The Correct Form of Testamentary Disposition for Health Workers and Covid-19 Patients in Quarantine

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Abstract

Indonesia has a relatively high Covid-19 death rate. Many people face the risk of death due to Covid-19. They are, among others, health workers and Covid-19 patients. They need to prepare for the worst. For instance, they may need to make a will. During the pandemic, there is no standard guideline to dispose a will for health workers and Covid-19 patients in quarantine. Based on the current pandemic situation, health workers and Covid-19 patients are parties who need to write legal wills in the form of testamentary disposition considering the risk they face and their limited circumstances. The pandemic situation does not enable them to make testamentary disposition properly before a notary public. This study covers the problems of health workers and Covid-19 patients in making testamentary disposition in quarantine. Health workers and Covid-19 patients must be isolated from the public to avoid the risk of Covid-19 transmission. Surely, the situation avoids them to see public notary. In accordance with the situation, it is necessary to have a form of an appropriate testamentary disposition without the presence of a notary public. The study employed a normative juridical method with statutory and case approaches.

Keywords: covid-19, quarantine, testamentary disposition form.

Bentuk Wasiat yang Tepat bagi Tenaga Kesehatan dan Pasien Covid-19 di Masa Karantina

Abstrak

Angka kematian yang diakibatkan oleh Covid-19 di Indonesia cukup tinggi. Hal ini menyebabkan beberapa pihak yang beresiko terhadap resiko kematian akibat Covid-19 seperti tenaga kesehatan dan pasien Covid-19 perlu mempersiapkan hal-hal yang menyangkut kematian seperti membuat surat wasiat. Di masa pandemi Covid-19 ini belum ada kepastian mengenai bagaimana pembuatan surat wasiat bagi tenaga kesehatan dan pasien Covid-19 di masa karantina. Jika dilihat dari kasusnya, tenaga kesehatan dan pasien Covid-19 merupakan pihak yang membutuhkan akses pembuatan wasiat sebab resiko kematian yang mereka hadapi dan memiliki keadaan yang terbatas sehingga tidak bisa membuat wasiat sebagaimana mestinya yaitu dengan bertemu langsung oleh notaris.

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Penelitian ini akan membahas permasalahan yang dihadapi oleh tenaga kesehatan dan pasien Covid-19 mengenai pembuatan wasiat di masa karantinanya. Tenaga kesehatan dan pasien Covid-19 tidak dapat membuat surat wasiat dengan bertemu notaris sebab keadaannya yang harus diisolasi dari masyarakat untuk menghindari resiko penularan Covid-19. Dengan adanya keadaan yang seperti ini, perlu adanya suatu bentuk wasiat tepat yang dapat dibuat tanpa harus berhadapan dengan notaris. Metode penelitian yang digunakan dalam penelitian ini adalah penelitian yuridis normatif dengan pendekatan Undang-Undang dan pendekatan kasus.

Kata Kunci: *bentuk wasiat, covid-19, masa karantina.*

A. Introduction

Up to present, Indonesia has been experiencing the Covid-19 pandemic for almost a year since the early 2020. The new virus type, which was formerly unidentified in humans known as coronavirus, causes the pandemic, was discovered first in December 2019, in the city of Wuhan, China. Covid-19 is included in the group of SARS and MERS viruses that cause mild to severe symptoms. Indonesia reported the first case in early March 2020. The infection has been increasing making Indonesia the state with highest number of positive Covid-19 cases in Southeast Asia.

The Associations of Indonesian Health Professionals records that there were at least 6,680 health workers infected by corona virus during the pandemic after the first case was announced in early March 2020. The records mention that 2,979 nurses, 2,291 midwives, 803 pharmacists, 115 dentists, and 492 officers in a medical laboratory that examines the samples were infected. Of the number of infected health workers, 234 of them died. They are 117 doctors, 6 pharmacists, 22 midwives, 85 nurses, and 4 medical laboratory staff. The Indonesian Doctors Association (IDI – *Ikatan Dokter Indonesia*), the Indonesian National Nurses Association (PPNI – *Persatuan Perawat Nasional Indonesia*), the Indonesian Midwives Association (IBI – *Ikatan Bidan Indonesia*), the Indonesian Dentists Association (PDGI –*Persatuan Dokter Gigi Indonesia*), the Indonesian Pharmacists Association (IAI – *Ikatan Apoteker Indonesia*), and Association of Indonesian Medical Laboratory Technology Experts (Patelki – *Persatuan Ahli Teknologi Laboratorium Medik Indonesia*) compiled the data.[1] In fact, according to the IDI, the death rate for health workers due to the Covid-19 virus infection in Indonesia is suggested to be the highest death rate in Southeast Asian and above the world's average.

The high death rate is a threat for some parties, such as health workers and Covid-19 patients. They must worry about the death risk that they face. To face the

[1] Ilman Hadi, "Lebih dari 6 Ribu Tenaga Kesehatan Indonesia Terinfeksi Covid-19", https://www.aa.com.tr/en/dunia/lebih-dari-6-ribu-tenaga-medis-indonesia-terinf-covid-19/1981656, accessed on October 2020.

death risk, it is necessary to prepare for the worst so that no problems arise after the death. Everyone certainly wants to die peacefully and leave no problem behind. Health workers and Covid-19 patients need to prepare, for instance making wills to the people they live with. The will is something important to avoid conflict among the heirs related to inheritance.[2] If a person dies without making a will, problems may arise regarding inheritance.

Wills can be made in a legal act to determine continuation of assets following a death. A wills is made in a form of testamentary disposition to living and is only able to be applied after the death of the testator.[3] The making of testamentary disposition is also a legal act that aims to perform legal effect. It is a result as promised by objective law and must be met certain conditions. In other words, the emergence of certain legal consequences does not depend only on subjective wills of the heirs.[4] Inheritance often ends up with social problems. Therefore, it requires an orderly arrangements and settlements in accordance with the prevailing laws and regulations.[5]

A testamentary disposition is a deed with a statement of a testator about the wishes after death that can be revoked by the testator.[6] A wills is usually called as the last will of a person that will be carried out after the death.[7] In principle, a statement of wills comes from a single party (*eenzigdig*) and can be withdrawn at any time by the one who made it. Withdrawal (*herrolpen*) may be explicit (*uitdrukkelijk*) or in silent (*stilzwijgend*).[8]

According to the definitions above, a testamentary disposition must be in accordance with the mandate of the law. The requirements, among others, are as follows.

1. Testamentary disposition is in the form of a deed. Therefore, it must be in writing.
2. Testamentary disposition contains statements from a living person.
3. Testator wishes after the testator passed away.
4. The statement can be withdrawn.

A testamentary disposition must fulfill first to third elements above to impose legal validity and force. The fourth element is a right of the testator, if the testator

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2 Paula Fransisca and Ro'fah Setyowati, "Wasiat kepada Ahli Waris Menurut Kompilasi Hukum Islam dan Kitab Undang-Undang Hukum Perdata", *Jurnal Notarius*, Vol. 11, No. 1, 2018, p. 123.

3 Fanny L and Erni A, "Tanggung Gugat Notaris dalam Pelaksanaan Pendaftaran Wasiat Secara Online*", Arena Hukum*, Vol. 10, No. 1, 2017, p. 143.

4 William S.M, "Kedudukan *Legitieme Portie* dalam Hal Pemberian Hibah Wasiat berdasarkan Hukum Waris *Burgerlijk Wetboek*", *Jurnal Notaire*, Vol. 2, No. 2, 2019, p. 278.

5 M. Wijaya S.,"Tinjauan Hukum Surat Wasiat Menurut Hukum Perdata", *Jurnal Ilmu Hukum Legal Opinion*, Vol. 5, No. 2, 2014, p. 107.

6 Article 875 of the Civil Code.

7 J. Satrio, *Hukum Waris*, Bandung: Alumni, 1992, p. 180.

8 R. Subekti, *Pokok-Pokok Hukum Perdata*, Jakarta: Intermasa, 2005, p. 107.

is still alive, the testator can revoke the wills. If a testamentary disposition has fulfilled all requirements stipulated by the statutory regulations and does not violate the stipulated conditions, the testamentary disposition can be stated to be valid as a proof of ownership.

The Civil Code is not the only regulation that regulate interpretation of testamentary disposition. In fact, the term wills or *wasiat* is often used within society. It implies that customs and tradition commonly affect the implementation of wills. a testamentary disposition serves to provide clear boundaries regarding the transfer of the inheritance of the testator to the heirs. A testamentary disposition is important to be made so that the inheritance of the testator can be protected. In addition, it also avoids seizure of assets. Therefore, it is advisable for assets' owner to make a testamentary disposition.

The significance of testamentary disposition is also valid for health workers and Covid-19 patients who own assets to avoid seizure of the assets after the death. Every heirs certainly wishes that the assets could be used in accordance with the wishes of the heir. For this reason, the law allows assets' owners to transfer assets according to the owners' wishes. This principle actually deviates from the provisions of the Law of Inheritance. However, this is natural because in principle an assets owner is free to treat her/his property according to her/his wishes.[9]

As an expression of the last will of a deceased person, a testamentary disposition does not only contain the appointment of a person or several people to be heirs for part of the inherited wealth (*testamentaire erfgenaam*). It can also regulate other matters as long as the matter is not against the law. The making of testamentary disposition is the right of the testator and the wills is a very personal legal act.[10] The implementation of the last wish is understood as a form of determination of inheritance which will later be left to the heirs. The statement is usually made and with the consent of the heirs.[11] The testamentary disposition to be made must be in the form of deed and notary deed. This means that a testamentary disposition requires a notary public to make it official. If it is not made before a notary public, the testator who writes the testamentary disposition can submit the testamentary disposition to the notary public after it is signed.[12]

The high Covid-19 death rate illuminates the importance of testamentary disposition. Death and testamentary disposition are interrelated because a testamentary disposition is a person's last wishes and death is one of the absolute conditions for the validity of the testamentary disposition. A testamentary disposition is generally made before a notary public. However, during the Covid-19

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9 Joshua Lay, "Kedudukan Surat Wasiat (*Testament*) sebagai Bukti Kepemilikan yang Sah Menurut Pasal 875 KUHPerdata", *Lex Privatum*, Vol. VII, No. 3, 2019, p. 128.

10 Abdul Manan, *Aneka Masalah Hukum Perdata Islam di Indonesia*, Jakarta: Kencana, 2006, p. 150.

11 Iman Sudiyat, *Hukum Adat, Sketsa Asas*, Yogyakarta: Liberty, 1981, p. 13.

12 Tamakiran, *Asas-Asas Hukum Waris Menurut Tiga Sistem Hukum*, Bandung: Pioneer Jaya, 1992, p. 29.

pandemic, it is hard to meet a notary public physically. That includes health workers and Covid-19 patients. Health workers and Covid-19 patients are not allowed to meet other people since they must undertake quarantine to avoid the risk of Covid-19 transmission.

Facing the high death risk, testamentary disposition has become significant for health workers and Covid-19 patients. They need access to make testamentary disposition properly. Currently, they have no access to make testamentary disposition. Hospital is the only party that can make physical contact with health workers and Covid-19 patients. Therefore, hospital actually should provide access or facilities for health workers and Covid-19 patients who need to make testamentary disposition. currently, there is no means of making testamentary disposition for health workers and Covid-19 patients in quarantine. Health workers and Covid-19 patients have no ways to make testamentary disposition properly in hospital and have no access to meet notary public physically.

A testamentary disposition needs to be drawn up to avoid problems such as seizure of the inheritance by the heirs and provide legal certainty for the inheritance. If health workers and Covid-19 patients are not given access to make a testamentary disposition, they cannot make a testamentary disposition. Suppose there were worst situation, there could be problems with their inheritance such as seizure of assets and legal uncertainty on their inheritance. Considering the importance of testamentary disposition, every person has an absolute right to make it in any conditions.

In accordance with the difficulties faced by health workers and Covid-19 patients in making testamentary disposition in quarantine, this study aims to provide solution. This study has become significant based on the importance of fulfilling civil rights of a person as a legal subject. In addition, current pandemic bears a new problem because the pandemic is a relatively new situation in the study of law. This study is a moderately new since there are only few literatures related to the pandemic situation.

This study aims to contribute knowledge or thoughts in the form of testamentary disposition that can be made during the Covid-19 pandemic and other emergencies. It also tries to provide solutions to health workers and Covid-19 patients regarding the making of testamentary disposition without the presence of a notary public without losing its legal validity. This study discusses the correct form of testamentary disposition for health workers and Covid-19 patients in quarantine. This study also elaborates the correct form of testamentary disposition for health workers and Covid-19 patients during quarantine and the process of making it. This study is expected to provide knowledge and assistances to the people seeking solution in making testamentary disposition during the Covid-19 pandemic.

B. The Correct Form of Testamentary Disposition for Health Workers and Covid-19 Patients in Quarantine

1. Forms of Testamentary Disposition That is Suitable for Health Workers and Covid-19 Patients in Quarantine

A testamentary disposition is a person's last wish that will be carried out when the testator has passed away.[13] The testamentary disposition to be made must be in the form of deed and notary deed. This means that a testamentary disposition requires a notary public to make it official. If it is not made before a notary public, the testator who writes the testamentary disposition can submit the testamentary disposition to the notary public after it is signed.[14]

During the Covid-19 pandemic, it is hard to meet a notary public physically. That includes health workers and Covid-19 patients. Health workers and Covid-19 patients are not allowed to meet other people since they must undertake quarantine to avoid the risk of Covid-19 transmission. Surely, the situation avoids them to see public notary. The situation is a difficult for health workers and Covid-19 patients who want to make a testamentary disposition in isolation or quarantine.

A testamentary disposition is a person's last mandate or request related to the distribution of her/his inheritance. Inheritance refers to personal assets or wealth of the deceased after deducted by debts.[15] Article 875 of the Civil Code mentions elements of testamentary disposition as follows.

a. A testamentary disposition is a deed. Therefore, it must be in writing, either in the form of an authentic deed or under hand. The content is the wishes of the testator.
b. The content of a testamentary disposition is a statement of will so that it is classified as a unilateral legal action that creates an engagement and has legal consequences that do not require an agreement or consensus from the heirs to be legally valid.[16]
c. A testamentary disposition will only take effect or be opened after the testator has passed away.
d. A testamentary disposition can be revoked. It means that not all of the wills in the testamentary disposition can be carried out or allowed to be carried out. For instance, a will is contrary to the *legitime portie* is deemed to be null and void if the legitimate party sues it.[17]

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13 J. Satrio, *op.cit.*

14 Tamakiran, *op.cit.*

15 H.R. Otje Salman, *Hukum Waris Islam*, Bandung: Refika Aditama, 2001, p. 15.

16 Putu Eva L., "Urgensi *Executeur Testamentair* dalam Pelaksanaan Wasiat", *Acta Comitas Jurnal Hukum Kenotariatan*, Vol. 5, No. 2, 2020, p. 291.

17 M.S. Mu'arif, "Perbandingan Wasiat dalam Perspektif Kompilasi Hukum Islam (KHI) dan *Burgerlijk Wetboek* (BW)", *Tafáqquh: Jurnal Penelitian dan Kajian Keislaman*, Vol. 3, No. 2 , 2015, p. 93.

To find out the form of testamentary disposition that is suitable for health workers and Covid-19 patients in quarantine, it is necessary to understand the form of testamentary disposition according to the civil law. Based on the civil law, there are four forms of testamentary disposition as follows.

a. Secret Trust (*Geheim*)

Based on Article 940 of the Civil Code, the making of a secret trust as the testamentary disposition is as follows. The testator who wants to make a secret trust writes, or requests someone else to write. The testator must still sign it herself/himself. The testator must sign the paper containing all the provisions or their covers.

After the testator makes the testament, the secret trust is then submitted to the notary public for safekeeping and the notary public must make an explanatory deed (*Acta Superscriptie*) on the outside of the testament or the sealed testament. The secret trust must be closed and sealed and shown to the notary public at in front of four witnesses. In the presence of these witnesses, the testator must testify that the paper contains her/his will with the confirmation that the testator herself/himself who wrote it or that someone else wrote it for her/him and the testator signed the letter herself/himself.

The beneficiary, notary, and witnesses must also sign the deed. If a party is not able to sign the deed, then the cause of the absence must be stated. All procedures must be fulfilled and other actions should not be done. Every closed or confidential will must remain in the deposit of the notary public who received it, including the original documents attached to the deed.[18]

b. General Testament (*Openbaar Testament*)

General Testament is a testamentary disposition made before a notary public with two witnesses. Article 939 of the Civil Code regulates the procedure for making general testamentary disposition. The regulation provides that both the notary public and the testator must write down the wills in clear words. If the narrative takes place with the absence of witnesses, before the testament is read, the testator must be asked whether what was read earlier to represent the wills. Equally, if it is made with the presence of witnesses, the same reading and questioning must also be carried out. the testament must be signed by testator, notary public, and witnesses. If the testator cannot sign it, or is unable to sign it, the deed must state the information and the cause. The procedures that have been fulfilled also must be clearly written in the testamentary disposition.[19]

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[18] Article 940 of the Civil Code.

[19] Article 939 of the Civil Code.

c. Olographic Wills

Article 932 of the Civil Code regulates the making of an olographic will. The testator must write and sign the entire wills and hand it kept to a notary public. The notary public bear the obligation to immediately make a deed of deposit. The testator and two witnesses sign the deed. If the letter is open to the notary public, it must be on another separated paper. However, if the testament is closed or sealed, the testator must provide a note on the cover stating that the cover contains her/his wills and the note must be affirmed with her/his signature before the notary public and witnesses.

In the event that the testator, due to an obstacle arising after the signing of the will or the cover, is unable to sign the cover or deed of deposit or both, the notary public must include a description on the cover or deposit certificate.[20]

d. Emergency Testament

According to the Civil Code, this testamentary disposition can only be made in the following circumstances.

i. Soldiers of other members of the armed forces, who are on the battlefield or in a place occupied by the enemy, may make their testamentary disposition before an officer who is at the lowest rank a lieutenant. If there is no officer, the soldier can make it in front of a person who holds the highest position in the place, in addition to two witnesses.[21]
ii. The wills of the people who are sailing on the sea, may be made up before captain or commander of the ship. If none of them is not present, the presence of two witnesses is compulsory.[22]
iii. People in places that have no contact to the outside world due to an outbreak of bubonic plague or other contagious disease may make their will before any civil servant and two witnesses. The same authority is given to those who are threatened as a result of sudden illness or having an accident, rebellion, earthquake, or other catastrophic natural disaster.[23]

Of the various forms of testamentary disposition, health workers and Covid-19 patients in quarantine can use the ones that do not need to be made in front of a notary public. In this case, they are olographic wills and emergency testament. An olographic will is a form of testamentary disposition that is made or written by the testator and handed to a notary public. Health workers and Covid-19 patients can apply olographic will because it can be made or written by themselves before being entrusted to someone who is authorized to submit the will to a notary public. In

[20] Article 932 of the Civil Code.
[21] Article 946 of the Civil Code.
[22] Article 947 of the Civil Code.
[23] Article 948 of the Civil Code.

the delivery of the will, both the notary and the person who is authorized regarding the actual contents of the will can communicate. At the signing of the deposit certificate, even if the officer has an obstacle and cannot sign it, based on Article 932 of the Civil Code, notary public needs to include a statement on the cover or the deed. This is the foundation for making olographic as the most appropriate for health workers and Covid-19 patients.

The similar situation happens in making an emergency testament. Emergency testament is a form of testamentary disposition that can be made in an emergency, such as during the Covid-19 Pandemic. The emergency testament can be made by soldiers who are at war, people who are traveling by the sea, people who are exposed to infectious diseases, and people who are threatened by sudden illness, rebellion, earthquakes, or catastrophic natural disasters. In making an emergency testament, a testator can make their will before a civil servant and the presence of two witnesses. Health workers and Covid-19 patients can make an emergency will before civil servants. In this case, it can a hospital employee and two other witnesses may be there.

2. The Process of Making the Correct Form of Testamentary Disposition in Quarantine to be Used as a Means of Legal Validity

It is important to understand the process of making a testamentary disposition so that it can be carried out in accordance with the applicable law and legally valid. The legality of the law is very important for a will because if it is not valid, the will is legally invalid and not executable.

a. Making Olographic Will in Quarantine

An olographic will is written and made by testator alone. The deed must be signed by the testator and then brought to the notary public to be deposited in the notary public's protocol. The notary public who receives the olographic will must prepare a deposit certificate in front of witnesses. The deposit deed aims to provide legal power to the olographic will, similar with the power of a general will made before a notary (Article 933 of the Civil Code).[24] The process of making an olographic will must meet the requirements stipulated by Article 932 of the Civil Code as follows.

i. An olographic will is made, or written, and signed by the testator alone.
ii. The will must be handed to a notary public.
iii. The notary public is obliged to make a deposit deed signed by testator and two witnesses. If the letter is open to the notary public, it must be on another separated paper. However, if the testament is closed or sealed, the testator must provide a note on the cover stating that the cover contains her/his wills

[24] Alya Hapsari, Liza Priandhini, and Widodo Suryandono, "Pemberian Akta Hibah Wasiat Atas Seluruh Saham Perseroan Terbatas PT LNI", *Indonesian Notary*, Vol. 1, No. 2, 2019, p. 10.

and the note must be affirmed with her/his signature before the notary public and witnesses.

During the Covid-19 pandemic, many documents used electronic signatures or known as digital signatures. During the Covid-19 pandemic, several legal actions must be done remotely so that physical signatures may be unavailable. Digital signature is the solution. Article 1 point (12) of the Law Number 11 of 2008 states that digital signature consists of electronic information that is embedded, associated, or related to other electronic information used as a verification and authentication tool.[25] There are two types of deeds, namely *partij* deed, which is made by a notary public, and *relaas*, which is a deed made before a notary public. Unlike the *partij*, the *relaas* allows the use of an electronic signature. The deed of deposit for an olographic will includes a notarial deed. It is classified as a special deed of *relaas*. *Relaas* is a special form because the notary public acts indirectly as an appearer. The notary public acts as the party receiving and depositing the olographic.[26] By using it as a deed of *relaas*, an olographic will can be made with an electronic signature.

The legal force and legal consequences of electronic signatures have been equated with manual signatures as guaranteed in the Elucidation of Article 11 of the Law Number 19 of 2016 on Electronic Information and Transactions. Based on Article 5 paragraph (4) of the Law Number 19 of 2016 on Electronic Information and Transactions, it is known that documents made in the form of notary deeds are not included in electronic information and/or electronic documents. On the other hand, electronic information/documents cannot be used as an authentic deed. Notary public is a public official who is authorized to make authentic deeds. In this context, notary public only legalizes the digital signature (*waarmerking*).[27]

After being signed, the olographic will is submitted to the notary. The delivery can be done after the provision of power to a trusted person. In submitting olographic will, a person is not required to appear in person before a notary but can be represented by another person by making a power of attorney. The method of making a power of attorney is not determined. A testator should make or write power of attorney alone according to her/his will. A testator may not appear before public notary due to specific cases. For example, the testator is ill. The person who receives the power of attorney must meet requirements for carrying out legal actions.[28]

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25 Article 1 Number (12) Law No. 11 of 2008 on Electronic Information and Transactions.

26 Kristian Gandawidjaja, *Kewenangan Notaris Membuat Akta Penyimpanan Surat Wasiat Olografis*, Surabaya: Universitas Airlangga, 2009.

27 Nur Aini F, "Kekuatan Pembuktian *Digital Signature* Pada Akta yang Dibuat oleh Notaris"*, Jurnal Hukum dan Kenotariatan*, Vol. 4, No. 2 , 2020, p. 154.

28 Monica Sriastuti A, "Tinjauan Hukum Surat Wasiat dalam Penyerahan oleh Orang Lain ke Notaris"*, Jurnal Fakultas Hukum Universitas Tulungagung*, Vol. 6, No. 1, 2020, p. 63.

Actually, the delivery of olographic will by an authorized person is very risky because no one can guarantee whether the contents of the will are safe. Hospital may have to take a role in the making of an olographic will. For instance, a Covid-19 patient can authorize a trusted health worker to submit the olographic will to a notary public, either independent or assigned by the hospital. It can provide security and is very efficient for Covid-19 patients and health workers who want to make olographic will. However, to date, no hospital provides the facility for health workers and Covid-19 patients in quarantine.

The form of an olographic will is either open or closed. If the will is submitted behind a closed door, the notary public's deposit certificate must be made on separate paper. On the envelope, the notary public must note that the envelope contains the olographic will. The notary public must sign the notes. If the olographic will is submitted openly, the deed can be written under the olographic will.[29] However, with conditions that must be quarantined, Covid-19 patients cannot sign the deed of deposit. This has been regulated in Article 932 of the Civil Code. It states that if the testator cannot sign the deed of deposit or its covers or even both, the notary public must include a description on the deed of deposit or the cover. Therefore, Covid-19 patient does not have to sign the deed or the cover since the notary public must include a statement about the causes of obstruction on the cover or the deed certificate.

After the deed of deposit, the notary public will keep the documents. According to the Civil Code, for the purpose of validity, there is no requirement that it must be kept by a notary public. The testator alone can keep the letter that has been written, signed, and dated.[30] The strength of proof of an olographic will is determined in Article 933 of the Civil Code, which states that if an olographic will is in the notary public's deposit, then its power will be the same as a general will (*openbaar testament*).

The testator will can withdraw an olographic at any time. Article 934 of the Civil Code confirms this. The testator can do the withdrawal before a notary public who deposits the olographic will. Furthermore, the testator must state intention to reclaim the olographic will. The notary public deposits a separate deed.[31] There are some reasons of testament withdrawal such as follows.

i. Receiver of testament rejects something given by the testator.
ii. Receiver of testament is passed away earlier than the testator.
iii. Receiver of testament was sentenced for wanting to kill the testator.
iv. Receiver of testament faked or destroyed the testament; or Receiver of testament had forced the testament to prohibit testator strictly from changing or removing the testament.

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29 Ali Afandi, *Hukum Waris, Hukum Keluarga, Hukum Pembuktian,* Jakarta: Rineka Cipta, 2000, p. 17.
30 R. Soetojo Prawirohamidjojo, *Hukum Waris Kodifikasi*, Surabaya: Airlangga University Press, 2000, p. 176.
31 Fanny L and Erni A, *op.cit.,* p. 147

v. Anything pointed by the testament is destroyed or lost while the testator is alive.[32]

Notary public is obliged to report to the Central Register of Wills in case of revocation because if a testator makes a new will without revoking the previous will, the will is not valid and the previous will remains in effect. Therefore, notary public must always monitor the wishes of the testator as well as the progress of the will. This also applies to health workers and Covid-19 patients in making their wills. Even though they are in quarantine, notary public still have to maintain communication. It is done so that when health workers and Covid-19 patients in quarantine change or withdraw the olographic will, the notary public can continue to do it without being hindered by the circumstances during the Covid-19 pandemic.

There are few conditions resulted in the cancellation of an olographic will. There are also the following provisions.[33]

i. Olographic will does not bind the parties unless the person in the will has died and the will remains. A testator can withdraw the will before the testator dies. If the testator withdraw the will, it becomes void.
ii. Being insane and losing mind takes away one's ability to take legal action. An olographic will that is made by a person who lose her/his sanity is invalid.
iii. If the testator left a debt at the time of her/his life, the will is carried out after the payment of the debt. If the debt that must be paid will consume all assets, the will that was previously made would be void.
iv. The inheritor of the will dies before the testator.

In general, the implementation of an olographic wills is similar. It is after the death of the testator. If the will is closed, the notary public who keeps the will shall bring the will to the Heritage Hall. The Heritage Hall would open the will because the notary public was not authorized to open it.[34]

The notary public's obligation is not only to keep the will but also to convey the will to the Heritage Hall after the testator. Among others, the obligation also covers the following.

i. An olographic will must be submitted to the Heritage Hall in the area of open inheritance law after the testator dies. In the event that the letter is sealed, the Heritage Hall must open and make an official report regarding the delivery of

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32 Agus Wahyu S., Nyoman Sumardika, Ni Gusti Ketut S.A., "Kewenangan Notaris dalam Pembuatan/ Pencabutan Surat Wasiat (*Testament*)", *Jurnal Preferensi Hukum,* Vol. 1, No. 2, 2020, p. 9.

33 Muhammad G. Iqbal S, "Pembatalan Surat Wasiat dan Akibat Hukumnya terhadap Harta Warisan Menurut Pasal 834 KUHPerdata", *Lex Privatum*, Vol. VI, No. 2, 2018, p. 131.

34 Maman Suparman, *Hukum Waris Perdata*, Jakarta: Sinar Grafika, 2015, p. 108.

the will and the condition of the will. It is regulated in Article 936 of the Civil Code.

ii. Based on Article 937 of the Civil Code, a closed olographic will must be submitted to the Heritage Hall, which will act in accordance to Article 942 on the closed olographic will.
iii. The notary public must convey a secret or closed olographic will to the Heritage Hall in the open inheritance area after the testator dies. The Heritage Hall will open the will and make an official report on the delivery and opening of the will. This is regulated in Article 942 of the Civil Code.

The Heritage Hall has several duties related to inheritance and will. They are to:

i. Make a certificate of inheritance rights;
ii. Register wills that are already open;
iii. Open closed wills; and
iv. Split and distribute the inheritance (*boedelscheiding*).

The duties of the Heritage Hall are to open closed olographic will. The Legacy Hall only prepares the opening minutes of the closed olographic will. However, the contents of the will remain the obligation of the notary public for further implementation. The Heritage Hall also has other duties related to the notary public, namely in the registration of wills that are already opened (when the testator dies). The implementation must first be registered at the Heritage Hall to fulfill the principle of publicity. The principle of publicity is very important for the implementation of wills.[35]

Article 943 of the Civil Code stipulates that after the obligation to submit to the Heritage Hall. Every Notary public, who keeps an olographic will among the original documents, must also notify all concerned parties. Notary public is an official who has the authority to make authentic deeds regarding all actions and decisions that are required by general legislation to be desired by concerned parties that it is stated in the authentic letter, guarantees the date, and keeps the deeds. A Notary public also issues execution copies, document copies, and quotations. It is in the situation when it is devoted to officials or other people.[36] It can be concluded that the notary public has an important function in processing an olographic will from the start to the end so that the will has a binding legal force.

A notary public is obliged to make a list of deeds related to the olographic will according to the timeline monthly, to send a list of wills, or a nil list to the Center of

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[35] Amelia Novelik Malik, "Tanggung Jawab Hukum Notaris dalam Pembuatan dan Pendaftaran Surat Wasiat secara *Online* Menurut Undang-Undang Nomor 2 Tahun 2014 tentang Perubahan Atas Undang-Undang Nomor 30 Tahun 2004 tentang Jabatan Notaris", *Jurnal Ilmu Hukum dan Humaniora,* Vol. 7, No. 4, 2020, p. 897.

[36] M. Luthfan, *Hukum Notariat dan Tanggung Jawab Jabatan Notaris*, Yogyakarta: UII Press, 2017, p. 2.

Will of the Ministry of Government Affairs. It must be performed within five years on the first week of each following month, as well as recording the repertorium date of delivery of the testament at the end of each month.[37]

As a public official, a notary public has been given special authority regarding an olographic will as stipulated in Article 16 paragraph (1) of the Law on Notary Public Office. The notary public is authorized to make the will deeds. Notary Public have several obligations in making a deed as regulated in Article 16 paragraph (1) letters i, j and k of the Notary Public Office. The obligations are important to guarantee protection of the testator's interests. To support the guarantee of protection, the notary public is obliged to report the will to the office of the Directorate General of Law and Human Rights Administration. This reporting is to record testator and to monitor the will, which results in the absolute part of the testator.[38]

An unregistered olographic will remains valid as authentic. It is not null and void because the main elements of an authentic deed are made by and/or before a public official determined by law.[39] In Article 16 Paragraph (10) of the Law Number 2 of 2014 on the Position of a Notary (Law 2/1014), the provisions of evidence as an underhand deed do not valid in the making of will.[40] An unregistered will also does not invalidate the right of the person concerned, even though the person is subject to administrative sanctions such as compensation, reward, interest before the notary public. In other words, as long as the parties or the testator still respect the will, the will can still be enforced.[41] Therefore, the will remains binding. However, if there is a third party who refuses or denies the evidence, of course it will become a problem later and will be left to the judge's consideration at the trial to prove the strength of the evidence. Therefore, the report of this will is an important matter in the implementation of the will.

The role of notary public in making deeds during the Covid-19 pandemic is very important. The initiative of a notary public is compulsory to enable the function of a will, such as making a deed of deposit without the will. An additional note is required on the condition of the testator, monitoring the wishes of the testator, and the progress of the will. If the notary public is negligent in carrying out the duties, it may harm testator and recipient of the will. The notary public can be prosecuted in court and be subject to sanctions in the form of written warnings,

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37 Habib Adjie, *Penafsiran Tematik Hukum Notaris Indonesia Berdasarkan Undang-Undang Nomor 2 Tahun 2014 tentang Perubahan Atas Undang-Undang Nomor 30 Tahun 2004 tentang Jabatan Notaris*, Bandung: Refika Aditama, 2015, p. 257.

38 Alya Hapsari, *op.cit*, p. 16.

39 Rahmad Hendra, "Tanggung Jawab Notaris Terhadap Akta Otentik yang Penghadapnya Mempergunakan Identitas Palsu di Kota Pekanbaru", *Jurnal Ilmu Hukum,* Vol. 3, No. 1, 2013, p. 3.

40 Article 16 Paragraph (10) of Law Number 2 Year 2014 on the Position of a Notary.

41 Annisa, Yanis Rinaldi, and Teuku Abdurahman, "Tanggung Jawab Notaris yang Tidak Mendaftarkan dan Melaporkan Akta Wasiat ke Daftar Pusat Wasiat*", Syiah Kuala Law Journal*, Vol. 3, No. 1, 2019, p. 7.

temporary dismissal, and respectful dismissal and may result in dishonorable dismissal.

In addition, if the notary public neglects the obligations in registering and reporting wills, especially by the giver and recipient of the will, the notary public can be sued in civil law. The violations committed by the notary public are considered violations if they fulfill two aspects of violation, namely violations of the code of ethics and violations based on the Law 2/2014. In violation of the code of ethics, a notary public is a person who holds and carries out the duties of a public official as referred to in the Law on Notary Public Position. In Law 2/2014 violations, there is a violation on Article 16 paragraph (1) letter j of the law. It states that in carrying out the office, a notary public is obliged to send a list of deeds as referred to in letter i or a nil list related to the will to the Central Register of Wills at the Ministry that administers governmental affairs in the field of law within five days in the first week of each following month.[42] In other words, a notary public who commits an offense by not registering and reporting a will to the Central Register of Wills can be subject to ethical code sanctions in the form of a temporary dismissal and dismissal with disrespect. It may also be subject to sanctions in violation of the Law 2/2014, namely dismissal with respect and disrespect as Notaries and Associations.

b. Making an Emergency Testament in Quarantine

The condition experienced by Covid-19 patients is an emergency because of a dangerous infectious disease. Articles 946, 947, and 948 of the Civil Code regulate conditions for making an emergency will. They include conditions of infectious diseases such as the Covid-19.[43] Covid-19 patient can make an emergency testament whenever necessary.

In the circumstances during the Covid-19 pandemic, especially in quarantine of health workers and Covid-19 patients, the law stipulates that wills can be made outside the presence of a notary, namely by making and writing in before the highest official, who is in quarantine. This is based on Article 948 of the Civil Code, which states that they who are prohibited from having contact with the outside world due to an outbreak of an infectious disease may make their will before every civil servant and two witnesses. Health workers and Covid-19 patients who are in quarantine can make their wills in front of hospital official and two witnesses. An emergency testament requires the signature of the beneficiary, the official before whom the will is drawn up, and at least one witness. If the beneficiary or a witness testifies that she/he is unable to put her/his signature, the statement must be stated in the deed.[44]

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42 See Article 16 paragraph (1) letter j of Law Number 2 Year 2014 on the Position of a Notary.

43 See Article 946, 947, and 948 of the Civil Code.

44 Article 949 of the Civil Code.

The weakness of emergency testament is that it is only valid six months after the expiration of the reasons of the will. It is regulated in Article 950 of the Civil Code. However, Article 952 of the Civil Code also explains that it loses its power if the person who testifies dies after the causes mentioned in Articles 946,947 and 948 of the Civil Code ended. Unless the will has been submitted to a notary public for deposit in a manner that is in accordance with Article 932 of the Civil Code.

An emergency testament is not an authentic will, because it is not made before a notary public. Therefore, its legal force is imperfect. However, it does not mean that the will is not considered valid. It is valid because it is made under hand so that it meets the requirements as a testamentary disposition. However, this will has limitations on the implementation. The limitations regarding the implementation of the will are regulated in Article 935 of the Civil Code. It reads as follows.[45]

> *"Untuk akta di bawah tangan yang seluruhnya ditulis, diberi tanggal dan ditandatangani oleh pewaris, dapat ditetapkan wasiat, tanpa formalitas-formalitas lebih lanjut hanya untuk pengangkatan para pelaksana untuk penguburan, untuk hibah-hibah wasiat tentang pakaian-pakaian, perhiasan-perhiasan badan tertentu, dan perkakas-perkakas khusus rumah."*
>
> [For underhand deeds which are entirely written, dated and signed by the testator, a will can be stipulated, without further formalities only for the appointment of executors for burial, for testament grants on certain garments, body adornments, and specific household utensils].

In other words, a testament made informally is not for goods or property. It only covers clothes, certain body adornments, and special household utensils.[46] If an emergency testament is intended for other items, then it has to be handed to a notary public and registered to the Heritage Hall to make it having a legal force.

Based on the provisions, it can be understood that an emergency testament has weaker legal validity and force than a testament made in normal circumstances. In fact, an emergency situation reflects the signs of a person facing death so that an emergency testament in this situation should have the same legal validity and force with the ones made in normal circumstances. Therefore, in order to have legal validity and force as strong as a general will, an emergency testament must be submitted to a notary public to be registered to the Heritage Hall.

Based on the law, it is not an obligation to submit an emergency testament to a notary public. It is only an option for people who want to make an emergency testament to be legally guaranteed. The power of a notary public's deed in an

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[45] Article 935 of the Civil Code

[46] Ilman Hadi, "Dapatkah Surat Dibuat dI Bawah Tangan?", https://www.hukumonline.com/klinik/detail/ulasan/lt500e3701e8453/surat-wasiat-dikertas-biasa/, accessed on November 2020.

emergency testament is a perfect power of proof. A notary public's deed has all the powers of proof whether physical, formal, or material. Legally, an emergency testament without a notary deed or an informal testament does not guarantee legal certainty because it can be canceled unilaterally.[47] An informal emergency testament has the potential to cause problems and could be canceled.

C. Conclusion

Health workers and Covid-19 patients face a high death risk of due to Covid-19. It is necessary to prepare for the worst, such as making a testamentary disposition. health workers and Covid-19 patients need testamentary disposition to provide legal certainty for their wealth later. To make the testamentary disposition, health workers and Covid-19 patients confront difficulties because they have to go through quarantine. The quarantine is important to avoid the spread of covid-19 among the people. Confronting the situation, health workers and Covid-19 patients cannot make a testamentary disposition properly before a notary public. In quarantine, health workers and covid-19 patients certainly encounter difficulties to make testamentary disposition since they cannot see a notary public.

Considering the difficulties, this study tries to provide solution for the process of making testamentary disposition in quarantine without the presence of a notary public. The Civil Code essentially has provided regulation regarding forms of testamentary disposition. There are several forms of testamentary disposition that can be applied in quarantine based on the provision of the Civil Code. They are the general testament, olographic will, secret trust, and emergency testament. The form of testamentary disposition that can be used in quarantine is olographic wills and emergency testament. An olographic will is a testamentary disposition that is made, written, and signed by the testator. An emergency testament is a testamentary disposition made in an emergency. Health workers and Covid-19 patients can use both forms because both do not require the testator to present before a notary public.

In making an olographic will, health workers and Covid-19 patient can write the testamentary disposition by themselves and sign the deed by means of electronic signature before submitting the deed to a notary public through a lawyer. In making an emergency testament, health workers and Covid-19 patients can write their own will in front of a hospital official with two witnesses. The emergency testament is only valid six months after expiration because it is not made in front of a notary. Therefore, the legal validity can be considered imperfect. In order to avoid unwanted things and to provide legal force, an emergency testament should be submitted to a notary public and registered to the Heritage Hall.

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[47] Adam Lukmanto and Munsharif Abdul C., "Tinjauan Hukum dan Akibatnya Terhadap Wasiat Tanpa Akta Notaris Ditinjau dari Kompilasi Hukum Islam Dan Kitab Undang-Undang Hukum Perdata"*, Jurnal Akta*, Vol. 4, No. 1, 2017, p. 31.

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