



Responsibilities and Authorities of the Notary for the Legalization of Authentic Deeds

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ABSTRACT

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A notary is a public official authorized to do authentic deeds and has other authorities as referred to in this Law or based on other laws. This study aims to determine how a notary's authority and responsibility as a deed maker is towards parties who do not recognize the deed. This type of research uses a doctrinal type because it is concerned about justice and good faith and aims to review the Notary Office Law. The literature study that will be worked on is legal documents such as the Law on the Position of Notary Public, Jurisprudence regarding related cases, and the decision of the West Jakarta District Court No.547/Pdt.G/2021/PN.Jkt.Br. Based on the results of this study, it is the authority of the notary as the maker of the deed against parties who do not recognize the deed, stating that both parties have agreed and agreed to and at this moment, make a Sale and Purchase Agreement and Power of Attorney with the agreed terms and conditions. The responsibility of a Notary in doing a deed is the responsibility of a Notary in doing an authentic deed due to negligence in doing a deed. The negligence, in this case, is if a Notary has done a deed not by the applicable regulations.

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1. INTRODUCTION

Notary according to Article 1 of the Law of the Republic of Indonesia Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary (hereinafter referred to as UUJN), Notary is a public official authorized to make authentic deeds and has other authorities as referred to in this Law or based on other laws.

The exercise of the Notary position cannot be separated from the authority of the Notary position itself which is always related to authentic deeds. Article 1 point 1 UUJN-P states that "Notary is a public official authorized to make authentic deeds and has other authorities as referred to in this Law and based on other laws." Based on this article it can be seen that a Notary is a public official and that the main authority of a Notary is to make authentic deeds. Behind the authority attached to the position of Notary related to making authentic deeds, of course, cannot be separated from the obligations that will always accompany this authority. Regarding authentic deed, the obligation that must be

carried out by the notary to the authentic deed is to save it as minutes of the deed. Article 1 point 8 UUJN-P states that "Minuta deed is the original deed which includes the signatures of the appearers, witnesses, and includes the signatures of the appearers, witnesses and Notaries, which are kept as part of the Notary Protocol." This provision states that the minutes of the deed kept by the Notary are part of the Notary Protocol. Article 1 point 13 states that "Notary Protocol is a collection of documents which are state archives and must be kept and maintained by a Notary in accordance with the provisions of this legislation (Syahrani 1999).

Therefore, it can be seen that a Notary during carrying out his position has the obligation to keep the minutes of the deed. Minute storage at the Notary's office is physical deed minuta storage. Then in his book, it is continued with the Notary protocol management mechanism where the next provision requires the Notary to record every day all the deeds in the register of the deeds. In addition, each page in the list is numbered and initialed by the Regional

Supervisory Council (MPD), and the first and last pages are signed by the MPD. On the page before the first page, there is a description of the number of lists of deeds signed by the MPD (Adjie 2021).

It can be said that the main purpose of opening a notary office is to make authentic deeds for people in need. So that the notary must be guided by UUJN-P regarding how and what must be done by a notary related to the authority, obligations and prohibitions in carrying out the position of a notary.

The notary has the obligation to read the deed to his party and ensure that the parties and witnesses understand the contents of the deed. This is stated in Article 16 paragraph (1) letter m which reads the deed in front of the appeared with at least 2 (two) witnesses, or 4 (four) witnesses specifically for making a will under the hand, and signed at that time by the appeared, witness, and Notary; then proceed with Article 16 paragraph (7) UUJN where, the reading of the Deed as referred to in paragraph (1) letter m is not required, if the appeared wants the Deed not to be read because the appeared has read it himself, knows and understands its contents, provided that This is stated in the cover of the deed and on each page of the minutes of the deed initialed by the appeasers, witnesses and notary. The reading of the deed is also contained in Article 44 paragraph (1) UUJN where, immediately after the deed is read, the deed is signed by each appeared, witness and Notary, unless there is a appeared who cannot sign and state the reasons. One of the deeds that can be made by a notary is the binding of a sale and purchase agreement (Anand 2018).

If we examine the Civil Code, there are no specific arrangements regarding PPJB, so that the definition, form and content as well as the scope of the PPJB grow and develop in notarial practice, in accommodating people's desires and needs for land to fulfill their lives or for the purposes of selling transactions. buy land rights or land rights. PPJB land as a preliminary (partum subject and included in the provisions of book III of the Civil Code regarding engagement as a preliminary agreement, while the main agreement of the PPJB land is the sale and purchase of land that is subject to and included in the provisions of national land law. In theory and doctrine, the land PPJB is classified as an obligatory agreement, so that the elements of the agreement as well as the terms of the validity of

the agreement including the legal principles of the agreement in general must be fulfilled.

The power or power to exercise an independent power given by a clause cannot be withdrawn by the person giving the power of attorney and ignoring the provisions of Article 1813 of the Civil Code which regulates the causes that can terminate a power, is an absolute power.

Therefore, at the time of reading the deed, the parties are considered to have understood and know clearly what the deed will be signed later. However, this is not the case according to the decision of the West Jakarta District Court No. 547/Pdt.G/2021/PN.Jkt.Br. In this decision, initially the parties agreed to carry out a Sale and Purchase Binding Agreement because the payment by the Second Party as the buyer will be made in stages and also through Home Ownership Credit which will be transferred from the First Party to the Second Party and then the Second Party pays it off to the bank. However, when the payment was made and the name of the certificate was reversed, the First Party stated that it had never signed the Sale and Purchase Agreement on the grounds that what was signed was a Deed of Acknowledgment of Debt, while the title of the deed was also read out at the time of signing the deed. The notary in this case received a summons to serve as a witness in court (Budiono 2018).

Based on the case above, the legal requirements for the agreement have been fulfilled, but in fact the lawsuit can still be accepted and brought to the table of the district court so the author wants to discuss the authority and responsibilities of a notary as a deed maker against parties who do not recognize the deed by referring to the example of a district court decision case West Jakarta No. 547/Pdt.G/2021/PN.Jkt.Br. This study aims to determine how a notary's authority and responsibility as a deed maker is towards parties who do not recognize the deed.

2. METHOD

This type of research uses a doctrinal type because this research is concerned about justice and good faith so that it aims to review the Notary Office Law. The literature study that will be worked on is legal documents such as the Law on the Position of Notary Public, Jurisprudence regarding related cases, and also

the decision of the West Jakarta District Court No. 547/Pdt.G/2021/PN.Jkt.Brt.

3. RESULTS AND DISCUSSION

Authority of a Notary as a Deed Maker Against Parties Who Do Not Recognize the Deed

PPAT as the official who made the land deed has been given the authority to make authentic deed. This is regulated in Article 3 paragraph (1) PP Number 37 of 1998 which says that in order to carry out the main tasks referred to in Article 2 a PPAT has the authority to make authentic deeds regarding all legal actions as referred to in Article 2 paragraph (2) regarding the right to land and ownership rights to apartment units located within the working area. Article 2 paragraph (2) PP Number 37 of 1998 clearly provides a classification of the types of deeds that can be made by a PPAT, this is also reaffirmed in Article 3 of PP Number 37 of 1998 (Marzuki 2008).

The PPAT's authority in making authentic deeds has been regulated in PP Number 37 of 1998. The PPAT's authority in making authentic deeds is also limited by Article 2 paragraph (2) PP Number 37 of 1998. This limitation is intended so that the authority given to the PPAT does not conflict with the authority of officials others who can make authentic deeds such as a notary. The classification of making authentic deeds in the context of land registration carried out by PPAT is clearly regulated in Article 2 paragraph (2) PP Number 37 of 1998. Therefore, as a guide in making authentic deed from the land registration process, PPAT in making authentic deed should not out of the guideline.

The authority of a notary as a deed maker against parties who do not recognize their deed. In the case of the West Jakarta District Court Decision No. 547/Pdt.G/2021/PN.Jkt.Brt notary has the authority to make Contract Agreements made by both parties. In this case, basically the Notary is not responsible for the contents of the deed made before him because the contents of the deed are the will and agreement desired by the parties. The notary only puts the agreement into the form of an authentic deed so that in this case the notary is only responsible for the formal form of the authentic deed as stipulated by law.

The role of the Notary in this case is only to record or to include a legal action committed by

the parties/appearers in the deed. The notary only confirms what happened, what he saw, and experienced from the parties/appearers along with adjusting the formal requirements for making an authentic deed and then pouring it into the deed. The notary is not required to investigate the truth of the material contents of the authentic deed. This requires the Notary to be neutral and impartial and to provide a kind of legal advice for clients who request legal advice from the Notary concerned.

The case states that both parties have agreed and agreed to and hereby enter into a Sale Purchase and Power of Attorney Agreement with the agreed terms and conditions. For and on behalf of the First Party, sell, transfer / transfer and / or release the rights to the Land and Building to the Second Party itself, at the price and terms and conditions or agreements as usual for a sale and purchase of Land and Building and for this purpose the authorized person has the right to appear before anyone and anywhere, including and especially before the authorized Land Deed Making Officer and/or Notary, receive and give statements, draw up, request to make and sign the deed of sale and purchase and the deeds and other documents required and to take any actions deemed good and useful to achieve the aims and objectives mentioned above, no action is excluded (Ridwan 2006).

So the notary in this case has the authority to make an authentic deed which contains an agreement that has been agreed upon by both parties in accordance with the applicable law and gives legal force to the agreement, so that if one of the parties violates the agreement, they can be prosecuted legally.

Responsibilities of a notary as a deed maker towards parties who do not recognize their deed.

As a public official authorized to draw up an authentic deed, a notary in carrying out his duties can be sued in court based on an authentic deed he made himself. Notaries in their behavior and when carrying out their duties in order to fulfill their obligations have been regulated in the Notary Code of Ethics, in which Notaries in carrying out their duties must do the following (Hadi 2017):

1. Notaries in making authentic deeds are required to do it properly and correctly. Which means, the deed made must

comply with the general will and the requests of interested parties because of their obligations;

2. Notaries are required to produce quality deeds. Which means that the deed made must be in accordance with applicable legal regulations and in accordance with the wishes of the interested parties. Here the Notary is required to explain to the interested parties regarding the truth of the contents of the deed he made, so that anyone who will admit the truth to the deed will have perfect evidentiary power.

By being able to be burdened with responsibility for the actions of a Notary in making a deed, there is responsibility for a Notary in making an authentic deed due to negligence in making a deed. The negligence referred to in this case is if a Notary has made a deed that is not in accordance with the applicable regulations. In this case it is not in accordance with UUJN, Criminal Code, Criminal Code or Notary Code of Ethics. Then the deed can be used as a criminal act. Therefore, in making the authentic deed, the Notary must be guided by the UUJNP so that the deed can be declared in accordance with the procedures and procedures for making an authentic deed required by the Notary, so that there is no legal loophole for interested parties to claim compensation from the Notary. Notary for mistakes in making the deed (Kusuma 2021).

According to the decision of the West Jakarta District Court No. 547/Pdt.G/2021/PN.Jkt.Brt. In this decision, initially the parties agreed to carry out a Sale and Purchase Binding Agreement because the payment by the Second Party as the buyer will be made in stages and also through Home Ownership Credit which will be transferred from the First Party to the Second Party and then the Second Party pays it off to the bank. However, when the payment was made and the name of the certificate was reversed, the First Party stated that it had never signed the Sale and Purchase Agreement on the grounds that what was signed was a Deed of Acknowledgment of Debt, while the title of the deed was also read out at the time of signing the deed. The notary in this case received a summons to serve as a witness in court. According to Article 1320 of the Civil Code, it contains the conditions for a

valid agreement, namely (Suteki and Taufani 2018):

1. The agreement of the parties, namely the conformity of the will between the parties regarding what will be regulated in an agreement. An agreement of will is considered to exist if it occurs without coercion, deception and oversight;
2. The competence of the parties, meaning that the person/party who will make the agreement must be capable of acting within the law and not being under guardianship;
3. There is a certain object as the object of the agreement, and the cause is lawful, meaning that the contents and objectives of an agreement must be based on reasons that are not prohibited by laws and regulations, decency and public order.

In this case it can be seen that one of the parties does not acknowledge the deed made by the notary. Then the responsibility of the notary as the maker of the deed towards parties who do not recognize the deed is that the notary makes the DEED OF EMPLOYMENT NUMBER 193, the contents of which among other things state that (HSB and Julianthy 2018):

- That the Land and Buildings being traded have not been handed over by the First Party to the Second Party, because they are still inhabited by the First Party.
- In connection with the matters described above, now and for the time being, the First Party hereby promises and binds itself to the Second Party to hand over the Land and Building in an empty condition from the occupants including the complete keys in a well-maintained condition to the Second Party, no later than the tenth of September two thousand and sixteen (10-09-2016).
- If at the stipulated time the First Party has not handed over the Land and Buildings in an vacant condition without the complete occupants along with the keys, then the First Party is negligent, which negligence is proven by the passage of time, and in such an event if there are still items The First Party in the house, then the goods are considered to belong to the Second Party.

Article 1

- The Second Party will receive what it has purchased in good condition complete with the keys.

- The First Party promises to deliver what has been purchased by the Second Party in a complete and well-maintained condition.

Section 2

- If a fire or damage occurs as a result of the fault of the First Party and/or its employees, the First Party is required for and at the risk and expense of the First Party itself to rebuild what it uses according to its original condition.

Article 3

- Subscriptions to electricity accounts, PAM water, security maintenance fees, cleaning and others, are borne and borne by the First party as long as this emptying agreement has not ended.

Article 4

- The First Party is prohibited from renting or transferring in any way the building and land to other people/parties, either in part or in whole, including accepting other people/companies to jointly occupy the building and land, nothing is excluded.

Article 5

- The First Party is not allowed to change the buildings and land above since the signing of this deed.

Article 6

- Matters that have not been or have not been sufficiently regulated in this agreement, if deemed necessary in the future, will be determined separately by deliberation in an addendum which is an integral part of this agreement.

Article 7

- The costs of making this deed and others related to the making of this deed are borne and paid for by the First Party.

Article 8

- Finally, both parties stated that they chose a common and permanent legal residence for all matters arising as a result of this deed, at the Registrar's Office of the District Court in West Jakarta.

4. CONCLUSION

The authority of the notary as the maker of the deed against parties who do not recognize the deed states that both parties have agreed and agreed to and hereby make a Sale and Purchase Agreement and Power of Attorney with the agreed terms and conditions. For and on behalf of the First Party, sell, transfer / transfer and / or release the rights to the Land and Building to the

Second Party itself, at the price and terms and conditions or agreements as usual for a sale and purchase of Land and Building and for this purpose the authorized person has the right to appear before anyone and anywhere, including and especially before the authorized Land Deed Making Officer and/or Notary, receive and give statements, draw up, request to make and sign the deed of sale and purchase and the deeds and other documents required and to take any actions deemed good and useful to achieve the aims and objectives mentioned above, no action is excluded. So the notary in this case has the authority to make an authentic deed which contains an agreement that has been agreed upon by both parties in accordance with the applicable law and gives legal force to the agreement, so that if one of the parties violates the agreement, they can be prosecuted legally.

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