International Journal of Law
www.lawjournals.org
ISSN: 2455-2194
Received: 20-05-2023, Accepted: 06-06-2023, Published: 21-06-2023
Volume 9, Issue 3, 2023, Page No. 82-85

Notary responsibilities for unread fiduciary deeds

Muhammad Al asfaraini[1], Teuku Ahmad Yani[2], Teuku Abdurrahman[2]
[1] Student of Master, Program of Notary University Syiah Kuala Banda Aceh, Indonesia
[2] Lecture Master, Program of Notary of University Syiah Kuala Banda Aceh, Indonesia

Abstract
The rules of responsibility of a notary for the deed he made are listed in Article 16 paragraph (1) letter (m) of Law Number 2 of 2014 concerning the Position of Notary, amendments to Law Number 30 of 2004, and the Notary Code of Ethics. The reading of the deed by a notary is a requirement of the authenticity of a deed and is the obligation of the notary not to violate the provisions of the notary supervised by the Notary Supervisory Board, which is a body that has the authority and obligation to carry out guidance and supervision of the notary. However, the facts that occur in the making of fiduciary deeds are mostly not following the rules mentioned above.
The purpose of this study is to explain the form of responsibility of a notary to a fiduciary deed that is not read in front of the audience and to explain the position of the fiduciary deed that is not read out by the notary in front of the audience.
The method used in this research is a normative juridical method. The data source used by the author is primary data in the form of interviews with the Banda Aceh City Notary, Banda Aceh City Notary Supervisory Board, Banda Aceh City Notary Supervisory Council, and other related parties. Meanwhile, secondary data was obtained from the main legal materials by examining theories, concepts, legal principles, and laws and regulations related to this research.
The results showed that there were notaries who did not read the fiduciary deed in front of the appearers due to the large number of notaries in making Fiduciary Deeds so the responsibilities in reading the deed could not be carried out perfectly, as a result, their were defects in the deed issued resulting in legal loopholes for the attorneys (lawyers) in finding fault Notary in carrying out his position. The position of the deed made by the notary has been degraded which has resulted in the power of proving the deed privately.
It is suggested to a notary in carrying out his/her position that a notary must adhere to the Law on the Position of a Notary, the notary's code of ethics, or other legal regulations, without neglecting his/her obligations, especially in the case of reading the Fiduciary Deed before the Appearance. With the reading of the Fiduciary Deed in front of the Appearance, it can facilitate the Notary in carrying out his duties to avoid all legal loopholes.

Keywords: notary, responsibility, fiduciary deed

Introduction

Notaries in carrying out their positions must behave according to the applicable laws and regulations, namely Law No. 2 of 2014 concerning the Position of Notary, amendments to the Shrimp Law No. 30 of 2004, and the Notary Code of Ethics, so as not to violate these provisions, the Notary is supervised by the Notary Supervisory Board., namely a body that has the authority and obligation to carry out supervision of the Notary. In carrying out the duties of his position, in addition to having to carry out the authority or duties given by the law, namely making authentic deeds, a notary must also be responsible for the deed he has made.
One of the Notary Deeds, namely the Fiduciary Guarantee Deed, Fiduciary comes from the word fiduciary or fides, which means trust, namely the transfer of ownership rights to objects in trust as collateral (collateral) for the settlement of creditor receivables. Fiduciaries are often referred to as FEO, which stands for Fiduciare Eigendom Overdracht. The transfer of ownership rights to objects is intended only as collateral for the settlement of certain debts, which gives the fiduciary recipient (the creditor) a priority position over other creditors. (Sasauw, 2015) [6] (Ni Nyoman Ayu Adnyaswari, 2017) [5].
The term guarantee comes from the word "guarantee" which means "dependant", so that guarantee can be interpreted as a guarantee. Article 1131 of the Criminal Code states that guarantees are all objects belonging to the debtor, both movable and immovable, which already exist or will exist in the future, to be borne for all individual engagements as a result of a debt agreement."(Ni Nyoman Ayu Adnyaswari, 2017) [5]

The fiduciary elements themselves are as follows:
Transfer of property rights to an object.
Built on trust.
Materials remain in the possession of the object owner.
In practice, fiduciary is a popular thing to do in Indonesian society because of the ease of the process and the position of the collateral object that remains in the hands of the owner (not in the hands of the fiduciary). The advantages of this fiduciary guarantee are born as a subsidiary of a mortgage guarantee which is considered to have a major weakness in the form of collateral that must be handed over to the recipient of the guarantee. In other words, the pledged object must be in the hands of the pawnbroker so that the pawnbroker loses the ability to use the object. Article 5 paragraph 1 of Law Number 42 of 1999 concerning Fiduciary Guarantees stipulates that the encumbrance of objects with fiduciary guarantees is made with a notarial deed as a fiduciary guarantee deed. This arrangement is closely related to the position of a notary who has the authority to make authentic deeds so that they have a strong

legal force. Apart from having to be made in an authentic form, the fiduciary guarantee deed must also be registered. Registration must also be carried out according to what is regulated in CHAPTER III Part Two of Law No. 42 of 1999 concerning Fiduciary Guarantees (UUJF). Article 11 paragraph (1) UUJF stipulates that "Objects burdened with fiduciary guarantees must be registered."

The fiduciary guarantee registration stage begins with the making of a fiduciary guarantee deed in the form of an authentic deed made before a notary following the provisions of Article 5 paragraph (1) of the Fiduciary Guarantee Law and continues with registration at the fiduciary registration office. The fiduciary guarantee deed made in an authentic form is chosen so that the deed can later provide legal protection for the parties involved and if there is interference by the notary as legal adviser to the parties, legal advice delivered by the notary aims to make the parties aware of possible legal consequences from unlawful acts. (Eudea Adeli Arsya, 2021) [2].

The fiduciary guarantee deed is a partij deed, namely a deed drawn up before (ten overstrain) a notary, in practice a notary is referred to as a party deed. This means that the notary in this case reads and witnesses the signing made in front of him. Facing means that the deed is read and signed in front of a notary, as a public official. As stipulated in Article 16 paragraph (1) letter (m) UUJN "read the deed before the appeared attended by at least 2 (two) witnesses and signed at the same time by the appeared, witness and notary". The meaning of the word before in this provision is the physical presence of a notary before the parties and witnesses (explanation of Article 16 paragraph (1) letter (m) UUJN). (Suharto, 2017) [7]

The provisions in Article 16 paragraph (1) letter (m) UUJN explain that the meaning before the appeared is that the notary should submit legal advocacy insofar as it is related to the deed and relates to the parties listed in the deed, the notary reads it in front of the appeared so that the parties assume that you have understood and are clear about the intent and purpose outlined in an authentic deed. After the deed was read, immediately the appearers signed the deed as a form that they agreed and understood the contents of the deed.

Unless there are appearers who cannot sign by stating the reasons. The provisions for reading and signing are an integral part of the formalization of the deed.

If the reading of the deed before the parties mentioned above is connected with the making of an authentic deed as a perfect form of proof, it is very clear that conventionally making a notarial deed requires the presence and physical and real position of the interested parties/ appearers. Then reading the deed made before a notary is something that must be done by a notary in carrying out his duties. The notary is obliged to read the contents of the deed in front of the parties, this is a concrete example of the form of legal advocacy carried out by a notary. The reading of this deed is useful for explaining so that the parties understand and there are no multiple interpretations after it is read by a notary.

Materials and methods

Based on this research, a normative legal research method is doctrinal legal research, also known as library research or document study. It is called doctrinal legal research because this research is conducted or aimed only at written regulations or other legal materials. It is said to be library research or document study because this research is mostly done on secondary data in the library. The research approach to be used in this study is a normative juridical approach. A normative juridical approach is an approach that is carried out based on the main legal material by examining theories, concepts, legal principles, and laws and regulations related to this research. This approach is also known as the library approach, namely by studying books, laws and regulations, and other documents related to this research. Research materials obtained from library research and field research. Data analysis was carried out using a qualitative approach, namely a study that groups data according to the problems studied and is taken as conclusions and implemented so that they can provide analysis in scientific research. (Ali, 2010) [1].

Results and discussion

The notary is a very noble legal profession (official mobile) because the notary profession is very closely related to humanity, and officials authorized to make authentic deeds regarding all actions, agreements, and stipulations required by general regulation or by interested parties, wish to be stated in an authentic deed. In the attitude of carrying out their duties as a public official, a Notary has responsibilities, which are divided into 3 responsibilities, among others

Administrative accountability

Civil liability

Criminal liability

In carrying out his duties, a notary must adhere to UUJN regulations. Not only that but notaries are also required to adhere to the provisions of the Changes in the Notary Code of Ethics at the Extraordinary Congress of the Indonesian Notary Association (KLB INI) in Banten on 29-30 May 2015. These provisions are known as the Notary Code of Ethics (KEN) which is without any provisions regarding the code of ethics. Such ethics can lead to a lack of professionalism and a loss of public trust in a Notary which puts the dignity of a Notary at stake because ethics is a way of life and a view of behavior in which there is a collection of moral values and principles. The purpose of having a code of ethics is so that a profession can be run in a moral or dignified manner.

The authentic deed has perfect evidentiary power, so no other evidence or additional evidence is needed. If one of the parties provides information that is not following reality or may be carried out inappropriately and the procedures that should apply, such as not being read directly by the notary, then that party may state that the deed is not true or the parties or appearers have obligations to prove. Consequences for a Deed that is not read directly by a Notary to the parties as stipulated in Article 16 paragraph (9) UUJN has juridical consequences from an authentic deed whose reading is not read directly by a Notary will be degraded so that it becomes an underhanded deed, whose strength of proof becomes imperfect again.

Therefore, a Notary can exercise his authority following his position in making deeds as long as it is still carried out within his territory which includes the province of his place of domicile. The domicile in question is the regency or city area as stipulated in Article 18 paragraph (1) UUJN. Not only that, the UUJN in Article 19 paragraph (3), ensures that a Notary has no right to concurrently hold office outside his/her place of domicile. ensure that the Notary has no right

to concurrently hold office outside his/her position. (Mardiyah, 2017) [4]

In carrying out his duties and positions, the notary should read the deed he has made before the appearers which at that time is also attended by witnesses known to the notary and the signing of the deed must be carried out after the deed has been read and approved by the appearers which is then signed by the appearers, witness, and Notary. This is as stipulated in Article 16 paragraph (1) letter (m) UUJN. In connection with the reading of this deed, the question arises as to whether the deed can be read by another person or not. According to the results of the interview with the notary, it was stated that a deed drawn up by the notary must be read by the notary himself and not order employees or assistants from the notary to do so. Although in practice there are still notaries who deliberately do not read out their deeds or the deed is not spoken by a notary, but by an employee or assistant of the notary. This should receive more attention because the reading of the deed by a notary is part of the Verlinden of the deed.

Through reading the deed, the notary can explain how the contents and intent of the deed are following what is the will of the parties. After reading the deed by the notary, it must be included at the end of the deed. This also applies if the parties do not wish the deed to be read out because the appearers have read it themselves and understand the intent and purpose of the deed drawn up. For this reason, the notary is also obliged to include at the end of the deed made that the deed was not read out because of the will of the parties. This is very important to do because it relates to the position of the deed made.

The reading of the deed by a notary is a must in every authentic deed, this reading is part of the verlijden or formalization of the deed (reading and signing). The reading of the deed is not only beneficial for the notary but also for the appearers. Here are some of the benefits of reading the deed carried out by a notary, including that the notary still has the opportunity to correct mistakes that were not seen before.

If the notary intentionally does not read the deed drawn up without the consent of the appearers, then the notary may be deemed to have committed an offense by not reading the deed drawn up by the notary to the appearers. The sanctions that can be imposed as stated in Article 28 paragraph (5) Staadblad Number 3 of 1860, namely the deed made by the notary will lose the power of proof as an authentic deed and will only apply as a deed made privately. This is also stipulated in Article 84 UUJN which regulates the same matter, even the deed is considered null and void and can be an excuse for appearers who feel aggrieved to demand reimbursement of costs and compensation to the notary concerned.

Based on the new Notary position regulations, Notaries are required to make deeds following those determined by laws and regulations. If a deed is made not following the applicable rules due to negligence in making it by the notary, then the deed does not fulfill the elements of an authentic deed regulated in Article 1868 of the Civil Code. When the deed made by the notary does not fulfill the elements of an authentic deed, then the deed no longer has the strength of proof as an authentic deed, and only applies as a private deed. Proof of the deed under the hand depends on the confessions and statements of the appearers and the witnesses who signed the deed, their heirs, and the people who got the rights from them.

Based on the opinion above, it is clear that the notary deed must be read by the notary himself without being represented by another person. Looking at the provisions of Article 38 paragraph (4) letter a UUJN determines that the reading must be stated explicitly in the Notary's deed. Thus, whether the deed is read or not read must be listed at the end of the deed. If this is not done, there are formal aspects that are not fulfilled, which results in the deed being legally flawed and only having the force of law like a private deed. (Kartikosari, 2017) [3]

An authentic deed that only has the power of underhand evidence is not a problem as long as the deed only regulates the agreement agreed upon by the parties who have acknowledged the truth of all the actions committed in the deed. But this will be problematic when the deed made is a condition for the birth of a legal relationship that has been determined by law, such as a fiduciary deed that becomes a private deed that causes the deed to not be registered. so that it can be detrimental to the parties, especially creditors, where the preferred creditor should become a concurrent creditor. The notary's responsibility if the fiduciary guarantee deed is not read out is the moral responsibility for the deed he made which does not have perfect evidentiary strength so that it does not provide legal protection to the parties who agree, and also compensates for losses to parties who feel aggrieved in this matter is a creditor who cannot execute a fiduciary guarantee object.

If you do not comply with the provisions of the Notary's Code of Ethics in Article 3 point 15 or have violated the terms or conditions of the Law on Notary Office related to the requirements for the authenticity of the deed, then the deed will experience degradation which will result in the power of proving an underhanded deed.

Conclusion

Based on the results of the study, it was shown that there were notaries who did not read the fiduciary deed in front of the appearer, namely due to the large number of notaries making fiduciary deed so that the responsibility for reading the deed could not be carried out perfectly, as a result, there was a defect in the deed issued so that legal loopholes arose for attorneys (lawyers) in look for Notary mistakes in carrying out their positions. The position of the deed made by the notary has been degraded which has resulted in the power of proving the deed privately.

Reference

1. Ali Z. Metode Penelitian Hukum. Jakarta: Sinar Grafika, 2010.
2. Eudea Adeli Arsya HN. Jawab Notaris Terhadap Akta Yang Cacat Hukum Dan Tidak Sesuai Dengan Ketentuan Pembuatan Akta Dalam Undang-Undang Jabatan Notaris. Jurnal Bina Mulia Hukum, 2021, 5.
3. Kartikosari H. Pembatasan Jumlah Pembuatan Akta Notaris Oleh Dewan Kehormatan Pusat Ikatan Notaris Indonesia. Jurnal Panorama Hukum, 2017, 180.
4. Mardiyah SI. Sanksi Hukum Terhadap Notaris Yang Melanggar Kewajiban Dan Larangan Undang-Undang Jabatan Notaris. Acta Comitas, 2017.
5. Ni Nyoman Ayu Adnyaswari dS. Kekuatan Hukum Akta Jaminan Fidusia Yang Tidak Didaftarkan. Bali: Jurnal Fakultas Hukum Universitas Udayana, 2017.

6. Sasauw C. Tinjauan Yuridis Tentang Kekuatan Mengikat Suatu Akta Notaris. Jurnal Lex Privatum, 2015, 100.
7. Suharto R. "Problematika Akta Jaminan Fidusia (Suatu Studi Tentang Akta Jaminan Fidusia Setelah Berlakunya Sistem Pendaftaran Fidusia Secara Online. Jurnal Diponegoro Private Law Review, 2017.