
THE POSITION OF THE DEED AND THE RESPONSIBILITY OF THE NOTARY FOR DEEDS READ OUTSIDE THE WORKING AREA OF THE NOTARY IN REALIZING LEGAL CERTAINTY AND JUSTICE

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Abstract

Notaries such as Public Officials who make authentic deeds are prohibited from reading deeds outside their work area. The problem is that many Notaries still read deeds outside their work area, which results in changes in the status of the deeds they make. The method used in this research is normative juridical by conducting research through the literature on secondary data, especially primary legal materials in the form of statutory regulations and secondary legal materials in the form of books and articles or journals, using the theory of responsibility and Law Enforcement. The results of the research show that to date Notaries who read deeds outside their area of office have violated the law and the Notary's code of ethics, therefore Notaries can be held accountable by parties who have been harmed by reading deeds carried out outside their area. position of Notary, it can be concluded that law enforcement against Notaries who read deeds outside their area of office is not optimal. Therefore, in terms of proof, his deed is no longer authentic, but a private deed.

Keywords: deed of position, notary responsibility, law

INTRODUCTION

Notaries in Indonesia were first regulated by the Instructie voor de Notarissen Residerence in Nederlands Indie in Staatblad number 11 dated 7 March 1822 Notodisoerjo & Raja, (2017.), until then there were several changes and developments until Law Number 30 of 2004 concerning Notary Positions and Law Number 2 of 2004 were formed 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Positions (UUJN). The birth of UUJN became legal unification in regulating Notary positions in Indonesia, which is written law as a measuring tool for the validity of Notary actions in carrying out their duties and positions (Adjie & Gunarsa, 2013).

A notary is a public official who has the authority to make authentic deeds and has other authorities as regulated in statutory regulations (Ananda & Ninik Darmi, 2014.). Authentic deeds can be made because they are mandated by statutory regulations and are desired by interested parties to ensure the rights and obligations of the parties for the sake of certainty, order and legal protection for interested parties as well as for society as a whole.

A notary, as a public official who has the authority to make authentic deeds, remains responsible for his actions in making authentic deeds forever until the Notary dies. There are four types of responsibility of a notary for the deed he makes, namely:

1. The civil responsibility of a notary regarding the material truth of the deed he or she makes.
2. The notary's criminal responsibility for the material truth in the deed he made.
3. The notary's responsibility is based on the Notary's Position Regulations regarding the material truth in the deed he or she makes.
4. The notary's responsibilities in carrying out his office duties are based on the Notary Code of Ethics (Anshori, 2009).

Notaries themselves, in carrying out their profession, have their respective office positions, which means that notaries cannot immediately act outside their office location. The notary's domicile area is usually located in a city or district with a working area of one province where the notary's office is located. Notaries can make authentic deeds throughout Indonesia, but the reading of the deed in front of the parties must be done in their work area. outside the working area of the Notary.

Article 17 paragraph 1 letter a of Law number 2 of 2014 concerning Amendments to Law number 30 of 2004 concerning the Position of Notaries states that Notaries are prohibited from carrying out positions outside their area of office (Indonesia, 2004). Notaries who commit violations in Article 17 paragraph (1) according to Law number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Positions can be given sanctions as written in article 17 paragraph (2) which reads: "Notaries who violate the provisions as intended in paragraph (1) may be subject to sanctions in the form of:

- a. Written warning;
- b. Temporary suspension;
- c. Dismissal with honor; or
- d. Dishonorable discharge."

The consequence for deeds made by Notaries who read them outside their work area is that the deed only has the power of proof as a private deed, this is stated in Article 41 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 Concerning Notary Positions.

However, we can see that if there is a territorial violation, it does not mean that the deed does not exist or is null and void, but only changes the evidentiary power from an authentic deed to a private deed, which means that the deed still exists and is valid only by the evidentiary power of the deed. changes, and if in the future there is a dispute then the court should also be able to accept that the deed remains as evidence in the trial. This will create legal uncertainty, where the deed actually still exists, and can still be used and obeyed by the parties. Violations regarding this work area still occur today by notaries because of this uncertainty, and also the sanctions given have not been maximally implemented. From the explanation above, the author is interested in discussing "The

RESEARCH METHODS

The research method is a scientific activity that is based on a certain method, systematics and thinking which aims to study a particular phenomenon by analyzing it, because research in the social sciences is a process that is carried out in a planned and systematic manner to obtain solutions to problems and provide a conclusion that leaves no doubt (Soemitro, 1990).

This research is normative or doctrinal legal research, namely a process of finding conformity between legal rules, legal norms, legal principles and one's actions (M. Marzuki, 2017). Normative research is conceptualized as what is written in statutory regulations as rules or norms that guide human behavior (Rifa'i, 2023). Normative legal research functions to provide juridical arguments and maintain critical aspects of legal scholarship when there is a vacuum, ambiguity and conflict of norms (Diantha & Sh, 2016). regarding the Notary's responsibility for the deed he or she makes.

The approach method used by the author in writing this thesis is the statutory approach. The research was carried out by reviewing the laws and regulations related to the issue at hand (P. M. Marzuki, 2013). This approach is considered by the author to be the most suitable approach to examine the position of deeds and the notary's responsibility for deeds read outside the area of office in realizing legal certainty and justice.

This research was carried out using secondary data obtained from the literature in accordance with the problem, type of research and approach method used. Secondary data consists of:

1. Primary Legal Material, namely legal material that is binding and authoritative or has authority P. M. Marzuki, (2013), consisting of:
 - a) Civil Code;
 - b) Law Number 30 of 2004 concerning Notary Positions;
 - c) Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Positions;
 - d) Regulations of the Indonesian Notary Association;
 - e) Notary Code of Ethics; And
2. Secondary Legal Materials, namely legal materials that are not binding and are not official documents but provide instructions or explanations for primary legal materials, such as textbooks, legal dictionaries, journals (P. M. Marzuki, 2013).
3. Non-legal materials, namely supporting materials outside of primary and secondary legal materials as complements and providing additional guidance on these legal materials, such as the Big Indonesian Dictionary (KBBI), and interviews with sources (legal experts) as an effort to obtain opinions that are relevant to the research object.

Secondary data in the form of primary legal materials, secondary legal materials and non-legal materials in this research were collected by conducting a literature study related to the problems studied. Library materials, documents and archives obtained through literature study are then inventoried, recorded and quoted. Primary legal materials are arranged or identified systematically, then secondary legal materials are collected by looking at references in a book which are explored further as long as they are related to the problem being studied (Diantha & Sh, 2016).

The collected legal materials are analyzed using qualitative analysis, namely describing and interpreting legal materials in the form of good and correct sentences to obtain short answers that are formulated deductively

RESULT AND DISCUSSION

In carrying out his profession, a Notary is required to comply with the Law and also the Code of Ethics. In Indonesia, the law regarding notary positions is regulated in Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Positions, and a Notary must also comply with the Code of Ethics issued by the Indonesian Notary Association (INI). In Article 41 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary which reads "Violations of the provisions as written in Article 38, Article 39 and Article 40 result in the Deed only having the power of proof. as a private deed." This can happen because in Article 38 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary, the contents of which are part of the deed, precisely in paragraph 2 letter d, it reads "the full name and place of residence of the Notary. " This proves that if the Notary reads the deed, his/her area is different from the Notary's working area, then a violation occurs which results in the fulfillment of the deed being under his control according to Article 41 above.

In the Notary's Code of ethics, Chapter III Obligations, Prohibitions, and Exceptions, in the Obligations subchapter article 3 Point 8 says "Notaries and other people who hold and carry out the position of Notary are obliged to establish an office at their place of domicile and that office is the only office for the Notary concerned in carrying out the daily duties of the office." which means that a Notary can only have one office in his/her regional domicile, which means that the Notary must carry out his/her work within his or her territory, not outside the area where his/her office is located. In point 18 it says "Notaries and other people who hold and carry out the office of Notary are obliged to carry out the office of Notary, especially in making, reading and signing deeds carried out in their office, except for valid reasons."

In the Prohibition subchapter Article 4 Point 1 reads "Notaries and other people who hold and carry out the office of Notary are prohibited from having more than 1 (one) office, either a branch office or a representative office. In this article, it is clearly stated that a Notary is not allowed to have more than 1 office, even if the office only acts as a representative, this further strengthens Article 3 point 8 and point 18.

The sanctions that will be given for the above violations are written in Chapter IV regarding sanctions in Article 6 which reads:

Sanctions imposed on members who violate the Code of Ethics can be in the form of:

- a. Reprimand,
- b. Warning
- c. Schorsing (Temporary Dismissal) from Association membership,
- d. Onzetting (Dismissal) from membership of the Association,

e. Dishonorable dismissal from association membership

When linked to the theory of responsibility, a person is said to be legally responsible if he or she can be subject to sanctions when committing an act that is contrary to the law. Normally, sanctions are imposed on individual perpetrators (delinquents) because of their actions which require accountability. In this case, the subject of responsibility and the subject of legal obligation are the same. According to traditional theory, there are two types of responsibility, namely responsibility based on fault and absolute liability (Asshiddiqie & Safa'at, 2006).

The responsibilities of a Notary adhere to the principle of responsibility based on fault (based on fault of liability). In making an authentic deed, the Notary must be able to take responsibility if the deed he makes is found to contain an error or intentional violation by the Notary. On the other hand, if the element of error or violation occurs on the part of the party or persons present, then as long as the Notary carries out his work in accordance with the regulations, the Notary concerned cannot be held responsible because the Notary only records what is conveyed by the party or parties to be included in the deed (Afifah, 2017).

We can also use the theory of legal protection in this matter because in this matter of course the parties must be protected, because if the deed they make is read outside the working area of the Notary it will turn into a deed under the hand, this will of course be very detrimental to the parties. , especially if there are legal problems in the future, and what must be protected is the Notary who is supposed to be in the area, but in reality there is another Notary who reads in the area, because if this is done continuously without legal protection it will create losses for the Notary which should be its territory. Theoretically, legal protection is divided into 2 (two) forms, namely preventive protection and repressive protection, both in court, namely within the scope of general justice and government agencies which are administrative appeal institutions (Arliman, 2018; Sugiswati, 2012). In the opinion of Phillipus M. Hadjon, legal protection for the people is a preventive and repressive government action. Preventive legal protection aims to prevent disputes from occurring, which directs government action to be careful in making decisions based on discretion, and repressive protection aims to resolve disputes, including handling them in judicial institutions (Tirtakoesoemah & Arafat, 2020).

CONCLUSION

Based on the description above, it can be concluded that there are rules governing the work area of Notaries, and what sanctions the Notary will receive. The notary must be held accountable for violating the rules regarding the area of office because it was done intentionally. By law, a deed read by a Notary outside his/her work area is relegated to a private deed, and specific sanctions from the Indonesian Notary Association Organization if there is a violation of the work area, the sanctions given to the Notary can vary, starting from the lightest, namely warning up to dishonorable dismissal, all you have to do is go back to the Indonesian Notary Association organization on how to process the Notary who commits this violation because if it is carried out seriously by the Indonesian Notary

Association organization, violations of the Notary's work area should be reduced and may not even occur in the future so that no parties or colleagues of the Notary are harmed by this violation.

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First publication right:

Injury - Interdisciplinary Journal and Humanity



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