

Reflecting Backrechtsvacuum in the Legal Politics of Protection of Notary Employees as Witnesses When an Action Occurs Forgery of Notary Deeds Carried Out by Notaries

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Abstract. *The importance of the position of Notary employees as witnesses has not been balanced with regulations regarding the protection of Notary employees who become witnesses when a Notary deed is problematic due to the error of the Notary or the parties requesting the making of the Notary deed. The type of research in this writing is empirical research. Based on the existing study, it can be understood that the Law of the Republic of Indonesia Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary does not regulate the rights of Notary employees as witnesses in cases arising from defects in the deed caused by the negligence of the Notary or the parties who made the deed of agreement before the Notary. Law of the Republic of Indonesia Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary also does not regulate the legal protection mechanism for Notary employees as witnesses in cases arising from deed defects caused by the negligence of the Notary or the parties who made the deed of agreement before the Notary. done.*

Keywords: *Employee; Notary; Protection; Witness.*

1. Introduction

Notary Deed Witnesses are witnesses who participate in the making of the deed or are called instrumental witnesses (*Instrumentaire Getuigen*). Instrumental witness (*Instrumentaire Getuigen*) is a witness who is familiar with all aspects of the formalities of making a deed, carried out in the office/before the parties who appear before the Notary, and participates in the making of the deed (instrument). The witnesses to the deed affix their signatures, usually the witnesses to the instrument are witnesses from the notary's own staff. The witnesses to the deed are required to sign the deed.¹ Providing testimony regarding the truth that has been carried out and the fulfillment of the required formalities as stated in the Notary Law in the deed. Considering the importance of witnesses in a deed, the government

has regulated it by the issuance of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary, which has been in effect since January 15, 2014. According to Article 40 of the UUDN, the provisions for witnesses in notarial deeds are as follows:

(1) Every Deed read by a Notary must be attended by at least 2 (two) witnesses, unless statutory regulations stipulate otherwise.

(2) Witnesses as referred to in paragraph (1) must fulfill the following requirements:

- a. at least 18 (eighteen) years old or previously married;
- b. competent to carry out legal actions;
- c. understand the language used in the Deed;
- d. can affix signature and initials; and
- e. not having a marital relationship or blood relationship in a straight line upwards or downwards without limitation of degree and lateral line up to the third degree with the Notary or the parties.

(3) The witnesses as referred to in paragraph (1) must be known to the Notary or introduced to the Notary or their identity and authority must be explained to the Notary by the person appearing.

(4) The introduction or statement regarding the identity and authority of the witness is stated expressly in the Deed.

Notary employees as witnesses in the making, reading, and officialization of deeds must receive legal protection and must Notary employees as witnesses in the making, reading, and officialization of deeds must receive legal protection and must be guaranteed their safety in the event of a case or lawsuit in court against a deed in which the employee is a witness. Protection for notary employees is protection guaranteed by statutory regulations. Considering that the making of a notarial deed is a legal act in the notarial field, protection for notaries and employees who are witnesses in the making and officialization of the deed must receive protection from statutory regulations in the notarial field, in this case the Notary Law. However, the Notary Law, which has explained the requirements for being a witness in the officialization of a notarial deed, does not provide legal protection for witnesses, in this case notary employees. Whereas, as has been described, the role of witnesses in the making and The reading of notarial deeds is very important, and has acted in legal acts, so it should receive legal protection.

In the Notary Law, legal protection is only given to Notaries with the right of recusal which can be seen implicitly in Article 16 in conjunction with Article 4 paragraph (2) in conjunction with Article 54 of the Notary Law, while for notary employees who become witnesses in the making of deeds there are no regulations. With these conditions, notary employees who become witnesses in the making and officialization of deeds do not receive legal protection in the Notary Law, even though the legal actions carried out are

included in the notary field. With the absence of protection regulations for notary employees who become witnesses in the Notary Law, the author is interested in discussing it. This is because legal actions carried out in the notary field, in this case notary employees as witnesses in the making of deeds, apparently do not receive protection in the Notary Law. Legal protection for notary employees who act as witnesses has only been found by the author in provisions outside the notary office regulations, namely Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Notary Office, namely in Law of the Republic of Indonesia Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning the Protection of Witnesses and Victims. Although the Law on the Protection of Witnesses and Victims does not specifically regulate witnesses in the officialization of a notarial deed. However, considering that the legal actions carried out by notary employees have entered the notarial realm, they should receive legal protection from the Notary Office Law, which until now has not been accommodated and has not been regulated outside the Notary Office Law.

The absence of regulations regarding legal protection for notary employees can clearly result in the vulnerability of notary employees to being sued in cases involving notaries. This is evident in the case of alleged forged deeds during general meetings.

extraordinary shareholders (EGMS) of the housing developer company, PT Mutiara Arteri Property. The plaintiff's attorney, Michael Deo, said that the notary with the initials YS is suspected of falsifying his client's attendance at the EGMS. As a result of the falsification, Michael Setiawan suffered losses because he was also responsible for the problem because he was sued in the housing company's civil case due to his name being used. The case resulted in two Notary witnesses in the preparation of the deed, namely BK and YM, also being reported to the police. In this case, the two suspects who were Notary witnesses from the reported Notary's employees admitted that they were only carrying out the duties of the Notary where the two Notaries worked. In contrast to the plaintiff's attorney, according to the plaintiff's attorney, the two Notary employees were involved in the reported Notary's evil plan with the parties who used his client's name, resulting in his client suffering losses.

2. Research Methods

The type of research in this paper is empirical research. Empirical legal research (*empirical law research*) also called sociological legal research, is legal research that examines law conceptualized as actual behavior, as an unwritten social phenomenon, experienced by everyone in social relationships. Sociological legal research.

3. Results and Discussion

3.1. Legal Protection for Notary Employees as Witnesses in the Making of a Deed According to Law of the Republic of Indonesia Number 2 of 2014 Concerning Amendments to Law Number 30 of 2004 Concerning the Position of Notary

The position of a Notary Public employee as a witness in the making of a Notarial deed is regulated in Article 40 of the Republic of Indonesia Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary Public:

- (1) Every Deed read by a Notary must be attended by at least 2 (two) witnesses, unless statutory regulations stipulate otherwise.
- (2) Witnesses as referred to in paragraph (1) must fulfill the following requirements:
 - a. at least 18 (eighteen) years old or previously married;
 - b. competent to carry out legal actions;
 - c. understand the language used in the Deed;
 - d. can affix signature and initials; and
 - e. not having a marital relationship or blood relationship in a straight line upwards or downwards without limitation of degree and lateral line up to the third degree with the Notary or the parties.
- (3) The witnesses as referred to in paragraph (1) must be known to the Notary or introduced to the Notary or their identity and authority must be explained to the Notary by the person appearing.
- (4) The introduction or statement regarding the identity and authority of the witness is stated expressly in the Deed.

The provisions in Article 40 of the Republic of Indonesia Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary do not expressly mention Notary employees as witnesses in the making of Notary deeds, however, the appointment of Notary employees as witnesses in the making of Notary deeds can be examined and seen in the provisions of Article 40 paragraph (2) letter c and paragraph (3) of the Republic of Indonesia Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary. Article 40 paragraph (2) letter c of the Republic of Indonesia Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary states that "understand the language used in the Deed", parties other than Notaries who have the ability to understand the language used in the deed other than legal academics or legal experts are Notary employees who, because of their work as Notary employees or assistants to carry out Notary duties in terms of making Notary deeds, can only be owned by Notary employees so that Notary employees can be trusted as parties who have the ability to understand Notary deeds. Then Article 40 Article (3) of the Republic of Indonesia Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004

concerning the Position of Notary states that "The witnesses as referred to in paragraph (1) must be known to the Notary or introduced to the Notary or have their identity and authority explained to the Notary by the person appearing.". It is known in this case that notaries not only have a close relationship and emotional relationship with their employees, but also know from the aspect of ability in understanding the notarial deeds that they teach to their employees and know that their employees fulfill the requirements as witnesses as intended in Article 40 paragraph (2) of the Republic of Indonesia Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notaries. The position of notary employees as witnesses is very important, this is because the position of witnesses in making notarial deeds can determine the validity of a deed, meaning that without a notary employee as a witness, the deed will be considered formally flawed or violate Article 40 paragraph (1) of the Republic of Indonesia Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notaries, this is emphasized in Article 41 of the Republic of Indonesia Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notaries which states that "Violation of the provisions as referred to in Article 38, Article 39, and Article 40 results in the Deed only having the power of proof as a private deed". However, in the Republic of Indonesia Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary Public does not regulate the legal protection for Notary employees as witnesses in the making of Notary deeds when the Notary deed made later turns out to be problematic and detrimental to one or all parties who made the Notary deed due to the existence of material defects in the contents of the Notary deed made, even though the Notary employee does not materially really know that there is a deviation either caused by the Notary's error or the parties appearing before the notary. This could clearly result in the criminalization of notarial employees who merely testify regarding the formal content of a notarial deed without truly understanding the substance of the intent of the parties making the deed of agreement before the notary.

3.2. Obstacles in Legal Protection for Notary Employees as Witnesses in the Preparation of a Deed

The discussion related to the obstacles in implementing legal protection for Notary employees who are witnesses in making Notarial deeds using Friedman's legal system theory, where the weaknesses related to the implementation of legal protection for Notary employees who are witnesses in making Notarial deeds see that the implementation of legal protection for Notary employees who are witnesses in making Notarial deeds is due to the existence of legal substance obstacles (legal regulatory obstacles), legal structure obstacles (legal implementation mechanism obstacles), and legal culture obstacles (legal culture obstacles in society).

a. Legal Substantive Constraints (Legal Regulatory Constraints)

The legal substance constraint (legal regulation constraint) is the constraint in the form of the absence of legal regulations governing legal protection for Notary employees who are witnesses in the making of Notary deeds. It has been explained that the provisions in Article 40 of the Republic of Indonesia Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notaries do not expressly mention Notary employees as witnesses in the making of Notary deeds, however, the appointment of Notary employees as witnesses in the making of Notary deeds can be examined and seen in the provisions of Article 40 paragraph (2) letter c and paragraph (3) of the Republic of Indonesia Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notaries. Article 40 paragraph (2) letter c of the Republic of Indonesia Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notaries states that "understand the language used in the Deed", parties other than Notaries who have the ability to understand the language used in the deed other than legal academics or legal experts are Notary employees who because of their work as Notary employees or assistants to carry out Notary duties in terms of making Notary deeds can only be owned by Notary employees so that Notary employees can be trusted as parties who have the ability to understand Notary deeds. Then Article 40 paragraph (3) of the Republic of Indonesia Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary states that "witnesses as referred to in paragraph (1) must be known by the Notary or introduced to the Notary or have their identity and authority explained to the Notary by the person appearing." It is known in this case that notaries not only have a close relationship and emotional relationship with their employees, but also know them from the aspect of their ability to understand notarial deeds that they teach their employees and know that their employees fulfill the requirements as witnesses as intended in Article 40 paragraph (2) of the Republic of Indonesia Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary. The position of a Notary employee as a witness is very important, this is because the position of a witness in making a Notary deed can determine the validity of a deed, meaning that without a Notary employee as a witness, the deed will be considered formally flawed or in violation of Article 40 paragraph (1) of the Republic of Indonesia Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary, this is emphasized in Article 41 of the Republic of Indonesia Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary which states that "violations of the provisions as referred to in Article 38, Article 39, and Article 40 result in the Deed only having the power

of proof as a private deed". However, in the Law of the Republic of Indonesia Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary Public does not regulate the legal protection for Notary employees as witnesses in the making of Notary deeds when the Notary deed made later turns out to be problematic and detrimental to one or all parties who made the Notary deed due to the problem of material defects in the Notary deed made, even though the Notary employee does not materially really know that there is a deviation either caused by the Notary's mistake or the parties who appeared before the Notary. This matter can clearly result in the criminalization of Notary employees who actually only provide testimony related to the formal content of making a Notary deed without really understanding the material content of the intention of the parties who made a deed of agreement before the Notary.

b. Legal Structure Constraints (Law Implementation Mechanism Constraints)

The next obstacle is the legal structure obstacle (obstacle to the legal implementation mechanism). Due to the absence of legal protection regulations for Notary employees who are witnesses in the making of Notary deeds, there is no regulation and no mechanism for the protection procedures for Notary employees as witnesses in the making of Notary deeds, in addition there is no determination of the rights that need to be given to Notary employees who are witnesses in the making of Notary deeds when they are caught in a legal case caused by defects in Notary deeds whose testimony is given without understanding the problem of the material content that violates the law in Notary deeds due to errors by Notaries and the parties, then there is no mandate and coercion from the state towards the government and notary organizations to really seriously protect Notary employees as witnesses in the making of problematic Notary deeds.

This is shown by data on public complaints regarding losses due to defects in Notarial deeds made. Where the complaints also implicate Notary employees as witnesses in the making of deeds which are also stated to be problematic as explained above.

c. Legal Culture Constraints (Societal Legal Culture Constraints)

The next obstacle is the legal culture obstacle (the obstacle of the legal culture of society). The legal vacuum regarding the protection of Notary employees as witnesses in the making of Notary deeds, makes Notary employees as witnesses in the making of problematic Notary deeds do not have legal clarity as witnesses who must be protected and cannot be charged with legal responsibility when the deed to which they testify contains material defects due to the negligence of the Notary or the parties, the uncertainty of the right to be protected from prosecution that exceeds their capacity as witnesses, making Notary employees who are witnesses in

the making of Notary deeds vulnerable to legal prosecution outside their responsibilities as witnesses. This can be seen from the statement from Dhody AR Widjajaatmadja as Head of the Research Division of the Indonesian Notary Association, Regional Secretariat of West Java City, then also explained that:

The absence of protection regulations for Notary employees as witnesses in the making of a problematic Notary deed, often results in the parties choosing legal remedies that disregard the position of Notary employees as witnesses, both as witnesses who have the right to legal protection as witnesses and as Notary employees who are bound by the UUJN legal mechanism when they commit a violation of the law as witnesses in the making of an existing Notary deed.

The various existing obstacles have clearly injured the legal protection for notary employees who are witnesses in the making of notarial deeds when problems arise due to defects in the deed's material. Notarization due to negligence of the Notary or the parties who made the deed of agreement before the Notary.

3.3. Solutions to Problems in Legal Protection for Notary Employees as Witnesses in the Preparation of a Deed

Based on the previous explanation, it is clear that Islam mandates the protection of witnesses, this is because of the important position of witnesses in solving justice in a legal case, witnesses are needed to protect the fate of an innocent person through their statements which are based on wisdom and justice as well as their skills and expertise as well as their knowledge of a legal problem. This Islamic mandate is then translated by Article 5 of the Republic of Indonesia Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims regarding the rights of witnesses which consist of obtaining protection for the security of their person, family, and property, and being free from threats related to the testimony that will be, is, or has been given, participating in the process of selecting and determining the form of protection and security support, providing information without pressure, getting an interpreter, being free from ensnaring questions, receiving information regarding case developments, receiving information regarding court decisions, receiving information in the event that the convict is released, having their identity kept secret, receiving a new identity, receiving temporary residence, receiving new residence, receiving reimbursement of transportation costs according to needs, receiving legal advice, receiving temporary living expenses until the Protection period ends; and/or receiving assistance.

Based on the existing explanation, it is also clear that legal protection for

notary employees who serve as witnesses in the preparation of notarial deeds is very important and urgent. According to Philipus M. Hadjon, there are two types of legal protection, namely:

Preventive Legal Protection Facilities

In this preventive legal protection, legal subjects are given the opportunity to raise objections or express opinions before a government decision is finalized. The goal is to prevent disputes. Preventive legal protection is crucial for government actions based on freedom of action, as it encourages the government to exercise caution in making discretionary decisions. Indonesia does not yet have specific regulations regarding preventive legal protection. Handling of legal protection by the General Courts and Administrative Courts in Indonesia falls into this category of legal protection. The principle of legal protection against government actions rests on and stems from the concept of the recognition and protection of human rights because, according to Western history, the birth of concepts on the recognition and protection of human rights was directed at the limitations and placement of obligations of society and government. The second principle underlying legal protection against government actions is the principle of the rule of law.

Linked to the recognition and protection of human rights, the recognition and protection of human rights occupy a primary place and can be linked to the objectives of the rule of law. A possible solution is to include the right for Notary employees to

act as witnesses in a legal matter resulting from defects in Notary deeds caused by the negligence of the Notary or the parties making the agreement before the Notary. This right is divided into two rights, namely: a. The right to preventive legal protection which includes:

- 1) The right not to be sued beyond the scope of his/her responsibilities as a witness, meaning that the Notary's employee as a witness in the issue of a Notary's disability can only be prosecuted when he commits a violation as a witness, which in this case is giving false testimony or making a conspiracy with the Notary to participate in committing a crime or violation of the law by carrying out his role as a witness through falsifying various important materials in the agreement deed made so as to harm the parties or one of the parties who agreed to make the agreement deed to the Notary concerned.

- 2) The right to provide evidence and defend oneself as a Notary employee as a witness in the matter of the disability of a Notary's deed, through the ethical hearing mechanism carried out by INI, considering that the Notary employee as a witness in the making of a Notary's deed is a witness whose competence is known to the Notary and works under the responsibility of the Notary's duties.

b. The right to repressive legal protection which includes the right to

legal protection in the realm of legal processes outside the ethical legal mechanisms organized by INI, namely:

- 1) receive protection for the security of his/her person, family and property, and be free from threats relating to the testimony he/she will, is or has given,
- 2) participate in the process of selecting and determining the form of security protection and support,
- 3) provide information without pressure,
- 4) get a translator,
- 5) free from ensnaring questions,
- 6) get information about case developments,
- 7) receive information regarding court decisions,
- 8) receive information in the event that the convict is released,
- 9) keep his identity secret,
- 10) get a new identity,
- 11) get a temporary residence,
- 12) get a new residence,
- 13) obtain reimbursement for transportation costs according to needs,
- 14) get legal advice,
- 15) receive temporary living expenses assistance until the Protection period ends, and/or
- 16) receive assistance.

The next solution is to regulate the mechanism for the process of implementing legal protection for Notary employees as witnesses in legal matters due to defects in Notarial deeds as a result of negligence by the Notary and the parties who made the deed before the Notary.

4. Conclusion

Law of the Republic of Indonesia Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notaries does not regulate the rights of Notary employees as witnesses in cases arising from defects in deeds caused by the negligence of the Notary or the parties who made the deed of agreement before the Notary. Law of the Republic of Indonesia Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary also does not regulate the legal protection mechanism for Notary employees as witnesses in cases arising from deed defects caused by the negligence of the Notary or the parties who made the deed of agreement before the Notary. done.

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