



The Validity of Notarial Deeds Regarding Shop Rental Agreements Made With False Witness Presence (Case Study of Supreme Court Decision No. 1266 K/Pdt/2022)

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ARTICLE INFO

Keywords: Validity of the Deed, Notary, Shophouse Lease Agreement, Presence of Deed Witnesses, Not Actually

Received : 2, January
Revised : 17, January
Accepted: 19, February

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ABSTRACT

The notary in the deed he made lists the existence of witnesses, while the actual fact is that the witness was never present and never signed the deed. This research is perspective-based and is of the normative juridical research type. The position of witnesses in the issuance of a Notary deed. Witnesses who helped create the deed and signed the document are known as notary deed witnesses. attested to its existence, and fulfilled the formalities required by Article 38 paragraph (4) letter c of the UUJN, Article 1868 of the Civil Code, and Article 40 paragraph (1) of the UUJN-P. The Notary Deed is considered complete if all formalities are fulfilled, giving it perfect evidentiary value and allowing the existence of deed witnesses to be legally accounted for because it is in the Notary deed.

INTRODUCTION

Based on Pancasila and the 1945 Clarity, order, and legal protection based on justice and truth are guaranteed by the Constitution of the Republic of Indonesia, the State of the Republic of Indonesia as a state of law. Every action made by citizens and government representatives must abide by the applicable laws. That genuine proof of the events, situations, or legal activities held by particular positions is required in order to maintain certainty, order, and legal protection.

Notaries are appointed and dismissed by the Minister of Law and Human Rights, among other public officials who exercise government authority in the legal domain, but they are not compensated with salaries or honoraria. According to Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Notary Position (UUJN) or other laws, a notary is a public official with the authority to create authentic deeds and other powers as specified in Law Number 30 of 2004 concerning the Notary Position.

The underlying philosophy is that the notary is empowered to create authentic deeds and other documents particularly to provide legal clarity for legal actions taken by the general public or legal subjects. Since real deeds are the greatest and most comprehensive proof, they form the foundation of every legal relationship in people's lives. The need for written evidence in the form of genuine deeds in a range of business relationships, banking activities, land activities, social activities, and so on is growing along with the demand for legal certainty in various economic and social relations at the national, regional, and international levels. An authentic deed is meant to provide legal clarity and precisely clarify the parties' rights and obligations, so preventing issues.

Genuine deeds are the most comprehensive and reliable written evidence, and they have been crucial in settling claims swiftly and affordably. As long as the notary does not assign or exempt the making of the deeds to other officials or other persons specified by law, the notary is authorized to make authentic deeds regarding all acts, agreements, and stipulations that are required by laws and regulations and/or by interested parties to be stated in authentic deeds. This includes ensuring the certainty of the date of making the deed, keeping the deed, giving grossed, and excerpting the deed.

A perfect letter or other piece of literary proof is a legitimate deed. Law Number 2 of 2014 regarding the Notary Position gives notaries the authority to create valid deeds that, when used, can provide certainty, order, and legal protection for all parties concerned.

There are three capacities of proof for authentic deeds. The ability of the deed to demonstrate its legitimacy as an authentic deed is known as the ****power of external proof (uitwendige bewijskracht)****. The second is the ****power of formal proof (formele bewijskracht)****, which guarantees that the facts and events recorded in the deed were actually heard by the notary and understood by the parties. Last but not least, the ****power of material proof (materiële bewijskracht)**** offers assurance that the data in the deed is accurate. In court proceedings, these three authorities support the legitimacy and legal force of a genuine deed.

As public officers, notaries have the authority to perform genuine deeds (openbaar ambtenaar). In the use of this power, the notary may be held accountable for authenticating documents that violate applicable laws or are executed unlawfully. Accountability is the willingness to take responsibility for all the results of one's actions or for all the dangers or repercussions that result from one's actions. The type of infringement and the resulting legal repercussions establish the culpability.

Generally speaking, notaries are subject to civil, administrative, and criminal liabilities. Three requirements must be met in order to determine if a notary has committed a civil or criminal liability: the notary must have performed a chargeable act whose components are specifically stated by the law. There must have been an error on the part of the notary, as their activities are illegal. In the criminal sense, mistakes or omissions include things that are against the law. Basically, any infraction or carelessness on the part of a notary public always has an illegal component.

According to Rosa Agustina, illegal activities fall under both the public and private domains of criminal and civil law. In order for the phrase "against criminal law" to be found in addition to "against civil law." Comparing the two ideas against the law in that setting reveals both similarities and contrasts.

THEORETICAL REVIEW

Theoretical Framework

The word theory etymologically comes from the Greek language, namely, theoria which means view, consideration, deep understanding, theoros whose original meaning is the observation of truth through pure reasoning. Karlinger in the book Arifin Leonardo Sambas K, stated that theory is a collection of interrelated variables, definitions, proportions that provide a systematic view of phenomena by differentiating the relationships that exist among various variables, with the aim of explaining existing phenomena.

a. Theory of the validity of Notary deeds

Notary Deed is an official document issued by a Notary according to the Civil Code Article 1870 and HIR Article 165 (Rbg 285) which has absolute and binding evidentiary power. The Notary Deed is perfect evidence, so it no longer needs to be proven by other proofs as long as the untruthfulness cannot be proven. Civil Code Article 1866 and HIR 165, the Notary deed is the main written evidence or proof letter, so this document is a trial evidence that has a very important position.

b. Acta Teori from Autne

An authentic deed is a deed whose form is stipulated by law, this provides a definition of the existence of an authentic deed regulated by law, and there is also an authentic deed whose form and format of the deed is prescribed by law, as in Article 1868 of the Civil Code which reads that an authentic deed is a deed that is prepared or made in a format or form that has been prescribed by law by or in the presence of a public official who has the authority to do so in place the deed was made".

c. Theory of the Validity of Agreements

Contracts or covenants as part of engagements need to be understood comprehensively, namely, in human association, each human being always does deeds to fulfill his interests. A contract or agreement in principle consists of one or a series of promises made by the parties to the contract. The essence of the contract is the existence of an agreement from the party who makes it. This collective agreement is not only a characteristic of the act of contract, but it is important as an intention expressed to the other party.

Conceptual Framework

Concept or Conceptual is the arrangement of various concepts that are the focus of observation in carrying out research. Often it is mere concepts that are sometimes unclear or given an inaccurate interpretation of how important the function of the definition is, when connected with concepts that are sometimes unclear.

Even if a definition is not complete, it is possible that the definition will be perfected on the basis of the results of the research that has been carried out. The conceptual framework can serve as an operational guideline in the process of collecting, processing, and analyzing data or legal materials. Legal research of conceptual frameworks is commonly called operational definitions.

METHODOLOGY

The process of locating legal doctrines, norms, and principles to address the legal problems at hand is known as legal research. Legal research, on the other hand, aims to clarify why the law, as primary legal material, is a reliable source of information about the law. A research method is a tool used to accomplish a goal and address an issue. In essence, research methods are a scientific approach to gathering data for certain applications and goals. Therefore, understanding, anticipating, gathering data, and solving and responding to the formulation of research questions are the main goals of the research method.

Types and nature of research

Normative juridical research, or research aimed at analyzing the application of norms or principles in positive law, is the kind of research employed in this study. The researcher employs the type of juridical normative research because he wishes to investigate and analyze how a notary deed's validity or authenticity is affected by the Civil Code, the Law on the Notary Position, and the Notary position regulations when there are fake witnesses present.

Source of legal materials

The source of legal materials for this research was obtained by collecting primary legal materials, secondary legal materials and non-legal materials obtained through the study of documents and literature consisting of:

- a. Primary legal material has authority because it is an authoritative legal material. Law Number 2 of 2014 regarding the Notary Position, the Civil

Code, official records or minutes used in legislation, and court rulings are examples of primary legal materials.

b. All publications pertaining to the law that are not official papers are considered secondary legal resources. Textbooks, legal dictionaries, legal periodicals, and analyses of court rulings are examples of legal publications.

c. Books on political science, economics, sociology, philosophy, culture, or non-legal research reports and journals can all be considered tertiary legal texts as long as they are pertinent to the subject of the study.

Data Collection Techniques and Tools

The collection of legal materials used in the legislative approach (statute approach) by looking for laws and regulations regarding or related to the existence of the Validity of Notary deeds which in this case are regulated in the UUJN. Meanwhile, the collection of legal materials in the case approach used in this study collects court decisions that already have permanent legal force and are similar to the problem to be studied.

Data analysis

The analysis used in drawing the conclusions used is a qualitative analysis method, namely by analyzing, describing and explaining the data obtained systematically and in detail, then data interpretation is carried out, namely by studying the data that has been compiled and making it in a sentence then drawing a deductive conclusion which is the answer to the problem based on the results of the research.

RESEARCH RESULTS AND DISCUSSION

The Position of Witnesses in the Issuance of a Notary Deed

Development of Notary arrangements in Indonesia

The history of the development of notary institutions in Indonesia is inseparable from the development of notary institutions in all European countries, especially the Netherlands. This is because in Indonesia, the UUJN is derived from the "Notaryswet" (Ned. Stbl. No. 20) from the Netherlands on July 9, 1842, while the content of "Notary" is mostly derived from the French Notary Law of 25 Ventose an XI (March 16, 1803) although it is not a complete translation. "Notaryswet" is recognized and used in the Netherlands.

The first Notary position in Indonesia was on August 27, 1620 with the appointment of a Dutchman named Melchior Kerchem who was a secretary of the College van Schepenen in Jacatra, a few months after Jacatra was made the capital (on March 4, 1621 it was named Batavia). Kerchem is assigned to the public interest, especially with regard to the registration of all documents and deeds that have been made. Initially, Notaries were employees of the Vereenigde Oost-Indische Compagnie (VOC), so they did not have the freedom to carry out their duties as public officials who served the community. It was only after 1650 that the Notary was given the freedom to carry out his duties and forbade the procureurs from interfering in the work of the notary.

Duties, functions, obligations and authority of a Notary

Notary Duties

The term Notary is actually known and popular, because it is the name of the first person who carries out notary activities, namely Notary, which is also a marker for a group of people who do writing work. The Notary profession then experienced its heyday in France during the reign of King Lodewijk de Heilege and this profession is considered to be the foundation for the constitutional union of France. This profession is also seen as meritorious in the act of legislation in the field of notary where the main purpose of this development is to provide more guarantees for the interests of the community.

A notary is a type of stenographer since the name "notary" is derived from the Latin "natae," which meaning "secret writing." Typically, the government appoints a notary to create an official or authentic deed. Notaries are public officials; a person is a public official when the government appoints and dismisses him, and when he is given the power and responsibility to serve the public in specific areas.

Functions of Notaries

Notaries are governed by the UUJN and hold a position as public officials with the authority to create authentic deeds. The notary gives the parties to the deed he creates legal certainty. Making authentic deeds pertaining to all acts, agreements, and provisions that are required by law and regulations and/or by interested parties to be stated in authentic deeds is the notary's function and authority as a public official. They also guarantee the certainty of the date of making the deed, retain the deed, and provide grosses, copies, and excerpts of the deed, provided that the official or any other person designated by law is not also assigned or exempted from making the deed.

Notary Authority

The Notary is authorized to make all deeds for all actions except for an act that is the authority of another official that has been regulated by the Law, such as deeds on civil records that must be made by civil registrars and other deeds made by officials who have authority over the deeds.

In accordance with Article 2 of the Constitution, which declares that "Notaries are appointed and dismissed by the Minister," a notary is an honorable position granted by the State through the law to a person whom he trusts and who appoints him is a Minister. According to Article 1 number 14 of the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 25 of 2014 concerning Terms and Procedures for the Appointment, Transfer, Dismissal, and Extension of the Term of Office of Notary Officers, which declares that "The Minister is the Minister of Law and Human Rights," the Minister mentioned in Article 2 of the UUJN is the Minister of Law and Human Rights.

The position of a Notary as a public official in Indonesia is contained in Article 1868 of the Civil Code which states that an authentic deed must have a position as a public official and Article 1 number 1 of the UUJN states that a Notary is a public official who is authorized to make authentic deeds and other

authorities. With this article, Notaries carry out their profession in providing legal services as public officials and this authority is not given to other officials. The implementation of the functions of public officials that can be carried out by Notaries in exercising their authority as public officials is contained in Article 15 paragraph (2) of the UUJN concerning other authorities that can be exercised by Notaries.

The Position of Notaries as a profession

The notary profession is a noble one (*nobile officium*) since it is a legal profession. Because of the importance of the notary profession to humanity, notaries are referred to as noble officials. The notary's deed may serve as the legal foundation for an individual's property status, rights, and responsibilities. As a formal official, the notary profession can be understood as a person who has been appointed, approved, appointed, and permitted by the state to assist the public in certain capacities, particularly civil procedures involving the creation of valid deeds.

Notary Responsibilities

A responsibility is one of the ethics that must be obeyed for people who have a certain profession. Responsible for someone who has a certain profession, can be formulated including:

- a. Responsible for the world of the profession he owns and obey the code of ethics that applies in the profession concerned.
- b. Responsible for the work he does in accordance with the guidance of his professional service.
- c. Responsible for the results of the profession he implements.
- d. Responsible for themselves, to society and to God Almighty.
- e. Under any circumstances dare to take risks to uphold the truth related to his profession, responsibly he must dare to speak, act and dare to say something that is in accordance with the truth of the demands of the profession he believes in.
- f. Consciously always striving to improve the quality related to the demands of their profession, in accordance with the dynamics and demands of the times and the circumstances that are increasingly developing at any time in certain circumstances, if necessary, must be willing to provide accountability reports to any party about everything that has been carried out in accordance with their profession.

Legal Consequences Of Notary Deeds That At The Time Of Signing Not Attended By Witnesses

Confrontation in Making Notary Deed

Provisions for Persons Appearing in Notary Deed

Witnesses are obviously necessary for every legal event, including the notary's creation of a deed. These individuals are the ones that observe and personally witness a legal event. An instrumental witness, or one whose names are listed in the Notary deed, is one who observes if the preparation of the deed performed by or before the Notary has been completed in compliance with the

requirements of the validity of an authentic deed. This instrument witness is the one who witnesses the inauguration of a deed by the Notary, namely whether it has been prepared and read by the Notary, and signed immediately by the audience.

Categories of Persons Present in Notary Deed

The notary is required to request the required documents or documents specified in the deed in order to verify the identification of the person confronting the legitimacy of the deed. An identity card, also known as an Identity Card (KTP), is the document that the notary must request be attached as a copy to the Minuta Deed (original Notary Deed). In the deed to be produced, the notary must make sure that the original identification is used. The witness must also meet a number of requirements in order to make the deed, including being at least eighteen (18) years old, married, and capable of performing legal acts; being known to the notary or introduced to him by two (2) identifying witnesses who are at least eighteen (18) years old, married, and capable of performing legal acts; and having an introduction that is specifically mentioned in the deed.

Writing the full name of the person in the notary deed

Competence is an important part of the preparation of authentic deeds that have been regulated in the UJN-P. Based on its form, each deed consists of the beginning of the deed/head of the deed, the body of the deed, and the end of the deed/closing of the deed. Comparison is part of the body of the deed that contains information regarding

- 1) The identity of the parties, including a description that can show that the person concerned has competence (*rechtsbekwaanheid*) and authority (*rechtshandelingen*).
- 2) The position of the parties acted. So that comparison contains several functions, namely:
 - a. Explain the identity of the parties who make the agreement/deed.
 - b. Explain in what position the person concerned acts.
 - c. Explain what the position is based on.
 - d. Knowing that the parties have the ability and authority to take legal action as outlined in the contents of the deed.
 - e. The person concerned has the right to perform the actions stated in the writing of the deed.

The description of the compensatory is very important, if there is a misrepresentation or elaboration of words in the writing of the comparison, it can have an influence on the deed and also on the parties listed in the deed. Therefore, the witnesses must be those who are capable and authorized to perform legal acts in the deed concerned. An error in writing a comparison can be declared wrong if it is based on evidence. Errors in writing compensatory statements as long as they can still be corrected must be corrected, so as not to result in a dispute case before the Court accompanied by threats.

Presence of the Parties in the Notary Deed

The presence of these witnesses is very important and absolute in the process of reading and signing the deed carried out by the parties and the Notary.

Especially for parties who are unable to affix their signatures due to physical disabilities of their hands or cannot read and write, in this case the Notary is obliged to write at the end of the deed about the circumstances or conditions. So what if the formal requirements regarding this witness are violated by the Notary, in the sense that the witness mentioned in the deed was not present to witness the reading and signing of the Notary at that time, but the witness whose identity is mentioned at the end of the deed only participated in affixing his signature as the basis for the order from the Notary concerned.

Signing of Notary Deed

Parties Entitled to Sign Notary Deed

The presence of two witnesses whose identities are expressly stated in the deed within the scope of notarization is one of the formal requirements that must exist in making a Notary deed. These witnesses are an inseparable tool from the Notary deed, because they are an absolute requirement for the deed not to lose its authenticity and not apply as a deed under hand. With the presence of deed witnesses, they can give testimony that the formalities in making the deed determined by the Law have been fulfilled by the Notary. A witness must give testimony of what he sees, hears and experiences himself, and not what he knows from the testimony of others, which is commonly called "testimonium de auditu".

When a Notary Deed Must Be Signed

Article 16 letter 1 of the UUJN stipulates that in carrying out his office,

- a. The Notary is obliged to read the deed in front of the witness attended by at least 2 (two) witnesses and signed at the same time by the
- b. witnesses, witnesses, and notaries. After the Notary deed is read and at the same time the deed is signed, it means that the reading of the deed and
- c. The signing of the deed is an inseparable unit. In practice in the field, it often happens that the signing and reading by the Notary is postponed so that it is not in accordance with the agreement of the parties.
- d. The Notary Deed must be signed during the process of making the deed in front of the Notary. This usually happens when the Notary and the parties involved in the deed have ensured that all the information contained in the deed is correct and in accordance with their wishes.
- e. Legal consequences of notary deeds that are not attended by witnesses at the time of signing

In general, witnesses are one of the evidence recognized in the law. As valid evidence, a witness is a person who gives testimony, either orally or in writing or signed, that is, explaining what he witnesses himself, whether it is in the form of an act or action of another person or a situation or an event.

Article 171 of the HIR states that what is meant by a witness is what he sees, hears or feels himself, after all, every testimony must be accompanied by a reason for what is the reason, how he came to know the things explained by him. A special feeling that arises because of reason, is not seen as a testimony.

Witnesses are one of the evidence recognized in the law as valid evidence. A witness is a person who has the obligation to give testimony orally or in writing to explain what he sees, feels himself, and hears about a legal event.

The scope of notary law is known by the existence of 2 (two) types of witnesses, the witnesses are identification witnesses and instrument witnesses. Instrument witnesses are witnesses who are required by law to be present during the process of making a Notary deed. The obligation of witnesses who witness this deed is to sign and testify about the truth of the contents of the deed and the completion of procedures according to the provisions of the Law. Usually, the witnesses to this instrument are Notary officers. While the identifying witness is the witness who introduces the witness to the Notary. For unknown witnesses, it is required that there is 1 (one) witness (witness attesterend), but if there are more than 2 (two) witnesses present, they can introduce themselves in front of the Notary. The presence of 2 witnesses is absolute, but it does not mean that there must be 2 (two) witnesses so that more can be presented if the situation wants. Instrumentary witnesses are required by law to be present in the process of making a Notary deed. The task of the instrument witness is to affix his signature, the witness gives testimony about the truth of the contents of the deed and the fulfillment of the formalities required by the law.

The Legal Force of Notary Deed That Was Not Attended by Witnesses at the Time of Signing

Notaries are required to be normatively guided by legal rules related to all actions to be taken and then poured into the deed. Acting based on the applicable legal rules will provide certainty to the parties, that the deed made before or by the Notary is in accordance with the applicable legal rules, so that if a problem occurs, the Notary deed can be used as a guideline by the parties.

The witnesses must be known by the Notary or introduced to the Notary or explained to the Notary about their identity and authority to the Notary by the witness. This is in accordance with Article 40 paragraph (3) of the UUJN. The introduction or statement of the identity and nationality of the witnesses must be clearly stated in the deed, this is in accordance with Article 40 paragraph (4) of the UUJN. The witness provisions as specified in this UUJN are not fulfilled, so the deed only has the power of proof as a deed under hand, in accordance with Article 41 of the UUJN. This indicates that the reading and the presence of witnesses are interrelated with each other. If the position of the deed is so, then the next step to make an assessment regarding the validity or correctness of the contents of the agreement contained in the deed is the authority of the Panel of Judges (in the hands of the judge), because in this case, the Law does not regulate the validity of the content of the agreement.

The Application Of The Law By The Panel Of Judges To The Notary Deed Regarding The Renting Of Shophouses Made By Not Including Witnesses In The Deed In The Decision Of Case Number 126 A.

Application of the Law by the Panel of Judges to the Notary Deed on Renting a Shophouse Made by Not Including Witnesses in the Deed (Case Decision Number 1266 K/PDT/2022)

Case Position and Legal Issues

Yamin as the Plaintiff agreed with Susy over the Shop House (Ruko) located on Jalan H. Agus Salim No. 99 Rantauprapat Village, North Rantau District, Labuhanbatu Regency, a deed of renting the Shophouse was made in the presence of Notary Elis Syahputra, as the Defendant in Rantauprapat. The fee is used for the future of school/college for 3 (three) children, it is still the responsibility of the parents even though they are divorced. Because it was obtained from the result of the marriage, each child was named Khathrine Kozen, Vincent Kozen, Verarine Kozen. Even though the married couple has been legally divorced, the decision of the Rantauprapat District Court has permanent legal force (inkrah).

By the joint will of the parties came to the Notary office, on Jalan Siringoringo in front of the An-Nur Rantauprapat Mosque, Labuhanbatu Regency, North Sumatra Province, so that by the Defendant, Deed Number: 05 dated April 4, 2019 was made, with Widow Susy as the First Party (the lessee) with the Plaintiff as the Second Party (tenant), on the Shophouse located on Jalan H. Agus Salim No. 99 Rantauprapat Village, Rantau Utara District, Labuhanbatu Regency.6 K/PDT/2022.

Legal Considerations of the Panel of Judges

The Plaintiff's lawsuit postulates that the Defendant has made Ikbal Solin Nasution as a witness in Deed Number 5 dated April 4, 2019 concerning the lease agreement, which resulted in a decrease in the value of the validity of Deed Number 5 dated April 4, 2019, thus causing losses to the Plaintiff.

To prove the validity of Deed Number 5 dated April 4, 2019 concerning lease agreements, according to the Assembly, it needs to be proven in this case is about the existence of Deed Number 5 dated April 4, 2019 concerning lease agreements. The Panel will consider the postulates of the Plaintiff's lawsuit as well as the arguments of the Defendant's rebuttal based on letter evidence and witness evidence that have relevance to the postulates of the lawsuit and the postulates of the Answer, because in civil law it is formal and in accordance with the provisions of Article 1866 of the Civil Code and Article 284 of the Civil Code.

Court Decision

a. Court Decision Number 26/Pdt.G/2020/PN Rap

1) In Exception

Rejecting the Defendant's exclusion in its entirety.

2) In the Subject

a) Reject the Plaintiff's lawsuit in its entirety.

b) Punish the Plaintiff to pay the costs of the case arising in this case in the amount of Rp 666,000.00 (six hundred and sixty-six thousand rupiah).

b. Court Decision Number 1266 K/Pdt/2022

1) Reject the appeal from the Yamin Cassation Petitioner;

2) Punish the Cassation Petitioner to pay the case fee in this cassation level in the amount of Rp500,000.00 (five hundred thousand)

Analysis of the Application of Law by the Panel of Judges to the Notary Deed on Renting a Shophouse Made by Not Including Witnesses in the Deed in Case Decision Number 1266 K/PDT/2022

Analysis of the application of law regarding the validity of deeds and their legal consequences

Analysis of the validity of the Deed made before the Notary in the event of a violation of Article 16 Paragraph (1) letter (l) of the UUJN-P, it was emphasized that; "In carrying out his position, the Notary is obliged to read the deed in front of the witness attended by at least two witnesses and signed at the same time by the witness, witness, and the Notary". If the formal requirements for making a deed are not met, then the deed made by the Notary only has the power of proof as a deed under hand. A material or formal aspect in a deed is very important to measure the validity of the deed, so that the advice given by a Notary can guarantee the agreement made by the parties.

The requirements for the validity of government actions, in this case the Notary in making deeds, are based on aspects of procedure, authority and substance. The aspect of authority points to the legitimate authority in making deeds, each authority is limited by material, time and region. Validity based on these aspects implies a defect in authority in making deeds.

Analysis of the application of law regarding the Notary's actions

As a result of the Deed being made not Authentic and not in accordance with reality, the Plaintiff (Yamin) and Attorney Doritz Bidould Tampubolon, met the Defendant (Notary Elis Syahputra, SH, M.Kn). Notification of the contents of the Renewal Use Actor canceled, because there had been a lie made by the witness Ikbal Solin Hutahean who was not present to be present. In Deed Number 05 dated April 4, 2019 regarding the Shophouse Lease Agreement, located on Jalan H. Agus Salim No. 99, Rantauprapat Village, North Rantau District, Labuhanbatu Regency.

The panel argued that what the Notary had done was not in accordance with the provisions of Article 16 paragraph (i) of the UUJN and Article 1868 of the Civil Code with the opinion of expert witness Abdul Salim. There are several things that can cancel the Deed, namely when someone is not present, in making the Deed. Therefore, the Deed is not in accordance with the truth with the material. Because one Act is a real legal fact. It cannot become an Authentic Deed, and its degradation to a Deed is under hand. For this reason, it is very necessary to prove its authenticity.

Analysis of the Application of Law Regarding the Responsibility of Notaries Analysis of Amar Verdict

The defendant committed a violation of Article 16 paragraph (1) letter i, UUJN-P and Article 1868 of the Civil Code as well as the opinion of expert witness Abdul Salim. The Deed became inauthentic due to Deed Number 05 dated April 4, 2019 of the Shophouse Lease Agreement, located on Jalan H. Agus Salim, Number 99, Rantauprapat. It was made that the witness Ikbal Solin Hutahean in the deed was not present to be present, and the witness did not sign the deed to be made. Witness Ikbal Solin Hutahean is not a Notary employee, but works to help parents sell onions at the Rantauprapat Glugur Tax.

If it is proven that a notary has violated the professional code of ethics and/or violated the law, and in the opinion of the district court one of the punishments described in these articles is still insufficient compared to the nature of the violations, then it is necessary to submit a proposal to the Minister of Justice so that a notary can be dismissed from his position.

Article 70 of the UUJN related to the Regional Supervisory Council (MPD) has the authority, namely "letter a holds a hearing to examine the alleged violation of the Notary Code of Ethics or violation of the implementation of the Notary office, and letter g receives reports from the public regarding the alleged violation of the Notary Code of Ethics or violation of the provisions in this Law". Article 83 paragraph (1) of the UUJN states that "notary organizations establish and enforce the Notary Code of Ethics".

Article 70 of the UUJN, the Regional Supervisory Board is authorized to hold a hearing to see the notary's liability claim or Notary's Code of Ethics that has been violated. If a notary violates any law while performing his official duties, he or she may be held liable in civil or criminal court. The position of a notary deed should be seen as an authentic deed with impeccable evidentiary power when responding to any claim or litigation from the notary reporting party or client. The notary code of ethics includes errors in the deed as a violation.

The researcher disagrees with the decision Number 1266 K/Pdt/2022, a Notary makes lies and dishonesty in a deed inauthentic, because in the making of the authentic deed, the witness is not present with the name of Ikbal Solin Hutahaean, if the Notary commits a violation, they can be subject to administrative sanctions or even criminal, depending on the severity of the violation committed. This shows the importance of strict application of law in the Notary profession to protect the public interest.

A notary who is found to have violated the law or code of ethics while performing his duties must be held responsible for his or her behavior. There are several requirements that must be met before a Notary can be convicted, including that the act is illegal, that losses are generated from it, and that it violates formal and substantive law. Formal in the sense of meeting the legal requirements and material requirements of the code of ethics and the UUJN.

CONCLUSIONS AND RECOMMENDATIONS

Conclusion

Based on the results of the discussion that has been presented in the previous chapters, it can be concluded as follows:

1. The position of the witness in the issuance of a Notary deed. Notary deed witnesses are witnesses who participate in the making of the deed. The witness affixed his signature, gave testimony about the truth of the existence and fulfillment of the formalities required by Article 38 paragraph (4) letter c of the UUJN, Article 1868 of the Civil Code and Article 40 paragraph (1) of the UUJN-P. The Notary Deed is said to be complete if all the formality requirements are met so that the Notary deed has a perfect evidentiary value and the existence of the deed witness in the Notary deed can be legally accounted for, because in the Notary deed, the position of the instrumentary witness is one of the formal requirements of a deed so that the deed can become an authentic deed.

2. Legal consequences of the Notary deed that at the time of signing the witness was not present. The signing of the deed that is not done in the presence of the Notary will result in a decrease in the value of the proof of the authentic deed into a deed under hand as stated in Article 16 paragraph (9) of the UUJN and violates the provisions of Article 4 paragraph (6) of the Code of Ethics of the Indonesian Notary Association.
3. The application of the law by the panel of judges in Case Decision Number 1266 K/Pdt/2022 regarding the Notary deed regarding renting a shophouse made by including a deed witness who is not the same as the witness listed in the deed. The lease agreement for the shophouse building between the Plaintiff and the Defendant is made before a notary on the basis of an agreement, so that it meets the conditions for the validity of the agreement as referred to in the provisions of Article 1320 of the Civil Code. The absence of a witness in the preparation of the lease agreement deed in this case does not result in the cancellation of the agreement because the agreement has met the legal requirements of the agreement, both objective and subjective as referred to in the provisions of Article 1320 of the Civil Code. Notaries have violated the code of ethics, namely Article 70 of the UUJN, which regulates the obligations of notaries in carrying out their duties honestly and professionally. If a notary is found to be in breach of these provisions, they may be subject to sanctions by the Supervisory Board.

Recommendations

1. It is suggested to the government and the House of Representatives that make laws, by seeing the importance of the presence of witnesses in terms of the authority of the Notary to make authentic deeds, it is appropriate that the provisions regarding witnesses of this deed be clarified and seated regarding the witnesses of the deeds, starting from the definition of the instrumentary witness itself, his obligations, and responsibilities in terms of his presence in the inauguration of a Notary deed. This is necessary so that there is no different understanding regarding its presence and avoids legal problems in the future.
2. Notaries as authentic deed-making officials, in carrying out their duties and professions, should submit and comply with the provisions of the applicable laws and regulations both in the UUJN and also the Notary Code of Ethics, and always prioritize the principle of prudence in every legal act/action before being poured into the deed.
3. Regarding the decision by the judge, the judge should give a reprimand to the notary who signs not with the actual witness so that the lease agreement made by the notary, which does not meet all the elements in the agreement in accordance with the laws and regulations.

ADVANCED RESEARCH

The role of witnesses in the execution of a Notary deed is a fundamental aspect of ensuring its authenticity and evidentiary strength, as regulated under the UUJN and Civil Code. However, legal discrepancies arise when a Notary fails to comply with these formal requirements, leading to a degradation of the deed's legal standing. The decision in Case No. 1266 K/Pdt/2022 underscores the

nuanced interpretation of legal formalities, where the absence of a witness does not necessarily nullify an agreement if it fulfills the substantive validity conditions under Article 1320 of the Civil Code. This raises critical questions regarding the balance between procedural compliance and substantive justice, as well as the potential liability of Notaries who contravene ethical and statutory obligations. Further research could explore comparative legal perspectives on notarial malpractice, the effectiveness of regulatory enforcement by the Supervisory Board, and the impact of such procedural violations on contractual certainty and judicial outcomes in Indonesia's civil law system.

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