Law Position Of Notary Deed Read By The Notary Employee

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Abstract- Notary, besides having authority make pukka act, in running his occupation have to obey obligations as arranged in section 16 Law No. 30 Year 2004 about of Notary occupation.Notary in the presence of duty exemption deed read as stipulated in article 16 paragraph (7) Notary Law background of this research, for setting liability in the reading of the deed by the Notary Law Notary in fact led to the perception as if redaing the deed was to be no longer mandatory in natuure which in practice changed from mandatory to facultative because of the rule.As an obligation during not exempted perhaps bring consequence to Notary and also act which making of. Fact in practice not rarely the act which is made by and before the Notary not read by Notary officer non by Notary making the act.What signalized under consideration this thesis streght fasten an act made before Notary which is not read off and legal consequences for act made before Notary which is not read off.Consequence punish not read off of act is pertinent act only have verification strength as act under hand.

Index Terms- Reading of the Deed, Streght Fasten of the Deed, Liability of Notary.

I. INTRODUCTION

The reading of a deed by Notary is a requirement of the authenticity of a deed. The reading of the deed is also one of the requirements of the verification of a deed, as well as the obligation of the notary as provided for in article 16 verse (1) letter l of notary law number 2 year 2014. Actually, the reading of the deed as the obligation is not obligatory thing. It is caused by the provision in article 16 verse (7) of notary law number 2 year 2014 that the reading of deed as referred in verse 1 letter (m) is not mandatory. That law is valid if respondents' deeds do not want to be read because they has read by them sleves, know and understand its contents since those things are stated in deed conslusion and on every page of the Deed Minuta signed by the interrogator, witnesses and notaries. This research is based on texistence of concessions on notary obligation in deed reading.

Deed reading by a notary is obligatory in every authentic deed making. According to article 28 of *Staadblad* number 3 year 1860 and article 16 verse (1) letter l of act number 2 Year 2014 about Notary Position, this reading is part of *verlijden* or deed inauguration (reading and signing). Since the deed is made by a notary, so it must also be read by notary concerned; Not done by others such as an assistant or notary employee.

If a notary does not read the deed to interrogator, he will be punished as set out in article 28 verse (5) of *Staadblad* number 3 year 1860 that the deed will lose its authenticity. While in the Law of Position number 30 of 2004, it is stated in article 84 that the violation done by a notary including not reading his own act will cause a deed is under the hand (non-authentic) and it canbe the reason for the loss sufferer to demand the reimbursement of fees and interest to the notary.

In performing his / her position, notary must behave in accordance with the applicable Law Regulations, namely the Notary Law and Notary Code of Conduct, in order not to violate the provision. Notary is supervised by the Notary Supervisory Board, an agency having the authority and obligation to carry out the guidance and supervision of Notary Public. It is established by the Minister to delegate his obligations in supervising and guiding him / her in doing the job.

Based on the explanation above, the writer is interested in it; the strength of binding notarial deed read by notary employee if someday it can be problem (dispute or lawsuit).

II. LITERATURE REVIEW

A. Authority Theory

According to Indonesian Dictionary, the definition of the word 'authority' is the right and power to act or do something. (Tim Penyusun Kamus Pusat Pembinaan dan Pengembangan Bahasa; 1128). Power is usually about a relationship; someone commands and commanded (the rule and the ruled).
According to Phillipus M. Hadjon:

"If examined, there is little difference between the term authority and *bevoegheid*. The difference is based on its law character. The term *bevoegheid* is used in public law concept or private law. In our law concept, the term authority should be used in public law concept".

Meanwhile, according to Juanda:
"Authority is a formal power derived from or granted by the Law such as legislative, executive, or judicial power. Thus, it appears the term 'authority'".

Power or authority always exists in all life matter; simple society and developed society (Yuslim, 2014; 13).

1. Attribution Authority (Ridwan, 2006; 103).
   Indroharto argues that giving new authority by governemnt happens in atribution.
2. Delegation Authority
   Delegating authority is done by state agency or governmental position that has obtained the government authority attributively to certain board or other state administrative office, so a delegation is always preceded by an authority attribution (Indroharto; 91).
3. Mandate Authority
   The mandate is not discussed by the submission of authority, nor the delegation of authority, in the case of a mandate no change of authority exists (at least in the formal juridical sense), there is only internal relations.

The study of the law of the State Administration is the important source of authority for government in carrying out state leadership. It is because in the use of such authority is always associated with law liability in granting authority to every certain government officials. It can not be separated from the liability generated. In terms of attribution, the authority accepter can create new powers or expand existing powers with internal and external responsibilities. The authority implementation is attributed entirely to the recipient of authority (Atributaris).

B. Position Theory

The term "position" has some common explanation. The Big Indonesian Dictionary defines position as a job in government or organization (Departemen Pendidikan dan Kebudayaan, 1994; 392). While, the Encyclopedia of Finance Ministry defines that position is a job showing employee's duties, responsibilities, authority and rights in an organizational unit (wikiapbn.org). The meaning of this position in a general sense for each field of work (duty) is created for the purposes. It concerns both of government and organizations that can be changed as needed (Adjie, 2013; 17) . According to Logemann, position is "The durable and lined work environment provided for occupied by appointed positions and provided to be represented by them as individuals. In the nature of formation, it should be clearly stated ".

Logemann requires a certainty and continuity in a position so the internal organizatio can run well. A position is run by an individual as a representative in a position, thus and acts on behalf of a position called a steward.
Logemann defines position:
"Een ambt is een instituut met eigen werkking waaraan bij de instelling duurzaam en wei omschreven taak en bevougdhden zijn verleend.

"It is an institution having its own work scope established for a long time and given certain duties and authorities".

According to Bagir Manan (Manan, 2004; 89):
"Position is a permanent work environment containing certain functions that will overall reflect the purpose and organization work. In other words, the organization is a collection of positions or permanent work environment with various functions. The whole function of all those positions reflect the organization's goals ".

Thus, a position is a work field deliberately created by the law rule for a particular purpose and function and is sustainable as a permanent employment environment.

C. Certainty Theory

In performing their duties, notaries must be guided normatively to the rule of law related to all actions taken. Then, it is to be poured in a deed. Obeying the rule of law will give the clear thing to party; deed made in "presence" or "by" notary has been in accordance with the applicable law, so if a problem occurs, the notary deed can be used as a guideline by the parties.

In Radbruch's opinion:
"The definition of law can be divided into the three aspects required to define it at a sufficient legal sense. Firstly, justice aspect in the narrow sense, means equal rights for everyone before the judiciary. Secondly, the goal of justice aspect or finality, determines the aw

contents because it is in accordance with the objectives to achieved. Thirdly, legality aspect, ensures that the law can function as a rule".

The law task is to achieve legal certainty for the sake of order and justice in society. According to Soerjono Soekanto (Sukanto, 1999; 55), Legal certainty requires the creation of general rules in order to create a safe and peaceful atmosphere in society.

Legal certainty can be achieved in certain situations (Otto, 2003; 25):
1. There are clear legal rules (clear), consistent and accessible;
2. Governmental agencies (government) apply the rules of t law consistently and obey them;
3. Citizens principally adapt their behavior to those rules;
4. The independent and impartial judges apply those rules consistently at any time when they settle the dispute;
5. Judiciary decisions are concretely implemented.

Notary deed must be made based on act. If the Notarial Deed has complied with the existing provisions, so it gives certainty and legal protection to the parties on the agreement made. Notary exercises part of the State's authority in the field of civil law to serve the public interests requiring evidence in the form of authentic deed having perfect legal certainty in case of problems (Adjie, 42).

Legal certainty is a question that can only be answered normatively, not sociologically. Normative legal certainty is when a regulation created and enacted certainly because it sets clearly and logically. Thus, there is no doubt (multi-interpretation) and logical in the sense of becoming a system of norms with other norms so it does not cause conflict of norms.

III. DISCUSSION

A. The Binding Strength of a Notary Deed Read by a Notary Employee

Deed according to Pitlo is a signed letter, made to be used as evidence and used by a person for whom the letter was made (Pitlo, 1986; 52). According to Sudikmo Mertokusumo, deed is "an autographed letter containing events which are the basis right or engagement originally made deliberately for proof (Mertokusumo, 1979; 106)". Thus, the deed is a letter made for use, signed, containing legal action events and used as evidence. For Subekti, the deed is different from the letter. It does not mean a letter, but must be interpreted with legal action, derived from the word *acta* which in French means deed (Subekti, 1980; 29). It can be consluded that deed is:
1. Generally, it is the act of handeling / legal action (rechtshandeling) and
2. A writing made to be used as evidence of legal acts, namely in the form of writing submitted to prove something (Situmorang & Sitanggang, 1993; 26).

Therefore, the functions of deeds for parties are:
1. Terms to declare a legal act
2. Proof tools, and
3. The only proof tool

One of the deed function is as evidence. In civil law, evidence is provided in article 1866 B. W., consisting of:
1. Written evidence,
2. Verification with witnesses,
3. Considerations,
4. Recognition,
5. Oath.

Deed includes written proof, which is divided into two parts:
1. Letter in the form of deed
2. Other letters, money is not deformed (Hamzah, 1989; 271).

What Subekti mentioned above in giving deed definition is more accentuated on its contents containing legal acts made by the parties. The law act is manifested in writings used as evidence of the occurrence of a bond. It cannot be said as a deed because it contains a legal act between the parties and used as evidence, so it is called as a regular letter, not a deed.

There are some requirements for letter that can be called as deed:
1. The letter must be signed,
2. The letter must contain the events becoming basis right or commitment
3. The letter is designated as evidence (Situmorang, 26-28)

Those requirements are intended to know whether the signing party has the power to do it in accordance with the provisions of article 1869 BW. It is determined that a deed which incompetence of such employee, or due to a defect in its form, shall not be treated as an authentic deed. However, it has the writing power under the hand if it is signed by the parties. Thus, if a deed has a case, such as a defect of the form or any other cause defecting the deed, so it becomes deed under the hands even though it is authentic signed by the parties. Victor M. Situmorang says that a letter can be called as a deed if it must be signed by the author (Ibid). It is the same as

Hamzah's opinion that the signed deed is an absolute obligation. Thus, the signature is for distinguishing it from other letters such as train tickets, receipts and etc and characterizing the author meant (Hamzah, 1989; 271). Signing on the letter is to characterize or to individualize a deed because the signature of each person has its own characteristics.
The letter should contain the event on which something is based on the engagement. It must contain an information being evidence required by the parties signing it. Regarding the intention of the inclusion of a legal event contained in the letter must be a legal event on which the engagement is based. Therefore, the deed must contain the basis of engagement, it can be used as evidence of the existence of an engagement.
The letter is used as a proof of right. A person feeling his right is infringed, must prove that his rights are violated in accordance with the provisions of article 1865 BW. It shows that any person who argues that he has a right or to affirm his own right or deny another person's right, pointing to an event, is required proving the existence of such right or event. Thus, the written requirement is an absolute thing. The letter as written evidence is divided into two kinds:
1. Deed
2. Other letters which are not deeds; not making as evidence and not necessarily signed.

The deed itself has two kinds:
1. Authentic deeds
2. Non-authenctic Deed (deed under the hand)

According to article 1867 B.W., determines that "proof with writing is done with authentic writings or under the hand". Thus, the deed as evidence consists of an authentic deed and under the hand.

Deed under the hand is a deed signed under the hands; letters, registers, household letters and other writings made without the intercession of a general employee, as the provisions of section 1874 BW. Thus, it is deliberately made by the parties themselves, not made by the public official having the authority to make the deed, which by the parties is used as evidence of the occurrence of a legal act. Thus, deed is limited to those who make it only because it is made by the parties only as the provisions of article 1338 B. W.; all legally-made agreements shall be valid as an act for the parties making it.
Deed made under the hands has a valid proof power if the deed maker acknowledges its contents and the signature contained in it. Therefore if a deed under the hand containing a unilateral recognition of a debt paying a sum of money or giving something, but denied by an opponent not recognizing the signature contained in the letter or deed, it must be proved by other evidence; the letter can only be accepted as a preliminary evidence in writing (Article 1878 BW).
An authentic deed is a deed in a form prescribed by law, is made in the presence of the ruling public officials for placed where the deed made (Art. 1868 B.W.). Thus, an authentic must have a signature, a legal action declaration and used as evidence. The deed is made in the presence of a public official. Its form is determined by the laws and the official making it has authority. As a result, the authentic deed has following requirements:
1. The deed must be made by a public officials and in the presence of them
2. The deed must be made based on act
3. The general official by or before whom the deed made shall have the authority making such deed (Situmorang & Sitanggang, 1993; 29).

A deed made by public officials and in the presence of them appointed by law, its authentic deed power is not due to the law enactment, but it is because made by or in the presence of a public official (Tobing, 1980; 50). Therefore, the truth of authentic deed is not caused by the form of the deed itself, but the official making the deed has the authority making it.
The proof strength of the deed can be distinguished as below based on written proof in B. W. Article 1902 paragraph 2:
1. The proof power is born
   The proof power based on circumstances of birth; what appears in the birth, ie a letter that appears to be (from birth) as deed, is considered (having power) like deed since it is not proven otherwise.
2. The formal proof power
   The proof power is based on whether true or false there is a statement about signed deed. This strength provides assurance about the event that the officials and the parties declare and do what contained in the deed.
3. The material proof power
   It is related to the statement: "is the deed content true?". Thus, it provides certainty about the deed matter; giving certainty about the event that the official or the parties declare and perform as in the deed (Abdulkadir, 121).

Based on the description above, the legal basis of the parties making the deeds of both the underwritten and authentic deeds is as evidence of a legal relationship made by the parties signing it. It can be used as evidence especially civil law if there is a dispute.

B. Law Effect of Deed Read by Notary Employee

The reading of a deed by Notary is one of notary obligation pursuant to Article 16 paragraph (1) sub-paragraph l UUJN, that in performing his / her position, the Notary is obliged reading the deed in the presence of at least 2 witnesses and signed at the same time by interrogators, witnesses and notaries. However, there is an exception that a Notary is not obligated to read a deed; interrogator has

read it by himself, knowing and understanding its contents, provided that it is stated in its conclusion as well as on every page of Minuta Deed signed by witnesses and notaries pursuant to Article 16 paragraph (7) UUJN. Although excluded, the deed no longer has law power as authentic deed if the reading is not attended by at least 2 (two) witnesses and signed at the moment by interrogators, witnesses and notaries pursuant to article 16 paragraph (8) UUJN. A notary must be physically present in accordance with the explanation of Article 16 paragraph (1) subparagraph l UUJN that a Notary must be physically present and sign the deed in the presence of interrogators and witnesses.

If the deed not be read out (not excluded as Article 16 paragraph (7) UUJN) does not mean that it is failed for sake of law because it is made as authentic deed by a notary public official. She / he has the authority making the deed based on the law. However, the deed is meant as deed under the hand that can be applied for the cancellation of the deed if it results in a loss on the other. This is evident from the provision of article 84 of the UUJN determining that the act of violation committed by a notary against the provision as referred to in Article 16 paragraph (1) letter l resulted in a deed only has the evidentiary power as a deed under may be the reason for the party suffering losses claiming reimbursement of costs, damages and Interest to a Notary. As in Article 84 UUJN, it does not mention whether the deed may be canceled, but the deed becomes having law power as the deed under the hand. It may be applied for cancellation if it results in the loss of another party and may even be used as a basis for filing a lawsuit against the notary.

A notary who does not read out the authentic deed he made may be subject to sanctions as Article 85 UUJN determining that violation of the provisions referred to Article 16 paragraph (1) letter l; getting sanctions in the form of oral reprimands, written warning, dismissal, dismissal with respect, or disrespectful dismissal.

Notary also has obligation obeying Notary Code of Conduct. It is showed below:

1. Having moral, attitude and good personality.
2. Respecting and upholding the dignity of the Notary.
3. Maintaining and defending the society honor.
4. Being honest, independent, impartial, full of responsibility, based on legislation and the oath contents of notary office.
5. Improving more science
6. Prioritizing the devotion to public interest and State.
7. Providing free services making other deeds for poor people without payments.
8. Establishing an the sole office of the notary concerned in the performance of day-to-day office duties.
9. Installing 1 nameplate in front of office with size selection; 100 cm x 40 cm; 150 cm x 60 cm or 200 cm x 80 cm containing:
    a. Full name and a valid title;
    b. Date and Number of Decision Letter;
    c. Position Place;
    d. Office address and Phone / fax number.
10. Attending, participating and actively participating in activities organized by associations; respecting, obeying, executing all society decisions.
11. Paying money in an orderly manner.
12. Paying the mourning money helping the died friends.
13. Implementing and complying all provisions concerning payment set by associations.
14. Undertaking notary's position; making, reading and signing the deed conducted in his office, except for legitimate reasons.
15. Creating a kinship and togetherness in carrying out the duties daily activities and treating mutual colleagues well, mutual respect, mutual help and trying to establish communication.
16. Treating fairly every client; not distinguishing social status.
17. Conducting obligations based on the UUJN. It is Article 19 paragraph (2) UUJN; the notary oath contents, basis estimate and INI's household.

In addition, there are notary's prohibitions:

1. Having more than 1 office' branch office or representative office.
2. Installing nameplate and writing "Notary / Notary Office" outside the office environment.
3. Conducting publication or self-promotion; alone or together by giving name and title, using print or electronic medias (advertisements, congratulations, sponsorship activities both in social, religious and sports fields).
4. Cooperating with service bureau / person / Legal body; seeking or obtaining clients.
5. Signing deeds whose making process of its minuta has been prepared by other parties.
6. Sending minuta to client to sign.
7. Doing other effort transferring from another Notary to him; directly to the client or through the intermediary of another person
8. Forcing client by holding the documentssubmitted or doing psychological pressure with the intention that the client keeps deed on it
9. Doing bad efforts; directly or indirectly leading to unfair competition with other Notaries.
10. Determining lower honorarium than the fee set by the organization.
11. Employing persons who are still employees of other notary offices without permission from the notary concerned.
12. Misbehaving or blaming a Notary's associate or deed made by him / her.

13. Establishing exclusive peer group to serve the interests of an agency or institution and closing the possibility for other Notary to participate.
14. Using title that is not in accordance with applicable laws and regulations.
15. Disobeying Notary's Code of Ethics and UUJN provisions

Sanctions for disobeying the code are reprimands, warnings, schorsings from membership of the Association, and disrespect from membership of the Society. The imposition of sanctions as described above shall be in accordance with the quantity and quality of the offenses committed by that member.

The role of Supervisory Board is also important; carrying out the guidance and supervision of Notary. It is established by the Minister delegating his / her obligation to supervise (at the same time as developing) a Notary covering the conduct and performance of Notary's office (Article 67 UUJN jo Article 1 paragraph (1) Regulation of the Minister of Justice and Human Rights of the Republic of Indonesia Number M.02.PR.08.10 Year 2004). It is divided into 3 parts in a hierarchical based on administrative region (regency / city, provincial and central): the Regional Supervisory Council, the Regional Supervisory Board and the Central Supervisory Board (Article 68 UUJN).

Supervisory Board Mechanism of Notary depends on the Regional Supervisory Board because through the Examining Team conducting periodic inspections 1 time in 1 year. The examination is also based on the physical condition of the office, and its administration and receiving reports from the public feeling harmed by the Notary. The report should be reviewed. If it is true true ,the notary will be called getting examination. Chairman of the Notary Supervisory Board forms the Regional Examining Council, the Regional Examining Council, the Central Assembly. The examination by the Regional Examining Council is closed to the public. This council shall examine and decide upon the results of the examination of the Regional Examining Council. The Central Assembly Council is authorized examining the appeals against the decision of the Regional Examining Council.

Theoretically, the Supervisory Board can not be said as independent regulatory board because it does not qualify the independence of an agency; structural, functional, administrative and financial. However, the Supervisory Board is expected and required becoming an independent board in carrying out supervision. Considering the heterogeneous members of the Supervisory Assembly, coming from the government, experts / academics and notary organizations having different backgrounds, it can be said that the Supervisory Board is difficult becoming independent board. Furthermore, the Notary Law and its implementing regulations do not stipulate clearly how the Supervisory Board should perform its duties as the Supervisory Board. Thus, the independence of the Supervisory Board as the Board of Trustees depends on the morale of each member.

IV. CONCLUSION

A deed made by and / or in the presence of a Notary has binding power as a perfect proof since it is made based on formal and meteriil requirements. It is notary's authority; not another official'. Notary has the obligation reading the deed in the presence of the witness attended by at least 2 witnesses and signed at the moment by the interrogators, witnesses and notaries. However, the interrogators can wishfor not reading it because they have read it. It must bestated in the dee conclusion as well as on every page of the Minuta Deed leveled by the interrogators, witnesses and Notaries. The legal consequence of reading a deed by a Notary's employee is the deed only has proof power of under the hand, the same as the non-reading of the deed by the Notary.

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