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PROHIBITION OF NOTARY TO CREATE A DEED OF TRANSFER OF RIGHTS RELATED TO FAMILY RELATIONS

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Abstract

Notaries are public officials who are authorized to make authentic deeds, but notaries have limited authority, namely they are not allowed to make deeds for themselves, their wives/husbands, or other people who have family ties with the notary either by marriage or blood relations in the lineage. The prohibition on notaries to make deeds of transfer of rights related to family relations is discussed normatively in this study, where notaries commit violations by making deeds of transfer of rights for parties who have family ties with the notary. This study aims to analyze the position and legal consequences of making deeds of transfer of rights by notaries related to family relations, as well as the legal considerations of judges related to deeds of transfer of rights that have family ties with notaries. The results of this study indicate that the position of the deed made by a notary who has a family relationship with the party appearing remains valid, but as a result the deed is no longer an authentic deed but is degraded as a deed under hand, if there is a party who feels aggrieved by the notary, the parties can sue for compensation. The judge does not impose sanctions on notaries who make deeds of transfer of rights related to family relationships.

Keywords: Deed; transfer; rights; relationship; family

1. INTRODUCTION

A notary is a public official appointed by the state and sworn in, who, in carrying out their duties and powers, is granted authority based on Law Number 2 of 2014 concerning the Notary Position (hereinafter referred to as UUJN). Article 1 paragraph (1) of the UUJN states that 'a notary is a public official authorized to create authentic deeds and other authorities as referred to in the UUJN.' Furthermore, the authority of notaries is also regulated in Article 15 paragraph (1) of the UUJN which affirms that notaries as public officials are authorized to create authentic deeds. The regulation regarding authentic deeds made by authorized officials is governed by Article 1868 of the Civil Code which states that an authentic deed is a deed made in the form prescribed by law, created by or in the presence of public officials authorized to do so at the location where the deed is made. One form of authentic deed made by a notary is a deed of transfer of rights.

The transfer of rights is one of the legal acts that can be used to transfer rights to another party when the owner wishes to do so or intentionally grants authority to perform legal acts on behalf of the attorney-in-fact, as stated in the power of attorney (Wahjuningati, 2024). The transfer of rights can occur on objects whose ownership status has not been registered and recognized by the state. A person's ownership rights can be transferred to another party (transferred) through sale, donation, exchange, bequest, and other actions intended to transfer ownership rights (Nugroho, 2017).

In creating a deed of transfer of rights, a notary must pay attention to the principles of prudence in drafting the deed. Article 52 paragraph (1) indicates that there are provisions for notaries regarding who may appear before them to perform legal acts in the deed made by the notary, specifically stating that it is not allowed to create a deed for oneself, a spouse, or anyone who has a familial relationship with the notary, whether by marriage or blood

relation in terms of descent. Thus, a notary in carrying out their duties must understand the contents of the Notary Public Law to avoid harming the parties involved and themselves.

The creation of a deed of transfer of rights by a notary related to blood relations is found in the decision of the Palembang District Court No. 219/Pdt.G/2023/PN Plg, where the notary prepared the Deed of Transfer of Rights for the applicant who had a familial relationship with the notary as a biological sibling. Subsequently, this Deed of Transfer of Rights was used as the basis for the application for a Certificate of Ownership Rights at the National Defense Agency office in the city of Palembang. This action could certainly be detrimental to the applicant.

Notaries who violate the provisions will face sanctions as mentioned in Article 52 paragraph (3) of Law Number 30 of 2004, which explains that the sanctions for violations may result in the deed they create having only the evidentiary power of a private deed or that the deed is weak and lacks strong legal force. A party that suffers a loss may claim compensation, damages, and interest from the notary.

Some previous studies have shown that the negligence of a notary in performing his duties results in legal consequences; among them, research by Nadya et al. explains that the provisions allowing notaries to create deeds for their families are limited by the general nuance in such conditions. Aside from that condition, the notary can be said to have a conflict of interest because he creates a deed for the benefit of his family. If the notary violates the rules in creating a deed for his family, then the authentic status can be downgraded to a private deed, as long as the party who feels harmed by the existence of the deed can prove it. (Nadya, Bambang, 2023). Furthermore, Mursid et al. found in their research that the status of the deed created by a Notary for her husband, who is bound by a private marriage with her, can be viewed from two aspects: the deed loses its authenticity and the evidentiary power of a private deed if the legal act is not required to be in the form of an authentic deed by law. However, if the deed is a legal act that is required by law to be in the form of an authentic deed, then the deed is downgraded to a private deed (Perdana & Badaruddin, 2022).

In the case of the deed of transfer of

land rights, where the Notary is a sibling of the applicant, in this deed the notary has documented the boundaries of the cultivated land without encroaching on the rights of others, thus aligning with the data on the ground. The Notary created the Deed of Transfer and Handover of Rights only based on the physical possession held by the first party, which was acquired unofficially without any sale, making the process of transfer and handover of rights to the second party legally very weak in terms of evidence. Therefore, the Notary must be cautious in their actions as this affects the civil rights of individuals, which could lead to a lack of legal certainty for the parties receiving the transfer of rights over the cultivated land. (Veronica, 2024).

Therefore, this research aims to analyze the position and legal consequences of the deed of transfer of rights made by a notary in relation to familial relationships.

2. METHOD

This writing uses the normative legal research method because the focus of the study is based on the notary's negligence in understanding the norms (Arnawa et al., 2024; Diantha, 2017), using an approach: statute approach, conceptual approach, and analytical approach. The technique for searching legal materials uses document study techniques, and the analysis study uses qualitative analysis.

3. RESULT AND DISCUSSION

The Position of Authentic Acts as Evidence of the Transfer of Rights Related to Family Relationships

Creation of the Deed of Transfer of Rights and Family Relations

According to Article 1866 of the Civil Code (hereinafter referred to as BW), the means of proof consist of written evidence, witnesses, presumptions, confessions, and oaths. In that article, written evidence is mentioned first, indicating that written evidence is the primary means of proof to be considered in matters of evidence. Written evidence is divided into 3 (three) types, namely authentic deeds, private deeds, and documents that are not deeds.

Among the three written pieces of evidence, an authentic deed holds the highest rank compared to the others. Article 1870 of the Civil Code states that an authentic deed can provide perfect

evidence regarding its contents for the parties involved as well as their heirs. Thus, it can be understood that an authentic deed plays an important role in realizing legal certainty in society. Based on Law Number 30 of 2004 concerning Notary Positions, which was later amended by Law Number 2 of 2014 concerning Notary Positions, it grants authority to a Notary to draw up deeds related to Land according to Law Number 2 of 2014 concerning Notary Positions. However, the authority of a notary in creating the deed is limited according to Article 52 paragraph (1) of Law No. 30/2004 on Notaries, which stipulates that notaries are not allowed to create deeds for themselves, their family, or close relatives. Based on Article 52 paragraph (1) of the Notary Law, the notary's authority in creating a deed is limited to individuals or groups who do not have familial relationships with them.

The authority held by this notary is granted by law. A notary, as an independent official, does not depend on other officials or institutions. The notary has some duties as a representative and acts on behalf of the state, due to the authority granted by attribution. In line with the theory of authority, which explains the legal meaning of authority as the power provided by regulations to cause legal consequences. In this case, the notary has the authority as an official mandated by law to create deeds, which are one form of legal instruments. However, this authority should not be used, for example, in making deeds of transfer of rights that still have family ties.

It is further explained that the notary obtains authority through attribution, which is the granting of authority by the legislator itself to a government organ, whether it is an existing one or a completely new one. This means that this authority is inherently attached to the intended government organ based on the position and authority granted to that government organ. Thus, notarial deeds are clearly authentic deeds which are legal products of the notary. The owner of the deed is the holder of a strong evidence, as long as it is not disproven by other parties.

With the recognition of the strength of authentic deeds for their holders, provisions have also been established regarding several procedures to maintain the position and validity of such deeds. The Law on Notaries has provided several rules regarding the obligations and prohibitions that notaries must adhere to

in order to uphold their professionalism as well as their dignity and honor. As a trusted position, it is very important for notaries to maintain this, so that the deeds they create can function appropriately in terms of evidence. One thing that must be avoided to maintain the strength of a deed for notaries is to refrain from making deeds for individuals who have blood relations or marital connections with the notary.

The Position of the Deed of Transfer of Rights by Notaries Related to Family Relationships

A deed is a written piece of evidence in the form of a written statement that is signed and made by an individual or by parties (Wajdi, 2020). The deed made in the presence of or by a Notary is regarded as an authentic deed according to the form and procedures established in the UUJN.

An authentic deed can be divided into two definitions, namely: theoretical and dogmatic definitions. Theoretically, what is meant by an authentic deed is a letter or deed that is officially made from the beginning (not underhand) with the aim of being used as evidence in the event of a dispute. The dogmatic definition, according to positive law, is: a deed whose form is determined by law and is made by or in the presence of authorized public officials at the place where the deed is created. (Kesuma., 2015)

An authentic deed can be divided into party deeds (partijakten) and minutes of deed (relaasakten). A party deed is a form of deed created as evidence containing information from the applicant(s) to the Notary, and the applicant(s) sign the deed in the presence of the Notary. The minutes of deed (relaas-akten) are deeds created as evidence for the applicant based on events that are witnessed and happen in the presence of the Notary. (Efa Laela, 2019)

In carrying out their duties, a notary has authority and limitations of authority. The authority of notaries is regulated in the Notary Law, precisely in Article 15 of the Notary Law. The authority of a Notary includes: creating authentic deeds; ensuring the certainty of the date of deed creation; storing deeds; providing the original, copies, and excerpts of deeds.

The authority mentioned above is the general authority of a Notary as stated in Article 15 paragraph (1) of the Notary Law. Other specific authorities of the

Notary are outlined in Article 15 paragraph (2) of the Notary Law, which includes: certifying signatures and establishing the certainty of the date of written documents by registering them in a special book; recording written documents by registering them in a special book; making copies of original written documents in the form of copies that contain descriptions as written and depicted in the relevant document; performing verification of the conformity of photocopies with the original document; providing legal counseling in relation to the making of deeds; creating deeds related to land matters; or creating auction records.

The powers of the Notary are regulated in Article 15 of the Notary Law, but in carrying out their authority, Notaries have limitations on their powers. One of them concerns for whose benefit the deed is made.

The limitation of authority is stated in Article 52 of the Notary Law, which prohibits a Notary from making deeds for themselves, their spouse, or relatives who have a family relationship with the Notary, whether by marriage or blood relation in a direct line downward and/or upward without degree limitation, as well as in a lateral line up to the third degree, and from being a party for themselves, either in a position or through a proxy.

The rationale for the prohibition in Article 52 of the Notary Public Act is to prevent any abuse by the Notary in creating deeds in which they or their close relatives have an interest in the making of such deeds. Notaries must maintain their position as impartial parties in the creation of deeds (Budiono, 2014). The position of the deed made by the Notary with an applicant who has a familial relationship, the deed then becomes a private deed.

The actions of a notary who creates a deed with a party who has a familial relationship with the notary is an act that violates the authority of the position as explained in the Notary Law, it is appropriate for the notary in question to provide an opportunity for other notaries to create the deed.

Legal Consequences of the Deed of Transfer of Rights Made by a Notary with Family Relations

As an authentic deed, a notary deed is deemed to be definitely true due to the presumption of validity principle. However, the authenticity of the deed may be downgraded or nullified by law if proven otherwise. In this case, it is known that a

notary in carrying out their duties must be honest, trustworthy, independent, careful, and impartial.

These principles are used as the foundation in the creation of the Notary Law and the code of ethics of the notarial profession, so that the existing provisions are certainly designed to prevent notaries from being declared dishonest, untrustworthy, lacking independence, careless, and biased. The perfect evidentiary power possessed by notarial deeds is based on their status as authentic deeds. To maintain the authenticity of these deeds, both the process of creation and the content must adhere to existing regulations without violations. The Notary Law explains the provisions for notaries in the creation and establishment of their deeds.

Violations in a notarial deed can cause an authentic deed to lose its validity and become a private deed, or it can also become a private deed. This depends on the type of violation present in the deed. If the violation can be proven, then the evidentiary value is submitted to the judge.

Article 16 paragraph (1) letter m of the Notary Law requires the notary to read the deed to the parties, in the presence of 2 (two) witnesses and 4 (four) witnesses for the deed, and to be signed simultaneously at the time the parties, witnesses, and notary are present. The reading of the deed may be waived if, at the request of the parties, they request not to have it read and this is stated at the end of the deed.

If in this case the parties present do not request not to read it out loud and the notary arbitrarily decides not to read the deed, then its authority can be downgraded to a private document. If a violation of the content of the deed occurs, then the deed can be nullified if the party who feels harmed by a material defect can prove otherwise (Mia Elvina, 2020).

In this case, a notary is clearly prohibited from drafting an act for their own family as stated in Article 52, paragraph (1) of the Notary Law. Family here refers to spouses, parents, grandparents, children, grandchildren, great-grandchildren, uncles, aunts, and siblings. If a notary is found to be drafting an act for any of those parties, they are in clear violation of the provisions in that article. Certainly, this violation has consequences for the act they created. Article 52, paragraph (3) of the Notary

Law states that if a violation of the provisions mentioned in paragraph (1) occurs, it results in the act having only the evidentiary force of a private document if the act is signed by the parties, and the notary is obligated to pay costs, compensation, and interest to the affected parties.

The prohibition for notaries to create deeds related to family relationships is due to the fact that notaries have a responsibility to act objectively and neutrally in the creation of deeds. If a notary creates a deed for a family member, there is a potential conflict of interest that can affect their neutrality; the deed created by the notary for a family member may lose its credibility due to suspicion about the notary's bias. This can undermine public trust in authentic deeds. As an effort for law enforcement, the Law on Notary Positions (UUJN) and the notary code of ethics clearly prohibit notaries from creating deeds for their relatives. Violations of this provision may result in legal and professional sanctions. Notaries must carry out their duties professionally and in accordance with applicable laws. Creating deeds for their family members can be considered a violation of good notarial practice standards.

Thus, it is known that if a notary drafts a deed for his family, then there are 2 (two) legal consequences for that deed, namely: the notarial deed has the evidentiary power limited to a private deed; and the notarial deed can be requested for cancellation in court by the party involved who suffers a loss due to the existence of that deed, which contains a legal defect.

A private deed certainly does not have the same strength as an authentic deed, and this causes the deed in terms of proof to not stand alone and requires support from other evidence. However, this goes back to the presumption of validity of an authentic deed, in which this principle assesses that the notary product deed is still considered valid until a party proves otherwise using a final and binding decision (Tuti Herningtyas, 2022).

Thus, as long as no party feels harmed by the existence of the deed, it is considered to still be valid and binding on the parties concerned. Maintaining the position of notarial products as authentic deeds is very important. This is considering that the existence of notarial deeds is needed by the community. Having an authentic deed as evidence by the

community is hoped to provide legal protection and legal certainty for them and their descendants. The community trusts notaries, as representatives of the state, to create evidence with perfect evidentiary power and a guarantee of legal certainty, so it is very important for notaries to always uphold the trust given to them by the state and society. In this case, the legal consequences of the deed made by the notary regarding family relationships, if any party feels aggrieved, that party can sue the notary for compensation. Furthermore, the notary who previously made the deed can create a cancellation deed in the presence of all Parties, and create a new Deed of Transfer of Rights by appearing before another Notary who has no family relationship as in this case.

Legal Considerations of Judges Based on Court Decisions Related to Deeds of Transfer of Rights That Are Family-Related with Notaries

Deed of Transfer of Rights Made By Notary Related to Family Relations Based on the Decision of the Palembang District Court No. 219/Pdt.G/2023/PN Plg

The deed of transfer of rights is a form of an authentic deed created by certain parties who have authority over the matter. Article 1868 of the Civil Code states that in the creation of authentic deeds, the law has determined the form and who can make it. In the implementation of the creation of such authentic deeds, the government grants authority to several public officials to assist members of the community in obtaining legal certainty. One of the public officials who plays a role and has been granted that authority is a notary.

The Notary Law has provided several rules regarding the obligations and prohibitions of notaries that must be adhered to in order to maintain their professionalism and dignity. As a position of trust, it is crucial for notaries to uphold this, so that the deeds they create can serve their purpose in terms of proof.

One thing that must be avoided to maintain the strength of a deed for a notary is to create a deed for a person who has a blood relationship or marital connection with that notary.

Thus, a notary in carrying out their duties cannot freely accept anyone to be in front of them. In this case, it is clearly prohibited by Article 52 paragraph (1) of the Notary Law for a notary to create a

deed for their own family. The family in this context includes spouses, parents, grandparents, children, grandchildren, great-grandchildren, uncles, aunts, and siblings. If a notary is found to have created a deed for these individuals, it clearly violates the provisions of that article. Certainly, such a violation impacts the validity of the deed they have created. Article 52 paragraph (3) of the Notary Law states that if a violation occurs against the provisions as mentioned in paragraph (1), the deed only has the evidentiary force of a private deed if it is signed by the parties involved, and the notary shall be required to pay costs, damages, and interest to the involved parties.

If a notary prepares a deed for their family, there are 2 (two) legal consequences for that deed, namely: The notarial deed has the evidentiary power of a private agreement; The notarial deed can be requested to be annulled in court by the concerned party who feels harmed by the existence of the deed, which contains legal defects. A private agreement certainly does not have the same force as an authentic deed, resulting in the deed not being able to stand on its own in terms of evidence and requiring support from other pieces of evidence.

Per Legal Considerations of Judges on Decisions Made and Sanctions of the Notary Law and Code of Ethics Against Notaries Who Prepare Deeds Related to Family Relationships

The judge in this case stated that the documents are as follows: - Deed of Transfer of Rights made in the presence of the Joint Defendant II; - Joint Defendant III; - Along with all documents related to the above-mentioned documents are declared invalid and without legal force;

The position of a deed made by a Notary for a party with a familial relationship can be seen from two aspects: the deed loses its authenticity and has the power of evidence under private hand, if the legal act is not required to be in an authentic deed form by law. However, if the deed is a legal act that is required to be in an authentic deed form by law, then the deed becomes a private deed. Meanwhile, for Notaries who violate the code of ethics by making a deed for a party who still has a family relationship with the Notary in question, there are legal consequences in the form of sanctions, including: Civil sanctions, in the case of Notary deeds, a lawsuit can be filed

against unlawful actions, based on the failure to meet the elements of the creating officer and/or elements of the place of creation and/or elements of the form and method of its creation. Criminal sanctions, namely several provisions contained in the Criminal Code (hereinafter referred to as the Penal Code) related to Notary acts: Article 264, Article 266, Article 263 paragraph (1), Article 418, Article 419. For Notaries who commit criminal acts, dismissal can be carried out by the Minister, as stated in Article 21 paragraph (2) sub b of the Ministerial Decision of 2003 concerning Notaries which states: "Notaries proven guilty of committing a criminal act directly related to their position or other criminal acts with a penalty of 5 (five) years in prison."

The sanctions of the Notary Law, if a Notary commits a violation of their position, the Notary Law regulates the provisions of sanctions for the violations committed by the Notary, which are contained in Chapter XI regarding the provisions of sanctions. Article 84 contains provisions regarding the sanctions for Notary deeds and Article 85 contains provisions regarding the sanctions for the Notary's position. The imposition of sanctions will be carried out by the Notary Supervisory Council with the following composition:

Sanctions of the Notary Code of Ethics, sanctions according to Article 1 point 12 of the Notary Code of Ethics are a punishment intended as a means, effort, and tool to compel compliance and discipline of the Association members as well as others who hold and perform the duties of a Notary in upholding the Code of Ethics and organizational discipline. The Notary Code of Ethics provides an understanding of violations as stated in Article 1 point 9, which is defined as an act or action committed by the association or others who hold and perform the duties of a Notary that violates the provisions of the Code of Ethics and/or organizational discipline. Sanctions that can be imposed on Notaries who commit violations are regulated in Article 6 of the Notary Code of Ethics, which are in the form of: censure; warning; suspension (temporary dismissal) from membership of the association; expulsion from membership of the association; dismissal without honor from membership of the association. These sanctions are adjusted according to the quantity and quality of the violations committed by the Notary.

In this case, the judge decided that the deed made by the notary becomes a private deed, which does not have as strong a legal force as an authentic deed. In fact, if the party that feels aggrieved wants to sue the Notary through the authorized party or Notary Supervisor, namely the MPD, the Notary will certainly be sanctioned in accordance with the provisions of Article 52 paragraph 3. However, this was not mentioned in the judge's decision in this case; the judge's decision only imposed a moral sanction on the Notary for his responsibility in carrying out his duties in the creation of the deed of transfer of rights for his sibling.

4. CONCLUSION

The position and legal consequences of the deed of transfer of rights made by a notary related to family relations. The position of the deed made by a Notary in the presence of individuals who have a family relationship is that it is an authentic deed which should be made in the form determined by law, and created by or in the presence of a notary. The Notary Public Law further regulates the procedure for creating authentic deeds clearly. An authentic deed can stand on its own, meaning that an authentic deed has perfect and binding evidentiary power. This means that what is written in the authentic deed is considered to be true and must be believed by the judge, unless there is strong evidence to the contrary that can prove the weaknesses of the authentic deed. In this case, the status of the deed made by a notary who has a family relationship with the party involved will be the status of the deed made. Degraded to a private agreement, which does not have as strong a power as an authentic deed, and causes the deed in terms of proof to not stand alone and requires support from other evidence. Furthermore, the consequences that arise from the deed being downgraded to a private agreement, if any parties feel aggrieved, want to sue the Notary who made the deed for compensation, damages, and interest to the parties or applicants, without reducing the Notary's obligations, then to avoid the deed being degraded and the legal consequences it brings, the notary should not make the deed for applicants who have a familial relationship.

Judicial considerations of the judge based on the Palembang District Court decision No. 219/Pdt.G/2023/Pn Plg regarding the deed of transfer of rights

that has familial relations, the judge only degraded the deed to a private deed, where the deed does not have the same strength as an authentic deed, and causes the deed in terms of its proof to not stand alone and requires support from other evidence, while as stated in the UUJN (Notary Public Law) there are sanctions if any parties wish to sue the notary, without reducing the notary's obligation to pay costs, damages, and interest to the parties or applicants, however, since the parties did not file a lawsuit in this case, the notary was not sanctioned for the violations committed in performing their duties regarding the creation of the deed of transfer of rights that has familial relations.

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