

The Legal Protection for Notary Employees who are Instrumental Witnesses in Notary Deed

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Abstract. *This research aims to identify and analyze legal protection for Notary employees who are instrumental witnesses in the Notary Deed, and to identify and analyze legal responsibilities for Notary employees who are instrumental witnesses in the Notary Deed which contains defects. This study used a normative juridical approach by using descriptive analytical research specifications. The type of data in this legal research was normative using primary legal materials and secondary legal materials, as well as tertiary legal materials. The data collection method in this study was in the form of literature and the data analysis method used qualitative data analysis. Based on the results of research and discussion, that the legal protection of a Notary employee who is an instrumenter witness is found in Act No. 31 of 2014 concerning Amendments to Act No. 13 of 2006 concerning the Protection of Witnesses and Victims. Then that the Notary employee who is the instrumenter witness in the Notary deed is not responsible for the deed and if there is a formal defect in the Notary Deed so that the Notary Deed is degraded its proof value as an underhand deed or if in the Notary Deed there is a material defect so that the Notary Deed can be canceled or null and void by law is not the responsibility of the Notary employee who is the instrumenter witness in the deed.*

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

1. Introduction

The legal profession is a profession that continues to develop according to the times. Likewise, the Notary profession as one of the legal professionals in Indonesia, has increasingly complex roles and functions¹. Notary is a profession that has existed for a long time, they facilitate the needs of the community who at that time could not read and write much². The notary helps write down the important points, which are then signed by each party. The notary authenticates the document with a certain mark.³

Notaries in Indonesia carry out a strategic profession, which positions Notaries as parties who are obliged to provide private or civil legal services, making authentic deeds with legal force characteristics.⁴ Notary is a public official who is authorized to make an Authentic Deed and has other authorities as referred to in this Law or based on other laws, as stated in Article 1 number 1 of Act No. 2 of 2014 concerning Amendments to Act No. 30 of 2004 concerning the Position of a Notary.⁵

The conditions for the validity of the Authentic Deed are party nature, which includes formal and material requirements. Between these two conditions are cumulative, and not alternative. Furthermore, between the formal requirements and the material requirements themselves, they are also cumulative, so that in accumulation there is also accumulation. One of the formal requirements for the making of an Authentic Deed is the presence of two witnesses, who act to witness the truth of the making of the Deed in the presence of the official concerned. Usually the one who acts as a witness is from the official who made the deed. An Authentic Deed made without the presence of witnesses, does not meet the formal requirements, therefore it is not valid as an Authentic Deed, and its degree is reduced to a private deed.⁶ The making of an Authentic Deed must be attended by two witnesses as stipulated in Article 16 letter m and Article 40

¹ Chuasanga A., Ong Argo Victoria. (2019). *Legal Principles Under Criminal Law in Indonesia and Thailand*, Jurnal Daulat Hukum, Vol 2, No 1 (2019) <http://jurnal.unissula.ac.id/index.php/RH/article/view/4218>

² Yaya Kareng, Ong Argo Victoria, R. Juli Moertiyono. (2019). How Notary's Service in Thailand. Sultan Agung Notary Law Review, 1 (1), 46-56, <http://jurnal.unissula.ac.id/index.php/SANLaR/article/view/4435>

³Widhi Handoko, 2019, *Dominasi Negara Terhadap Profesi Notaris Antara Ide Dan Realitas*, PT. Roda Publika Kreasi, Bogor. p. 1

⁴Ibid, p. 2

⁵Article 1 number 1 of Act No. 2 of 2014 concerning Amendments to Act No. 30 of 2004 concerning the Position of Notary

⁶M. Yahya Harahap, 2017, *Hukum Acara Perdata Tentang Gugatan, Persidangan, Penyitaan, Pembuktian, Dan Putusan Pengadilan*, Edisi Kedua, Sinar Grafika, Jakarta. p. 651

paragraph 1 of Act No. 2 of 2014 concerning Amendments to Act No. 30 of 2004 concerning the Position of a Notary.⁷

The inauguration of a Notary Deed in Notary law is recognized by 2 (two) witnesses, namely a known witness (testamentary witness) and an instrumenter witness. Instrumental witnesses are witnesses who must be present in making a deed, in the sense of reading and signing a deed. Meanwhile, known witnesses are witnesses who introduce the appearer to the Notary.⁸

Although the actions of Notary Employees as instrument witnesses in the inauguration of Notary Deeds are included in the Notary field, Act No. 2 of 2014 concerning Amendments to Act No. 30 of 2004 concerning Notary Positions does not provide legal protection for witnesses in the inauguration of the Deed. , especially to Notary Employees. Notary employees as instrument witnesses in the inauguration of a Notary Deed must receive legal protection and their safety must be guaranteed in the event of a case or lawsuit in court, against a deed in which the employee is a witness⁹.

There is no legal protection that specifically regulates legal protection for Notary Employees who act as instrument witnesses. So it becomes interesting to study in this discussion. The actions of Notary Employees as instrument witnesses who are present as witnesses of the Deed are included in the scope of the Notary, but in fact Act No. 2 of 2014 concerning Amendments to Act No. 30 of 2004 concerning the Position of Notary which is the only legal umbrella for Notaries has not clearly stated in this regard. Based on this, the authors are encouraged to conduct a study in the form of research with the title "Legal Protection for Notary Employees Who Become Instrumental Witnesses in Notary Deeds".

Based on the description of the background of the problem above, the writer formulates the problem as follows, namely, how is the legal protection of Notary Employees who are Instrumenter witnesses in the Notary Deed and what is the legal responsibility of Notary Employees who are instrumental witnesses in Notary Deeds which contain defects. In general, the purpose of this research is to find out and analyze the legal protection for Notary Employees who are instrumental witnesses in the Notary Deed and to find out and analyze the legal responsibilities of Notary Employees who are instrumental witnesses in the Notary Deed which contains defects.

⁷Op.cit.

⁸Tan Thong Kie, 2007, *Studi Notariat & Serba-Serbi Praktek Notaris*, PT. Ichtar Baru Van Hoeve, Jakarta. p. 467

⁹ Ong Argo Victoria, Ade Riusma Ariyana, Devina Arifani. (2020). *Code of Ethics and Position of Notary in Indonesia*. Sultan Agung Notary Law Review 2 (4), 397-407, <http://lppm-unissula.com/jurnal.unissula.ac.id/index.php/SANLaR/article/view/13536>

2. Research Methods

This research used a normative juridical approach. Normative legal research was a legal research conducted by examining existing library materials by basing the law as a law.¹⁰ Norm specification research used is descriptive analytical. The type of data in this legal research was normative using primary legal materials in the form of various laws and regulations relating to the protection and legal responsibilities of instrumenter witnesses¹¹. And secondary legal materials in the form of journals, both international journals and national journals, opinions of law scholars, papers, research reports, articles and magazines as well as electronic literature and libraries relating to legal protection and legal responsibilities of instrumenter witnesses. As well as tertiary legal materials in this study in the form of legal dictionaries, Indonesian language dictionaries and encyclopedias. The data collection method in this study was in the form of literature and the data analysis method used qualitative data analysis.

3. Results and Discussion

3.1 Legal Protection of Notary Employees Who Become Instrumental Witnesses in Notary Deeds

Instrumenter witnesses or deed witnesses as one of the requirements for the authenticity of a deed there are no rules governing legal protection for deed witnesses or instrumenter witnesses in Act No. 2 of 2014 concerning Amendments to Act No. 30 of 2004 concerning Notary Positions Even though the actions of Notary employees as instrumental witnesses in the inauguration of the Notary Deed are included in the notary field, they are not protected by the Notary Honorary Council, it is not impossible for the parties related to 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 make the parties who want to know about the case will pressure the instrumenter witnesses or deed witnesses to testify before the court.¹²

¹⁰Munir Fuandy, 2018, *Metode Riset Hukum Pendekatan Teori Dan Konsep*, Rajawali Pers, Depok. p.130

¹¹Deen, Thaufiq., Ong Argo Victoria & Sumain. (2018). *Public Notary Services In Malaysia*. *JURNAL AKTA*: Vol. 5, No. 4, 1017-1026. Retrieved from <http://jurnal.unissula.ac.id/index.php/akta/article/view/4135>

¹²I Komang Sujanayasa, Ibrahim R, I Gusti Ketut Ariawan, 2016, "Kedudukan Saksi Instrumentair Akta Notaris Dalam Kaitannya Dengan Pasal 16 Ayat (1) Undang -Undang Nomor 30 Tahun 2004 Tentang Jabatan Notaris", *Jurnal Ilmiah Prodi Magister Kenotariatan*, p. 289, <https://ojs.unud.ac.id/index.php/ActaComitas/article/view/24960/16193>. accessed on January 17, 2022, at 22:25 WIB

Instrumental witnesses or deed witnesses in this case are indeed in a weak position, because there is not a single article in Act No. 2 of 2014 concerning Amendments to Act No. 30 of 2004 concerning the Position of Notary which regulates the protection of witnesses. instrumenter or deed witness.

Legal protection for Notary Employees who act as instrumenter witnesses can only be found in provisions outside Act No. 2 of 2014 concerning Amendments to Act No. 30 of 2004 concerning Notary Positions, namely Act No. 31 of 2014 concerning Amendments on Act No. 13 of 2006 concerning the Protection of Witnesses and Victims.¹³

The rights of witnesses and victims in Act No. 31 of 2014 concerning Amendments to Act No. 13 of 2006 concerning the Protection of Witnesses and Victims are regulated in article 5 paragraph 1. Rights as stipulated in article 5 paragraph 1 of Act No. 31 of 2014 concerning Amendments to Act No. 13 of 2006 concerning the Protection of Witnesses and Victims can be carried out both outside the court and inside the court.¹⁴If it is observed in paragraph 2 of Article 5 of Act No. 31 of 2014 concerning Amendments to Act No. 13 of 2006 concerning the Protection of Witnesses and Victims, it turns out that the rights referred to in Article 5 paragraph 1 of Act No. 31 of 2014 concerning Amendments to Act No. 13 of 2006 concerning the Protection of Witnesses and Victims are given for/in certain cases in accordance with the decision of the Witness and Victim Protection Agency. So, the granting of these rights is selective and procedural through the Witness and Victim Protection Agency.¹⁵

Protection of witnesses and victims is provided from the stage of the investigation starting until it ends as stated in Article 8 of Act No. 31 of 2014 concerning Amendments to Act No. 13 of 2006 concerning Protection of Witnesses and Victims.¹⁶Other guarantees or protections for instrument witnesses or deed witnesses are also contained in Article 10 of Act No. 31 of 2014 concerning Amendments to Act No. 13 of 2006 concerning Protection of Witnesses and Victims.¹⁷

For witnesses and victims who feel that they are in a very big threat, their testimony is read in front of the court and can even give written testimony and

¹³Act No. 31 of 2014 concerning Amendments to Act No. 13 of 2006 concerning Protection of Witnesses and Victims.

¹⁴Ibid. Article 5 paragraph 1

¹⁵Bambang Waluyo, 2014, *Viktimologi Perlindungan Korban Dan Saksi*, Sinar Grafika, Jakarta. p. 41

¹⁶Op.cit. Article 8

¹⁷Ibid. Article 10

teleconference, this is based on Article 9 of Act No. 13 of 2006 concerning the Protection of Witnesses and Victims.¹⁸

Before witnesses and victims get legal protection from the Witness and Victim Protection Agency, they must go through several procedures that have been stipulated in Act No. 31 of 2014 concerning Amendments to Act No. 13 of 2006 concerning the Protection of Witnesses and Victims. The Witness and Victim Protection Agency is as stated in Article 28 paragraph 1 of Act No. 31 of 2014 concerning Amendments to Act No. 13 of 2006 concerning the Protection of Witnesses and Victims.¹⁹

The termination of protection for witnesses and victims provided by the Witness and Victim Protection Agency may occur if:²⁰

- At the request of witnesses and/or victims if the application is submitted on their own initiative.
- At the request of the competent authority, if the application for protection is submitted by the official concerned.
- The witness and the victim violated the written provisions in the agreement.
- The Witness and Victim Protection Agency is of the opinion that witnesses and/or victims no longer need protection based on convincing evidence.
- Termination of protection must be in writing.

3.2 Legal responsibilities of Notary Employees who are instrumental witnesses in the Notary Deed which contain defects

Notary staff, as well as instrument witnesses, play a role since the collection of supporting data from the deed, payment of all costs related to the making of the deed, even up to typing and witnessing the reading and signing of the deed. However, this does not cause the instrumenter witnesses to be responsible for everything that will happen to the deed. Because this instrumenter witness only witnessed whether the Notary had carried out the requirements for the formality of making a deed at the time of making the deed.²¹

¹⁸Ibid. Article 9

¹⁹Ibid. Article 28 paragraph 1

²⁰Bambang Waluyo, Op.cit, p. 102

²¹Marina Dhaniaty, 2019, Kedudukan Saksi Instrumentair Atas Akta Notaris Yang Menimbulkan Permasalahan Dalam Perkara Perdata, *Jurnal Media Hukum Dan Peradilan*, p. 123, <http://repository.ubaya.ac.id/35384/1/Marina%20Dhaniaty%20KEDUDUKAN%20SAKSI%202019%20>. accessed on January 17, 2022, 23.50 WIB

The responsibility of a Notary employee as an instrumenter witness is in terms of typing and compiling a draft of a deed, a Notary employee is responsible for the results of the typing being in accordance with the design, and in matching the names of the people listed in the deed it must be exactly the same as those of the persons listed in the deed. The person who acts as an appearance in the making of the deed in terms of such responsibility cannot be separated from the instructions and directives of the Notary.²²

Notary employees have responsibility for what is ordered or assigned or requested by a Notary. In the event that a Notary employee is ordered, assigned or asked to be a witness in the inauguration of the deed, the notary employee who is an instrumenter witness must be present at the inauguration of the deed to witness the inauguration of the deed, namely the reading of the deed by the Notary and the signing by the appearers, the Notary and the witnesses. Thus, the Notary's employee is not responsible for the contents of the deed he signed as an instrumenter witness, considering the nature of his position as an employee who was only assigned by the Notary, which was only limited to preparing the deed.²³

If there is a defect in the deed so that the deed has degraded its evidentiary value as a deed under the hands of a notary who is responsible for it as stated in Act No. 2 of 2014 concerning Amendments to Act No. 30 of 2004 concerning the Position of a Notary that the Notary deed has degraded its evidentiary value as a private deed if there are violations or do not meet the specified requirements.²⁴

Based on Act No. 2 of 2014 concerning Amendments to Act No. 30 of 2004 concerning the Position of Notary, the Notary Deed is formally flawed so that the proof value is degraded as a private deed because it is not fulfilled or violates the provisions of article 16 paragraph 9, article 41 , article 44 paragraph 5, article 48 paragraph 3, article 49 paragraph 4, article 50 paragraph 5, article 51 paragraph 4 of Act No. 2 of 2014 concerning Amendments to Act No. 30 of 2004 concerning the Position of a Notary, as well as article 52 paragraph 3 of Act No. 30 of 2004 concerning the Position of a Notary.

Determining the Notary Deed which has degraded its evidentiary value as a private deed is not necessarily carried out by the parties themselves or by the Notary who made it or by another party, it must be based on the court's decision

²²I Komang Sujayanayasa, Loc.cit

²³Ibid.

²⁴Vivien Pomantow, 2018, Akibat Hukum Terhadap Akta Otentik Yang Cacat Formil Berdasarkan Pasal 1869 KUHPERDATA, *Lex Privatum*, Vol. VI, No.7 Hal. 94, <https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/22401/22083>, accessed on January 18, 2022, at 00.02 WIB.

that the lawsuit was filed against the Notary who made it by the appearers themselves.²⁵

Apart from the formal requirements, a Notary Deed can be said to be an authentic deed if it meets the material requirements in accordance with the legal requirements of an agreement, which is contained in Article 1320 of the Civil Code and if the material requirements are not met then the deed can be canceled or null and void by law. .²⁶

Notary in the case of making an authentic deed which causes the deed to only have the power of an underhand deed or the deed is null and void, the parties who feel aggrieved can claim compensation for the Notary. In the event that a Notary Deed is canceled by a judge's decision in court, then the compensation for the Notary can only be done if there are parties who feel aggrieved and as long as the error in the Notary Deed is the fault of the Notary who made it.²⁷

Based on the explanations and provisions above, it can be concluded that a Notary employee who is an instrumenter witness in a notary deed if there is a formal defect in the Notary Deed so that the Notary Deed has degraded its evidentiary value as a private deed or if the Notary Deed has material defects and the Notary Deed can be canceled or null and void completely is the responsibility of the Notary considering his position is as the official making the deed and not the responsibility of the Notary employee who is the instrumenter witness in the deed considering the nature of his position as an employee who is only assigned by the Notary, which is only limited to preparing the deed.

4. Conclusion

Notary employees as instrument witnesses or deed witnesses in providing information regarding the disputed deed are protected in Act No. 31 of 2014 concerning Amendments to Act No. 13 of 2006 concerning Protection of Witnesses and Victims through the Witness and Victim Protection Agency where the institution is duty and authority to provide protection and rights to witnesses and victims. Notary employees who act as instrumenter witnesses are not responsible for the contents of the deed. Notary employees who act as instrumentary witnesses should receive protection in Act No. 2 of 2014 concerning Amendments to Act No. 30 of 2004 concerning Notary Positions because the actions of Notary employees as instrumentary witnesses in the inauguration of the Notary Deed are included in the notary field . To prevent

²⁵Habib Adjie, Rusdianto Sesung, 2020, *Tafsir, Penjelasan, Dan Komentor Undang-Undang Jabatan Notaris*, PT. Refika Aditama, Bandung. p.438

²⁶Article 1320 of the Civil Code

²⁷Vivien Pomantow, Op.cit.

defects in the Notary Deed, a Notary who has been appointed to make the deed must be more careful in carrying out the duties of the Notary's position and follow all the procedures and conditions specified in the making of the deed.

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