

The Legal Protection for Notary Employees as Witnesses in Making and Inaugurating Deeds

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Abstract. *This research aims to find out and analyze the position of notary witnesses in making deeds and how legal protection is for notary employees as witnesses in making and formalizing deeds. This research uses normative juridical research methods. The results of the research conclude that the position of instrumental witness plays a role in witnessing 2 (two) important stages in making a deed, namely the process of reading and signing (validating or formalizing) the deed and legal protection for notary employees as witnesses in making and formalizing the deed. Legal protection is found in the Law. Law of the Republic of Indonesia Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims.*

Keywords: *Employees; Instrumental; Protection; Witnesses.*

1. Introduction

Notaries are one of the pillars of national law enforcement, in carrying out their profession in addition to having to comply with the law. Based on Article 1 number 1 of Law No. 2 of 2014 concerning Amendments to Law No. 30 of 2004 concerning the Position of Notaries, hereinafter referred to as UUJN, it is stated that a notary is a public official who has the authority to make authentic deeds, regarding all the duties and powers of a notary which is determined by statutory regulations and/or which is desired by the interested party to be stated in an authentic deed. The aim is that the deed can be used as strong evidence if one day there is a dispute between the parties or there is a lawsuit from another

party. If this happens, it does not rule out the possibility that the notary will become involved in the p.

A Notary employee must not only be able to assist the Notary's performance in carrying out his/her position optimally, but must also be able to act as a witness in making a deed which is required by law for the validity of a deed. The role of Notary employees as witnesses in making the deed is justified as long as it meets the requirements stipulated in the Notary Position Law. In its development, the notary's obligations in preparing and formalizing deeds were not carried out by the notary himself, but were assisted by notary employees. The notary's obligations are regulated in the Law that the deed must be prepared, read and signed in the presence of at least 2 (two) witnesses. The notary's witnesses prioritize the employee himself,

As a witness in a notarial deed case, you must also receive legal protection and your safety must be guaranteed in the event of a case or lawsuit in court regarding a deed where the employee is a witness. Although the actions of Notary employees as instrumental witnesses in the officiating of notarial deeds are included in the field of notarial ps, the Law on the Position of Notaries does not provide legal protection for witnesses in the officiating of deeds, especially notary employees.

In the absence of regulations in the Notary Position Law regarding protection for Notary employees who act as instrumental witnesses in making and formalizing deeds, legal protection for Notary employees who act as witnesses can only be found in provisions outside the Notary position regulations, namely the Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims.

Based on the description above, What is the position of notary witnesses in making, what is the legal protection for notary employees as witnesses in making and formalizing deeds, it is necessary to study legal protection for notary employees as witnesses in making and formalizing deeds.

2. Research Methods

In this research the author uses legal research viewed from the perspective of the research objectives, namely: normative juridical, which is descriptive or illustrative. The type of data used is secondary data, so to obtain data is by literature study. The data analysis technique used is a qualitative method.

3. Results and Discussion

3.1. What is the Position of a Notary Witness in Making a Deed?

The position of a deed witness (instrumental witness) is different from that of witnesses in general. Witnesses are generally witnesses who hear or see for themselves an event that occurs, for example, if a sale and purchase occurs and the purchase money is handed over from the buyer to the seller, then the witness physically sees the event for himself. However, in deed witnesses, if the buyers have handed over the purchase money to the seller through an inter-bank transfer, which is only proven by proof of transfer, then the sale and purchase deed is before a notary, the witness's knowledge in the two legal events regarding the handing over of the purchase money is different. So witnesses other than the deed witness really know the legal events that occurred in the transaction, while the deed witness does not know anything about the physical delivery of the money.¹

Instrumental witnesses are required by law to be present at the notarial deed. The task of the instrumental witness is to sign, provide testimony regarding the correctness of the contents of the deed and the fulfillment of the formalities required by law. Usually, the instrumenter witnesses are the Notary's employees themselves.

An identifying witness is a witness who introduces the person to the Notary. The identifying witnesses consist of two people who are at least 18 years old or married and competent to carry out legal actions. For an unknown presenter, one attesterend witness is required, whereas if there are more than 2 (two) presenters, then they can introduce each other to the Notary.

Witnesses in a notarial deed (not a testamentary deed) cannot control whether the contents of a deed are in accordance with the wishes of the witnesses. Thus, the presence of witnesses in a notarial deed (not a testamentary deed) is only required by law to witness it and by signing them, they declare in writing that the notary has fulfilled the statutory requirements for an authentic deed.²

Witness position *instrumenteras* one of the formal requirements for a Notarial deed, it is stated in Article 38 paragraph (4) letter C of Law of the Republic of Indonesia Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary, that at the end or closing of the deed must contain the following paragraphs. witness. When these formal requirements are not met, the deed is relegated to having the power of proof as a private deed.³ As mandated by Article 1868 of the Civil Code and Article 40 paragraph (1) of the

¹Habib Adjie, Rusdianto Sesung, 2020, Tafsit, Explanation and Comments on the Notary Position Law, PT. Refika Adhitama, Bandung, p. 417.

²Tan Thong Kie, Notarial Studies & Miscellaneous Notary Practice, PT. Van Hoeve's New Ichtiar, Jakarta, p. 648.

³Op, Cit, p. 416.

Law of the Republic of Indonesia Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of a Notary, a Notarial deed is referred to as a Notarial deed which complete if all formal requirements are met, so that the Notarial deed has perfect evidentiary power, and the position of the deed witness is one of the formal requirements in a Notarial deed that can be legally accounted for.⁴

In relation to the Notary's obligation to keep the contents of the deed confidential as regulated in the provisions of Article 16 paragraph (1) letter I of 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 an instrumental witness is a legal requirement. a deed called an authentic deed is not a violation. The position of the instrumenter witness is an integral part of a Notary's deed, the instrumenter witness who comes from the Notary's employees in practice in the field is not always the employee who types the parties' deed. It is not uncommon for employees who witness the signing and reading of the deed to know only when the incident took place. So that Notary employees in their position as instrumental witnesses are not obliged to remember the contents of the deed in their memory. As long as the instrumental witness does not commit unlawful acts in his duties as a Notary employee to type the parties' deeds, then his presence in a Notarial deed does not conflict with the provisions of the Notary's obligation to keep the contents of the deed confidential.

As explained previously, the content of the Notary's deed remains the responsibility of the Notary if it is disputed at the trial of a case related to the Notarial deed, because the Notary communicates directly to the person appearing, so that the Notary's employees cannot be held responsible if they are used as witnesses at the trial of the case. relating to the contents of the Notarial deed, because the responsibility of the notary employee is only limited to preparing the deed for which he is responsible to the Notary.

3.2. What is the legal protection for notary employees as witnesses in making and formalizing deeds

The witnesses listed in the Notarial deed are instrumental witnesses or deed witnesses, namely witnesses who were present at the time the deed was drawn up, put their signature, gave testimony regarding the correctness of its implementation and the fulfillment of the formalities required by law, which are mentioned in the deed. and which was witnessed by those witnesses. In other words, the instrumental witness or witness to the deed is the one who witnesses

⁴Ibid, p. 417.

whether the deed was inaugurated, namely whether it was drawn up, read and signed, whether it was executed correctly by the Notary.⁵

In practice, many Notaries use their employees as instrument witnesses or deed witnesses, if they fulfill what is determined by law, in this case regulated in Article 40 paragraph (2) of Law of the Republic of Indonesia Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary. In making a notarial deed, the presence of witnesses is absolute. If a notarial deed does not involve witnesses then the deed is not an authentic deed but rather a deed that has the force of a private deed. When inaugurating the deed, the notary must read the deed in front of the presenters and witnesses, to then be signed by the parties and witnesses.⁶

This does not mean that instrumental witnesses or deed witnesses do not understand the contents of a deed at all. Instrumental witnesses or deed witnesses who are also notary employees clearly know the formalities involved in making the deed. Notary employees, both witnesses as instrumental witnesses or deed witnesses, play a role starting from collecting supporting data for the deed, paying all costs related to making the deed, even to typing, witnessing the reading and signing of the deed, the instrumenter witnesses or witnesses This deed really understands everything contained in the deed. However, this does not cause the witnesses to become responsible for everything that will happen to a deed.⁷

Judging from the meaning of their nature and position as witnesses, instrumental witnesses or witnesses to the deed also listen to the reading of the deed, and also witness the actions and facts that are confirmed and the signing of the deed. Instrumental witnesses or aka witnesses do not need to understand what is read and they also have no obligation to store the contents of the aka in their memory. However, instrumental witnesses or deed witnesses are obliged to know what constitutes a legal act in it. Because if there is a dispute regarding the deed, the investigator can ask for information regarding the legal actions in the deed, or ps relating to the reading of the deed before a Notary, whether or not the parties were present at the reading or information regarding the identities of the parties when given to the Notary .⁸

⁵I Komang Sujanayasa, Ibrahim R, I Gusti Ketut Iriawan, 2016, "The Position of Instrumental Witnesses for Notarial Deeds in Relation to Article 16 paragraph (1) of Law Number 30 of 2004 concerning the Position of Notaries", Scientific Journal of the Master of Notary Study Program, p. 288, accessed on June 23 2023, at 23.33 WIB.

⁶Ibid, p. 289.

⁷Ibid, p. 288.

⁸Liza Dwi Nanda, "Legal Protection for Saki Instrumenter Balam Notarial Deeds Whose Deeds Are the Object of Criminal Cases in Court", Premise Law Journal, p. 11.

Written or letter evidence is the most important form of evidence in the realm of civil law. This is different from evidence in criminal cases, where the main evidence is witness testimony. This is because someone who commits a criminal act always tries to get rid of or destroy evidence in the form of writings and anything that could enable the discovery of the criminal act in question, so that evidence must be sought from the statements of people who saw, heard or experienced the criminal act. In practice, the opposite is true. civil, for example there are legal actions of the parties within the framework of their contractual relationship, the parties concerned generally deliberately make a writing for the purposes of proof at a later date. The main and determining evidence in civil cases is written evidence, If there is no written evidence, then the party who is obliged to prove something tries to find people who saw, heard or experienced the event. These people may also have been intentionally asked to witness the incident at the time of the incident as intended, and there are also people who happened to see, hear and experience the event themselves.⁹

Instrumental witnesses or deed witnesses are not regulated in the Civil Procedure Code, instrumental witnesses or deed witnesses are only known in the realm of Indonesian notarial law, so their existence is regulated in Law of the Republic of Indonesia Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary. This law basically does not regulate who is meant as an instrumental witness or witness to the deed.¹⁰

When a dispute occurs involving a deed made by a Notary, the Notary who made the deed is often summoned as a witness in police, prosecutor's or trial investigations, and by law summons the Notary as a witness as confirmed in Article 66 paragraph (1) of the Law. Law of the Republic of Indonesia Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary that the summons of a notary to attend an examination relating to a Notary's deed or protocol which is in storage for the purposes of the judicial process, investigator, public prosecutor or judge must with the approval of the Notary Honorary Council. With the right to refuse,¹¹

When a Notary is summoned by an investigator, the Honorary Council of Notaries is not permitted to comply with the investigator's summons, which

[https://media.neliti.com/media/publications/164933-ID-none .pdf](https://media.neliti.com/media/publications/164933-ID-none.pdf). accessed on July 8 2023, at 10.56 WIB.

⁹Facts Andony, Anita Afriana, Indra Prayitno, 2020, "The Position of Notary Employees as Witnesses in Authentic Deeds in Investigation and Judicial Processes Reviewed by the Notary Position Law", Adhaper Civil Procedure Law Journal, No. 2, Vol. 6 p. 92 , <https://jhaper.org/index.php/JHAPER/article/view/133/114>, accessed on July 7 2023, at 11.00 WIB.

¹⁰Ibid, p. 93.

¹¹Ibid, p. 95.

means that the Notary's deed is legally correct. Because the Notary has perfect evidentiary power, namely because he has fulfilled the requirements for external proof, formal proof and material proof.

The reality is that if the Notary is released as a witness, the police or prosecutor will try to find a way to obtain material truth and what the police or prosecutor will do is summon the instrumental witness or witness to the deed whose identity is expressly stated at the end of the deed.¹²

Legal action in the form of a summons is a series of investigative processes to obtain information at both the investigation, prosecution and judicial levels.¹³

The Civil Procedure Code regulates that there are three types of exceptions that free a person from their obligation to be a witness, namely: people who can resign, people who can ask to be released and people who are prohibited from being witnesses but whose statements can be heard before the trial without being sworn in. If you look at these three exceptions, Notary employees as instrumental witnesses or deed witnesses are not included in any group, so it is still mandatory for them to attend the trial and be a witness. If a Notary employee who acts as a witness refuses to be a witness, then he can be punished under articles 224 and 522 of the Criminal Code, namely a maximum fine of nine hundred rupiah and a maximum imprisonment of nine months.¹⁴

In contrast to a notary who has the right to refuse, on the other hand, notary employees do not have the right to refuse that a notary has. A Notary employee does not receive legal protection in the form of the right to refuse or go through an institution that gives him permission first before he appears at trial and gives testimony. When a Notary employee is summoned to give testimony in a criminal case before a trial, he cannot refuse because it is a legal obligation for him in accordance with Article 159 paragraph (2) of the Criminal Procedure Code. Apart from that, there is no legal protection for him because he does not have to get permission from anyone to be a witness.¹⁵

Instrumental witnesses or deed witnesses as one of the conditions for the authenticity of a deed, there are no regulations governing legal protection for deed witnesses or instrumental witnesses in Law of the Republic of Indonesia Number 2 of 2014 concerning Amendments to Law Number 30 of 2004

¹²Ibid, p. 87.

¹³Ibid

¹⁴Alifah Sarah Yunita, Herwinda Rena Damayanti and Nindya Putri P., 2020, "The Position of Notary Employees as Witnesses in Cases Involving Notaries in Trials", *Notaire*, No. 1. Vol. 3, p. 18, <https://e-journal.unair.ac.id/NTR/article/view/17492/pdf>. accessed on 7 July 2023, at 11.18 WIB

¹⁵Ibid

concerning the Position of Notary Even though the actions of Notary employees as instrumental witnesses in the inauguration of Notarial Deeds are included in the field of notarial ps, they are not protected by the Notary Honorary Council, it is not impossible for the parties involved in a case related to the deed made by the Notary, to know that the instrumental witnesses or witnesses the deed knows the ins and outs of the deed from the beginning to the end of the deed. This will cause parties who want to know the situation of the case to pressure instrumental witnesses or deed witnesses to provide testimony before the court.¹⁶

Notary employees as instrumental witnesses or deed witnesses in providing information regarding disputed deeds receive protection in Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims through the Witness and Victim Protection Agency (LPSK) where This institution has the duty and authority to provide protection and rights to witnesses and victims.¹⁷

Instrumental witnesses or deed witnesses receive protection from Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims. This provides protection for witnesses and victims to the Witness and Victim Protection Agency (LPSK). As stated in Article 1 number 5 of Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Witness and Victim Protection, what is meant by the Witness and Victim Protection Agency (LPSK) is an institution tasked and authorized to provide protection. and other rights of witnesses and victims as regulated in this Law.¹⁸

Before witnesses and victims receive legal protection from the Witness and Victim Protection Agency (LPSK), they must go through several procedures that have been stipulated in Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims. receive protection from the Witness and Victim Protection Agency (LPSK) as stated in Article 28 paragraph (1) of Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims.¹⁹

¹⁶Ibid, p. 288.

¹⁷Alifah Sarah Yunita, Herwinda Rena Damayanti and Nindya Putri P., 2020, "The Position of Notary Employees as Witnesses in Cases Involving Notaries in Trials", Notaire, No. 1. Vol. 3, p. 21, <https://e-journal.unair.ac.id/NTR/article/view/17492/pdf>. accessed on 7 July 2023, at 11.18 WIB

¹⁸Article 1 number 5 of Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims.

¹⁹Saristha Natalia Tuage, 2013, "Legal Protection of Witnesses and Victims by the Witness and Victim Protection Agency (LPSK)". Lex Crimen, No.2, Vol.II,

Several requirements that have been determined by the Witness and Victim Protection Agency (LPSK) to provide witness and victim protection are listed in Article 28 paragraph (1) of Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims.²⁰

Fulfillment of witness rights is important. In fact, fulfilling these rights effectively, efficiently, without being complicated, not procedurally and objectively is the dream of all, not just witnesses and/or victims. A professional Witness and Victim Protection Agency is needed, with integrity and full responsibility in carrying out its duties and obligations.²¹

In practice, instrumental witnesses or deed witnesses are summoned by investigators as witnesses if there are or arise problems between the parties based on the deed in question. Notary is a position of trust, this contains meaning, namely those who carry out the duties of the office can be trusted and because the position of Notary is a position of trust, so the position of Notary is a position of trust and the person who carries out the duties of the position can also be trusted, both of which support each other. Therefore, a Notary, in carrying out his official duties, has an obligation to keep confidential anything regarding the deed he makes and all information obtained in order to make the deed in accordance with his oath/promise of office.²²

It is also emphasized in the explanation of Article 16 paragraph (1) letter f of Law of the Republic of Indonesia Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary that the obligation to keep confidential everything related to aka and other documents is to protect the interests of all parties related to the aka. It is the Notary's obligation to maintain the secret of the position, because what happens when a Notary is called a position of trust, it turns out that the secret of the position of trust can be revealed by investigators through the testimony of instrumental witnesses or deed witnesses who are summoned by the investigator.²³

Summoning instrumental witnesses or witnesses to Notarial deeds by investigators. So in fact there has been a disclosure of official secrets through instrumental witnesses or deed witnesses. This is a meaning that investigators do

P.59,<https://ejournal.unsrat.ac.id/index.php/lexcrimen/article/view/1541/1236>, accessed on July 9 2023, at 21.17 WIB.

²⁰Article 28 paragraph (1) Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims

²¹Ibid, p. 46.

²²Habib Adjie, Rusdianto Sesung, 2020, Interpretation, Explanation, and Comments on the Notary Position Law, PT. Refika Aditama, Bandung, p.418.

²³Ibid.

not know or understand, which can destroy the authenticity of a notary's deed.²⁴

Notarial Deeds must not be treated partially before the law, but must be understood holistically (holistic-integral), starting from the beginning of the deed to the end of the deed, in other words the summoning of instrumental witnesses or deed witnesses at the end of the deed is a deviation and misunderstanding and does not need to be done and there has been a disclosure of the secret through the summons and testimony of instrumental witnesses or deed witnesses.²⁵

Based on this, it can be understood that those whose names are in the deed do not want to carry out the contents of the deed or there are parties who are harmed, not by dragging the Notary and the instrumental witnesses or witnesses to the deed to the police or investigators. However, the deed is the basis, because there will be inconsistencies in the evidence, when the Notary and the instrumenter witness or deed witness are still alive, then the Notary and the instrumenter witness or deed witness will be questioned, but if the Notary and the instrumenter witness or deed witness have died, then it is no longer possible to ask for information. Therefore, the focus is on the deed, not questioning the notary and instrumental witnesses or witnesses to the deed.²⁶

There is no longer a need for investigators to take other legal action, by summoning instrumental witnesses or deed witnesses to ask for information, from which the instrumenter witness or deed witness will be confronted with the notary or vice versa. confronted with the testimony of instrumental witnesses or deed witnesses. Whatever method is used, it is no longer in accordance with Law of the Republic of Indonesia Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notaries and Indonesian notarial law.²⁷

4. Conclusion

The position of a notary witness in formally making a deed remains as a witness only. In contrast to the Notary as a public official who ratifies the deed, the instrumental witness plays the role of witnessing 2 (two) important stages in making the deed, namely the process of reading and signing (validating or inaugurating) the deed. Notary employees who act as instrumental witnesses are

²⁴Ibid.

²⁵Ibid.

²⁶Ibid.

²⁷Ibid. p. 420.

not responsible for the contents of the deed.

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