



Unlawful Acts of Notary Officials in Making Deeds Whose Signatories Are Not Before a Notary

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Abstract The creation of legitimate deeds is one of a notary officer's primary responsibilities. Notaries are constrained by the formats and procedures that have been established by rules and laws when creating genuine deeds. If the deed is not in compliance with the ruling, the deed will be subject to legal consequences. In order for a deed to be considered authentic, it is necessary for the parties signing it to be in front of the appropriate notary public. This requirement is set forth in the legislation; if it is not followed, the notary public will not follow certain regulations. Because the Notary Officer broke the law and caused harm to others, it might be said that they did an Unlawful Act (the facers). Therefore, more research is required to determine the legal ramifications for notaries who conduct crimes as well as the ramifications for deeds whose signatures are not in front of notary officials. Through the processing of data from primary, secondary, and tertiary legal documents, this sort of research is normative juridical employing secondary data. Qualitative analysis of data gathering methods for document studies. The study's findings have led to the understanding that a deed that is signed without the presence of a notary public bears the same legal consequences as a deed that is signed in person. Stated differently, the deed has lost its authenticity. The party who feels wronged by the notary's creation of the deed may then file a lawsuit or civil claim with the court to demand payment of costs, damages, and interest to the notary in question. This is the notary's responsibility for unlawful acts in making a deed whose signing is not before a notary official. The Notary Regional Supervisory Board may also impose ethical punishments on the Notary Public.

Keywords- *Unlawful, Acts Notary, Deed Signature;*

I. INTRODUCTION

The ability of the State to offer public services to its citizens is one of its roles. The State provides access to civil law evidence and documents, which are held by notaries and given to general officials with these objectives, as one method of serving its residents. The details of the deed are transferred to the State and need to be kept on file indefinitely. The usage of the state insignia, the Garuda Bird, by notaries in such capacities is what notaries acknowledge as positions (rather than professions) in order to exert state power. By this interpretation, notaries exert some of the State's power in the field of civil law. [1]

Particularly in the area of civil law, notaries play a part in the enforceability of the law. This is due to the fact that notaries have the legal authority to handle civil matters as public

authorities, particularly when it comes to creating genuine deeds. A notary is a general official who has the capacity to create legitimate deeds and other powers, as stated in Article 1 paragraph (1) of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Position, also referred to as the Notary Position Law or UUJN. A notary is the sole public official who possesses the authority to draft an authentic deed concerning a legal act that will be detailed in an authentic deed. The notary is required to retain and deliver the grosse, copies, and quotes from the actual deed in addition to verifying the exact date of the

original deed that he executed. The notary must confirm that the deed he does complies with the rules that are binding on him as a notary public and that no general rule designates officials or other individuals to execute it. [2]

Authentic deeds are the most complete and persuasive evidence in any legal proceeding in public life. The need for written proof in the form of legitimate deeds in a range of commercial contacts, banking, land, social activities, and other areas is increasing due to the need for legal certainty in various economic and social relations at the national, regional, and international levels. Through the use of a real deed that clearly defines the parties' rights and obligations, provides legal clarity, and, perhaps, AIDS in issue prevention. Authentic deeds, the most powerful and thorough textual evidence, contribute significantly to the resolution process even in cases where these disputes cannot be avoided. [3]

Naturally, the confronters who should or wish to do the desired deed are represented by the Notary Officer when they create the legitimate deed. However, current rules and regulations—in this example, Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Positions—have governed the original deed mentioned in its production and forms. As a result, even if a notary official is permitted to make a notarial deed in line with Article 1 point 1 of the Notary Office Law, the document still needs to be made in compliance with the specified guidelines. The legal ramifications for the deed will arise if it is demonstrated that the concerned Notary purposefully disregarded the provisions when creating the authentic deed.

The essence of an act against the law, that is, there is no contractual relationship between one party and another. Unlawful acts can occur one party harms another party without any intention but causes harm to one party. In practice, Notaries perform a job based on their authority or within the scope of duties of the position as a Notary Public based on the Notary Position Law. The complainants come to the Notary on their own awareness and express their wishes before the Notary, which is then poured into the form of a Notary Deed in accordance with applicable legal rules, and it is impossible for the Notary to make a word without a request from anyone. As long as the Notary Public carries out the duties of his office in accordance with the Notary Office Law, and has fulfilled all procedures and requirements in making a deed, and the relevant deed has also been in accordance with the parties before the Notary, then claims in the form of unlawful acts under Article 1365 BW are not possible.

Legal subjects who come before a Notary based on their own needs and desires, Notaries are also unlikely to do a job or make a deed without a request from the facers, thus prosecuting a Notary in the form of representing another person without power of attorney is impossible under Article 1354 BW. Therefore, there is a problem if the faces are supposed to go to the notary to make an authentic deed, but the faces do not go to the Notary. But the faces who are supposed to sign the deed in front of a Notary, but do not sign the deed directly before the Notary. Thus, for a deed whose signing is not before the Notary, it will be a matter later about the strength or legal consequences of the deed, because there are legal provisions that are not fulfilled by the Notary Officer in making the deed in question.[4]

Based on the entire set of background information provided above, it is known that there are issues or

issues to be looked at in this study, specifically regarding the status or position of the deed signed by a notary public whose signing is not in front of the notary public in question, as well as the potential legal liability that can be placed on notaries who knowingly violate the terms of their contracts by carrying out confrontations that take place in front of a notary public. In this

situation, the actions involve breaking the law (illegal acts) that cause harm to other parties. Stated differently, the goal of this study is not to address these issues direct.

II. LITERATURE REVIEW

A. Unlawful Acts

An act that does nothing or does something causes harm to others. Legal acts that regulate unlawful acts are regulated in Article 1365 of the Civil Code, which determines and determines unlawful acts requiring errors that have arisen losses and then paying those losses. The category in unlawful acts must be acts, starting from the perpetrator, actions include doing something, or not doing, which is legally required to obey the orders of the law, or public order and decency. [1] [2] [3]

B. Preparation of Notary Deed

The preparation of a Notary Deed must be based on rules with procedures, so that the Notary's position as the deed maker, the authority is given to create evidence, absolute proof in the sense that the deed is, in essence, considered correct, this interest is for those who need evidence for purposes, for personal interests or the interests of a business, or for transactions in the field of trading business, job contracting, credit agreements and so on. [4]

The Notary profession is a work of special expertise and has special knowledge and knowledge, and is responsible, serves the public interest and regulates in writing authentically that is consensus between the parties, notaries must behave morally, honestly, patiently with the limits of their authority not solely based on money, notaries may not make deeds without being asked, then the deed must meet the provisions of the applicable law, For certainty of the interests of the obligations of the parties, to fulfill the interests of the parties as well as to maintain order and legal protection for interested parties as well as for society as a whole. [5]

III. METHOD

One of the aspects of a topic that needs to be explored is research procedures, which are the primary means of achieving the standard of scientific study. The research strategy is based on laws, regulations, and normative legal research, which is a type of normative legal research that is used in line with the formulation of the problem and the goal of the study. Then This study uses a descriptive analytical approach. The secondary data that uses legal resources in the form of primary, secondary, and tertiary legal materials is the source of information used to perform this normative juridical research. The literature and document reviews, as well as the analysis of current data and legal and regulatory frameworks, serve as the study's methods for gathering data. Studying different documents—both those pertaining to rules and regulations and those that are now in existence—is known as document study. [5] The most crucial and final step in this writing process is the data analysis that will be done on this research. through the gathering, processing, and production of data during the research process. Data analysis is another research activity that involves adding, critiquing, commenting, endorsing, and drawing conclusions from the research findings using one's own ideas and well-versed theories. This study used qualitative analysis, a type of data analysis that gives priority to the quality of the data by describing the findings using words rather than figures. [6] [7][8]

IV. RESULT AND DISCUSSION

A. *Legal Effects of a Deed whose Signatory is Not Before a Notary Officer*

A notary has the status of a general official, which means that their authority has never been transferred to another official as long as it is not shared by other officials. The Notary Public is the only official authorized to make authentic deeds regarding all deeds, agreements, and

determinations required by a general ordinance or by the interested party desired to be stated in an authentic deed, so long as the making of the deed by a general regulation is not also assigned or exempted to other officers or persons. [9] Rules define what constitutes an authentic deed, and officials who have the authority to enforce equal weight must also be subject to rules or regulations that are on par with the law. Authentic deeds can only be made by notaries up to now, provided they are true and consistent to a single legal system. This is only due to the fact that it is predicated on legal requirements that must be met for a statement to qualify as an authentic deed. A notary is an official designated by the State by law who is entitled to exercise a portion of the State's authority in the area of civil law. This official is known as a general official. [10]

According to Article 1 point 1 of the Notary Office Law, a notary is a general official who is authorized to make legal deeds and exercise additional authorities as specified in Article 15 of the Notary Position Law. The notary's standing as a general official pertains to the fact that their power has never been ceded to another official; rather, their power will always exist as long as they are able to use it to create authentic deeds and other legal documents. Notary power is further validated by other laws and regulations (which are not included in the Notary Office Law) in addition to being governed by Article 15 of the Notary Office Law. A general officer with the authority to make legitimate. Notary Deeds can be divided into two classes or types: (1) Deeds made by Doornotaries, also called minutes or *Relaas*; and (2) Deeds made before Ten Overstaan notaries, sometimes called party deeds or *Partij*. Deeds executed by or on behalf of the notary must follow the format specified, in this case based on Article 38 of the Notary Office Law, and follow the protocols established, in this case based on Articles 39 through 53 of the Notary Office Law. [11]

Essentially, Article 1868 of the Civil Code governs an authentic document in general. It says, "An authentic deed is a deed made in the form prescribed by law by or before the public officer authorized for it at the place where the deed was made." The genuine deed here is one that has been made by a Notary Officer, in accordance with Law Number 2 of 2014 respecting Notary Positions. It can be seen in the provisions of Article 16 paragraph (1) letter m of the Notary Office Law above, that in making a deed must be attended directly by the facers, read directly in front of the faces and also signed directly by the faces before the notary concerned. This is a formal provision that must be obeyed by the Notary Officer in making a deed, because it has been regulated by laws and regulations. Of course, if there are things that are not implemented, it will have an impact or implication for the deed made.

In contrast, it is important to realize that a Notary Public alone has the ability to create this valid deed, provided that other general officials are not prohibited from creating similar documents¹. We might therefore assume that the only general official with this kind of jurisdiction is the Notary Public. It might be stated that the Notary position is one of trust given the significance of the Notary's responsibilities, his standing in society, and the strength of the authentic deed he made as evidence. Because of this position of trust bestowed by both society and the law, a Notary Public is accountable for maintaining the law and performing their duties as best they can. [12] According to the notary's obligations, the claimants must sign the deed directly in front of the notary, as stated in Article 16 paragraph (1) letter m above. This requirement is also included in Article 44 paragraph (1) of Law Number 2 of 2014 concerning Notary Positions, which says that "every confront, witness, and notary shall sign the deed as soon as it is read, except when there is a contender who is unable to sign stating the reason." It is evident that signing in front of a notary public is a requirement for creating a genuine deed.

The notarial deed is referred to as security because rules and regulations have specified what constitutes an authentic deed throughout its manufacturing. A notarial deed may be annulled if it is not made in compliance with all applicable laws and rules and standards. It is the duty of the pertinent notary officer to prepare notarial deeds in compliance with legal and regulatory requirements. Regarding the cancellation and cancellation of engagements is regulated in Article 1456 of the Civil Code. This section only summarily regulates part of the void, especially agreements made by those who are incompetent, that is, those who are minors, put under

curatele, and defective in will. Defects in the will occur due to coercion, error, deception, and abuse of circumstances.

When the law wants to declare the absence of legal effect, it is stated in simple terms void, but sometimes using the term null and worthless or unenforceable. Cancellation and cancellation are not explained in their application in the rules, meaning under what circumstances or for what reason an engagement or agreement is included in the qualification of cancellation and cancellation. The application of these two terms needs to be related to the term null and void is a term commonly used to assess an agreement if it does not meet objective conditions, namely a certain thing and cause that is not prohibited and the term can be canceled if an agreement does not meet the subjective condition, namely the agreement of the parties who bind themselves and the ability to make an agreement.[13]

There may be legal repercussions for notarial deeds that are not made in compliance with current regulations, particularly if the signing takes place outside of the presence of a notary public. In this instance, the deed only had the power of evidence as a deed in hand, in accordance with Article 44 paragraph (5) of Law Number 2 of 2014. Accordingly, the deed's status changes to that of a deed under the hand as specified in Article 1869 of the Civil Code, which reads as follows: "A deed that cannot be treated as an authentic deed as per Article 1 number 7 jo Article 1868 of the Civil Code." In other words, the deed does not automatically become null and void, but changes its position to a deed under hand. However, it also does not rule out the possibility for the aggrieved parties, related to its cancellation can also be filed in the competent Court. So that the deed remains valid, but because it is not made in accordance with the provisions of laws and regulations, its status does not become authentic before the court.

B. Notary Liability for Unlawful Acts for Making Deeds Whose Signing Is Not Before a Notary Officer

In order to attain legal certainty, notaries—who serve as public servants by offering legal services to the general public—need protection and assurances. Law Number 30 of 2004 Concerning Notary Positions regulates the provision of protection and the promise of obtaining legal certainty for the performance of Notary responsibilities. Changes must be made, though, as some of the Law's provisions are no longer in line with community needs and legal advancements. These changes also aim to further affirm and strengthen Notaries' roles as public servants and their authority, as well as harmonize with other laws. As a result, the government must guarantee the legality of genuine documents.[14] Due to the fact that all business transactions carried out by all parties are becoming more seamless and legally certain, notaries have a wider and more developed function and role in today's increasingly complex national development movement. This development is undoubtedly a result of the legal services and products that notaries provide. It goes without saying that the public and the government, who bestow some authority upon notaries, anticipate that the services they offer will be trustworthy, important, and valuable.

Notaries cannot be released from responsibility in the performance of their duties if a deed is made incorrectly and causes a dispute. This can occur from a mistake the notary made based on the description of the will submitted by the face, ensuring that the notary's statement is accurately described in an authentic deed, or from an error the notary made in making a deed that causes errors beyond the notary's estimate for unintentional errors. Due to these infractions, notaries are forced to deal with the legal system for their acts on a civil, criminal, and administrative level. [15] Naturally, in the framework of civil law crimes, it is part of an unlawful act to make deeds whose signature is not before a notary public. Illegal activities are controlled under the Civil Code's provisions. "Every unlawful act, which brings harm to another person, obliges another person for wrongfully publishing the damage, to compensate for the damage," according to Article 1365 of the Civil Code. According to Article 1365 of the Civil Code, which states that an individual who commits an unlawful act and causes losses to third parties via their mistake is considered to have committed an unlawful conduct. Unlawful acts in the authentic deeds notaries do must satisfy the criteria for unlawful conduct listed in the [16]

According to the description given above, Notary Public officials who disregard laws and regulations when creating genuine deeds may be held legally liable and may be required to compensate the harmed party, as per Article 1365 of the Civil Code. Article 44 paragraph 5 of Law Number 2 of 2014, on the other hand, states that in addition to liability in terms of compensation, parties that suffer losses may also make claims to a notary for reimbursement of fees, compensation, and interest. Therefore, in addition to compensation, there is also a possibility of receiving recovery for fees and interest if it can be demonstrated that the notary broke the law when preparing the deed. There is notary liability in administrative form handled by the Notary Supervisory Panel if the notary concerned is proven to be negligent or erroneous in making a deed, including neglecting the provisions of Article 16 paragraph (1) letter m jo Article 44 paragraph (1) of the Notary Office Law. This is in addition to liability in the form of claims for reimbursement of costs, compensation, and interest to the notary concerned as stipulated in Article 1365 of the Civil Code and Article 44 paragraph (5) of Law Number 2 of 2014 concerning the Notary Position above.[17]

The Notary Supervisory Council is one tool that the government uses and was established to support in its duties. This is due to the numerous issues involving errors made by notary public employees while doing their duties. Since a notary performs a work that involves numerous parties, it is also considered that the notary is an official. In order to monitor and regulate notaries' ethical behavior in performing their responsibilities and the appropriateness of notary authority in accordance with legal and regulatory requirements, a supervisory institution was established. The Notary Supervisory Council is the name of the supervisory organization, and it is situated in the center as well as the regions. The Regional Supervisory Council is subordinate to the Central Supervisory Council (MPP).

Based on the aforementioned provisions, a notary's liability for unlawful acts in creating a deed whose signature is not before a notary official can take the form of administrative sanctions from related institutions that can be imposed on notaries, such as oral warnings, written warnings, suspensions ranging from three to six months, and dishonorable terminations. The damaged party may also be entitled to petition the court for interest, recompense, and cost reimbursement. Consequently, every notary public should be able to maintain his or her standards when exercising their authority, especially when drafting deeds, whose forms and procedures are really subject to laws and regulations.

V. CONCLUSION

There may be legal repercussions for a deed whose signing takes place away from the Notary Officer since there are prerequisites for creating a deed that the Notary cannot fulfill, such as the need to sign the document face-to-face with the Notary. This is in line with Law Number 2 of 2014 respecting Notary Positions' Article 16 paragraph (1) letter m and Article 44 paragraph (1). Therefore, if it is not put into practice, it will have legal ramifications regarding the status of the made deed, meaning that it will only have the same power of evidence as the deed in question. Stated differently, the act is no longer perceived as an authentic Notary Responsibility for Unlawful Acts: Before a notary official signs a deed, they should review the provisions of Article 1365 of the Civil Code, which outline actions that cause injury to other people. Since the Notary Officer in this case is acting in accordance with his power to create a genuine deed while disobeying the law, the action in issue is considered unlawful. Therefore, parties who feel wronged by the deed may initiate a civil case with the court to request reimbursement of fees, damages, and interest to the Notary in question, in accordance with Article 1365 of the Civil Code and Article 44 paragraph (5) of the Notary Position Law.

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