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Protection of Notary Employees In Deed Making Agreements That Are Legally Defective In Terms of Law Number 13 Of 2003 About Employment

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Abstract: This research aims to examine how the protection given to notary employees in the event of making deeds that are legally defective is reviewed based on Law Number 13 of 2003 about employment and also regarding the responsibility of notary employees for deeds that are legally defective. This research journal uses a normative juridical research approach. Sourced data from laws and other literature data. The result of the research conducted is that the protection of notary employees has not been specifically regulated in the Notary Profession Law (Undang-Undang Jabatan Notaris), but from what has been described previously, it confirms that labor or worker is very necessary to get protection and has an important role that is needed as well as notary employees who are included as labor and also witnesses in carrying out various tasks are very necessary to get protection so that the welfare and justice for notary employees can be properly guaranteed. Therefore, the author is interested in writing a research with the title Protection of Notary Employees in Legal Defective Deed Making Agreements Reviewed from Law Number 13 of 2003 about employment.

Keyword: Protection, Responsibility, Notary Employee.

INTRODUCTION

In running a business or business in everyday life, business owners certainly need help from other individuals to run the business and ease their work. Individuals who assist business owners in carrying out their work are called employees. Labor or employees have a very necessary role in the running of a company or business. Because it is impossible in a company or business can only be run by an individual, it needs help from other workers in order to run a company properly. In Article 1 number 2 of Law Number 13 of 2003 about employment, "Labor is every person who is able to do work in order to produce goods and / or service both to meet their own needs and for the community."¹

¹ Indonesia, Law Number 13 of 2003 about employment (State Gazette of the Republic of Indonesia Year 2003 Number 39, Supplement to the State Gazette of the Republic of Indonesia Number 42879), Article 1

In any field of work, including in the field of law, every company or profession that exists in the field of law requires labor or has an important role. Including the notary profession workforce which will be discussed in this research has an increasingly complex role and function.² According to Law Number 2 of 2014 on the Amendment to Law Number 30 of 2004 about Notary Profession (Undang-Undang Jabatan Notaris), "Notary is a public official authorized to make authentic deeds and other authorities."³ In their work, notaries do not work alone but there are workforce or what is referred to as notary employees who have several roles and tasks, namely to prepare for making deeds with the presence of notary employees can help speed up the process of making deeds and also carry out several tasks that are still included in assisting the making of notarial deeds, namely tidying up files, communicating with the client, making a list book for legalization, making a list book for the client or parties, making bundles of deed per month⁴, and many other tasks.

The second is to archive documents which aims to store all existing documents and files in order and neatly so that when needed the document will be easy to find. Some important documents or files that need to be archived are deed minutes, probate register books, repertories, legalized underhand deed register books, books containing lists of names of the clients and so on.

The next task is to maintain the confidentiality of documents as a notary employee must be able to maintain the confidentiality of existing documents because the documents made in the deed of agreement contain data that is private and can only be known by several parties so it is very necessary for the parties to maintain confidentiality and the last is the duty to be a witness in the legalization of the deed. Notary employees have a very important role in legalizing deeds because notaries need witnesses who are known by the notary concerned. In reading the deed the witness or employee of the notary must really have to understand the contents of the notarial deed so that no mistakes occur.

In the many duties and roles in carrying out their work, sometimes there are deeds of agreement that are legally flawed or not in accordance with the law that already existed, whether this is caused by clients who provide false data, there are errors in writing data, and many other things that allow this to happen. According to Article 86 paragraph 1 of Law Number 13 of 2003 about employment "Every worker or laborer has the right to obtain protection for occupational safety and health, morals and decency, and treatment in accordance with human dignity and religious values."⁵ Therefore, notary employees really need to get protection because there will be parties who make crimes or provide prosecution against notary employees. However, in practice, the rules regarding the protection of notary employees have not been specifically regulated in Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 about Notary Profession (Undang-Undang Jabatan Notaris). And the regulation regarding the protection of notary employees is still regulated in general using the rules in Law Number 13 of 2003 about employment.

Seeing this, the author is interested in making research in the form of a journal entitled "**Protection of Notary Employees in Legal Defective Deed Making Agreements Reviewed from Law Number 13 of 2003 about employment**" and in this study the author

² Edi Suarto, "PERLINDUNGAN HUKUM BAGI PEGAWAI NOTARIS YANG MENJADI SAKSI YANG HADIR DALAM PEMBUATAN SUATU AKTA (*INSTRUMENTER*) DALAM AKTA NOTARIS", Thesis, (Semarang: Faculty of Law, Universitas Islam Sultan Agung, 2022), p. 2.

³ Indonesia, Law No. 2 of 2014 Amending Law No. 30 of 2004 about Notary Profession (State Gazette of the Republic of Indonesia Year 2014 Number 3, Supplement to the State Gazette of the Republic of Indonesia Number 5491), Article 1.

⁴ Rahmad Hidayat, "Tugas Karyawan Notaris-Tanggung Jawab, Kualifikasi dan Gajinya" <https://www.kitapunya.net/tugas-karyawan-notaris/>, May 1, 2023

⁵ Indonesia, Law Number 13 of 2003 about employment (State Gazette of the Republic of Indonesia Year 2003 Number 39, Supplement to the State Gazette of the Republic of Indonesia Number 42879), Article 86.

is interested in examining how notary employees get protection against legally defective agreement deeds associated with Law Number 13 of 2003 about employment and obstacles in carrying out protection of notary employees. Similar research to this has previously been conducted under the title " Perlindungan Hukum Bagi Pegawai Notaris Yang Menjadi Saksi Yan Hadir Dalam Pembuatan Suatu Akta (*Instrumenter*) Dalam Akta Notaris " by Edi Suarto, SH in his thesis. However, the author will discuss this research from a different perspective.

METHOD

This research journal uses a normative juridical research approach. Where the use of this research method can be done based on the main legal material using how to examine or study theories, concepts, existing legal regulations, and also legal principles that are related and appropriate in this research. The approach used by the author is the Statute Approach. This approach is carried out by reviewing all laws and regulations that are related or concerned with the legal issues being discussed. Sourced data from laws and other literature data.

RESULTS AND DISCUSSION

Legal Responsibility of Notary Employees

In the legal dictionary, responsibility is or can be interpreted as responsibility or liability. Responsibility refers more to political responsibility while liability refers more to responsibility due to mistakes made by legal subjects.⁶ In law if every individual whoever it is commits an act that violates the law either intentionally or not then the individual who commits an offense will and can be sanctioned by being strictly enforced in accordance with the unlawful act committed by the individual. Then this can be said to be legal responsibility. In civil law the basis of responsibility is fault and also the risks that exist in every legal event.⁷

The definition of legal responsibility in the theory put forward by Hans Kelsen regarding legal responsibility, explained that "a person is legally responsible for a certain act or that he bears legal responsibility, the subject means that he is responsible for a sanction in the event of a contrary act."⁸

Every workforce certainly has responsibilities that need to be carried out in doing their job. There are several things that are the responsibility of the work of notary employees, namely:

1. Preparing for Deed Making

In the process of making a deed, notary employees have a role in helping to speed up the making of a deed so that it can help make it easier for notaries to carry out their responsibilities. Other notary employee tasks included in the assistance of deed making include tidying up files, communicating with the client, making a list book for legalization, making a clerk list book for the parties or client, making a bundle of deed per month⁹, and many other tasks.

2. Perform Document Archiving

Document archiving aims to keep existing documents and files in order, and neatly so that they can be easily found when the documents and files are needed. Important documents and files that need to be archived are deed, register of wills, repertorium, book

⁶ HR. Ridwan. *Hukum Administrasi Negara*. Jakarta : Raja Grafindo Persada, 2006, p.337

⁷ Purbacaraka. *Perihal Kaedah Hukum*. Bandung : Citra Aditya, 2010, p.37

⁸ Hans Kelsen (a) , 2007, translated by Somardi, "*General Theory Of law and State*" , "*Teori Umum Hukum dan Negara, Dasar-Dasar Ilmu Hukum Normatif Sebagai Ilmu Hukum Deskriptif Empirik*" , BEE Media Indonesia, Jakarta, p. 81

⁹ Rahmad Hidayat, *Op.Cit.*

of list of deeds that have been legalized, a book containing a list of names of the clients or parties, and so on.¹⁰

3. Maintain Document Confidentiality

As a workforce working in a notary office, notary employees must be able to maintain the confidentiality of existing documents because both documents and files are private documents that contain personal data of the clients and can only be known by several related parties so it is necessary to maintain confidentiality.

4. Witnessing the validation of a deed

One of the things that is an important requirement in the ratification of a notarial deed is that it requires a notary employee as a witness because the requirement as a witness is a witness known by the notary concerned. Notary employees who serve as witnesses will listen to the reading of the contents of the notarial deed and notary employees will put their signatures as witness approval. In reading the deed, the witness or notary employee must really understand the contents of the notarial deed so that no mistakes occur.¹¹

All these roles and responsibilities need to be carried out properly and responsibly by notary employees as worker. In Law Number 13 of 2003 about employment, it is written that "Workers or employers who commit violations of the law or crimes: A maximum imprisonment of five years or a maximum fine of Rp 500 million."

Protection of Notary Employees in a Deed of Agreement with Legal Defects Based on Law Number 13 of 2003 About Employment

The main authority of a notary is to implement authentic deeds¹². In making a notarial deed, there are several requirements until the deed becomes a valid deed and can be used as a condition of agreement by the interested parties. In the validity of a deed, there are formal and material requirements. Material requirements are the requirements arranged in Article 1320 of the Civil Code (Kitab Undang-Undang Hukum Perdata)¹³ which contains :

1. agreement of those who bind themselves;
2. capacity to enter into an agreement;
3. a particular subject matter;
4. a cause that is not prohibited¹⁴.

And formal requirements are requirements based on Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 about Notary Profession (Undang-Undang Jabatan Notaris) which contain the contents of the deed consisting of the beginning or head of the deed, the body of the deed, and the end or what is called the closing of the deed, and contains witnesses known to the notary.¹⁵ Data is needed in loading the contents of the deed that will be given by the clients to be contained in the deed of agreement. However, in practice, deeds can be found that are not in accordance either intentionally or unintentionally so that they do not meet the formal requirements and make the deed a deed that is considered legally defective. As mentioned in the introduction, a notary employee has a role in making a deed so that he becomes a witness in a deed. Therefore, a deed that is legally defective is certainly the

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² Anthony Robert Phangestu Abady & Mella Ismelina Farma Rahayu, " Penyuluhan Hukum Pembuatan Akta oleh Notaris Berdasarkan Undang-Undang Nomor 2 Tahun 2014 Tentang Jabatan Notaris ", Journal on Education, Vol.05 No.02, 2023.

¹³ Civil Code (Kitab Undang-Undang Hukum Perdata)

¹⁴ Philipus H. Sitepu, "Syarat Materiil dan Formil Akta Notaris, Apa Saja?" <https://www.hukumonline.com/klinik/a/syarat-materiil-dan-formil-akta-notaris--apa-saja-1t601406afbaaa9/>, April 1, 2024

¹⁵ *Ibid.*

responsibility of the employee concerned. If the notary employee makes an error unintentionally or an error caused by an outside party, the notary employee concerned is entitled to protection.

According to Imam Soepomo, there are 3 forms or types of employments protection, among others:¹⁶

1. Economic protection, which is a protection related to the efforts of an individual to provide sufficient income to meet daily needs for themselves or what is called employees and his family, including if the individual is no longer able to work because of something that is beyond his will.
2. Social protection, namely protection provided so that workers can carry out community activities. This social protection aims to enable workers to develop their lives as human beings in general and as members of the community and especially to the family.
3. Technical protection, namely protection that aims to protect workers from hazards in the form of accidents caused by working tools used or materials used by the company.

Article 88 paragraph 1 of Law Number 13 of 2003 states that "Every worker/laborer has the right to obtain protection:

1. occupational safety and health;
2. morals and decency; and
3. treatment in accordance with human dignity and religious values.¹⁷

As described in the background of notary employees also have a role to be a witness as a condition for the validity of a deed of agreement. Article 4 of Law No. 13 of 2006 on Witness and Victim Protection explains that "the protection of witnesses and victims aims to provide security to witnesses and/or victims in providing information in every criminal justice process."¹⁸ The protection of notary employees has not been specifically regulated in the Notary Position Law, but from the things that have been described previously, it confirms that labor is very necessary to get protection and has an important role that is needed as well as notary employees who are included as worker and also witnesses in carrying out various tasks are very necessary to get protection so that the welfare and justice for notary employees can be properly guaranteed.

CONCLUSION

In Article 1 point 2 of Law Number 13 of 2003 about Employment, "Labor is everyone who is able to do work in order to produce goods and/or services both to meet their own needs and for the community." Notary employees are also included as labor or worker, notary employees have a role, namely to prepare deeds, archive documents, maintain data confidentiality, and become witnesses as a condition of ratification of a deed of agreement. However, in carrying out their roles, employees sometimes make mistakes that are done unintentionally so that protection for notary employees is needed so that the welfare of notary employees can be guaranteed. The protection of notary employees has not been specifically regulated in the Notary Profession Law, but from the things that have been described previously confirm that labor or worker is very necessary to get protection and has an important role that is needed as well as notary employees who are included as labor or worker and also witnesses in carrying out various tasks are very necessary to get protection so that the welfare and justice for notary employees can be properly guaranteed.

¹⁶ Abdullah Sulaiman and Andi Wali. *Hukum Ketenagakerjaan/Perburuhan*. Jakarta: Yayasan Pendidikan dan Pengembangan Sumber Daya Manusia, 2019, p. 9

¹⁷ Indonesia, *Law Number 13 Year 2006 about Witness Protection and Victims (State Gazette of the Republic of Indonesia Year 2006 Number 64, Supplement to State Gazette of the Republic of Indonesia Number 4635) , Article 88*

¹⁸ *Ibid.*

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