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Juridical Analysis of the Roles and Responsibilities of a Notary Against Deeds that are not read before the Parties

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ABSTRACT
As a public official, a Notary has a role and obligation to ensure that what is in accordance with the wishes of the parties. A notary has the obligation to read the deed to the parties and write a statement of the circumstances of the appearer when he appears before the notary along with the reasons or statement of the deed not being read in the cover of the deed which is a provision contained in the law. If there is a misunderstanding between the parties regarding the preparation of the deed and causes ambiguity over the deed made, then the strength and usefulness of the notary deed needs to be questioned and also regarding the responsibility for the role of the notary who deliberately does not read the deed before the parties. In this study the aim is to examine further the role of the Notary in deed that is not read out before the parties and regarding the validity of the deed that is not read out. The research method used in this study is normative juridical, which is statutory research. It is carried out by examining problems using regulations that are related and relevant to the problem, in this case the rules that have to do with the field of notary law, namely UUJN and the Code of Ethics. Notary Public. The results of the study are that reading the deed is an obligation that must be carried out by a notary and if the notary's deed is not read out it will cause the deed to be null and void and the strength of proof becomes a private deed.

Keywords: Role, Responsibilities, Notary, Deed.

1. INTRODUCTION

A notary is seen legally as a position that carries out state duties, namely in the case of making authentic deeds made by and before a notary which is a state document that must be kept confidential. The main task of a notary is to make authentic deeds to meet the needs of the people who need their services as appearers so that in carrying out legal actions carried out by the community using the notary's services, they can obtain legal certainty in the implementation of the rights and obligations of each party according to the clause contained in the authentic deed of the notary (R. Soesanto, 1982:75).

In Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Changes in the Position of Notary Public (UUJN) article 1 paragraph 1 which states that a Notary as a public official has the authority to make authentic deeds and has other authorities specified in the law -law. Therefore, a Notary is an official authorized to make agreements and stipulations required by laws and regulations in order to provide legal protection and legal certainty to the

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parties. The establishment of an authentic notarial deed is not only based on law, but on the will of the parties so that their rights and obligations are guaranteed. Thus guaranteed legal certainty and legal protection for affected parties and other affected parties.

The deed drawn up by a notary contains or describes authentically an action taken or a situation seen or witnessed by a notary. Authentic deeds produced by a notary can be accounted for and protect the public in carrying out legal actions. The strength of the authentic deed that is produced is perfect proof for the parties (Herry Susanto, 2010).

unless there are appearers who are unable to sign by stating the reasons. The provisions for reading and signing are an integral part of the formalization of the deed.

In practice, the duties and obligations of a Notary are determined in the applicable regulations, namely Article 16 Amendment UUJN stipulates that a notary must fulfill his obligation to make an authentic deed as a notary. The reading of the deed by a notary is one of the duties of a notary, where in practice the reading of the deed must be carried out before an audience and attended by at least 2 witnesses. In making a will under the hand, 4 witnesses and a notary are needed. The sanctions imposed on a Notary who does not read out the deed that has been made are regulated in article 16 paragraph 9 of the Amendment to the UUJN which causes the notarial deed to not have the force of law as an authentic deed.

If the reading of the deed before the parties mentioned above is connected with the making of an authentic deed as a perfect form of proof, it is very clear that conventionally making a notarial deed requires the presence and physical position of the interested parties/appearers. Then reading the deed made before a notary is something that must be done by a notary in carrying out his duties. The notary is obliged to read the contents of the deed in front of the parties, this is a concrete example of the form of legal advocacy carried out by a notary. The reading of this deed is useful for providing an explanation so that the parties understand and there are no multiple interpretations after reading by a notary.

In practice, currently there are many notaries who do not read the deed they made but at the end of the deed it is stated that the deed has been read by a notary. This actually causes problems and causes the deed made by the notary to become a private deed and harms the parties. The notary deliberately lied and indirectly forged the deed he made. In carrying out his duties as a public official who has the authority to make authentic deeds, it is possible for a notary to make mistakes related to the professionalism of his work as stipulated in article 16 paragraph (1) and paragraph (7) UUJN.

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2. RESEARCH METHOD

This research procedure applies a type of normative research to examine problems, and normative research is a study of the application of norms or rules in positive law, so that it is hoped that truth can be realized. "According to Soerjono Soekanto and Sri Mamudji, this research is also called library law research because this research only examines literature. The main subject of the study is law which is conceptualized as a norm or as a rule which then applies in a society which becomes a guide for one's behavior. The approach used to help deepen the writing is the statutory approach and also the concept approach.

The conceptual approach is used to answer this problem by using several theories, as well as concepts, and legal principles that are common and often used in solving similar problems, using a conceptual approach originating from domestic legal experts and foreign legal experts. country. The legal materials used in this article consist of the relevant laws and regulations, namely the UUJN and related books as primary legal materials. And the source of secondary legal material used is scientific articles. The technique of collecting legal material in writing this article uses a document study technique, and uses a descriptive technique to analyze this article.

3. RESULTS AND DISCUSSION

Juridical Analysis of the Roles and Responsibilities of a Notary in Reading the Deed Made Before the Parties

Notaries have certain powers granted by the Law on Notary Positions (hereinafter referred to as UUJN). Each authority given to a position must have legal rules as a limit so that the position can be carried out properly, and does not conflict withother authority positions (Rika Sofiana, 2020). Thus, if a notary public official commits an act outside the specified authority, it can be categorized as an act violating authority.

The authority of a Notary is stated in Article 15 paragraphs (1), (2) and (3) UUJN. Article 2 UUJN stipulates that a Notary is appointed and dismissed by the government, in this case the minister in charge of notary affairs Article 1 point 14 UUJN basically states that a Notary even though administratively appointed and dismissed by the government, does not mean that the Notary is subordinate (subordinate) to the one who appointed him, namely the government. Thus, the Notary in carrying out his position (Ellise T et al., 2010):

1. Is independent (autonomous);
2. Not taking sides with anyone (impartial);
3. Does not depend on anyone (independent), which means that in carrying out the duties of his position cannot be interfered with by the party who appointed him or by other parties;

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4. Does not receive a salary or pension from those who appointed him;
5. Even though the notary is appointed and dismissed by the government, he does not receive a salary or pension from the government. Notaries only receive honorarium from the people they have served or can provide free services for those who can't afford it;
6. Accountability for the work of a notary to the community;
7. A notary as a public official (openbaar ambtenaar) who is authorized to make authentic deeds can be burdened with responsibility for his actions in connection with his work in making these authentic deeds.

Basically a notary is an official who must provide the best possible service to the public who need authentic evidence. In providing services the notary has the obligations regulated in Article 16 of Law Number 2 of 2014 are as follows:

(1) In carrying out his position, Notary must:
   a. acting trustworthy, honest, thorough, independent, impartial, and safeguarding the interests of the parties involved in legal actions;
   b. load the deed in the form of minutes of the deed and save it as part of the Notary's protocol;
   c. placing letters and documents as well as the fingerprints of the appearers on the Minutes of Deed;
   d. issue a grosse deed, a copy of the deed, or a quote based on the deed minuta deed
   e. provide services in accordance with the provisions of this law, unless there is reason to refuse it
   f. keep everything confidential regarding the deed he made and all the information obtained for making the deed in accordance with the oath or promise of office, unless the law determines otherwise
   g. bind the deed made in 1 (one) month into a book containing no more than 50 (fifty) deed, and if the number of deed cannot be contained in one book, the deed can be bound into more than one book, and record the number of minutes of deed , month and year of manufacture on each cover book
   h. make a list of deed of protest against non-payment or non-receipt of securities
   i. make a list of deeds relating to the will according to the order in which the deed was drawn up every month.
   j. send the list of deeds as referred to in letter i or the list of nil relating to the will to the center of the list of wills at the ministry administering the affairs government in the field of law within 5 (five) days in the first week of each month thereafter.

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k. record in the repertorium the date of transmission of the list of wills at the end of each month.
l. has a stamp or stamp bearing the state symbol of the Republic of Indonesia and in the space surrounding it is written the name, position and place of domicile concerned.
m. read out the Deed before the appearer attended by at least 2 (two) witnesses, or 4 (four) special witnesses for the making of a will under the hand, and signed at the same time by the appearer, witness and Notary
n. accept notary apprentice candidates.

(2). The obligation to keep the Minutes of the Deed as referred to in paragraph (1) Letter b does not apply, in the event that the Notary issues the Deed in original.

(3). The in original deed as referred to in paragraph (2) includes:

a. deed of payment of rent, interest, and pensions
b. deed of offering cash payment
c. deed of protest against non-payment or non-receipt securities
d. power of attorney
e. certificate of ownership
f. other deed in accordance with the provisions

legislation

(4). In original deed as intended in paragraph (2) can be made more than 1 (one) copy, signed on same time, form and content, with the provisions on each deed are written the words "APPLY AS ONE AND ONE FOR ALL".

(5). Deed in original which contains the power of attorney not yet filled in the name of the power of attorney only can be made in 1 (one) copy.

(6). The shape and size of the stamp as referred to in paragraph (1) letter ldetermined by ministerial regulation.

(7). Read the deed as intended paragraph (1) letter m is not mandatory, if the appearer wants the deed not read out because the appearer had read yourself, know, and understand the contents with conditions that it is stated in closing deed as well as on each page Minutes of Deed initialed by the appearer, witness and Notary.

(8). Provisions as referred to in paragraph (7) is exempted from reading of the head of the deed, comparison, a brief explanation of the subject matter of the Deedand cl ear, as well as closing deed.

(9). If one of the conditions as referred to in paragraph (1) letter m and paragraph (7) not fulfilled, Deed which concerned only has power of proof as a deed under hand.

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(10). Provisions as referred to in paragraph (9) does not apply to manufacturing will.

(11). Notaries who violate the provisions as referred to in paragraph (1) letter a to letter l can subject to sanctions in the form of:

a. written warning
b. temporary stop
c. honorable discharge,
d. dishonorable discharge

(12). In addition to being subject to sanctions ascreferred to in paragraph (11), violation of the provisions of Article 16 paragraph (1) letter j can be an excuse for those who suffer losses to claim reimbursement of costs losses, and interest to the Notary.

(13). Notaries who violate the provisions as referred to in the paragraphs (1) letter n may be subject to sanctions in the form of written warning.

Regarding the responsibilities of a notary who does not read the deed he made directly, beforehand it must be understood in advance the powers, obligations and prohibitions that a notary has in carrying out his position. The notary's authority is an attribution authority originating from the Law governing the position of a notary in making authentic deeds of the object agreed upon in the deed in accordance with the work area of the notary concerned, including reading and signing the deed made (Soekanto, 2012).

The theory of liability can be used in discussing the notary's responsibility for the deed he did not read. Based on the opinion of Roscoe Pound, liability is related to an obligation to ask for compensation from someone who has done a loss or harm (injury), either by the first person himself or by something that is under his control.(Pounds, 1996).

The reading of the deed by a notary is an obligation in forming the authentic deed. This is because reading the deed is a form of verlijden or inauguration of an authentic deed, apart from signing the authentic deed. Therefore, a deed made by a notary in his position and within the scope of the work area of his position must be read by the notary himself, and may not be carried out by the assistant or employee of the notary concerned.

The reading of the deed made by the notary is not only beneficial for the notary, but also for the parties facing it (Mido et al., 2018). The reading of the deed is also related to the power of formal proof which states that the notarial deed must provide certainty about what is stated and certainty that everything listed and described in the deed is true and in accordance with the wishes of the parties who appear before the notary (Swandewi, 2016).

Regarding the obligation to read the deed he made, in Article 16 paragraph (7) a notary is allowed not to read the deed he made, with the exception of not reading the deed he made if the

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appearers want the deed drawn up by the notary not to be read because the appearers have read the deed themselves, so that they feel they already know and understand the contents of the deed. If the deed is not read out because of the exception, then the provisions regarding this matter must be stated in the closing part of the deed, as well as on each page of the minutes of the deed initialed by the appearers, witnesses and also the Notary. Thus it can be interpreted that the reading of the deed is not mandatory as long as it is in accordance with these regulations,

It is different if in practice the notary intentionally does not read the deed made even though the notary is in place, or the deed made is not read out because the notary is not in place so that the appearers are served by employees or notary assistants, or the deed is read out but not all that is read out , and the deed was read but not by the Notary himself, but read by the Notary's employee or assistant or the appearer did not want the deed not to be read, but the Notary did not state the provision in closing the deed that the notary did not read the deed he made based on the will of the parties. If indeed the parties wish not to read it,

This will result in the deed made by the notary being not in accordance with what the appearer wants, or the appearers may not understand the contents of the deed, which will lead to misunderstandings and multiple interpretations regarding the contents of the deed drawn up by the notary, as a result one of the parties in the deed can do default or deed can not be used as it should.

Based on Article 38 paragraph (4) letter a UUJN-Amendment, the head of the deed and the closing deed are the responsibility of the notary, so the notary is obliged to read the deed he made and write a statement regarding the condition of the appearers when making the deed before the notary and the reasons or information regarding the deed which was not read out by the notary in the closing part of the deed because this was an order from the Law. The habit of copying the deed made by a notary for the same deed from a deed that has been made before, can cause the notary to forget to replace important parts related to the circumstances of the appearers when making the authentic deed, which is the responsibility of the notary.

So that basically the benefit of reading the deed for the Notary is a control over the authentic deed he has made, so that if there are errors and changes occur in the contents of the deed or those that are still wrong or the contents of the deed are not in accordance with the wishes of the appearer, the notary has the opportunity to correct them. This is very important to note, because due to the notary's negligence and carelessness, if the deed made is not in accordance with the provisions of the law, then the authentic deed made by the notary will become legally flawed and cause legal consequences for proving an authentic deed. it becomes a deed made under the hand, as stipulated in Article 16 paragraph (9) UUJN-Amendment (Nyarong et al., n.d.).

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As a result of this error, not only the parties suffer losses, the notary as the official who made the deed will also suffer losses due to the problematic deed he made. The losses experienced by the notary because the notary will be reported to the authorities, in this case the Notary Regional Supervisory Board (MPD), the Police, and even the Consumer Dispute Settlement Agency. Depending on the form and amount of losses suffered by the parties due to errors and negligence committed by the notary in making the deed, the notary can be held accountable for this.

Strength of Proof of Notary Deeds Not Read by a Notary

Regarding the status of a notarial deed that was not read out by a notary, basically a notary deed is an authentic deed that has the force of law in terms of proof. However, this cannot be separated from the procedures and procedures for making authentic deeds in accordance with applicable regulations. These rules become a limitation for notaries in burdening or taking action against individuals. The existence of these rules and the implementation of these rules give rise to legal certainty(Peter Mahmud, 2008).

Based on the Principle of Legal Certainty, making an authentic deed that is not in accordance with the provisions contained in the applicable regulations, the position of the deed can be questioned. Legal certainty from the position of an authentic deed made by a notary is very important for the parties. As specified in Article 1868 of the Civil Code, regarding drafting, reading and signing the deed, Verlijden in the process of making the deed related to the duties and authority of the notary to read the deed and ensure that the deed has been understood and signed by the appearers and the witnesses used in the the deed. This is what distinguishes an authentic notarial deed from making a private deed. The reading of the deed is an important part in the process of making the deed by a Notary.

By reading the deed made by the notary directly, the notary can find out the contents and intent of the deed so that it is in accordance with the wishes of the parties. In addition, the purpose of reading the deed by the notary concerned, one of which is to guarantee that the deed being signed is the same as the deed that has been read out. By reading the deed, it serves as a control for the parties and the notary as the maker of the deed in order to obtain certainty that the deed made is the will of the parties facing it, so that if something is deemed wrong or lacking, the deed can be corrected before it is signed. by the appearers, witnesses and notaries.

In carrying out his duties and positions, the notary has the obligation to read the deed he has made before the appearers which at that time is also attended by witnesses known to the notary and the signing of the deed must be carried out after the deed has been read and approved by the appearers which is then signed by the appearers , witness, and Notary. This is as stipulated in

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Article 16 paragraph (1) letter I UUJN(Notary Syamsi, 2022). In connection with the reading of this deed, the question arises as to whether the deed can be read by another person or not.

According to the results of the interview with the notary, it was stated that a deed drawn up by the notary must be read by the notary himself and not order employees or assistants from the notary to do so. Although in practice there are still notaries who deliberately do not read out their deeds or the deed is not spoken by a notary, but an employee or assistant of the notary. This should receive more attention, because the reading of the deed by a notary is part of the verlijden of the deed.

Through reading the deed, the notary can explain what and how the contents and intent of the deed are in accordance with what is the will of the parties. After reading the deed by the notary, it must be included at the end of the deed(Merlyani et al., 2020). This also applies if the parties do not wish the deed to be read out because the appearers have read it themselves and understand the intent and purpose of the deed drawn up. For this reason, the notary is also obliged to include at the end of the deed made that the deed was not read out because of the will of the parties.

This is very important to do because it relates to the position of the deed made. If the notary intentionally does not read the deed drawn up without the consent of the appearers, then the notary may be deemed to have committed an offense by not reading the deed drawn up by the notary to the appearers. The sanctions that can be imposed as stated in Article 28 paragraph (5) Staadblad Number 3 of 1860, namely the deed made by the notary will lose the power of proof as an authentic deed and will only apply as a deed made privately.

This is also stipulated in Article 84 UUJN which basically regulates the same matter, even the deed is considered null and void and can be an excuse for appearers who feel aggrieved to demand reimbursement of costs and compensation to the notary concerned. Based on the new Notary position regulations, Notaries are required to make deeds in accordance with those determined by laws and regulations. If a deed is made not in accordance with the applicable rules due to negligence in making it by the notary, then the deed does not fulfill the elements of an authentic deed regulated in article 1868 of the Civil Code. When the deed made by the notary does not fulfill the elements of an authentic deed, then the deed no longer has the strength of proof as an authentic deed,(Multazam & Purwaningsih, n.d.).

Proof of the deed under the hand depends on the confessions and statements of the appearers and the witnesses who signed the deed, their heirs and the people who got the rights from them. Based on the above opinion, it is clear that in accordance with the provisions of Article 16 paragraph (1) letter l UUJN, the notary deed must be read by the notary himself without being

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represented by another person. Seeing the provisions of Article 38 paragraph (4) letter a UUJN, determines that the existence of such reading must be stated explicitly in the notarial deed.

Thus, whether the deed is read or not read must be stated at the end of the deed. If this is not done, there are formal aspects that are not fulfilled, which results in the deed being legally flawed and only having the force of law like an underhand deed. An authentic deed that only has the power of underhand evidence is not a problem as long as the deed only regulates the agreement agreed upon by the parties who have acknowledged the truth of all the actions committed in the deed.

But this will be problematic when the deed made is a condition for the birth of a legal relationship that has been determined by law, such as the establishment of a Limited Liability Company which requires the use of an authentic deed.(Kartikosari & Sesung, 2017). In such a case, the deed of establishment of the limited liability company becomes invalid because the deed of establishment becomes a private deed.

4. CONCLUSIONS

The notary has the role of reading out the deed he has made before the parties. Through reading the deed, the notary can explain what and how the contents and intent of the deed are in accordance with what is the will of the parties. After reading the deed by the notary, it must be included at the end of the deed. This also applies if the parties do not wish the deed to be read out because the appearers have read it themselves and understand the intent and purpose of the deed drawn up. For this reason, the notary is also obliged to include at the end of the deed made that the deed was not read out because of the will of the parties. This is very important to do because it relates to the position of the deed made. If the notary intentionally does not read the deed drawn up without the consent of the appearers, then the notary may be deemed to have committed an offense by not reading the deed drawn up by the notary to the appearers. The sanctions that can be imposed as stated in Article 28 paragraph (5) Staadblad Number 3 of 1860, namely the deed made by the notary will lose the power of proof as an authentic deed and will only apply as a deed made privately.

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