

Notary's Responsibility for Deeds That Are Not Read, the Status of the Deed and Sanctions for Notaries Who Do Not Read the Deeds They Make

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Abstract. *This research aims to find out and analyze, that the Notary profession has obligations that should be carried out, to provide legal certainty and ensure that what is contained in the notarial deed can really be understood and is in accordance with what the parties want, the Notary's obligation to read the deed made and explain the situation of the parties if the deed is not read in front of the parties at the closing of the deed in accordance with the Law. That if there is a misunderstanding between the parties regarding the deed that has been made and this causes the deed to be unclear, then the position of the notarial deed is worthy of being questioned as well as the responsibility of the Notary who deliberately does not read the deed he has made in front of the parties. The method used is the normative juridical research method with a case approach, analytical approach, and legislative approach. The research results showed that reading a deed is an obligation, as one of the bases for an authentic deed made by a Notary, which if not carried out could result in a default on the deed. A notary who deliberately does not read a deed made in front of the parties is a violation which results in the deed he made becoming null and void and its evidentiary power being degraded to a private deed.*

Keywords: *Deed; Position; Responsibility; Sanctions.*

1. Introduction

Notaries in carrying out their duties are required to be guided normatively by the legal rules related to all actions to be taken to be then stated in a deed. Namely Law Number 2 of 2014 Amendment to Law Number 30 of 2004 Concerning the Position of Notary and the Notary Code of Ethics, then Notaries are required to act based on the applicable legal rules to provide legal certainty to the parties/applicants, that the deed made "before" or "by" the Notary is in accordance with the applicable legal rules, so that if a problem occurs, the Notary deed can be used as a guideline by the parties.

The existence of a Notary is the implementation of the law of evidence.¹The Republic of Indonesia is a state of law, the principle of a state of law,²guarantee certainty, order and legal protection based on truth and justice. Through the deeds he makes, Notaries must be able to provide legal certainty to the community using Notary services.³

The legal system of evidence in Indonesia for civil trials, there is written evidence as one of the evidence that can be submitted in court,⁴Article 1866 of the Civil Code in this thesis is abbreviated as (Civil Code) states that means of evidence include written evidence, witness evidence, allegations, confessions and oaths. Written proof can be done in authentic writing and underhand writing.⁵In Article 1 number (1) of Law Number 2 of 2014 amending Law Number 30 of 2004 concerning the Position of Notary.

Notary is a public official who is authorized to make authentic deeds and other authorities as referred to in this Law. Notary in carrying out his duties and obligations must comply with the applicable Laws and Regulations, obligations are something that must be carried out so that the deed made becomes an authentic deed. The obligations of Notary in carrying out his position are regulated in Article 16 UUJN. One of the obligations of Notary is to read the deed before the person appearing in the presence of at least 2 (two) witnesses or 4 (four) witnesses, specifically for making a private will and signed at that time by the person appearing, witnesses and Notary, regulated in Article 16 paragraph (1) letter m UUJN.

Exceptions to the obligation to read the deed by a Notary can be made, as regulated in Article 16 paragraph (7) UUJN, that the reading of the deed as referred to in Article 16 paragraph (1) letter m, is not mandatory, if the person appearing wants the deed not to be read because the person appearing has read it himself, knows and understands its contents, with the provision that this is stated in the closing of the deed, and on each page of the minutes of the deed are initialed by the person appearing, the witnesses and the Notary. The provisions on the obligation to read the deed in Article 16 paragraph (1) letter m UUJN, are not mandatory based on Article 16 paragraph (7) UUJN. This can be interpreted that the obligation to read the deed is not absolute or not mandatory or is not a requirement. Reading the deed by a Notary is a

¹ Herlien Budiono, 2013, Collection of Civil Law Writings in the Notary Sector, Second Book, Citra Aditya Bakti, Bandung, p. 220.

²Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia.

³H. Salim and H. Abdulah, 2007, Contract and MOU Designers, Sinar Grafika, Jakarta pp. 101-102.

⁴Article 1866 of the Civil Code.

⁵Article 1866 of the Civil Code.

requirement in every making of an authentic deed, reading the deed is part of the *verlijden* or inauguration of the deed (reading and signing). Therefore, because the deed is made by a Notary, it must also be read by the Notary concerned, not by other people such as assistants or Notary employees.

Sanctions for violations of the obligation to read a deed are regulated in Article 16 paragraph (9) UUJN, that if one of the requirements in Article 16 paragraph (1) letter m and Article 16 paragraph (7) is not fulfilled, then the deed in question only has the power of proof as a private deed. When compared with Law Number 30 of 2004 (the previous Notary Law) in Article 84 it states that: acts of violation committed by a Notary including not reading his own deed will result in a deed only having the power of proof as a private deed or a deed being null and void by law can be a reason for the party suffering a loss to demand reimbursement of costs, compensation and interest from the Notary. Meanwhile, in the Notary Regulation *Stadblad* Number 3 of 1860 hereinafter referred to in this thesis as (PJN), Article 28 paragraph (5), sanctions for a deed that is not read, then the deed only has the power of proof as a private deed. However, with the enactment of Law Number 2 of 2014, an amendment to Law Number 30 of 2004 concerning the Position of Notary, it states that the previously applicable regulations are no longer valid.

3. Results and Discussion

I. Notary's responsibilities are divided into 3 parts

Civil Liability

Notaries can be held civilly liable if the parties deny:

- a). Day, date, month, year facing;
- b). Time, facing hour;
- c). Signatures listed in the minutes;
- d). Feeling like you never face it;
- e). The deed is not signed before a notary;
- f). The deed was not read out

The responsibility of a Notary in serving the public in accordance with the moral ethics of the profession and the law is to implement and uphold the provisions of the Notary Code of Ethics and the Notary Law and other laws and regulations.

The oath and obligations of a Notary in the UUJN regarding maintaining the confidentiality of the contents of an authentic deed are supported by articles

1365, 1366 and 1367 of the Civil Code which are civil responsibilities, so if a notary violates the oath of office which contains the obligation to maintain the confidentiality of the deed, it can be classified in these articles.

The impact of not complying with the oath of office is getting sanctions or punishment. Acceptance of sanctions or punishment is an implementation of the notary's professional responsibility. This is reflected in the fact that civil responsibility is attached to the notary.

Criminal Responsibility

The legality of a deed is the validity and legality of a deed made by a notary. A deed made by a notary must meet the requirements stipulated in the law in order to be recognized as a valid and valid deed. The deed must be made by a notary who has the authority and expertise to make deeds in accordance with applicable provisions. This authority and expertise can be obtained through education and training attended by the notary and certification provided by the government, the deed must be made in accordance with the procedures stipulated in the law.

This procedure includes the procedure for making a deed, the content and form of the deed, and the signatures that must be given by the notary and the parties involved in the deed. The deed must contain correct information and not contain fraud. A deed that does not contain correct information or contains fraud can cause legal problems and cannot be recognized as a valid deed.

Criminal Sanctions, Notaries who are proven to have intentionally committed, ordered to be committed, participated in committing and/or assisted in committing, namely the act of making and do forgery of letters, using or ordering others to use fake letters, ordering false information to be included in authentic deeds, and accepting gifts or promises to motivate someone to do or not do something related to their position, will be subject to criminal sanctions if proven guilty.

Notaries who commit criminal acts can be dismissed by the Minister. with the reason why a notary has been proven guilty and is subject to a prison sentence, as regulated in the 2003 Ministerial Decree on Notaries, Article 21 paragraph (2) sub b, namely "a notary has been proven guilty of committing a criminal act directly related to his position or another criminal act with a prison sentence of 5 (five) years."

Administrative Responsibilities

That in addition to Civil and Criminal Liability there is also Administrative Liability, the law enforcement instruments in the Notary Law, include preventive

measures (supervision) and repressive measures (imposition of sanctions). Preventive measures are carried out through periodic examination of notary protocols and the possibility of violations of the code of ethics in the implementation of the notary's position. While repressive measures are carried out through the imposition of sanctions by:

1. Regional Supervisory Board,
2. Central Supervisory Board; and
3. Minister,

in the form of dishonorable dismissal and dishonorable dismissal. In addition, the existing administrative sanctions, namely verbal warnings, written warnings, temporary dismissal, honorable dismissal, dishonorable dismissal, it is not explained whether the application is carried out sequentially or not. Meanwhile, regarding notaries who violate the code of ethics, they can be subject to sanctions regulated in the Notary Code of Ethics. Sanctions according to the notary code of ethics in Article 1 number (12) namely, "sanctions are a punishment intended as a means, effort and tool to force obedience and discipline of members of the association or other people who hold and carry out the position of notary in enforcing the code of ethics and organizational discipline." Sanctions that can be imposed on notaries who commit violations are regulated in Article 6 of the Notary Code of Ethics, namely:

- 1) Reprimand;
- 2) Warning;
- 3) Schorsing (temporary dismissal) from association membership;
- 4) Onzetting (dismissal) from membership of the association

This is the same as the administrative responsibilities of a Notary as regulated in UUJN, namely in the form of verbal warnings, written warnings, dismissal temporary, honorable discharge, dishonorable discharge.

II. POSITION OF THE DEED

Notaries provide legal protection to the public regarding the ratification (legalization) of every act or transaction carried out by the public.⁶In making an authentic deed, a notary is obliged to include the wishes of the parties and not violate existing norms in society or legal norms, and the deed must be clearly understood by both parties.

The notary is required to read the contents of the deed so that the parties are clear about the contents of the deed and all information related to the deed is

⁶Darusman, YM (2017). The position of a notary as an official who makes authentic deeds and as Land Titles Registrar. FAIR: Journal of Law, 7(1), 36-56. p.40

also known to the parties. So that the decision to agree or disagree with the contents of the authentic deed is determined by the parties who will later sign it. In its implementation, the obligations and duties of the notary have been determined by the applicable regulations. The implementation of the notary's obligations in making authentic deeds in his position is determined in article 16 of the UUJN. The reading of the deed made by the notary is one form of the notary's obligations, the reading of the deed must be done in front of the parties and has been attended by at least 2 witnesses. In making a private will deed, the witnesses required are 4 witnesses and the signing is done at that time by the parties, witnesses and the Notary. The position of a Notarial deed that is not read and is not the will of the parties not to be read, and is not as excluded by the UUJN as explained above, then the deed that has been made by the Notary as a Public Official, can be degraded to a deed under hand, meaning that the deed experiences a decline, or a decrease in quality, the position of the deed becomes lower in strength as evidence, which previously was a complete and perfect authentic deed that did not need to be proven, as a result of the degraded deed becomes the beginning of proof or imperfect evidence.

III. SANCTIONS

The sanctions received by a notary who does not read out the deed he has made are determined in Article 16 paragraph (9) of the UUJN-Amendment, which results in the notarial deed not having legal force as an authentic deed and is only limited to a deed under hand. In the previous regulations, the violations committed.

Sanctions against Notaries who do not carry out the obligation to read the deed are that the Notary is subject to civil sanctions, namely that there are parties who feel disadvantaged because the deed is degraded, the parties demand reimbursement of costs, compensation, and interest from the Notary. Criminal sanctions, namely that the Notary can be subject to articles regarding the crime of forgery in connection with his authority to make a deed, if the deed he makes does not correspond to the information on the actual circumstances of the person appearing. And administrative sanctions, namely sanctions imposed on the position of Notary, in the form of: written warnings, temporary dismissal, honorable dismissal, or dishonorable dismissal.

4. Conclusion

The notary is responsible for the deed he/she has made. In the making of a deed by a notary, the reading of the deed is an obligation in every making of an authentic deed as part of the *verlijden* or formalization of the deed (reading and signing). The deed made by a notary must be read by the notary concerned and not by the notary's employee or assistant, or by anyone else. Because the deed is

the notary's responsibility, so when there is a misunderstanding regarding the intent and content of the deed by the parties and results in a breach of contract on the deed, the notary is considered responsible and can be blamed. Therefore, if the parties do not agree to have their deed read by the notary, the notary still has the right to read the head and closing parts of the deed which are his responsibility and explain to the parties that they have understood and are responsible for the deed they have read.

5. References

Civil Code

Constitution of Indonesia 1945

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Law Number 2 of 2014 amendments to Law Number 30 of 2004 concerning Notary Positions