International Journal of Multicultural and Multireligious Understanding

http://ijmmu.com
editor@ijmmu.com
ISSN 2364-5369
Volume 7, Issue 10
October, 2020
Pages: 702-708

Notary Responsibility toward Underhand Deed (Waarmerking) as Evidence in Court

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http://dx.doi.org/10.18415/ijmmu.v7i10.2205

Abstract

The authority of a notary to record deeds under hand (waarmerking) is regulated in Article 15 paragraph (2) of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Position. In the decision number: 12 / Pid.B / 2020 / PN.PTK. The notary was summoned as a witness because of the fake letters used by the defendant in waarmerking by the Notary. The problem raised in this thesis is how the responsibility of the Notary as a witness to the underhand deed that was recorded (waarmerking) by the Notary in the decision Number: 12 / Pid.B / 2020 / PN.PTK. This study uses a normative juridical approach. Sources of legal materials used are primary legal materials, secondary legal materials, tertiary legal materials. Legal materials are collected through library research. Analysis of legal materials is carried out in a qualitative normative manner. The results of the research show that The testimony given by a notary in a criminal case Number: 12 / pid.B / 2020 / PN.PTK is not a form of accountability by a notary, but only the fulfillment of his obligations as a citizen. Notary Call to become a witness in a criminal case by the Police at the investigation stage and the prosecutor or judge at the trial stage must first submit an application and obtain approval from the Notary Honorary Council as regulated in Article 66 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 About the Position of Notary Public.

Keywords: *Notary Responsibilities; Waarmerking; Evidence*

Background of Research

The Unitary State of the Republic of Indonesia is a constitutional state that guarantees a high level of rule of law, which is reflected in law enforcement and equality based on the 1945 Constitution of the Republic of Indonesia. Law is a collection, statutory rules or customary law, in which a State or society recognizes it as something that has binding power against its citizens. Law as a norm has specific characteristics, namely it wants to protect, regulate and provide balance in maintaining public interests.

In Indonesia, there are 2 types of legalization known for underhanded letters, under-handed registration by notary Waarmerking and legalization. Both have differences, although at first glance they look the same. Because in the upper right corner of each document, there is usually the stamp of the

notary concerned, and an initial, and at the end of the document there is the signature of the notary concerned. However, if you pay attention to the legalization of signatures, it reads different from the registration of a letter under the hand by a notary or Waarmerking. The difference between legalization and registration of letters under the hands of a notary public, legalization of a notary is the process of increasing the power of proof of a letter under the hand, letters / documents that have been made under the hand are signed by the parties before the notary concerned, then the document / letter is explained or read by the notary. So that the date of the letter or document concerned is in accordance with the date of legalization by the notary concerned.

The document / letter made under the hand is signed in the presence of a notary public, after the document / letter has been read or explained by the notary concerned. So that the date of the document or letter concerned is the same as the date of legalization from the notary public. Thus, the notary guarantees the validity of the signature of the parties whose signature is legalized and the parties who signed the document, because it has been read and explained by the notary about the contents of the letter. The parties who signed the letter could not deny and said that they did not know or did not understand the contents of the signed document / letter. Legalization, sometimes distinguished by the notary concerned, with Signature legalization only. Where in the legalization of the signature the notary does not read the contents of the document / letter in question, which is sometimes caused by several things, for example: the notary does not understand the language of the document (for example: documents written in Mandarin, Korean, Japanese or other languages which is not understood by the notary concerned) or the notary is not involved when discussing the document between the parties who have signed. So in this case the Notary is merely explaining that on such a date, Mr. A and Mr. B signed the document before the Notary concerned.

Underhand registration of deeds or Waarmerking means, the documents / letters concerned are registered in a special book made by a notary on a certain date. Usually this is done when the documents / letters have been signed by the parties before being conveyed to the notary concerned. So the letter date may not be the same as the registration date. Registration of letters under the hands or waarmerking has not been specifically regulated in Indonesia, but can be found in Law Number 30 of 2004 concerning the Position of Notary Public as amended by Law Number 2 of 2014 (Law on the Position of Notary), in Article 15 paragraph (2) letter a Law on the Position of Notary, Notary in his position has the authority to validate the signature and determine the certainty of the date of the deed under signature by registering in a special book. According to the contents of the article, the notary is authorized, but it does not explain the legal strength of the underhand letter registered by the notary.

Under-hand registration of letters is an activity by a notary to make a letter under the hand into a deed, according to Subekti in the books of Sjaifurrachman and Habib Adjie, deeds are different from letters, furthermore it is said that, "the word deed does not mean a letter but must be interpreted as a legal action, derived from the word acte which in French means action ". The application of underhand letters registered by notaries has many problems, many of which misunderstand, underhand letters registered by the notary do not have a clear legal basis, only in the notary law

To determine a truth in the judicial process, evidence is needed. Evidence can be interpreted as an effort to provide certainty in a juridical sense, to provide sufficient grounds to the judge about the truth of an incident submitted by the litigant in a formal manner, meaning that it is limited to evidence submitted in court. Meanwhile, proof according to R. Subekti is an effort to convince the judge about the truth of the arguments presented in a dispute. In the evidentiary stage the party arguing something must be supported by evidence, evidence in civil law is contained in Article 164 HIR in conjunction with Article 1866 of the Civil Code which includes documentary evidence, witness evidence, confessions and oaths. Meanwhile, in the criminal law, evidence is contained in Article 184 paragraph (1) of the Criminal Procedure Code which includes letters, witness statements, expert statements, defendants' statements, instructions.

Evidence in criminal justice tends to material evidence. In material proof, documentary evidence only serves as reinforcement, but criminal elements take precedence. Meanwhile, in civil courts there tends to be evidence in formal studies, therefore in civil decisions documentary evidence becomes the basis for judges' consideration of events or legal acts committed.

On the criminal verdict Number: 12 / Pid, B / 2020 / PN.PTK. Where the defendant with the initials RJ was found guilty of committing a criminal act using a forged letter. In this case the defendant made a letter under his own hands, namely a letter of operation and relinquishment of rights from Phang Herlina to the defendant over a plot of land of SHM No. 283 dated 12 August 2011 signed by Phang Herlina (the first party) and the defendant and the witnesses in the letter and then the letter was registered (waarmerking) at the notary office. However, the letter of operation and release of rights turned out to be an underhanded deed which the defendant made and the defendant signed himself without the knowledge or consent of the party mentioned in the contents of the letter. The defendant made this letter and registered the defendant at the notary office to convince witness Nedy that the problem regarding the land he sold to Nedy had been resolved. As a result of the act the defendant made a false letter, namely:

1. Loss of land tenure rights as contained in the Certificate of Property Rights N0. 238 / Naram belonged to witness Phang Herlina, because the SHM on behalf of the witness had been disabled by the Office of BPN Kota Singkawang based on this letter and the existence of land tenure rights of another party (witness Nedy Ahmad) on the same land object.

2. There has been a breakdown of the certificate.

3. Witness Phang must undergo the process of a lawsuit at the Administrative Court.

Juridically, waarmerking is actually only a legal action of a notary or other public official authorized by law, to record and register under-hand deeds that have been made by the parties in the waarmerking book list specially provided for that in accordance with the existing order. So waarmerking does not state the truth of the date and signing and the truth of the contents of the contract deed under the hand as legalization or ratification. One of the weaknesses of a letter under the hand that is registered with the notary is that the notary does not know that the principle of balancing the contents of the letter under the hand is fulfilled and the letter is not intended for a particular crime. The notary only registers the letter without seeing or asking for clear information about the contents of the letter.

The notary's responsibility for the deed he books (waarmerking) is to ensure that on the date of registration, the letter exists. However, mistakes often occur in society related to signed undersigned letters because they contain a notary's signature. The Notary's signature is often misinterpreted that the Notary is said to be fully responsible for the deed under the signature which has been signed by the Notary concerned. Based on the description above, the authors are interested in conducting research for the writing of this thesis and then pouring it into a paper in the form of a thesis with the title **NOTARY RESPONSIBILITY TOWARD ASSETS UNDER THE HANDS WRITTEN (WAARMERKING) AS A PROOF TOOL IN COURT (Verdict Case Study) Number: 12 / Pid.B / 2020 / PN.PTK)**

Research Method

The research method used in this study is a normative juridical, a research approach based on normative literature study and conducted through investigating law secondary data.[1] To conduct this study, the researcher completes any materials required in studying and finishing this study by investigating the primary, secondary, and tertiary data.[2] The techniques to collect the data are:

1. Literature study is conducted through collecting law materials relating to the study of materials, such as books of law whether in a form of written texts or soft-copy edition, such as e-books, journal articles, papers, government publication, and other sources provided in the internet and accessed via online. Besides, reading, studying, and noting some reviews of literature materials relating to the object of this study are conducted.

2. Study of interview was conducted to some related interviewees, such as the Head of National Land Agency of West Sumatera Province and Conveyance.

The method of data analysis used in this study is qualitative descriptive. Qualitative approach in this study is a procedure to produce descriptive data as revealed by the respondents orally and behaviorally. Then, the objects investigated and studied in this study is the whole research[3].

Result of Research

Judges at a trial really need evidence to be able to provide a settlement (decision) based on the evidence submitted. In the verdict Number: 12 / Pid.B / 2020 / PN PTK, where the evidence in this case is one of the underhand deeds waarmerking by a notary. Registration of deeds under the hands of a notary in principle will change the letter under the hand to deed under the hands due to interference from the authorized official, namely the Notary.

An underhanded deed will have formal evidentiary power if the signature on the deed has been recognized by the party in the deed. This means that the statement from the signatory to the deed has been recognized. The strength of formal proof of the deed under hand is the same as the power of formal proof of an authentic deed. While the power of material proof of the deed is under hand according to Article 1875 of the Civil Code, then the underhand deed which is recognized by the person against whom the deed is used or who can be deemed recognized according to law for the signatory is perfect proof like an authentic deed. Based on this, the contents of the information in the underhand deed are true of who made it.

A person against whom the underhand deed is used is obliged to firmly confirm or deny the writing or signature on the deed. In the criminal verdict Number: 12 / Pid.B / 2020 / PN PTK where the PH did not justify the deed that was made underhanded by the defendant, who then registered the underhand deed with the notary. Because what has to be proven by the PH through the Public Prosecutor is the act of the defendant who committed a criminal act using a fake document and the object of which is an underhand deed registered by a notary, therefore the public prosecutor as a state attorney submits other evidence in order to be able to provide instructions and considerations for the judge to decide the case.

[1] Mamudji Sri, et al., Legal Research and Writing Methods, Faculty Publishing Board Law of the University of Indonesia, Jakarta, 2005, Page 4-5
[2] Adi Rianto, Social and Legal Research Methodology, Granite, Jakarta, 2004, page 31
[3] Soerjono Soekanto, Introduction to Legal Research, UI Press, Jakarta, 2006, Page 32

This is also in accordance with the criminal justice system in Indonesia which tends to prove material where documentary evidence only serves as reinforcement, but the criminal elements are prioritized. Based on Article 184 of the Criminal Procedure Code, in a criminal case, the evidence for witness testimony is the main evidence in addition to other evidence. There is no criminal case that escapes the proof of evidence of witness testimony. Almost all proof of a criminal case always relies on examination of witness testimony. At least apart from proof with other evidence, such as presumption or written evidence, even a confession from the defendant, even though it is always necessary to prove it by means of evidence from the witness testimony Therefore, in order to obtain an objective and perfect examination result, investigators need witness testimony.

The summons of a notary as a witness relating to underhand deeds which are mandated by him and indicted as criminal, according to the author, is irrelevant to the nature of evidence at the level of investigation and the system of proof in criminal law. This is because Article 1 point 26 of the Criminal Procedure Code states that a witness is a person who can provide information for the purposes of investigation, prosecution and trial regarding a criminal case that he has heard himself, seen himself, and experienced himself. Meanwhile, the summons of a notary who has signed the deed under hand and then allegedly falsified the letter is not in accordance with the qualifications of the testimony, because the notary has never seen, heard, and experienced the content or signature of the deed under hand.

Waarmerking is to provide a definite date, namely a statement that the Notary actually sees the deed under the hand and records it in a special book (not the date the deed is signed under the hand). The authority of a notary to record deeds under hand is regulated in Article 15 paragraph 2 of Law Number 2 of 2014 concerning amendments to the Law number concerning Notary Public which states that Notaries are authorized to record deeds under hand by registering them in a special book. Waarmerking is taken if the document / letter has been signed by the parties before being submitted to the Notary concerned. So the date of the letter may not be the same as the date of registration of the letter in the special book by the Notary. The benefit of waarmerking is that if the underhand deed is lost by the party tapping, it can see the archive to the Notary who registers the underhand deed.

The above can be said that the notary waarmerking only registers, so the legal implication of waarmerking for the notary is not big because the notary only records the deed under his / her hand and sees that the deed under the hand really exists. Therefore, according to the author, the Notary is not obliged to be a witness in the investigation, prosecution and trial of the underhand deed which was registered by him, which later indicates a criminal act of letter forgery, because the Notary does not know that there was an agreement in the underhand deed because the deed was signed not before a notary.

Notary summons to be witnesses in case Number: 12 / Pid.B / 2020 / PN PTK is not a form of accountability from the Notary. However, it is the fulfillment of the obligation as a citizen / member of the public to attend a criminal examination as a witness as stipulated in Article 224 of the Criminal Code. This is the same as the withdrawal of a notary to become a co-defendant in a civil suit. Because the word co-defendant in a civil lawsuit is used for people who do not control the disputed item or are not obliged to do something, but only for the sake of completeness a lawsuit must be included in the petitum and only requested to submit and obey the judge's decision. So the Notary is only serving as a complement, the Notary is drawn as a co-defendant in the lawsuit so that the lawsuit is complete. This occurs because the parties in the lawsuit must be complete, the incomplete formulation of the subject that should be the defendant, the lawsuit can be deemed to have occurred in personal error / legal subject error, therefore the lawsuit cannot be accepted / niet ontvenkel iskvertelaard.

Responsibility is born as a result of the authority possessed by the community. Authority is a legal action that is regulated and given to a position based on the prevailing laws and regulations and regulates the position concerned. The authority possessed by a notary is an attribution authority, namely

the authority attached to a position. Waarmerking is an authority owned by a notary to register deeds under hand where that authority has been guaranteed by law.

Responsibility is a principle of professionalism which is a manifestation of a commitment that a Notary must have towards the implementation of his office as regulated in UUJN. The responsibility of the notary adheres to the principle of responsibility based on fault (based on fault of liability). The responsibility of a notary arises if there is an error committed in the performance of his duties and the error causes losses to the person requesting the services. There are several juridical considerations that must be considered in carrying out the responsibilities of a Notary in carrying out his office, including:

1) Notary is a public official whose job is to carry out public office.

2) In carrying out their duties, notaries may not defame the good name of the legal profession development corps.

3) In carrying out their duties, the notary does not defame the reputation of the notary institution.

4) Notaries work by applying the law in the products they produce, it is expected that they will always uphold the nobility of their duties and the dignity of their offices, as well as carry out their duties by fulfilling the requirements determined by legislation as a form of their responsibilities.

According to Hans Kelsen, in his theory of legal responsibility, a person is legally responsible for a particular act or that he bears legal responsibility, the subject means that he is responsible for a sanction in the case of a contradictory act. If it is related to the Notary's authority to register the deed under hand (waarmerking), the Notary does not witness the parties signing it because the parties have signed the deed under the hand before registering at the Notary's office. So the notary does not know either the parties or the contents of the letter / agreement under the deed. Waarmerking is only limited to bookkeeping, which in this case is intended so that if the deed is lost in the future, the parties can ask for a copy of the notary who has registered the underhand deed. The notary's responsibility for the under-handed deed that has been booked / registered (waarmerking) by the Notary is the date of registration and only ensures at the time of registration of the underhand deed that the letter exists but is not responsible for the substance and parties. Meanwhile, the testimony given by a Notary in a criminal case Number: 12 / Pid.B / 2020 / PN PTK is not an accountability, but only the fulfillment of obligations as a citizen because of the difference between the records held by the Notary and the deed under the hands of the defendant.

Reference

Achmad Ali, 2015, Revealing the Veil of Law, Kencana, Jakarta, p. 41.

Adi Rianto, Social and Legal Research Methodology, Granite, Jakarta, 2004, page 31.

Bambang Poernomo, 1986, Principles of Indonesian Criminal Court Procedure in Law No. 8 of 1981, Liberty, Yogyakarta, page 46.

Djamanat Samosir, 2011, Civil Procedure Law, Civil Case Settlement Stages, Nuansa Aulia, Bandung. p. 225.

Hans Kelsen, 2007, Introduction to Legal Theory, Kompas, Jakarta, p. 26.

Mamudji Sri, et al., Legal Research and Writing Methods, Faculty Publishing Board Law of the University of Indonesia, Jakarta, 2005, Page 4-5.

R. Abdoel Djamali, 2009, Introduction to Indonesian Law, Rajawali Pers, Jakarta, page 3.

R. Tresna, 2001, HIR's Commentary, Pradnya Paramita, Jakarta, p. 141.

Rony Hanitijo Soemitro, 1988, Legal and Jurimetric Research Methods, Ghalia Indonesia, Jakarta, p. 9.

Sjaifurrachman and Habib Adjie, 2011, Aspects of Internal Notary Accountability.

Subekti and Tijtrosudibio, 2008, Civil Code, Pradyna Paramita, Jakarta, page 478.

Suhardi K. Lubis, 2006, Legal Profession Ethics ,, Prints XI, Sinar Grafika, Jakarta, page 44.

Supriyadi, 2010, Ethics and Responsibilities of the Legal Profession in Indonesia, Sinar Grafika, Jakarta, page 18.

Sophar Maru Hutagalung,2014, Civil Justice Practices and Alternative Dispute Resolution, Sinar Grafika, Jakarta, p. 156.

Soerjono Soekanto, Introduction to Legal Research, UI Press, Jakarta, 2006, Page 32.

Titik Triwulan Tutik, 2008, Civil Law in the National Law System, Kencana, Surabaya, p. 12.

Yahya Harangkap, 2006, Civil Procedure Law Regarding Lawsuits, Trials, Confiscation, Evidence and Court Decisions, Sinar Grafika, Jakarta, p. 16.

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