

Legal Consequences for Deed that is Not Signed Before a Notary

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Abstract

Notary Deed Signing is not in the notary's office, even though the act is at risk of violating the rules of the notary position law and notary code of ethics, but it is still carried out by certain notaries. This type of research is normative legal research. With normative juridical methods. Legal materials consist of primary, secondary and tertiary legal materials. The analysis method uses the description technique, construction technique, and systematic technique. The validity of a deed not signed before a notary, the deed is only valid as an agreement, where a valid agreement is an agreement that has fulfilled the legal requirements of an agreement such as an agreement, the ability of the parties, the object of the agreement, and the agreement made is not contrary to the law applicable. The validity of the deed is invalid, because in signing the deed that was not performed before a notary, the authentic deed did not fulfill the formal requirements to become an authentic deed as regulated in Article 16 paragraph (1) letter m of Law Number 2 of 2014 concerning Amendment to the Law Number 30 of 2004 concerning Notary Position. Where in this provision that the Notary must be physically present and sign the deed in front of the parties, witnesses, and the Notary himself. Notary Deed that is not signed by the registrar before a notary public and signed outside the Notary's office, even though on the grounds that one of the registrants cannot be present at the signing of the deed by the tappers, and witnessed by witnesses and Notaries, resulting in the degradation of the authentic deed becomes the only deed has a proof of deed under the deed. In Act Number 2 of 2014 concerning amendments to Act Number 30 of 2004 concerning Notary Position, no regulation is found concerning sanctions against Notaries that are significant for violations of Article 16 paragraph (1) letter m of Act Number 2 of 2014 concerning amendments to Law Number 30 of 2004 concerning Notary Position.

Keywords: Legal Impact; Deed; Not Signed Before a Notary

I. INTRODUCTION

The community's need for legal certainty at this time is crucial and is a very important thing in people's lives, so that every element in the community that deals directly or indirectly with the implementation and enforcement of the law must have the same parameters, namely the achievement of legal certainty (Abdul Hakim G. Nusantara, 1998). Notary and actual products can be interpreted as an effort by the state to create legal certainty and protection for community members. The position of a notary public official is an honorary position given by the state attributively by law to someone he trusts. The importance of the existence of a notary related to

the making of an authentic deed meant by Article 1868 of the Civil Code. According to Article 15 of Law Number 2 of 2014 concerning amendments to Law Number 30 of 2004 concerning the Position of Notary, the Notary has the authority to make authentic deeds regarding all the changes, agreements and stipulations required by statutory regulations and / or as desired by those It is in the interest to be stated in an authentic deed, guarantee the certainty of the date of making the deed, keep the deed, give a grosee, copy and quote of the deed, all of it as long as the making of the deed is not also assigned or excluded to other officials or persons stipulated by the Act. In the provision of Article 19 paragraph (3) of Law Number 02 of

2014 concerning Amendment to Law Number 30 of 2004 concerning the Position of Notary, regulates the notary authority to carry out his position within a span of time mostly outside his domicile, in this case in the county or city area.

Provisions relating to Article 19 paragraph (3) of Law Number 2 of 2014 concerning amendments to Law Number 30 of 2004 concerning Notary Position, namely in the Notary Ethics Code in the provisions of Article 3 number 8 of the Notary Code of Ethics which states that: “ establish an office in the domicile and that office is the only office for the Notary concerned in carrying out daily office duties.”

As regulated in Article 4 number 6 of this Notary Code of Ethics which states, the prohibition of Notaries or other people (as long as they carry out the position of Notary) is prohibited: “Sending minutes to clients to be signed”. As regulated in Article 3 number 15 of this Notary Code of Ethics which states that: “Carry out the position of Notary in his office, except for certain reasons.” In the other provisions, it is not explained further regarding “legitimate reasons” so as to bring up a blemish for the notary by signing the deed not before the notary and outside the notary’s office.

Judging from the provisions above, in reality, sometimes the notary himself comes to the audience, not the person who comes to the notary’s office. This happened because of certain reasons that made the notary had to meet the registrar and sign the notary at the notary’s office even outside the area of the notary’s position. In practice, the deed has not been signed before the notary public and the signature is done outside the notary’s office.

Notary Deed Signing is not in the notary’s office, even though the act is at risk of violating the rules of the notary position law and notary code of ethics, but it is still carried out by certain notary persons.

A legal effect is an event that is caused by a cause, that is, an action carried out by a legal subject, both an act that is in accordance with the law, and an action that is not in accordance with the law. The making of authentic deeds is required by legislation in order to create certainty, order and legal protection. In addition to the authentic deed made by or before a Notary, not only because it is required by laws and

regulations, but also because it is desired by the parties concerned to ensure the rights and obligations of the parties for the sake of certainty, order and legal protection for the parties concerned at the same time, for society as a whole. Based on the provisions of Article 1 number 7 of Law Number 2 of 2014 concerning amendments to Law Number 30 of 2004 concerning Position of Notary.

An authentic deed drawn up by a notary is in accordance with what the parties have notified the notary. The notary is obliged to include in the deed what the parties want and subsequently pour the statement or statement of the parties into the notary deed in the form specified in Law Number 2 of 2014 concerning amendments to Law Number 30 of 2004 about the position of Notary Public. Regarding signatures, it is regulated in the Civil Code Book in the Fourth Book in Chapter II concerning written evidence, namely in Articles 1867-1894 of the Civil Code. Article 1875 Civil Code.

Appellers are those who want an agreement or stipulation to be stated authentically in a notarial deed. This means that the parties must be interested parties in matters that are to be stated in the notarial deed.

Based on the background mentioned above, the problem of this study raises the title of: Legal Results of Data Which Is Not Signed Against Notary. In writing this thesis in accordance with the title, there are problems raised as follows:

1. How is the validity of a deed not signed before a notary?
2. What is the consequence of the deed not signed before the notary?

II. METHOD

Legal theory is a study of the essential characteristics of the legal system, with an interdisciplinary method of studying legal phenomena, both theoretically and about the general symptoms of positive law. For this reason, in developing a “legal theory” a clear concept or replacement is required, a consistent building, simple arrangement, formulation or formulation is accurate and clear (I Dewa Gede Admaja, I Nyoman Putu Budiarta, 2018). This type of research used in this thesis research is normative legal research. In connection with this study, using a statutory approach, a conceptual approach, a

historical approach. This research was conducted through a literature study divided into 3 (three) parts, namely primary, secondary, and tertiary legal materials. The research was conducted with a literature study to obtain legal materials and use document study techniques where the collection of legal materials was clarified based on primary legal materials.

III. RESULT AND DISCUSSION

The validity of the deed not signed by the registrar before a notary public. Notary Deed as an authentic deed has perfect and strong evidentiary power so that anyone who states that the deed is wrong or not true, then who states it must prove it through a district court hearing. This needs to be done as the meaning of notarial deed authenticity (Habib Adjie, 2008). Notary Deed As an Authentic Deed, in relation to the contrary proof of the contents of the deed, thus the truth of the contents of the official deed or the official deed cannot be sued, except by alleging that the deed is false, whereas in the deed of party or the deed of the truth party, the contents of the deed of party can be sued without accusing its falseness by stating that the statement from the party is incorrect.

So that the most basic task in this case, the notary can also be said as one of the law enforcers, because the notary is authorized to make written evidence that has the power of proof. Notary deed can be accepted in court as absolute proof of its contents, but even so there can be a denial with contrary evidence by witnesses who can prove that what the notary explained in the act is not true.

Validity of Deed Not Signed before the Notary Public In the provisions of Article 3 number 15 of this Notary Code of Ethics which formulates that:

“Carry out the position of Notary in his office, except for certain reasons (Habib Adjie, 2022). “By looking at the provisions above, the validity of signing a notarial deed not in the notary’s office can be divided into, namely:

1. The validity of a Notary Deed Signed Not at the Notary Office in the Case of Notary Area. That is, the notary is still authorized to carry out his position not in the notary’s office but still in his place of office for as long as there are certain reasons, then the signing is still valid. not explained how certain reasons are.

However, from the observations of researchers in practice, certain reasons are usually more caused by the user who will make a deed, not the reasons caused by a notary. These reasons are usually in the form of a pressing situation, where the user cannot or cannot come directly to the notary’s office because of the urgency.

2. The validity of a Notary Deed Signed Not at the Notary Office in the case of Not being in the Position of Notary Public is still in the Position of Notary Position. Not done consecutively this prevents unfair competition between fellow notaries in the place where the deed is signed. If a notary is done in succession, it will make the notary not authorized and make the deed invalid.
3. The validity of a Notary Deed Signed Not at the Notary Office in a Case Outside the Area of Notary Position. Notaries are prohibited from carrying out positions outside of their jurisdiction, where the notary public office covers the entire provincial territory from their domicile. So if this is prohibited by the Law, then the deed signed outside the notary’s area of office becomes invalid, because the notary has no authority and violates the law’s order.
4. The validity of a notary deed sent to the Tapping Place outside the notary’s unsigned office before a notary. The validity of a notary deed signed not in the notary’s office has the criteria as an illegitimate deed as an authentic deed, because the signing of the deed is done not before a notary, but the deed, signing outside the office with a notary employee who brings to the address, although accompanied by circumstances or conditions that are not possible to come directly to the notary’s office. so that the deed made will lose authenticity and be degraded into a deed under the hand.

The validity of making an authentic deed as mentioned in Article 16 paragraph (1) letter m of Law Number 2 of 2014 concerning Amendment to Law Number 30 of 2004 concerning Notary Position.

Thus, the validity of a deed not signed before a notary, the deed is only valid as an agreement, where a valid agreement is an agreement that has fulfilled the legal requirements of an agreement such as an agreement, the ability of the parties, the object in the agreement, and the agreement made is

not contrary to applicable law. The validity of the deed is invalid, because in signing the deed that was not performed before a notary, the authentic deed did not fulfill the formal requirements to become an authentic deed as regulated in Article 16 paragraph (1) letter m of Law Number 2 of 2014 concerning Amendment to the Law Number 30 of 2004 concerning Notary Position. Where in this provision that the Notary must be physically present and sign the deed in front of the parties, witnesses, and the Notary himself.

Due to the Legal Deed that was not signed before the Notary Public. The Legal Liability of a Civil Notary for a Deed that is signed by the TAP not before a notary public. Sanctions on Notarial Deed have the strength of proof as an underhand deed is an external sanction, ie sanctions against Notary in carrying out their office duties do not carry out a series of mandatory actions against or in the interests of the parties facing the Notary and other parties which results in the interests of the parties being unprotected . The relationship between the Notary profession with the public and the state has been regulated in Law Number 2 of 2014 concerning amendments to Law Number 30 of 2004 concerning Notary Position, while the relationship between the Notary profession and the Notary profession is regulated through the Notary Ethics Code. Without the Notary Code of Ethics, the dignity and dignity of his profession will be lost.

Notaries in carrying out their duties must comply with Law Number 2 of 2014 concerning amendments to Law Number 30 of 2004 concerning Notary Position, and the Code of Ethics of his profession. The scope of the code of ethics applies to all members of the Indonesian Association of Notaries Association (INI) and others who carry out the position of Notary. Sanctions as a form of effort to enforce the Notary code of ethics violations set forth in Article 6, states that sanctions imposed on members who violate the code of ethics can be in the form of reprimands, warnings, temporary dismissals from membership of the association and dismissal with respect to the membership of the association (Gembongseto Hendro Soedagoeng, Gunarto, Habib Adjie, 2017).

Legal Consequences of the Deed Signed Not before a Notary Public. Based on the provisions of the sanctions provided for under Law Number

2 of 2014 concerning amendments to Law Number 30 of 2004 concerning the Position of Notary, it can be said that violations of the Notary Code of Ethics can be equated with violations of the law, so that sanctions originating from Constitution. In this case the Notary Code of Ethics adheres to submission to the law. Enforcement of the code of ethics is an effort to carry out the code of ethics as it should, supervise so that there are no violations, because the code of ethics is part of positive law, then the norms of law enforcement apply to the enforcement of the code of ethics. The notary code of ethics only binds in, into what is meant here is only binding to the notary who follows the membership of the association only, but this code of conduct does not bind out the membership of the notary public association.

Notary Deed that is not signed by the registrar before a notary and signed outside the Notary's office, even though on the grounds one of the tappers cannot be present at the signing of the deed by the tappers, and witnessed by witnesses and Notaries, resulting in the degradation of the authentic deed to be a deed that only has a proof of deed under the deed. In Law Number 2 of 2014 concerning amendments to Law Number 30 of 2004 concerning Notary Position, no regulation is found concerning sanctions against Notaries that are significant for violations of Article 16 paragraph (1) letter m of Law Number 2 of 2014 concerning amendments to Law Number 30 of 2004 concerning Notary Position.

IV. CONCLUSION

The validity of a deed not signed before a notary, the signing must be done before a notary. The notary is considered responsible for signing the deed so that the validity of the deed can be proven as an authentic deed. Thus, the validity of a deed not signed before a notary, the deed is only valid as an agreement, where a valid agreement is an agreement that has fulfilled the legal requirements of an agreement such as an agreement, the ability of the parties, the object in the agreement, and the agreement made is not contrary to applicable law. The validity of the deed is invalid, because in signing the deed that was not performed before a notary, the authentic deed did not fulfill the formal requirements to become an authentic deed as regulated in Article 16 paragraph (1) letter m of Law Number 2 of

2014 concerning Amendment to the Law Number 30 of 2004 concerning Notary Position. Where in this provision that the Notary must be physically present and sign the deed in front of the parties, witnesses, and the Notary himself.

As a result of the legal deed that was not signed by the registrant before a notary public, it resulted in the deed that he made became the strength of proof into a deed under the hand and the loss suffered by the tappers. Sanctions against notaries are not clearly regulated in the provisions of the Civil Code, the Notary Position Law, and the Notary Ethics Code. Notary Deed that is not signed by the registrar before a notary and signed outside the Notary's office, even though on the grounds one of the tappers cannot be present at the signing of the deed by the tappers, and witnessed by witnesses and Notaries, resulting in the degradation of the authentic deed to be a deed that only has a proof of deed under the deed. In Act Number 2 of 2014 concerning amendments to Act Number 30 of 2004 concerning Notary Position, no regulation is found concerning sanctions against Notaries that are significant for violations of Article 16 paragraph (1) letter m of Act Number

2 of 2014 concerning amendments to Law Number 30 of 2004 concerning the Position of Notary stating that: "Read the Deed before the audience attended by at least 2 (two) witnesses, or 4 (four) special witnesses for the making of a will under the hand, and signed on right away by the parties, sanctions and notaries.

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