



Notary responsibilities for deeds circulated to clients to be signed

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Abstract

Notaries in carrying out their duties, positions, and responsibilities must follow the guidelines set out in the UUJN and KEN. However, there are still Notaries who do not pay attention to this formal aspect. One example is when the parties sign the deed. Is it true that a Notary can sign a deed outside the office with the parties at different times and places, and what is the legal impact on the status of the deed? This research is a normative research with a statutory approach and conceptual approach, and uses primary and secondary legal materials. The results show that the Notary is obliged to read out the deed in the presence of the parties and witnesses, and all parties must sign the deed at that time. If the reading and signing are not done in the presence of the Notary, the evidentiary power of the deed will be degraded. Furthermore, Notaries who violate the Code of Ethics by sending the deed to the client for signature may be subject to various sanctions, including reprimand, warning, temporary dismissal, and dishonourable dismissal. It is emphasised that Notaries must pay attention to these formal aspects and fulfil their obligations to avoid legal consequences and potential sanctions. The signing of a deed by a Notary outside the office does not directly result in a decrease in the status of the notarial deed, but it is still considered an authentic deed with perfect evidentiary power as long as the deed is notarised.

Keywords: Circulated, notary deed, out of office, signature

Introduction

The foundation of Indonesia as a constitutional state is explained according to the 1945 Constitution. Indonesia is a state based on law, namely the constitutional system and not based on absolute or unlimited power by the government. The rule of law principle adopted by the Indonesian state is emphasized in the state constitution, namely in Article 1 paragraph 3 of the 1945 Constitution (hereinafter referred to as the UUD 1945). These principles must be upheld in their implementation, for the sake of the continuity of the life of society, nation and state. Thus, the state will guarantee certainty, order, and legal protection which will lead to the widest possible truth and justice for citizens.

The development of social life also has an impact on the increasing need for services with legal certainty, one of which is notarial services. The services provided and the expertise of a Notary include making authentic deeds and duties including obligations and responsibilities given to Notaries as public officials based on the Notary Position Law and other laws and regulations. Notaries in carrying out their duties and positions must be based on the mandate of the laws and regulations governing them, which are regulated in Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Positions (referred to as the UUJN).

Notary in Article 1 point 1 of UUJN is a public official authorised to make authentic deeds based on UUJN or other laws and regulations. Notaries are appointed by the government and authorised to make the authentic deeds and provide assistance to the public in making agreements. The making of an agreement before a Notary has the importance of guaranteeing legal certainty for all parties involved. The definition of an authentic deed, as described in Article 1867 and Article 1868 of the Civil Code (referred to as

KUHPerdata), refers to a written evidence prepared in accordance with the provisions of the law by or before a public official authorised in the place where the deed is made (Mawartiningsih & Maryanto, 2017) ^[8].

One of the crucial things for a Notary in carrying out his duties and functions is to have an understanding of the formal aspects regulated by law. This aims to ensure that the public can understand properly and avoid actions that violate the law. The notary's responsibility is very large in providing legal certainty to the public. As a public official appointed by the government, a Notary is indirectly responsible for legal certainty in society. Legal actions carried out in everyday life, both through authentic deeds and underhanded deeds, are related to the evidentiary process related to legal actions and become significant evidence (Sajadi *et al.*, 2015) ^[13].

In carrying out his profession, including as a Notary, we are required to comply with the code of conduct written in the Code of Ethics, which in this case is the Notary Code of Ethics/Kode Etik Notaris (referred to as the KEN). The code of ethics of the Notary profession is considered important to provide guidance on behavior to Notaries. The position of a Notary is a mandate from law and society, therefore, a Notary has the responsibility to carry out their duties by upholding legal ethics, morals, as well as the dignity and integrity of the position. Violation of these principles by a Notary can have a detrimental effect on society and disrupt the continuity of sustainable law enforcement (Ayuningtyas, 2020) ^[2].

Based on the regulations that have been mentioned, it is expected to be a guide for Notaries, who are also required to follow the Professional Code of Ethics in carrying out their duties and positions. In addition, a Notary must also have ethics which include unwritten norms, including personal ethics which are reflected in individual behavior. This

allows the Notary to avoid potential legal problems in the future. Furthermore, this provides legal protection if the Notary is involved in a legal situation and faces possible administrative, civil or criminal sanctions related to making a deed or the performance of his duties. Even so, not all Notaries comply with applicable legal regulations when carrying out their duties. Many Notaries deal with clients who feel aggrieved, which can result in reporting to legal authorities if the deed made is inappropriate or suspected of violating legal regulations (Pintoko, 2021) ^[10].

However, even though all aspects related to authorities, obligations, prohibitions, and procedures for Notaries do their duties, job titles and responsibilities have been explained in UUJN, there are still many Notaries who ignore these formal elements. Several notaries deliberately did not read the deed they made, but the deed stated that the notary had read it. The notary claims that the parties have faced it, despite the fact that the parties only interacted with the notary's staff and the notary himself was not present in person. Sometimes, the actual deed read by the Notary's staff in the written deed states that the Notary himself reads it. The parties involved in the deed are stated to have signed the deed before a Notary, but in reality this is not the case. This kind of behavior clearly violates the law, not only a violation of the Notary's oath, but also the act of intentionally making a fake deed (Putri *et al.*, 2022) ^[12].

Notary in signing the deed must be done at the notary office, this is also reinforced by the use of the term "appearance" in UUJN. "Appearance" is a verb that refers to one's actions to attend or meet other people who are desired. In UUJN, the concept of "appearance" is defined as a client who comes to the Notary's office to make an authentic deed. In conclusion, every individual who wants to make an authentic deed with a notary must be present and sign the document at the notary's office in accordance with UUJN provisions (Eskanugraha, 2020) ^[5].

On the basis of several violations that have been committed by a Notary in carrying out his duties before, it is an absolute responsibility for a Notary to consistently apply the prudence principle in carrying out his position. This precautionary principle has a very broad meaning in carrying out the duties of a notary. Notaries are required to be careful and accurate in making authentic deeds so as not to cause harm to clients, other parties, and even to themselves.

Based on the above problem, the author wants to examine how the Notary's responsibility for the deed circulated to the client to be signed is viewed from the perspective of UUJN and KEN. In performing his duties and positions, is it permissible for a Notary to sign outside the office and with separate presence and not simultaneously facing the Notary at the Notary Office. Then whether this can have implications for the legal consequences for the Notary concerned to the status of the authentic deed made by the Notary.

Research methods

This research is included in the type of normative juridical research. This research treats law as a normative system which includes principles, norms and rules contained in statutory regulations, court decisions and academic views. The approach used in this research is a legislative approach, where all laws and regulations related to the legal issue being examined will be studied. Apart from that, a

conceptual approach is also used which refers to various views and doctrines that have developed in the legal discipline.

In normative legal research, the data collection process is carried out through literature studies of various types of legal sources. It includes primary legal materials, supporting legal materials, other legal references, and non-law related sources. To access legal materials, researchers can read, review, listen to, or utilize legal sources available via the internet or websites.

In this research, a qualitative analysis approach is used in which interpretation of the legal material that has been processed occurs. This interpretation method aims to understand the law, especially in recognizing whether there are void legal norms, conflicting legal norms, or ambiguous (unclear) legal norms in the legal material, especially in the main legal material (Muhaimin, 2020) ^[9].

Result and discussion

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As previously mentioned in the background above, that authority (Article 15 UUJN), obligations (Article 16 UUJN), prohibitions (Article 17 UUJN), and procedures for Notary when do their duties, job titles and responsibilities have been described in the UUJN. This is a formalities aspect that may not be deviated by the Notary.

Prior to the making, reading, and signing of the deed, all parties that will be involved in the agreement must appear before the Notary to produce an authentic deed relating to their agreement. In this process, the Notary only confirms or formulates the will of the parties in a deed. Once the deed is finalized, the Notary reads out the contents of the deed in the presence of witnesses and the parties present, and then the deed is signed by the parties, witnesses, and the Notary.

The notary has the obligation to read out the deed in the presence of the applicants and is accompanied by 2 witnesses. The deed is then signed by all parties present, including the presenters, witnesses, and notary. This requirement is regulated in Article 1 point 8 of the UUJN. In its definition, UUJN also states that minutes of deeds is the initial form of a deed that includes the signatures of the signatories, witnesses, and notary, with a copy kept in the Notary Protocol. The details of this requirement are further elaborated in Article 16 paragraph 1 letter m of the UUJN, which states that the notary must read out the deed in the presence of the parties present along with 2 witnesses, or 4 witnesses specifically for the making of a handwritten will. The deed must be signed simultaneously by all parties present, including the parties, witnesses, and than notary.

Provisions relating to the reading up to the signing of the deed by the Notary constitute an integral part of the issuance of the deed (past). Furthermore, said before in terms of signing the deed, namely the presence of a Notary in the process of issuing the deed (past) or face to face, as explained in the elucidation of Article 16 paragraph 1 letter m of the UUJN (Alfajri *et al.*, 2013) ^[11].

Article 16 paragraph 7 specifies that the reading of the deed, as mentioned in Article 16 paragraph 1 letter m, is optional if the appearing parties choose not to have the deed read aloud, given that they have personally read, comprehended, and agreed with its contents. This can be carried out,

provided it is clearly indicated on the cover of the deed and on each page of the deed, with the appearing parties, witnesses, and the Notary initialing the acknowledgement.

The connection between the legal validity of the deed and the responsibilities of a Notary hinges on their obligations. The act of reading the deed is a sequence of steps and protocols essential in creating an authentic deed, as mandated by UUJN. The authenticity and legal certainty of a Notary's deed are ensured when the Notary personally conducts the reading, without delegating this task to their staff. This ensures that the Notary comprehends and verifies the deed's contents before the parties who are present, preventing any misinterpretations of the deed's contents by the appearing parties (Pratama *et al.*, 2021) ^[11].

The aforementioned rules are reemphasized in Article 44 of UUJN, which dictates that right after the deed is read, it must be signed by each appearing party, witnesses, and the Notary—unless there are appearing parties unable to sign, in which case the reasons must be explicitly stated in the deed. Additionally, the deed must clearly state the details regarding the reading and signing procedures, as specified in the earlier provisions, at the conclusion of the deed.

Notaries, through their creation of authentic deeds, establish legal certainty regarding events and the facts detailed within the deed, which were genuinely executed by the Notary. The information provided by the appearing parties at the time is accurately documented in the notarial deed in accordance with the procedures outlined in UUJN. Formally, this documentation ensures accuracy and certainty regarding the day, date, month, year, and time (hour) of the involved parties, witnesses, and the Notary (in official deeds or Minutes). Additionally, the Notary bears the responsibility of verifying the accuracy of the aforementioned details, stated at the start of the Notary's deed, as evidence that the parties were present and signed the deed on the specified day, date, month, year, and hour, and that all deed-making procedures adhere to the legal regulations prescribed by UUJN (Elvina, 2020) ^[4].

When the notary deed is not read and signed immediately by the appearer in the presence of the notary due to the absence of one of the parties, and then the notary distributes the deed for signing, it unquestionably violates the regulations set by UUJN and goes against the ethical standards expected of a notary. Such actions could have significant legal consequences for both the deed and the involved notary.

Not conducting the reading and signing of a deed in the presence of a Notary will lead to a reduction in the evidentiary strength of an authentic deed, transforming it into a private deed, as regulated by Article 16, paragraph 9 of UUJN. This provision indicates that if any of the requirements outlined in Article 16, paragraph 1, letter m, and Article 16, paragraph 7, are not fulfilled, the deed in question will only hold the evidentiary value of a private deed. Furthermore, as per Article 16, paragraph 11, the Notary may also face potential sanctions, which may include a written warning, temporary suspension, honorable dismissal, or dishonorable discharge.

In addition, in Article 44 paragraph 5 UUJN also explains that if you violate the provisions regulated in this article, it will result in a deed that only has the legal force of proof as a private deed. In addition, it can also be a reason for the parties who feel disadvantaged and suffer losses on the deed, to demand reimbursement of costs, compensation and interest from the notary concerned.

In addition to potential violations of the UUJN, Notaries can also violate the provisions in the KEN. It is stated in Article 1 point 8 of the KEN that if a Notary commits a violation of the KEN, then the follow-up is carried out by the Dewan Kehormatan Notaris, which is an institution established to enforce the KEN. In addition, Article 7 of the KEN states that the institution authorised to supervise Notaries is the Dewan Kehormatan. In the event of a violation of the Code of Ethics committed by a Notary, the Dewan Kehormatan will take steps and impose sanctions in the form of reprimand, warning, temporary dismissal from membership of the association, honourable dismissal from membership of the association, and dishonourable dismissal from membership of the association (Latifah, 2021) ^[6].

Of course, the above procedures must follow the mechanism in sanctioning Notaries who violate the KEN and are adjusted to the level of violation committed. However, Notaries who receive sanctions have the right to object to the sanctions given by conducting a series of tiered appeals, namely through examination and imposition of sanctions at the initial level by the Dewan Kehormatan Daerah Ikatan Notaris Indonesia, then through examination and imposition of sanctions at the appeal level by the Dewan Kehormatan Wilayah Ikatan Notaris Indonesia, and finally through examination and imposition of sanctions at the final level by the Dewan Kehormatan Pusat Ikatan Notaris Indonesia (Yuniati & Wahyuningsih, 2017) ^[14].

In Article 4 of the KEN which contains prohibitions, paragraph 6 states that Notaries are prohibited from sending minutes to clients for signature. This will have consequences, namely sanctions imposed on Notaries who violate the code of ethics, namely in the form of reprimand, warning, temporary dismissal and dishonourable dismissal from membership of the association. Administratively, the Notary appointment decree issued by the Minister of Law and Human Rights can be revoked and the Notary can be dismissed from his/her duties and positions (Lutfia *et al.*, 2022) ^[7].

In other provisions described in the KEN, namely in Article 3 paragraph 15. In the regulation, it is explained that a Notary is obliged to carry out the position of Notary in his office, except for certain reasons. The phrase "except for certain reasons" in this provision means that a Notary may only carry out his position outside his office in connection with the signing of the deed, as long as it includes reasons that can be accounted for.

Article 3 paragraph 15 of this KEN gives a green light for a Notary to carry out his/her position outside his/her office in certain circumstances, in the form of making a GMS deed of a company which requires the Notary to be present at the domicile of the company and not to leave the scope of the Notary's office area or to draw lots in a event, and that nature is a deed account. But not limited to the deed account only, to the deed side also applies in certain conditions, for example, the absence of the parties or one of the parties because an official is busy with his work so there is no time to attend the Notary's office. Then it is also possible that the appearer is sick, but it must be ensured that the appearer is still legally capable in accordance with the Civil Code and statutory regulations and is still aware and understands or understands what the Notary conveyed or what he has done. Furthermore, for appearers who are unable to attend the Notary's office due to carrying out statutory obligations such as being detained/imprisoned (Azizah & Muhaimin, 2022) ^[3, 9].

The signing of a deed by a notary outside the notary's office does not necessarily become a deed of notary and degrades, instead it remains an authentic deed with perfect proof as long as it does not overrule the provisions in UUJN and the KEN. In addition, the Notary does not continue to carry out his position outside his office, only leaves for certain reasons described above. Then the deed made by the Notary will not experience degradation or decrease in power to become an underhand deed.

Degradation of the evidentiary power of a Notarial deed can occur if in the process of making it violates the provisions of the requirements or procedures for making a valid deed based on the UUJN and other governing laws and regulations. One of these violations is the making of deeds that are not in accordance with the facts. In fact, if the Notary in carrying out his duties and positions always and always adheres to the guidelines and does not override the formal aspects of the UUJN and the KEN, the Notary will avoid legal problems related to the deed he made. If they are still involved and dragged into the legal process, the UUJN and the KEN will always be a stronghold for Notaries in carrying out their duties and positions.

Conclusion

Based on the foregoing discussion, it is crucial for Notaries to consistently adhere to, follow, and be guided by both the UUJN and the KEN while carrying out their roles, responsibilities, and avoiding limitations. These are essential procedural aspects that Notaries must not deviate from. Failing to adhere to this formal procedure, such as when a Notary circulates a deed for client signatures without proper reading, has significant implications for the deed's validity. As per the UUJN requirements, a deed must be read directly by the Notary in the presence of all parties and witnesses, followed by immediate signatures from these parties, witnesses, and the Notary. Any deviation from this procedure must be explicitly stated in the deed, providing the reasons for not reading the deed. Primarily, a Notary, through their authentic deed, must provide legal certainty about an event and the facts documented in the deed, confirming that these indeed occurred and were executed by the Notary. Moreover, the contents explained by the parties present must be accurately documented in accordance with UUJN procedures. In cases where any of these provisions are not implemented, the deed in question holds the evidentiary value of a deed under hand. Furthermore, such deviations could lead to claims from parties feeling disadvantaged, demanding compensation for costs, losses, and interest from the Notary involved. Violation of the KEN is also a critical concern. The Code strictly prohibits Notaries from sending unsigned minutes to clients. Violation of this rule will result in imposing sanctions such as reprimands, warnings, temporary dismissals, and dishonorable discharges from membership associations. In addition, from an administrative standpoint, the Notary's appointment letter issued by the Minister of Law and Human Rights can be revoked, and the Notary may be dismissed from their position and duties.

Suggestion

Notaries as public officials must maintain their honor and dignity by carrying out their duties and positions without leaving their position. That's why the notary profession is called an honorable profession. Notaries must apply the

principle of prudence in carrying out their duties and positions, namely by providing legal explanations to the audience that Notaries must comply with the formal aspects in making deeds in accordance with UUJN, which is in the process of inaugurating the deed (*verliejden acte*) in this case reading and signing. The deed must be executed in the presence of witnesses and the notary himself. Apart from that, the active role of the Ikatan Notaris Indonesia as a forum for notaries in Indonesia through its apparatus, namely the Majelis Pengawas, is also needed by providing training and counseling regarding awareness of complying with UUJN and KEN. This aims to protect a notary himself from legal implications resulting from violating UUJN and KEN, and also aims to maintain the dignity and honor of the Notary profession.

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