

Inclusion of a Notary Public Protection Clause in the Deed of Parties, Legalization, Waarmerking, Adjustment and Matching of Copies with the Original and Kovernot

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Abstract

When a Notary violates this article while doing his or her job duties, it qualifies as an act without authority. As a consequence of such an act without authority, someone who is harmed by a Notary who has declared his position without authority can sue for civil damages and compensation to the Notary Public. In carrying out these responsibilities, the notary is protected by the Notary Position Law (UUJN) and the UUJN-P. However, other forms of protection can be carried out and developed by the notary himself, namely by including the Self-Protection Clause in the deed made before the Notary Public. or when at the request of the parties making Legalization, Waarmerking, Adjustment / Matching of the Copy with the Original and Kovernot. Such a Notary Self-protection is very important for the notary so that no one quickly questions the notary's deed of Legalization, Waarmerking, Adjustment / Matching of Copies with the Original and Kovernot. So the notary is obliged to protect himself.

Keywords

Notary, Self Protection, Authority



I. Introduction

Article 15 UUJN-P regulates Notary's Authority. Juridically, authority is a limitation given by law or statutory regulation to specific positions that apply to cause legal consequences (Adinugraha, Sudarwantio & Amiruddin, 2018).

Notaries in carrying out their duties must be based on the authority as mentioned earlier (Agus, 2008). Suppose the notary makes a deed at the request of the parties not following his / her authority, for example, making a decision that falls under another official's authority. In that case, the action can be qualified as an act outside of control, and the action becomes the notary's responsibility if there is a party who feels harmed, and the deed in question does not have any binding strength. Article 15 paragraph (1) confirms The notary's authority to perform stunts; that is, the notary is allowed to perform the authentic acts of all actions, agreements and sets of provisions required under statutory regulations and/or to be specified in original acts, to ensure certainty as to the date of performance and to maintain the deed and, in particular, to supply the gross, copy and excerpt of the act. Article 15(2) UUJN-P shall control the sole authority of the notary, which includes the following: 1) ratifying signatures and establishing the date of the letter underhand by registration in a specific book (Salim, 2003); 2) documenting notes underhand through writing for a specific text; and 3) validating the photocopy's compatibility with the original document (Agus, 2008).

Whereas the notary carries out the authority mentioned above, if a request comes or before the notary, without a request (from the public) before the notary, the source cannot be exercised (Sultan, 1993). So that it can be emphasized that the notary will do a deed,

validate the signature and determine the date certainty of the letter underhand by registering in a particular book (Legalization) (Yahya, 1986); book a letter underhand by writing for a specific text (Waarmerking) (Yana & Lesmana, 2020). So that when these matters (products of the Notary's Authority) are questioned by themselves or by other parties, it should be the responsibility of facing or asking to make them to the Notary (Ahmadi, 2007).

There is an assumption in the community (as users of Notary services) that when the parties whose names are in the Notary deed, Legalization, Waarmerking, photocopy adjustments to the original and Kovernot is problematic or the dispute. A lawsuit that occurs in court will place the Notary as Defendant or Co-Defendant or make a complaint report to the police and will remember a Notary as a Witness, even though these two things by suing and reporting such a Notary are not following the Indonesian Notary Law (Dadang, 2011). So that in this connection, the notary is not a party because of the desire to do deeds or carry out legalization, Waarmerking, adjustment of photocopies to the original, and Kovernot always comes from the wishes of the parties (Alyafie & Purnawan, 2021).

In this connection, it is also necessary to link the legal relationship between the tappers and the notary, which can be included or qualified in the form of a default if the legal arrangement has been contractual; for example, the parties offer authorisation to do specific work for and on behalf of a power of attorney (Yuanitasari, 2017). The tappers come to the notary because of the wishes of the tappers themselves. All Notaries are open to anyone, and it is not suitable if every person who comes to the notary must first agree to grant power to do a specific job, in this case, do the deed (Daeng, 2006). In the absence of a written or oral agreement that is expressly stated or not between the Notary Public and the parties to do the deed he wants, it is not appropriate parties qualifies as a contractual relationship which if the Notary Default can be sued based on a lawsuit. The notary has default (Deen, Victoria & Sumain, 2018).

II. Review of Literature

The essence of an act against the law (PMH) is that there is no contractual relationship between one party and another (Roba, 2019). Unlawful Acts (PMH) can occur when one party harms another party without deliberate action but causes harm to one party (Yulia, Riyanto & Priyono, 2018). In practice, notaries perform a job based on their authority or within the scope of their duties as a notary based on UUJN (Putra, 2021). The tapper come to the notary and express his/her desires before the notary, who then is issued a notary deed in accordance with the laws applicable, and something that a notary cannot do without anyone's permission (Mariam, 1994). Unless the notary performs his/her duties after the UUJN and meets all protocols and conditions for the act, and the act is also requests are not permissible in form of illegal acts (PMH) pursuant to Article 1365 BW (Djasin, 1993).

Suppose there is no contractual or mutual binding between the tappers and the notary or an agreement to provide specific jobs (Yusuf, 2008). Thus the legal relationship that occurs between the notary and the parties is a legal relationship that is not included in the form of an agreement which is subject to the arrangement of power; in this case, the notary accepts or performs work for other people to carry out specific affairs or agreements, such as approval to perform certain services, in the form of labor agreements and job contracting (Article 1601 BW) or labor agreements acting work under the orders of others (Article 1601 d BW).

Legal subjects who come before the notary are based on their own needs and desires, the notary is also impossible to do a job or do a deed without any request from the parties, thus demanding the notary in the form of representing another person without power (Zaunjukarneming) is impossible based on Article 1354 BW (Dzaki & Hanim, 2018).

Thus the legal relationship that occurs between the notary and the tappers cannot be ascertained or determined from the start in the form of or there has been Defaulting or Unlawful Actions (PMH) (Onrechtmatigedaad) or an agreement to do specific jobs or represent other people without power of attorney (Zaunjukarneming) which can be used as the basis for suing the notary in the form of compensation, compensation, and interest (Harahap & Wahyuni, 2020). Such construction cannot be applied directly to a notary because there are no conditions that are met, such as 1) There is no written agreement or power of attorney or to do specific work (Krisna & Purwadi, 2018); 2) There are no rights of the parties or the parties whom the notary violates; 3) Notaries do not have superiors to receive orders to do a job, and 4) There is no volunteerism from the notary to do deeds, without any request from the parties (Habib, 2008).

The legal relations between a notary and the parties are a unique legal relationship, with the following characteristics: (1) It is not necessary to consent both orally and in writing in the form of the power to grant the attorney the right to carry out certain acts, or to perform specific tasks; (Hassanudin, 2000).

III. Result and Discussion

The term Self-Protection in the making of Notary deeds, Legalization, Waarmerking, adjustment of photocopies to the original, and Kovernot is found in UUIJN / UUIJN-P. However, the author himself developed the term by referring (as a comparison) to Eksoneration.

Exoneration in various legal literature, if it is summarized, can be interpreted to free a legal subject (person or legal entity) from a claim or legal responsibility that has been previously agreed. This clause excludes the obligations or duties of legal matters in the agreement (Isnaini & Utomo, 2019). Sutan Remy Sjahdeni said that, if the individual concerned does not or does not adequately comply with its obligations under the agreement, The inclusion of an exercise clause is intended to discharge or limit one party's liability against the other party's proceedings (Herlien, 2007).

The word "Exoneration Clause" in which a party refuses to meet their obligation to pay complete or limited compensation due to a breach of promises and/or illegal actions, is then defined as the contractual term for Mariam Darus Badruzaman (PMH). David Yates describes the word exclusion clause: Any part of a contract restricting, releasing or producing compensation or liability arising out of a violation of the agreement. "The exoneration clauses of the Agreement shall release one of the parties, without prejudice to its legal responsibility, if one party fails to meet its obligations by making absolute, limited restitution for breaches of promises or unlawful actions (PMH), (Semkiv, 2018). It is often a normal contract (standard contract) in which this exoneration clause is often defined by an arrangement in which nearly all the provisions are standardized by the recipient. The other party has no opportunity for negotiations or requests unilateral amendments by producers/business actors/sellers which contain general provisions (mass) to ensure that only two (two) options are available to the buyer, namely approval or rejection (Sriwati, 2000).

Referring to the term exoneration or adopting the meaning of exoneration to be used for the benefit of a notary with the term self-protection of a notary, I interpret this as necessary to protect the notary from the actions of the parties who want to sue the notary to a court or report the notary to the competent authority, even though they are disputing. The notary has carried out their duties correctly and adequately; the Notary Public must protect the form of a Notary Public Protection Clause.

The notary self-protection clause data is included in the notary deed, legalization, watermarking, adjustment of the photocopy to the original, and Kovernot is a statement from the complainants if anyone has problems to be released from all forms of responsibility if the notary has fulfilled all procedures, authority, and substance. Inclusion of Self-Protection Areas for Notaries in carrying out their duties can be done in:

a. Notary Deed

Article 15 paragraph (1) UUJN - P confirms that the notary's authority to make deeds (1) ordered by / based on law, or (2) which the parties want. The inclusion of this clause can be stated before the closing/end of the deed.

Example 1:

1. The parties declare that both the civil and the criminal shall not involve the notary in any way and in any manner when there is conflict both within or outside the case.
2. b) While all the Parties' claims, if not valid, are true, it becomes the duty of the Parties and does not include the notary.
3. If all the letters/documents displayed in this act by the notaries' tappers and their contents are exact letters/documents, the tappers will one day become solely responsible and release them from civil or criminal legal consequences.

For instance, 2:

1. Ensure that all names and letters/documents and records sent to me, the notary and the materials used in the act are accurate and take full responsibility for them.
2. Have understood, understood, and acknowledged all possible legal implications, whether present or future.

The clause can also be made: 1) When the Notary in the deed includes a letter under the hand or not a notary deed, it can be closed with the sentence: the validity of the letter/document is the full responsibility of the reporter and 2) when the notary (in comparison) is based on the notary's deeds, can be closed with the sentence: according to the statements of the parties, there are no deeds other than those included in this deed.

3.1 Legalization

Article 15 paragraph (2) letter a UUJN - P, that the Notary is authorized to ratify signatures and determine the date certainty of the letter under hand by registering in a special book;

Example:

Number: _____.

View and certify the signature of: -----

Mr/Mrs _____ residing in _____, Street _____

Number _____,-----

at the date of _____, Month _____, Year _____, by me, _____.

Bachelor of Law, Notary at _____-
 "That the validity of the signature and the contents of the letter / document is fully the responsibility of the parties who have signed it".

-----,-----

Signature & Notary stamp

(_____)

Example:

Number : _____ I, the undersigned _____ below: _____
_____. Notary domiciled at _____, Regional Positions Province _____, explain that the contents of this letter I have explained / explained to Mr / Mrs _____, Self-employed, residing in _____, Street _____ number _____, which I, Notary, know / introduced to me, Notary and after that, the Mr/Mrs _____, the letter shall put his signature / fingerprint on his left / right hand * on this letter in front of me, Notary.-----"That the validity of the signature and the contents of the letter / document is fully the responsibility of the parties who have signed it".

_____, _____

Signature & Notary Stamp

(_____)

Waarmerking

Article 15 paragraph (2) letter b UUJN - P that Notaries are authorized to record letters underhand by registering in a particular book;

Example:

Number : _____
It was stamped and registered in the registration book specially prepared for it by me:----- Notary domiciled in the City _____, Regional Positions Province _____, at the date of _____
"That the validity of the signature and the contents of the letter / document is fully the responsibility of the signatories themselves". _____, _____

Signature & Notary Stamp

(_____)

The Notary's Self-Protection Clause in adjusting the suitability of the photocopy to the original

Article 15(2) letter d UUJN-P Article 15 Notary can validate the photocopy compatibility with the original letter;

Example:

This photocopy is following the original letter which was shown to me, notary.
"The original validity of the letter and a photocopy of the responsibility showing it to the notary."

Notary at _____.
Signature & Notary Stamp

(_____.)

3.2 Kovernot

Whereas the making of Kovernot by a Notary is a Notary Living Law, it is a customary law that lives in carrying out the duties of a Notary, and normatively Kovernot is not regulated or mentioned in UUJN / UUJN-P. It should also be noted that: 1) This Kovernot was made based on data/documents/information provided by the tappers to a notary; 2) Kovernot is not created to create rights and obligations of the parties; 3) The use of kovernot that is not following the contents of this kovernot is the responsibility of accepting kovernot.

Note: Then the material described/stated in Kovernot must be: 1) Based on data/facts that have occurred or done in the presence of the notary concerned (not Kovernot orders by other parties who have not taken any legal action before the notary concerned); 2) Does not / does not contain a notary's conclusion; 3) Not an analysis of the actions / legal actions of the tappers that were carried out before a Notary; 4) Does not contain the hopes/desires of the tappers.

Example sentences of the Notary Public Protection Clause can be included at the end of the Kovernot (before the notary's signature), namely:

"This Kovernot was made at the request of the tappers, based on information/statements and letters/documents shown to me by a notary."

-----, -----

Signature & Notary Stamp

(_____)

Whereas the legal urgency of the inclusion of this clause is an effort to develop the duties of a Notary that is carried out by Notaries, namely: a) Sometimes the Notary's position is "stagnant", so as not to stagnate, the Notaries must create a "Notary Living Law"; b) Inclusion of a Notary Public Protection Clause as an effort to create Notary Living Law; c) Notary in carrying out his / her job duties by making / making Notary deed, Legalization, Waarmerking, adjusting the photocopy to the original and kovernot if there is a legal subject who appears and asks for it; d) If no one appears / asks for it, then the notary will not carry out any duties / authorities and obligations, the notary in carrying out his / her job duties by making / making Notary deeds, Legalization, Waarmerking, adjusting photocopies to the original and kovernot if there are legal subjects who turned up and asked for it; and e) When the notary is carrying out his / her duties because there is an applicant who asks for it, if there is a problem from his own party, it is as if from the result of the implementation of his / her job the notary is considered a product of a notary public, so that there is a qualification to participate in (participation) or help to do) or co-defendants, then this is something that is not true.

For what the Notary Public must include this Self-Protection Clause?

- a) As a form of caution and caution from the notary.
- b) As a form of legal protection that the notary itself can carry out.
- c) As information for other parties, do not stigmatize/label the other party's notary too quickly as the party must be fully responsible if there is no strong evidence.
- d) As a way of educating the tappers, if they lie, the tappers themselves must be held responsible.

Whereas if the basis is not prohibited, it is permissible, it returns to the notary concerned, and it is essential or insignificant that the notary himself does so. And there is no need to prohibit a notary who wants to include such a clause. So the inclusion of a Notary Public Protection Clause is not a necessity or an obligation but is returned to the notary concerned.

The inclusion of this clause will not become an obstacle for the disputing parties to place the notary as a defendant or witness. But the sentence is just an effort to be careful and increase the confidence and confidence of the notary's heart, and if the disputing parties do not need to involve the notary.

IV. Conclusion

The notary self-protection clause that is included in the deed made before a notary or when at the request of the parties to carry out legalization, waarmedking, adjustment/matching of the original copy and Kovernot is an effort made by a notary in carrying out his duties when the parties make the deed or legalization, Waarmedking, Adjustment / Matching of Photocopies to the Original and Kovernot disputes by dragging the notary because the notary made it, even though whatever Notary product is based on notary's authorization given UUJN / UUJN-P does not place itself as a Party, and also this clause is a form of developing the position of a notary so as not to stagnate and to create Notary Living Law.

Whereas UUJN / UUJN-P does not regulate or confirm the existence of a Notary Public Protection Clause, so that the urgency of such protection is a form of preventive protection that can be carried out by the notary himself, from arbitrary action by parties who have done deeds before a Notary or upon request. The parties carry out Legalization, Waarmedking, Adjustment / Matching of the Copy to the Original and Kovernot is an effort made by the notary in carrying out his duties when the parties who make deeds or Legalization, Waarmedking, Adjustment / Matching of Copies with the Original and Kovernot question the notary's product.

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