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Validity of A Notarial Deed Made Without the Presence of the Presence

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Abstract: The Notary is obliged to read the deed in the presence of the audience and therefore is obliged to face the Notary. On the other hand, it will have an impact on the deed becoming invalid and the Notary's civil liability. This research is normative legal research using statutory and case approaches, with the source of research material being secondary data obtained through a literature study. The results of this research show that, philosophically, the legality of a Notary's deed made without the presence of an audience is related to truth and justice, that with the presence of an audience, it is true that the audience is present so that he can listen to the contents of the deed read by the Notary so that the deed becomes valid because its truth can be accounted for. Juridically, the presence of an audience in front of a Notary when making a deed is a provision of Article 16 paragraph (1) letter m UUJN which states that a Notary in carrying out his or her position is obliged to read the deed in the presence of the audience so that the Notary's deed becomes valid if it is based on this juridical provision. The validity of Notarial deeds made without the presence of an audience according to Supreme Court Decision Number 1615 K/Pdt/2018/2020 is that the deeds were declared invalid and null and void, and the Notary was deemed to have committed an unlawful act because the plaintiff was proven to have never appeared before the Notary.

Keyword: Audience Presence, Civil Liability, Deed, Notary.

INTRODUCTION

The position of a Notary has the task of providing guarantee services or legal certainty (Sri Maulina, et al., 2021) in the form of legal services for making authentic deeds. In its function, there are 2 (two) main functions, namely first, the Notary is responsible for the public who need legal certainty in connection with every ratification of legal obligations, and second, the Notary has the authority provided by law as a public authority to provide legal strengthening to legal obligations, which ultimately bring peace and a sense of comfort in society (Yoyon Maulana Darusman, 2016).

Notaries with their position as public officials who have the authority to make authentic deeds are based on Law Number 30 of 2004 concerning the Position of Notaries as amended by Law

Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notaries (hereinafter written UUJN), as this authority is contained in the provisions of Article 1 number 1 UUJN. Therefore, it can be understood that a Notary is a public official who is authorized by law to produce authentic evidence (having perfect evidentiary power) (Mia Elvina, 2020). In line with this, the provisions of Article 15 paragraph (1) UUJN further regulate that a Notary has the authority to make authentic deeds regarding all agreements, actions, and stipulations required by statutory regulations and/or desired by interested parties or parties.

Apart from authority, one of the various obligations of a Notary in carrying out the authority of his position is to read the deed in front of an audience. The provisions for reading this deed are contained in Article 16 paragraph (1) letter m UUJN which states that in carrying out the office of Notary, it is mandatory for the Notary to read the deed in front of an audience attended by at least 2 (two) witnesses, or as many as 4 (four) people. special witness to make the will under his hand, and signed at that time by both the presenter, the witness, and also the Notary. According to this provision, what is meant before the presenter is the implementation of the duties of a Notary who is obliged to provide legal advice insofar as it relates to the deed and his relationship with the parties listed in the deed. The notary reads it in the presence of the presenters so that the parties are deemed to have understood and are clear about the intent and purpose contained in the deed. After reading the document, the person present immediately signs the deed to confirm that they accept and understand the contents of the deed.

The reading of the deed is part of the verlijden or the official reading and signing of the deed in question. According to G.H.S. Lumbun Tobing which states that if the Notary himself reads the deed then on the one hand the presenters have a guarantee if they have signed what they heard previously (the reading is carried out by the Notary) and on the other hand the presenters and the Notary have confidence that the deed really contains what is stated. desired by the presenters (G.H.S. Lumbun Tobing, 2006). The notary is obliged to read the contents of the deed in front of the audience so that the parties clearly understand the contents of the deed and the information relating to the deed is also known to the parties to decide to agree or disagree with its contents. The contents of the deed are determined by the parties who then sign it (IWayan Arya Kurniawan, 2018). So, if the reading of the deed in the presence of the presenters is related to the making of an authentic deed as perfect evidence, then it is clear that the making of the deed requires the physical and real presence of the interested persons.

In practice, there are facts about Notaries who do deeds without the presence of an audience, who must be held accountable for their actions from the aspect of civil law, namely in cases that are examined and decided by the cassation level court based on Supreme Court Decision Number 1615 K/Pdt/2020 which cancels the Mataram High Court Decision Number 130/Pdt/2019/PT Mtr, case between Mariam as the original Plaintiff (Casation Petitioner) against Eni Riani as the first Defendant (Cassation Respondent I) and in particular a Notary named Lalu Muhammad Supriadin as the original Defendant III (Co-Respondent for Cassation III). In the posita it is stated that essentially without Plaintiff's knowledge, on April 9, 2011, Defendant I executed a Deed of Authorization to Sell and a Deed of Sale and Purchase Agreement in the name of Mariam (Plaintiff) which was issued by Co-Defendant III, which process was never carried out by the Plaintiff. and the deed made by Co-Defendant III was never signed by the Plaintiff. In his ruling, the judge at the cassation level court decided that this act was unlawful, and the two deeds were declared invalid and null and void.

Based on the explanation above, if the Notary makes a deed without the presence of an audience where the Notary consciously and deliberately knows about the action without being present, then the Notary must be responsible for his actions in the eyes of the law. Therefore, the formulation of the problem in this research is: first, what is the philosophical and juridical

validity of a notarial deed made without the presence of an audience? and second, what is the validity of a notarial deed made without the presence of an audience?.

METHOD

The research method contains the type of research, sample and population or research subjects, time and place of research, instruments, procedures, and research techniques, as well as other matters relating to the method of research. This section can be divided into several sub-chapters, but no numbering is necessary.

RESULTS AND DISCUSSION

Philosophical Validity of Notarial Deeds Made Without the Presence of an Audience

The philosophical basis is a consideration or reason that illustrates that the regulations formed take into account the outlook on life, awareness, and legal ideals which include the spiritual atmosphere and philosophy of the Indonesian nation which originates from Pancasila and the Preamble to the 1945 Constitution of the Republic of Indonesia (UUD 1945) (Ahmad Rifa'i, 2010). The first and fifth principles of Pancasila in particular illustrate that the Indonesian nation is a nation that believes in God, where this principle of godliness is closely related to the teachings of truth and justice for all Indonesian people.

The Notary's action that conveys the truth is the Notary's obligation to read the deed before it is signed by the parties. The rationale for reading the deed in the presence of the presenter is that the presenter is directly and physically present in front of the Notary. The aim is none other than to convey the truth of the contents of the deed to the parties and the person present must hear it directly. The purpose of reading the deed by the Notary is so that the presenter understands and comprehends the truth of the contents of the deed when they sign it, so that in the future the presenter cannot deny that he was not aware of any clauses that could be detrimental to him because apart from having read it himself, it had also been read to him. by a Notary, so that they can understand the contents of the deed. Therefore, the reading of the deed by the Notary is a guarantee to the presenters that what is signed is the same as what was heard when the deed was read (Kerina Maulidya Putri, 2022), so that the presenters are present in front of the Notary to hear the deed read and the deed signed. At that time, so that the veracity of the deed can be verified, the deed becomes valid.

Juridical Validity of Notarial Deeds Made Without the Presence of an Audience

A juridical basis is a consideration or reason that illustrates that regulations are formed to overcome legal problems or fill legal gaps by taking into account existing rules, those that will be changed, or those that will be revoked to guarantee legal certainty and the community's sense of justice (Herry Susanto, 2010). Therefore, for the sake of the public's need for deed-making services, the UUJN was ratified and promulgated on October 6, 2004, and the Amendment UUJN on January 15, 2014, as a juridical basis, which gives the authority to make deeds to Notaries, as stipulated in Article 15 paragraph (1) UUJN which states that a Notary has the authority to make deeds.

Apart from the authority of a Notary, there are obligations of a Notary in carrying out his duties and position, one of which is reading the deed, on a juridical basis as stipulated in Article 16 paragraph (1) letter m UUJN which states that a Notary in carrying out his office is obliged to read the deed in front of an audience, attended by by at least two witnesses, whereas for private wills, at least four witnesses are present. The signing is carried out immediately by the Notary, witness, and presenter.

Based on the provisions above, the deed becomes valid after it is required to be read by a Notary, and the presenter must also be present. By reading the deed by the Notary in front of the audience present according to this provision, it becomes an opportunity for the Notary to

provide legal advocacy regarding each clause of the agreement, in front of the audience, so that the audience is deemed to have understood and been clear about the intent and purpose of the agreement as outlined in the deed. After the deed is read, the presenters immediately sign the deed as a form that they agree and understand the contents of the deed (Dwi Merlyania, et al., 2020).

Validity of Notarial Deeds Made Without the Presence of an Audience

The provisions of Article 16 paragraph (1) letter m UUJN regulate that in carrying out his office, the Notary is obliged to read the deed in front of the presenter in the presence of at least two witnesses, and signed at the same time by the presenter, the witness and the Notary. This means that the physical presence of the presenter in front of the Notary is also an obligation because at that time the presenter must listen to the deed being read, including signing the deed. In its implementation, there was a Notary who made the deed who consciously knew that the person who was present had never come before him and signed the deed, but still made the deed as if the person who had come to appear before the Notary, as the case was examined and decided based on the decision at the cassation level, namely the Supreme Court Decision. Number 1615 K/Pdt/2018/2020 (hereinafter written Cassation Decision 1615) which cancels the Mataram High Court Decision Number 130/Pdt/2019/PT Mtr (hereinafter written Appeal Decision 130). This Appeal 130 Decision previously declared unacceptable (Niet Ontvankelijke verklaard) Dompu District Court Decision Number 23/Pdt.G/2018/PN Dpu (hereinafter written Decision 23).

In Decision 23, the Notary was withdrawn as Co-Defendant II and Co-Defendant III, which in the main position case included, on April 9 2011, Defendant I executed a Deed of Authorization to Sell and a Deed of Sale-Purchase Agreement in the name of MARIAM (Plaintiff) which was issued by Co-Defendant III where this process was never carried out by the Plaintiff and the deed made by Co-Defendant III was never signed by the Plaintiff. From June 2011 to 2018, Plaintiff never authorized or gave Special Power or Absolute Power to Anyone or to Defendant I to represent Plaintiff in signing the Deed of Sale and Purchase issued by Co-Defendant IV for any reason because Plaintiff was not in a state at that time. illness or abroad which requires someone to represent him, but there is a deed made by Defendant I, namely the Deed of Power of Attorney to Sell dated 09 April 2011 with Number 11 and the Sale and Purchase Agreement dated 09 April 2011 with Number 10 which was issued by Co-Defendant III and Deed of Sale and Purchase issued by Co-Defendant IV. On October 25, 2011, Co-Defendant IV issued a Deed of Sale and Purchase Number 445 of 2011 which was carried out separately without the permission and knowledge of the Plaintiff, so that the Deed of Sale and Purchase clearly states that it was signed in the name of the First Party as the Seller and included the name of the Plaintiff. and the sign or code "qq", and secondly, as the Buyer, this was all done by Defendant I with the excuse of referring to the Power of Attorney to Sell from the Plaintiff which was issued by Co-Defendant III which was legally flawed.

Due to the actions of Co-Defendant II and Co-Defendant III as Notaries, the Plaintiff in his petitum charged that both of them had committed unlawful acts and that the deeds they had made were invalid and worthless. Based on this petite, the Judge in his consideration stated that Co-Defendant II and Co-Defendant III as Notaries were proven to have committed an unlawful act, and the deeds that had been made were declared invalid and had no legal force because they were made without the presence of the Plaintiff as the presenter so that the Plaintiff as the presenter did not have ever signed any deed, and in line with that in essence than in his ruling decided that the Co-Defendant II and Co-Defendant III as Notaries were proven to have committed acts against the law and were invalid and had the legal force of the deeds they had made.

Regarding Decision 23 above, Defendant I was not satisfied and filed a legal appeal to the High Court, which then, according to Appeal Decision 130, in its decision decided that Decision 23 was not acceptable (NO), with the consideration that Plaintiff was originally careless in drafting his lawsuit, The object of the lawsuit is what is in dispute and the reasons (posita) for not supporting the claim (petitum). This means that the High Court, the Panel of Appeals Judges has not yet assessed whether the actions of the two Notaries are unlawful, because by not carefully structuring the Plaintiff's claim in Decision 23 which is still in the formal realm of the lawsuit, the Panel of Appeals Judges does not need to examine further the subject matter of the case as a material domain. who needs to prove whether the Notary's second act is an act against the law and includes the evidentiary strength of the deed he has made. Amar in Appeal Decision 130, among other things, decided to accept the appeal request from the Appellants and cancel the decision of the Dompu District Court dated 29 May 2019 Number: 23/Pdt.G/2018/PN.Dpu. Apart from that, it was also decided in the exception, namely stating that it accepted the exception from the Appellant and stating that the Appellee's claim was unacceptable (Niet Ontvankelijke verklaard).

Regarding Appeal Decision 130 which stated that Decision 23 could not be accepted, the Plaintiff initially did not accept the verdict and filed a cassation legal action according to Cassation Decision 1615. In Cassation Decision 1615, the Panel of Cassation Judges in its consideration stated that the Panel of Appeal Judges in Decision 130 annulled the Decision. 23 was wrong in applying the law, considering that the quo case between Plaintiff (Mariam) and Defendant I (Eni Riani) was regarding Plaintiff's loan of Rp. 40,000,000.00 (forty million rupiah) to the Defendant with the guarantee of an ownership certificate in his name. Plaintiff (Mariam), because the borrowing and borrowing of money occurred with collateral, the sale and purchase carried out by Defendant I and Co-Defendant IV in the name of a power of attorney to sell the disputed object belonging to Plaintiff which was used as collateral for the loan was invalid. These matters are as stated in the Cassation Decision 1615 which, among other things, decided to grant the cassation petition from the Cassation Petitioner and cancel the Decision of the Mataram High Court Number 130/PDT/2019/PT MTR, dated 10 September 2019 which canceled the Decision of the Dompu District Court Number 23/Pdt .G/2018/PN Dpu, dated 29 May 2019. In addition, it was stated that the Notary as a Co-Defendant transferring rights to the land object of the dispute and changing the name of the land certificate of the object of the dispute was an unlawful act, and the Deed of Sale-Purchase Agreement in the name of Mariam dated 9 April 2011 and the Power of Attorney to Sell dated 9 April 2011 regarding the land subject to dispute is invalid and null and void.

Based on the Cassation Decision 1615, it is proven that the Deed of Sale and Purchase Agreement and the Deed of Power of Attorney to Sell which were made by a Notary were made without ever being present or even signing them and therefore the Notary was declared to have committed an unlawful act, including all deeds which were made as being invalid and having no legal force. This shows the form of civil liability of the Notary and the legal consequences for the deed made if there is no presence of an audience.

As is known, a deed must be read by a Notary in the presence of the presenters before it is signed by the presenters, witnesses, and the Notary in the presence of the Notary. On the other hand, the Notary must be responsible for his actions and the Notary can be summoned at any time by the authorized parties to be held accountable (Habib Adjie, 2009). This is in accordance with the provisions of Article 16 point (1) letter m in conjunction with Article 16 paragraph (9) UUJN, which then results in the deed only having the power of proof as written privately or a deed becoming null and void and can be an excuse for the party who suffers. losses to demand reimbursement of costs, compensation, and interest from the Notary.

The phrase responsibility must also be interpreted as having the courage to take risks that arise as a result of one's service to the community. Negligence or mistakes in carrying out your

profession can have impacts that may harm yourself, and others and cause sin against God Almighty. This is in line with the theory of legal responsibility according to Purbacaraka, which can be interpreted as a state of being obliged to bear, bear responsibility, bear everything (if something happens, it can be sued, blamed, sued, etc.) in accordance with applicable legal regulations. Legal responsibility is human awareness of intentional or unintentional behavior or actions (Purbacaraka, 2010).

Based on the concept of legal responsibility according to Purbacaraka, the Notary's responsibility for the deed he made was made without the presence of the presenters, even though this act could not have been his initiation consciously and intentionally, it could resulted in the Notary being sued civilly (Nico, 2003). The legal basis used in civil liability for a deed made by a Notary is the construction of an unlawful act, wherein the provisions of Article 1365 of the Civil Code (KUHPerd) stated that every act against or violates the law that results in loss to another person, oblige the person who wrongly incurred the loss or compensates for the loss (Soebekti, 2023).

The explanation of the article above has a wide scope. This means that anyone who harms another party due to their actions can be held responsible and the person who made the mistake must compensate for the losses suffered. Based on the provisions of Article 1365 of the Criminal Code, a person can be said to be violating the law if he has several elements as follows: the existence of an unlawful act; there is an error; and there is a loss resulting from the error or negligence (Abdul Ghofur, 2009).

According to Herlin Boediono, in the theory of deed invalidity, the legal consequences of the Notary's unlawful actions where the deed is made by him without the presence and signature of the presenters so that the deed becomes null and void and only has the power of proof as written privately, is the responsibility Notary's civil service to compensate the injured party in the form of reimbursement of costs, compensation, and interest. This is by the provisions of Article 44 paragraph (1) and paragraph (5) UUJN in conjunction with Article 84 UUJN which states that as soon as the deed is read, the deed is signed by each presenter, witness, and notary, and vice versa, if it is violated, the result will be that the deed is the strength of the proof is only in writing under the hand and is void by law, with the legal consequence that the party who suffers loss can demand from the Notary for reimbursement of costs, compensation and interest.

Based on the three provisions above, especially according to the provisions of Article 44 paragraph (1) UUJN, the Notary has violated this provision because this provision contains the phrase "As soon as the deed is read, the deed is signed by each presenter, witness, and Notary", which means that the deed must be read by a Notary in the presence of the presenters and signed by the presenters. On the other hand, if the presenter never appears and signs, then this provision is violated. Therefore, the provisions of Article 44 paragraph (2) UUJN in conjunction with Article 84 UUJN apply, which results in a deed only having the power of proof as written privately or a deed becoming null and void, and can be a reason for the party who suffers losses to sue. reimbursement of costs, compensation, and interest to the Notary.

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CONCLUSION

The conclusion that can be drawn is that the philosophical validity of a Notary's deed made without the presence of the presenter is related to truth and justice, that with the presence of the presenter, the truth is realized in the sense that the presenter is obliged to be present to be able to listen to the contents of the deed read by the Notary so that the presenter understands. its contents and does not deny its truth later because the presenter was present and listened to the reading of the deed so that the deed becomes valid because its veracity can be confirmed. Juridically, the presence of a presenter in front of a Notary when doing a deed is a provision of Article 16 paragraph (1) letter m UUJN which states that a Notary in carrying out his or her

position is obliged to read the deed in the presence of the presenter, so that the Notary's deed becomes valid if it is based on this juridical provision.
The validity of Notarial deeds made without the presence of an audience according to Supreme Court Decision Number 1615 K/Pdt/2018/2020 is that these deeds are declared invalid and null and void. Apart from that, the Notary was sued and decided to have committed an unlawful act because the plaintiff was proven to have never appeared before the Notary, meaning that the plaintiff had never been present, listened to the reading of the deed, and signed the deed. At the same time, the Notary continued to make the deed as if the plaintiff had never appeared before him.

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