non-reporting on the deed's validity; and no evidentiary standard exists for proving system disruptions. These gaps weaken the framework's effectiveness and create inconsistency in application. From the perspective of the theory of legal certainty (Radbruch's *Rechtssicherheit*), the framework fails to provide the predictability and consistency that both notaries and the public require.
2. In Decision No. 91/Pdt/2021/PT.PTK, the Pontianak High Court held that Will Deed No. 16 dated 9 September 2005—made by Soi Tjheng before Notary Effendy Hidajat, SH—retained its full legal force as an authentic deed despite not being reported to the Will Registration Center. The judges reasoned that authenticity derives from the process of deed creation under Article 1868 of the Civil Code, and that neither the UUJN nor Permenkum 16/2025 provides that non-reporting results in nullification. This reasoning is formally correct under Indonesian positive law.

However, from the perspective of notarial administrative law and the theory of legal responsibility, the decision reveals a normative disharmony: the UUJN imposes both administrative sanctions and civil liability for non-reporting under Articles 16(11)–(12), yet no norm links this breach to the deed's validity. The decision thus simultaneously upholds the will's formal validity and exposes the inadequacy of the legal framework in protecting heirs and legatees from the consequences of notarial negligence. Legislative clarification is needed—specifically, a norm explicitly addressing the evidentiary status of unreported wills and strengthening the oversight mechanism—to realise the balance between legal certainty, justice, and legal benefit envisioned by the UUJN and Permenkum No. 16/2025.

REFERENCES

A. Legislation

- Civil Code (KUHPerdata/BW).
- Law No. 30 of 2004 on the Notary Profession (UUJN), as amended by Law No. 2 of 2014.
- Minister of Law and Human Rights Regulation No. 16 of 2025 on Reporting of Wills and Applications for Will Certificates (Permenkum 16/2025).
- Minister of Law and Human Rights Regulation No. 61 of 2016 on Procedures for Imposing Administrative Sanctions on Notaries.

B. Court Decision

- Pontianak High Court Decision No. 91/Pdt/2021/PT.PTK.

C. Selected Books

- Adjie, H. (2017). *Civil and Administrative Sanctions Against Notaries as Public Officials* (4th ed.). Bandung: Refika Aditama.
- Ghofur Anshori, A. (2009). *Indonesian Notary Institution: Legal and Ethical Perspective*. Yogyakarta: UII Press.
- Kartikawati, D.R. (2021). *Civil Inheritance Law: Synergy of Civil and Islamic Inheritance Law*. Tasikmalaya: Elvaretta Buana.

- Marzuki, P.M. (2005). *Legal Research* (13th ed.). Jakarta: Kencana.
- Oemarsalaim. (2006). *Fundamentals of Inheritance Law in Indonesia*. Jakarta: PT Abdi Mahasatya.
- Salim HS. (2018). *Regulations on the Position of Notary*. Jakarta: Sinar Grafika.
- Soekanto, S. & Mamudji, S. (2009). *Normative Legal Research: A Brief Review*. Jakarta: Rajawali Pers.
- Subekti, R. (2005). *Principles of Civil Law*. Jakarta: Intermasa.

D. Selected Journal Articles

- Al Mulia, M., Borahima, A., & Sitorus, W. (2022). Legal Consequences of Wills Not Reported to the Will Registration Center by Notaries. *Jurnal Justisi*, 8(1).
- Anggraeni, D. (2020). The Role of the Will Registration Center in Ensuring Legal Certainty for Heirs. *Journal of Legal Studies*, 9(2).
- Annisa, Rinaldi, Y., & Abdurahman, T. (2019). Responsibility of Notaries Who Do Not Register and Report Wills to the Will Registration Center. *Syiah Kuala Law Journal*, 3(1).
- Aprilianti. (2021). Requirements and Procedures for Making and Revoking a Will by a Notary. *Justicia Sains*, 6(1).
- Pratasa, D.R., Fendri, A., & Syofiarti. (2023). Registration of Will Deeds with the Will Registration Center by Notaries in Padang City. *Unes Law Review*, 6(1).
- Pratiwi, R.O. (2020). Legal Protection for Will Beneficiaries Against Notaries Who Do Not Report Wills Electronically. *Jurnal Cakrawala Hukum*, 11(3).
- Simanungkalit, R.P., Purwanti, E., & Maharani, C. (2023). Legal Consequences of Wills Not Reported by Notaries to the Will Registration Center. *Tanjungpura Acta Borneo*, 2(1).
- Sulistianingsih, D. (2024). Notary's Responsibility for Electronic Reporting of Wills. *Jurnal Hukum Lex Generalis*, 5(6).
- Suryani, N.L.P.M., Budiarta, I.N.P., & Wesna, P.A.S. (2024). Legal Consequences of Testamentary Deeds Not Registered Electronically by Notaries. *Journal of Legal Analogy*, 6(3).

Yuslim. (2017). Legal Certainty in the Implementation of Wills According to the Civil Code and the Notary Law. *Jurnal Notarius*, 10(1).