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# The Validity of A Will Made Before A Notary Without The Knowledge of The Heirs of The Will

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**ABSTRACT**

Making a will is very useful because it provides clarity on the property left by the owner when he dies. There is a case in the Supreme Court Decision Number: 3658 K/PDT/2022, where the Plaintiff as a Sinshe claimed to have received a will from a patient who had died, while the heirs of the patient were completely unaware of the making of the Will. Based on this, this study analyzes the recipient of the will whose position is as a sinshe or medical expert in receiving a will from the patient he treated, and analyzes and explains the validity of the will deed made before a notary without the knowledge of the heirs of the testator in the Supreme Court jurisprudence Number: 3658 K/PDT/2022. This type of research is normative legal research, with a statutory approach, a conceptual approach, and a case approach. That in accordance with the provisions of Article 906 of the Civil Code, the recipient of the will whose position is as a sinshe or medical expert is not allowed to receive a will from the patient he treated. The validity of a will made before a notary without the knowledge of the heirs of the testator is null and void and has no binding legal force.

**Keywords:** Validity, Notary Will Deed, Sinshe, and Willgiver Heirs.

## 1. INTRODUCTION

Parents often make wills when they want to distribute property to their heirs or children. Making a will is very useful because it provides clarity on the assets left behind by the owner when he dies. Making a will can also be called making a testamentary gift. A testamentary gift according to Article 957 of the Civil Code is a special determination, where the testator gives to one or several people certain items, or all items and certain types; for example, all movable or fixed assets, or usufructuary rights over some or all of the goods. What is meant by a will (*testament*) based on Article 875 of the Civil Code is a deed containing a person's statement about what will happen after he dies, and which can be withdrawn. Next, Subekti said *testament* is a statement from someone about what they want after they die( R. Subekti, 2002). From these provisions, in principle, a statement is issued by one party only and can be withdrawn at any time by the person who made it, here meaning that a will (*testament*) cannot be made by more than one person because it will cause difficulties if one of the makers revokes the will (*testament*), the most important thing is that the last will as a statement of will is a legal act and therefore an act aimed at causing legal consequences (Crouch, 2011)

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Make a will (*testament*) is a legal act, someone asks about what happens to their assets after they die. Inheritance assets often give rise to various legal and social problems, therefore they require orderly and orderly regulation and resolution in accordance with applicable laws and regulations.

Making a *testament* bound by a certain form and method, if ignored it can result in invalidation *testament*. In accordance with the provisions of Article 875 of the Civil Code, a will made before a notary can be canceled if it turns out that the procedure for making it was not carried out in accordance with the terms and conditions that apply to the Will Grant Deed.

The objects of the gift can be movable objects or immovable objects. Many people have made grants, especially land grants. The land issue is a very complex problem, one of which is related to the issue of transferring land rights originating from inheritance and grants. The transfer of land rights originating from inheritance according to customary law can begin whether the giver/heir is not yet dead or has died so that it is different from Islamic inheritance law and the Civil Code. Inheritance can occur at the time of the death of the heir to the heir (Soliman et al., 2015).

Related to the description above, there is a case such as in the case of Supreme Court Decision Number: 3658 K/PDT/2022, where the Plaintiff named KFW claimed to have received a will from someone who had died, namely the late. APR, while the heirs of the late APR was completely unaware of the creation of the Deed of Will. The inherited assets that were willed include all of the deceased's assets. APR, namely in the form of land and house buildings, as well as deposit savings at several banks. The will deed was made before Notary DW, S.H., M.Kn. as Surabaya City Notary as stated in Deed of Will Number 67 dated 30 November 2019.

That in this case, KFW sued the heirs of the late. APR, namely HRJ and the banks where there are Deposit Savings from the late. APR, namely Bank HSBC, Bank Danamon, Bank ICBC, and Bank Permata. KFW's aim in filing this lawsuit is basically to declare the Will Deed Number 67 dated 30 November 2019 valid before a Surabaya Notary named DW, S.H., M.Kn., and the Plaintiff (KFW) is declared the executor of the will, and the Plaintiff (KFW) is declared the legal owner of the inheritance that was willed. Regarding this lawsuit, HRJ as the heir in his response to KFW's lawsuit denied and denied the validity of the Will Deed Number 67 dated 30 November 2019 which was made before a Surabaya Notary named DW, S.H., M.Kn., and requested the Panel of Judges examining the case to reject and declare that the Plaintiff's (KFW) lawsuit was not acceptable, because HRJ argued that the Will Deed was Deed No. 67 dated 30 November 2019 made before a Surabaya Notary named DW, S.H., M.Kn. Its validity is questionable because it

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contains formal defects which result in the will being legally flawed and can be categorized as null and void.

Based on the description above, 2 (two) issues are raised, namely whether the recipient of the will whose position is a sinshe or medical expert has the right to receive the will from the patient he is treating, and what is the validity of the deed of will made before a notary without the knowledge of the heirs of the will giver in Supreme Court Jurisprudence Number: 3658 K/PDT/2022.

## 2. RESEARCH METHODS

The type of research used in this research is normative legal research, namely research using legal materials in the form of legislation and opinions or doctrines of legal experts in the field of civil law, especially will law. This research uses a statutory approach (*statute approach*), conceptual approach (*conceptual approach*), and case approach (*case approach*).

## 3. RESULTS AND DISCUSSION

### Sinshe's Position in Receiving Wills from Patients

Wills and grants are legal acts of a person to transfer his property to another person on the basis of *tabarru'* (doing good). Wills and gifts, including forms of engagement, in their implementation may not meet the terms of the engagement, or the engagement violates the law (Alam et al., 2024). Customary institutions that transfer rights from property owners to their children or other parties remain valid and are not subject to the provisions of the law of wills and grants.

In the event that there is a dispute over wills and gifts, whether because the will and gift do not fulfill the terms of an agreement or violate the law, the court can follow several guidelines as outlined below.

1) A lawsuit for cancellation or ratification of gifts and wills is submitted to the religious court in the area where the defendant or one of the defendants resides (for the Java and Madura regions) and to the religious court in the area where the object of the dispute remains or at the location of the defendant, if the object of the dispute is a movable object (for regions outside Java and Madura).
2) Lawsuits for cancellation of gifts and wills and ratification of gifts and wills must be substantive.

Heirs or interested parties can file a lawsuit to cancel gifts and wills, if the gift exceeds 1/3 of the assets of the testator or donor (Ferris & Orgel, 1965). If they do not make a claim on the

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property left by the heir, then the heir by will acquires the entire property or a certain part as the heir has bequeathed. Likewise about a husband or wife and also a relative, they are not included in the group of people who are entitled to something *legitimate portion* so that they can be completely eliminated from his rights to receive inheritance when the heir appoints someone as an heir with a will to his entire wealth (Marizen, 2021).

People who have assets sometimes hope that when they die, their assets can be used according to their needs. This inheritance can be done by means of a will (A Dg Mataro & Ermawati, 2021). There are even cases where a patient wishes to give or bequeath his property to a sinshe or medical expert who treated him while he was sick until he died. The term "Sinshe" is a term for teachers in any field in China, while in Indonesia, Sinshe refers to certain people who have mastered skills in the field of traditional Chinese medicine. This treatment method by Sinshe or Chinese healer or shaman is very complex, it cannot be said to be simple. Not just anyone can become a doctor, but they have to go through a learning process until they have a diploma like other health professionals. A senshe has the ability to examine and determine prescriptions for medicines for human diseases.

In the minds of most Indonesians, Sinshe is a very old person, with completely white hair, full of wrinkles on his face but exuding an aura of calm and wisdom, and when he speaks his voice is very slow and soft, even though those who are experts in Chinese medicine don't necessarily have to look like that, in fact there are many young people who have a fashionable and cool executive-style appearance, mastering Chinese medicine well. That in Indonesia regarding sinshe and healers as medical experts, the regulations are slightly different from those of a Doctor, Dentist, Midwife, Nurse, Pharmacist, Nutritionist, Physiotherapist, Occupational Therapist and Clinical Psychologist who are regulated as in the medical practice law and the law on health workers, whereas for sinshe and healers these are regulated by the Ministry of Health as a form of traditional medicine. Sinshe must meet competency and ethical standards set by the Ministry of Health. That these arrangements aim to maintain the quality and safety of health services in Indonesia.

Regarding the prohibition against medical experts accepting wills from patients they have treated, this has been regulated in Article 906 of the Civil Code which stipulates that "doctors, healing experts, pharmacists and other people who practice healing sciences, who care for a person while he is suffering from an illness which ultimately causes him to die, as well as religious servants who have helped him during his illness, may not take profits and wills made by that person during his illness for their benefit." Furthermore, based on the Indonesian Medical Code of

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Ethics (KEMDI) in Article 12 paragraph (1) states that doctors may not accept gifts or other benefits from patients, except small gifts that do not influence medical decisions.

Based on these provisions, giving testamentary gifts to sinshes or healers or other medical experts is prohibited. However, from these provisions must be excluded:

1) The stipulations in the form of a will grant to repay the services that have been given, as stipulated in the previous article;
2) Provisions for the benefit of the testator's husband or wife;
3) Even provisions are generally made for the benefit of blood relatives up to the fourth degree, if the deceased does not leave heirs in a straight line; unless the person for whose benefit the determination is made is among the number of heirs.

That because there are still things that are excluded, there are still incidents of giving a will by the patient to the medical expert who is treating him. Because there is still an opportunity for a medical expert to receive a will from a patient he is treating, of course there is a need for evidence as legal force in accepting a will from the patient he is treating.

**The Validity of a Deed of Will Made in the Presence of a Notary Without the Knowledge of the Heirs of the Will in Supreme Court Decision Number: 3658 K/Pdt/2022 Date 02 November 2022**

That this case concerns the existence of a deed of will that was made before a Notary without the knowledge of the heirs, where as the beneficiary of the will was KFW who was the sinshe who treated the deceased. APR as the giver of the will, when suffering from illness before death. That KFW in this case acts as the Plaintiff in case Number 1127/Pdt/G/2020/PN.Sby Jo. Number 604/PDT/2021/PT.SBY Jo. Number 3658 K/PDT/2022.

The defendant is HRJ, who is the grand-nephew of the late. APR, where the Defendant HRJ acted as a representative or proxy for the deceased's siblings. APR, as well as acting on behalf of the late husband. APR, which is called LIC. That KFW as Plaintiff felt that his rights were being obstructed by Defendant HRJ regarding the object of the will which was still controlled by Defendant HRJ, so KFW sued HRJ at the Surabaya District Court on the basis of an unlawful act, which was registered at the Registrar's Office of the Surabaya District Court with Number: 1127/Pdt.G/2020/PN.Sby.

In essence, the problem in this lawsuit is that Plaintiff KFW claims to have received a will from the deceased. APR as per Deed of Will Number 67 dated 30 November 2019 made before Notary DW, S.H., M.Kn. in the form of all of the deceased's assets. APR. The Defendant HRJ claims that the provision of the will by the late The APR to Plaintiff KFW is as stated in Deed of

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Will Number 67 dated 30 November 2019 made before Notary DW, S.H., M.Kn. is invalid and null and void, because the deed of will was made without the knowledge and permission of the deceased's husband. APR named LIC and without the knowledge of the deceased's siblings or family/relatives. APR. That Plaintiff KFW as the recipient of the will was a sinshe or healer (medicine expert) who treated the deceased. APR as the grantor of the will.

That regarding the legal considerations by the Supreme Court in case Number: 3658 K/PDT/2022 regarding the case of a will deed made before a notary without the knowledge of the heirs, of course it cannot be separated from the legal considerations of judex facti at the court of first instance (Surabaya District Court) and judex facti at the appellate court (Surabaya District Court) previously. Therefore, the following also describes the legal considerations from the Surabaya District Court's Judex Facti Case Number 1127/Pdt.G/2020/PN.Sby and the legal considerations from the Surabaya High Court's Judex Facti Case Number 604/PDT/2021/PT.SBY., which are basically as follows:

According to the Panel of Judges at the Surabaya District Court, there are two main things in this case that must be considered, namely: (1) That the deceased. APR still has a legal husband who is still alive and has the right to inherit the deceased's inheritance. APR (class I) is based on Article 832 of the KUH, as well as (2) the deed of will made by a Notary is valid and in accordance with reality or not.

Considering that there are heirs from the late. APR and whether or not he has the right to inherit the deceased's legacy. APR, based on the testimony of LIC witnesses presented by Defendant HRJ, he explained that he was still married to the late. Even though APR has not always lived together because of different domiciles and citizenship status. The witness's statement is supported by an LIC identity letter and a power of attorney regarding the management of the deceased's inheritance. APR approved by the Indonesian Embassy in Bandar Seri Begawan on January 7 2021. Then based on the testimony of witness FO who is the deceased's sibling. APR, witness NUR who is an RT Assistant and his son DEN confirmed that LIC is the husband of the late. APR. Apart from that, the testimony of witness NUR and witness DEN who lived with the deceased. APR that Plaintiff KFW was an acupuncture expert who always came to visit the deceased. APR 2 (two) times a week. Apart from the late APR still has a husband, based on the testimony of witness FO, Late. APR also still has 5 (five) siblings, and has stated that he rejects the inheritance from the late. APR by handing over its share of inheritance to Defendant HRJ.

Based on the facts mentioned above, according to the panel of judges, the will made by the Notary does not have binding legal force and is null and void because the material contained

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therein contains incorrect facts. That because the deed can be proven to the contrary where there are other heir rights that have not been determined or handed over, namely LIC's rights as the longest surviving husband who, based on the provisions of Article 832 of the Civil Code, is one of the main heirs, then all matters regulated therein also have no evidentiary power. That because the deed of grant of will 67 dated 30 November 2019 was declared null and void and not binding, the main claim of the KFW Plaintiff must be declared rejected as a consequence, then the KFW Plaintiff's claim regarding Defendant HRJ's control over the object of the dispute must also be rejected in its entirety.

Based on these descriptions and considerations, according to the panel of judges at the Surabaya District Court, the main issue concerns Plaintiff KFW's claim for the inheritance of the deceased. The APR based on the deed of gift has been answered, namely that the deed of will Number 67 dated 30 November 2019 is legally invalid because there is a legal fact that cannot be denied that there are rights of the main heir which have never been divided or determined, namely the part which is the right of LIC (the late APR's husband) who was also presented as a witness in this case. Or in other words, the legacy of the late The APR is still in the form of an inheritance boedel where the share of each heir must still be determined. Therefore, Judex Facti, the Surabaya District Court decided on the lawsuit, rejecting the Plaintiff's (KFW) lawsuit in its entirety, as per the Surabaya District Court Decision Number 1127/Pdt.G/2020/PN.Sby. June 9, 2021.

Whereas at the appellate level examination, the High Court Panel of Judges carefully examined and scrutinized the legal considerations of the First Instance Court Panel of Judges and turned out to be appropriate and correct because they had considered all the arguments of the lawsuit along with the evidence submitted at trial and had also linked them to the statutory regulations relating to the subject matter of the case, then the Surabaya High Court Panel of Judges was able to approve the legal considerations of the First Instance Panel of Judges because they had prepared and explained precisely and correctly all the circumstances and reasons which were the basis for their decision. In this way, the legal consideration of the Panel of Judges of the First Instance Court was taken over completely and used as the legal consideration of the Panel of Judges of the Surabaya High Court itself in deciding the case at the appeal level, as in the Decision of case number 604/PDT/2021/PT.SBY dated 05 October 2021, whose ruling confirmed the decision of the Surabaya District Court dated 09 June 2021 Number 1127/Pdt.G/2020/PN.SBy, which the appeal was filed.

Whereas the legal considerations from the Supreme Court regarding this case, namely: that the main dispute in this case is regarding the actions of the Defendant HRJ who controlled a

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number of assets inherited from the late. APR, which according to Plaintiff KFW was an unlawful act because it was carried out without the consent of Plaintiff KFW as the executor of the deceased's will. APR as contained in Deed of Will Number 67 dated 30 November 2019. According to the facts of the trial of the late couple. APR and her husband named LIC have no children, while the relationship between Plaintiff KFW and the late. APR is an employment relationship where the Plaintiff is the sinse (physician) who treated the deceased. APR by means of acupuncture.

Based on the provisions of Article 906 of the Civil Code, granting wills to healers or other herbalists is prohibited, so Will Deed Number 67 dated 30 November 2019 made by the late Mrs. Aprilia Lokadjaja stated that giving a certain amount of property (the object of the dispute) is an act that is contrary to the law, and is therefore null and void. Whereas based on these considerations, it turns out that the decision of the Judex Facti/Surabaya High Court in this case does not conflict with the law and/or statute, therefore the cassation petition submitted by the Cassation Petitioner (KFW) must be rejected.

Based on legal considerations by the Panel of Supreme Judges who examined and tried the case, on November 2 2022 decided case number 3658 K/PDT/2022 with a ruling rejecting the cassation request from the Cassation Petitioner (KFW). The legal considerations of the Panel of Judges of the Supreme Court are correct and correct and do not conflict with the applicable legal provisions, which are expressly stated The provisions of Article 906 of the Civil Code, states that doctors, healing experts, pharmacists and other people who practice healing science, who treat a person while he is suffering from an illness which eventually causes him to die, as well as religious servants who have helped him during his illness, may not take advantage of the benefits and wills made by that person during his illness for their benefit. From these provisions it is very clear that the Plaintiff/Appellant/Casation Applicant KFW is the sinshe who treated the deceased. BPR is prohibited from accepting bequests from Nature. APR as the patient it treats.

Regarding the legal power of the Supreme Court's decision Number 3658 K/PDT/2022 as the Foundation for a Non-Heir's Will, this cassation level decision is the end of a case examination process carried out by a panel of judges, with deliberations first carried out based on the provisions of Article 14 of Law Number 48 of 2009 concerning Judicial Power. A decision is a statement by a judge as an authorized agent of judicial power, pronounced in a trial open to the public, to resolve a dispute between the Parties. A decision can be given by the judge after knowing the actual situation of the case and the examination of the case is declared complete, then the judge's decision is

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handed down. A judge's decision is a judge's statement stated in written form and pronounced by the judge in a trial open to the public as a result of the examination of a lawsuit (contentius).

The judge's decision is also defined as a statement by the judge as a state official who is authorized to do so, pronounced at the trial, and aims to end or resolve the case or dispute between the parties. If the parties do not comply, the decision can be enforced. According to Soeparmono, a decision is a statement by a judge as a state official carrying out the duties of judicial power who is authorized to do so, which is pronounced at trial and aims to resolve a case.[8]

According to Sudikno Mertokusumo, a judge's decision is a statement made by the judge as an authorized official, pronounced at trial and aimed at ending or resolving a case or dispute between the parties.[9] The decision is required for justice and what is important and decisive is that the facts or events are clear, legal regulations are a tool, so in the judge's decision, what needs to be taken into account is the legal considerations so that they have objective reasons and have legal force, so that the decision cannot be changed again. Based on this description, it can be understood that a judge's decision is basically a work of discovering the law, namely determining what should be according to the law in every event that concerns life in a legal state. Apart from that, the judge's decision is the result of deliberations starting from the indictment with everything that was proven in the examination at the court hearing.

That of all the types of decisions that have been described, it is clear that each decision must begin with a description of the principles that must be upheld so that the decision handed down does not contain defects. Whereas in the case related to the granting of a will by a patient (the late APR) to Sinshe (KFW) as a medical expert who treated the giver of the will when he was suffering from illness until he died as stated in Deed of Will Number 67 dated 30 November 2019 which was made before notary DW, S.H., M.Kn. without the knowledge of the heirs as in the case in Surabaya District Court Decision No. 1127/Pdt/G/2020/PN.Sby Date 09 June 2021 *Because.* Surabaya High Court Decision No. 604/PDT/2021/ PT.SBY Date 05 October 2021 Jo. RI Supreme Court Decision Number 3658 K/PDT/2022 dated 02 November 2022, the decision in this case has permanent legal force, and the decision is binding between the parties involved in the case, in this case namely the Plaintiff KFW and the Defendant HRJ as well as the co-defendants.

Regarding the strength of the evidence (*evidence and the force*) of a court decision, then the decision is in written form which is an authentic deed, used as evidence for the parties needed to submit an appeal, cassation and its implementation. The regulation of the strength of evidence in criminal decisions is regulated in Article 1918 BW and Article 1919 BW which regulates that criminal decisions, which contain punishment and have legal force, can be used as evidence in civil

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cases regarding events that have occurred, unless there is opposing evidence, the strength of the evidence is binding (Article 1918 BW) and if a person is acquitted of all charges, the acquittal decision cannot be used as evidence in a civil case to ask for compensation (Article 1919 BW). While the evidentiary power of criminal decisions is regulated in Article 1918 BW and Article 1919 BW, there is no provision for the evidentiary power of civil decisions. Likewise, civil decisions have the power of evidence as they are left to the judge's consideration.

Executorial power/power to execute (*executorial force*) is a decision intended to resolve a problem or dispute or determine rights or law only, and its realization or implementation (execution) is forced. Therefore, what the panel of judges has determined in its decision must be implemented even though many people are helping it. The executorial power of a judge's decision cannot be paralyzed, unless it is fulfilled voluntarily. Thus, executorial power means the power to carry out what is implemented in the decision by force by state instruments.

Evidence that the decision has executorial force can be seen from the words "for the sake of justice based on belief in the Almighty God". This is what gives executorial power to court decisions in Indonesia. A judge's decision which already has legal force must still be implemented if a case has been decided and has obtained definite legal force. Thus, the case will be finished if it has been executed. The implementation of a decision or execution is essentially the realization of the obligation of the party concerned to fulfill that obligation.

According to Djazuli Bachar, the aim of implementing a court decision is none other than to make a decision effective into an achievement carried out by force. Efforts in the form of forced actions to realize the decision to those who have the right to receive it from the party burdened with obligations which constitute execution (Djazuli, 1987). In principle, a decision that can be executed is a decision that has obtained permanent legal force, because a decision that has permanent legal force contains the form of a permanent and definite legal relationship between the parties to the case. This is because the legal relationship between the parties involved in the case is fixed and certain, that is, this legal relationship must be obeyed and must be fulfilled by the party being punished (defendant) either voluntarily or by force with the help of general power.[12] In addition to the decision having to have permanent legal force, the decision is also condemnatory in nature, which means that a decision whose ruling or dictum contains an element of "punishment", while a decision whose ruling or dictum does not contain an element of punishment cannot be executed.

That based on the matters as stated above, the strength of the Decision of the Supreme Court of the Republic of Indonesia. Number 3658 K/PDT/2022 dated 02 November 2022 which

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rejected the claim of Plaintiff KFW (as Sinshe or medical expert) in the will case made by the late. APR as the patient of the KFW Plaintiff without the knowledge of the heirs as per Surabaya District Court Decision Number 1127/Pdt/G/2020/PN.Sby dated 09 June 2021 *Because.* Surabaya High Court Decision Number 604/PDT/2021/PT. SBY dated 05 October 2021, which has binding, executorial and juridical powers, so it must be respected by all parties.

## 4.CONCLUSION

That in accordance with the provisions of Article 906 of the Civil Code, the recipient of a will whose position is as a sinshe or medical expert is not permitted to receive a will from a patient he treated when he was suffering from an illness which ultimately caused him to die, this is because it is feared that it could affect people or patients who are seriously ill, unless it is determined firmly and clearly to repay his services so that in gratitude he will bequeath a small portion of his assets to people who have helped and served him a lot as intended in Article 12 paragraph (1) of the Indonesian Medical Code of Ethics (KEMDI) which states that doctors should not accept gifts or other benefits from patients, except small gifts that do not influence medical decisions.

As for the validity of the deed of will made before a notary without the knowledge of the heirs who gave the will in the Supreme Court Jurisprudence Number: 3658 K/PDT/2022, namely that it is null and void and does not have binding legal force because it is contrary to the provisions of Article 906 of the Civil Code which states that granting wills to healers or other medicine experts, including sinshes, is prohibited.

**Suggestion**

The government needs to make regulations or regulations regarding provisions that specifically regulate the limitations and requirements for giving wills to medical experts for the patients they treat, because it cannot be denied that there are still many patients who want to give a little or part of their assets to the medical experts who treat them as a token of gratitude for their services.

For patients who feel they want to give a will to the person who treated and cared for them during their illness as a sign of gratitude, the will should be made before a notary with a clear legal basis, the contents are made expressly, and the purpose of giving the will is clear, and of course giving the will to the medical expert has the approval of his heirs, this is to avoid the risks of lawsuits in the future by the heirs of the person who gave the will.

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