

Legal Consequences of Notarial Deeds Made Not In Accordance with The Provisions of Article 16 Paragraph (1) Letter M UUJN

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ABSTRACT

Notarial documents are important legal evidence, but their validity depends on the fulfillment of the provisions of the UUJN, especially Article 16 paragraph (1) letter m. This research aims to analyze the legal consequences of notarial deeds that do not comply with the provisions of Article 16 paragraph (1) letter m of the UUJN, as well as understand the responsibilities of notaries in ensuring the validity of the documents they create. This research uses a doctrinal approach by analyzing legal norms through a literature review of relevant literature and legal sources. The main focus is on the legal consequences of notarial deeds that do not comply with the provisions of Article 16 paragraph (1) letter m of the UUJN. The research found that a notarial document that is not read and signed in the presence of the parties involved potentially loses its evidentiary power and is considered an underhand deed. Notaries are fully responsible for this mistake, which can result in administrative, civil and criminal sanctions. The obligation to read the deed orally by the notary is essential to ensure that all parties understand the contents of the document and agree to its terms. Violation of this obligation not only harms the parties involved but also undermines the integrity of the notary profession. The conclusion of this study confirms that the fulfillment of the provisions of Article 16 paragraph (1) letter m of the UUJN is mandatory to maintain the validity of notarial deeds.

Keywords: Notarial Deed, UUJN, Notary Responsibility, Evidentiary Power, Legal Consequences.

INTRODUCTION

A notary is a public official authorized by the state to provide civil law services, particularly in the legal acts of agreements and the issuance of authentic deeds based on the parties' intentions as reflected in the documents (Samuel, 2022). In Indonesia, the role of notary is governed by Law Number 2 of 2014, which amends Law Number 30 of 2004 regarding the Office of Notary (referred to as UUJN). The powers of a notary are specifically outlined in Article 15 of the UUJN, which states that a notary is authorized to create authentic deeds for all acts, agreements, and stipulations required by law and requested by the parties to be documented as an authentic deed (Asti & Arsin, 2023). The notary also ensures the certainty of the deed's date, retains the deed, and provides copies and excerpts of the deed, as long as the preparation of the deed is not delegated to or excluded from other officials or individuals as specified by law (Supriyanto & Sulistyono, 2024). Notaries are required to adhere to normative legal

guidelines for every action documented in the deed. By acting in accordance with the relevant legal regulations, the notary assures the parties that the deed has been executed in compliance with the law. In the event of a dispute, the deed can serve as a reference for the parties involved. Notaries are available in the community to offer services to those seeking authentic proof of events, circumstances, and legal actions (Adjie, 2014).

Authentic deeds are created by authorized officials and serve as conclusive evidence for the parties involved (Utarid, 2023). An authentic deed is defined as a document prepared in the presence of an authorized official that reflects the agreement between the parties. This type of deed clearly outlines the rights and obligations of each party, provides legal certainty, and aims to prevent disputes between them. In the case of a dispute between the parties to the agreement, the terms of the agreement serve as conclusive evidence and do not need further proof during the trial, provided that the opposing party cannot present evidence to the contrary. The deed, as written documentation, holds significant legal weight against the party bound by the agreement, who must be accountable for the contents of the deed.

A deed can be recognized as an authentic deed if it is created in accordance with the regulations outlined in the UUJN. To qualify as an authentic deed, the document must meet both formal and material requirements. The formal requirements include being executed in the presence of an authorized official, with both parties present and either known or introduced to each other, along with two witnesses. Additionally, it must state the identities of the notary (official), the parties, and the witnesses, specify the location, day, month, and year of the deed, and be signed by all parties. It should also include an affirmation of reading, translation, and signatures in the closing section of the deed (Tanuwidjaja & Hoesin, 2022). The formal requirements of a deed are cumulative in nature; if any one of these requirements is not met, the deed cannot be regarded as an authentic deed and will lack evidentiary value in proving the case. On the other hand, the material requirements dictate that the deed must include information regarding the agreement of the parties, the details of the legal act, and that the creation of the deed is intentionally aimed at serving as evidence.

The requirement for the authenticity of the deed includes that it must be read aloud by the notary, which is a duty outlined in Article 16, paragraph (1), letter m of the UUJN. This article states, "The deed must be read aloud in the presence of the parties and at least two witnesses, or four witnesses specifically for the creation of a private testament deed, and signed at that time by the parties." This stipulation is further confirmed in Article 44 of the UUJN, which specifies that once the deed is read aloud, it must be signed by the parties, witnesses, and the notary, unless a party is unable to sign for a valid reason, which must be explicitly stated.

The deed executed before a notary, which includes the agreement of the parties, must be signed by the parties, witnesses, and the notary. According to Article 44 of the UUJN, "Immediately after the deed is read aloud, it is signed by each party, witness, and the notary," unless a party is unable to sign, in which case the reason must be provided. This reason for the inability to sign must be clearly stated at the end of the deed. By signing the deed in front of the notary, the agreement becomes binding for the parties involved, as their signatures represent their consent and commitment to fulfill the agreement. Additionally, the requirement for an authentic deed to be executed before a notary, as stipulated in Article 1868 of the Civil Code, is also a request from the parties to protect their rights and obligations, ensuring legal certainty, order, and protection for themselves and society as a whole.

In their role, notaries may encounter technical challenges, such as the simultaneous signing and reading of credit contracts in banks, where the volume of deeds can hinder the notary's ability to read them aloud. Besides these technical difficulties, there are instances where a notary might intentionally skip

reading the deed they prepared, falsely claiming to have read it in front of the parties. Additionally, the notary may assert in the deed that the parties appeared before them, even though they only interacted with the notary's staff rather than meeting face-to-face.

Previous research has explored various legal aspects related to notarial deeds, including notarial liability and deed validity. Several studies show that failure to comply with the provisions of the UUJN can have serious legal consequences for notaries and the parties involved. For example, research by Adjie (2014) highlights the importance of reading the deed in the presence of the parties to maintain evidentiary power. In addition, research by Erliyani and Hamdan (2020) examines the development of digital notaries and its challenges in the existing legal context (Putri, 2021). Despite these relevant studies, there is still a lack of in-depth analysis regarding the specific legal consequences of notarial deeds that do not comply with the provisions of Article 16 (Handoko, 2021).

This research offers a new approach with a specific focus on the provisions of Article 16 Paragraph (1) Letter m of the UUJN and its impact on the validity of notarial deeds. While many previous studies have addressed the general responsibilities of notaries, this research delves deeper into the specific aspects of the deed reading obligation and its impact on evidentiary power. By highlighting situations where notaries fail to fulfill this obligation, this research aims to provide a clearer insight into the legal implications and responsibilities of notaries.

The purpose of this study is to analyze the legal consequences of notarial deeds that do not comply with the provisions of Article 16 Paragraph (1) Letter m of the UUJN and to understand the responsibilities of notaries in ensuring the validity of documents. The benefit of this research is to provide a better understanding to notaries and interested parties regarding the importance of fulfilling this legal obligation to protect their rights and interests. In addition, the implications of this research can help develop better policies and practices in the notary profession, as well as raise awareness of the importance of integrity in notarial deeds.

RESEARCH METHODS

Methodology serves as a framework for how scientists study, analyze, and interpret their surroundings. Research is a scientific endeavor that involves analysis and construction, carried out methodically, systematically, and consistently. Legal research is a scientific activity grounded in specific methods, systematic approaches, and reasoning aimed at examining one or more particular legal phenomena through analysis. In this study, the research method employed is doctrinal law, which focuses on legal norms using a normative juridical approach. The methods utilized in writing this article involve library resources or secondary data pertaining to legal principles, commonly known as normative legal research or library law. The data sources consist of secondary data, including literature, journals, and books that address relevant research findings.

RESULTS AND DISCUSSION

Legal Consequences Notarial Deed Made Not in Accordance with the Provisions of Article 16 Paragraph (1) Letter M of the UUJN

Notaries are required to operate within the framework of applicable legal regulations to ensure that the deeds they create are in compliance with existing laws, thereby offering reassurance to the parties involved (Nurjanah & Sunardi, 2024). In the event of any disputes, these deeds serve as a reliable reference. At the start of each deed, the notary records the date and time of its creation, which is crucial for establishing the formal evidentiary strength of the document. This evidentiary power affirms that the events and facts asserted by the parties are aligned with the established procedures at the time the deed was executed.

The notary holds the crucial responsibility of confirming the day, date, month, year, and time recorded at the beginning of the deed, serving as evidence that the parties were present, signed the document, and adhered to all procedures in accordance with the UUJN (Mariaane, 2024). Failure to read the notarial deed aloud to the parties and witnesses due to the notary's negligence is a clear violation of UUJN regulations and the notary's code of ethics, which can have significant legal ramifications for both the deed and the notary involved. If the notary does not read the deed, its evidentiary value may diminish, reducing it to the status of a private deed. Additionally, not reading and signing the deed in the presence of a notary leads to similar consequences, as outlined in Article 16, paragraph (9) of the UUJN. This oversight also contravenes Article 4, paragraph (6) of the Code of Ethics of the Indonesian Notary Association. If the legal requirements are not fulfilled, the notarial deed may be rendered null and void.

The validity of a notarial deed can be compromised if there are violations of the relevant legal provisions during its creation. One such violation occurs when a deed does not accurately reflect the facts. If the notary fails to read the deed aloud and does not ensure that the signing occurs in the presence of the client, the notarial deed will lack full evidentiary power unless all procedures for its creation are properly followed. Should any procedural lapses be demonstrated, a court may declare the deed to possess only the evidentiary weight of a private deed. In this scenario, the determination of its evidentiary value will rest with the judge. Ultimately, the legitimacy of a notarial deed hinges on the fulfillment of its formal requirements, which are cumulative; if even one requirement is not satisfied, the deed cannot be considered an authentic document. Reading the deed aloud and having it signed by the parties in the presence of the notary are essential conditions that must be met for it to qualify as an authentic deed.

A notarial deed does not always require reading aloud if the parties involved request otherwise. According to Article 16, paragraph (7) of the UUJN, the reading of the deed, as specified in paragraph (1) letter m, is not obligatory if the present parties choose not to have it read, on the condition that they have already read, understood, and acknowledged the contents of the deed. This preference must be documented in the closing section of the deed, with each page initialed by the parties, witnesses, and the notary. Thus, while the reading of the deed itself can be waived if the parties are aware of its content, this exception pertains specifically to the body of the notarial deed. The provisions regarding the title, comparisons, brief explanations, and closing sections still necessitate attention.

Even if the deed's content isn't read aloud, the notary is still obligated to provide a brief explanation of its main points to prevent any potential misunderstandings among the parties. Essential sections of the deed, such as the title, comparisons, and closing must be read aloud to meet the formal requirements of an authentic deed (Syukur et al., 2023). This includes mentioning the parties involved, the notary's name and position, as well as the date, day, month, and year of the deed. Additionally, the fact that the contents were not read aloud must be clearly documented in the closing section to ensure the deed retains its authentic status and does not degrade to that of an underhand deed. The closing statement can specify that the deed was not read by the notary at the request of the parties, who have confirmed they have read, understood, and acknowledge its contents.

If the deed is not read aloud but this fact is documented at the end of the deed, it can still be considered an authentic deed since it reflects the true facts. However, if the deed is not read and this is not noted in the closing section, it may be downgraded to an underhand deed due to a violation of the provisions outlined in the UUJN.

When signatures on a deed are not executed in the presence of a notary, the document is classified as an underhand deed due to its failure to meet the formal criteria for an authentic deed. Signatures are crucial as they signify the parties' agreement to undertake legal actions. A deed can be considered authentic if it includes signatures that validate the legal intent and serve as reliable evidence. However,

if a deed is not signed in front of a notary, it cannot be deemed authentic since the notary does not verify the validity of the signatures or the parties' consent to the legal actions. Consequently, if a notary-prepared deed fails to fulfill the requirements for authenticity, it loses its evidentiary strength and is regarded merely as an underhand deed. The evidentiary value of an underhand deed relies on the acknowledgment and statements of the parties involved, along with the witnesses who signed it, including their heirs and successors.

If these requirements are not satisfied, the deed will fail to meet the formal criteria, resulting in a legal defect and limiting its status to that of an underhand deed. While an authentic deed that carries the evidentiary weight of an underhand deed can function adequately for agreements acknowledged by the involved parties, complications may arise if the deed is necessary for establishing a legal relationship governed by law.

Notary Responsibility for Deeds that are not in accordance with the Provisions of Article 16 Paragraph (1) Letter M of the UUJN

A notary's deed encapsulates the legal actions taken by the parties involved. Notaries hold a significant responsibility for their work, ensuring that the deeds they create are trustworthy and serve to protect those entering into legal agreements. An authentic deed executed by a notary carries substantial evidentiary weight in court (Mason, 2018). Notaries play a vital role in fostering fairness, recognizing that parties in legal transactions may not always have equal standing. If a notary fails to read the deed aloud, as required by Article 16 paragraph (9) of the UUJN, the deed is downgraded to an underhand deed. According to the UUJN, notaries are obliged to create deeds in compliance with relevant laws and regulations. Should a notary's negligence result in non-compliance, the deed will not meet the criteria for an authentic deed as defined in Article 1868 of the Civil Code.

According to Article 16 paragraph (1) letter I of the UUJN, a notary is required to personally read the deed without delegation to another individual (Narsudin, 2023). Furthermore, Article 38 paragraph (4) letter a of the UUJN specifies that this reading must be clearly noted in the notarial deed itself. Regardless of whether the deed is read aloud or not, this must be explicitly mentioned in the concluding section of the notary's document.

A notable breach by a Notary occurs when they fail to read the deed and do not sign it at the same time as the parties and witnesses. In instances where the Notary does not read the deed aloud before signing, and the witnesses referenced in the deed are absent during its ratification, this violates the deed's stipulation, which states, "after I, the Notary, have read this deed to the parties and witnesses, this deed is immediately signed by the parties, witnesses, and I, the Notary (Khalid, 2023)." The principle of prudence is crucial for Notaries in fulfilling their responsibilities. Given the esteemed nature of their role, Notaries are expected to exercise care and caution, as outlined in the UUJN and the Notary Code of Ethics. This underscores the importance of adhering to legal standards in notarial practices with professionalism and integrity.

Notaries who engage in unlawful conduct while executing their professional duties must face accountability for their actions (Rizgi & Wisnuwardhani, 2024). To establish civil liability for such unlawful acts, Notaries must satisfy the criteria outlined in Article 1365 of the Civil Code. Several conditions must be met when imposing sanctions on Notaries: there must be a clear prohibition against the act, evidence of fault on the part of the Notary, and proof of any resultant harm. Formally, the act must align with legal definitions, while materially, it should adhere to ethical standards and the UUJN. The scope of violations by Notaries is evaluated based on the provisions of the UUJN. Consequently, the penalties for these violations are determined by the UUJN, emphasizing that Notaries must uphold their responsibilities not only to themselves and their clients but also to God Almighty.

Notaries who fail to fulfill their responsibilities in accordance with the UUJN and the Notary Code of Ethics can be held accountable for their actions. It is imperative for Notaries to adhere to the established regulations while performing their duties, particularly in the creation of legal deeds. If any material, formal, or administrative requirements are neglected during the deed-making process, the Notary involved may face sanctions. According to Article 3 of the Notary Code of Ethics, Notaries are required to diligently execute their roles, including the preparation, reading, and signing of deeds. Should a violation occur in their professional capacity, Article 6 of the Notary Code of Ethics stipulates that they may be subject to various administrative sanctions, including reprimands, warnings, temporary suspensions, dismissal, or dishonorable discharge.

CONCLUSION

Based on the analysis presented, the author concludes that the legal ramifications of notarial deeds that do not comply with Article 16 Paragraph (1) Letter M of the UUJN can be summarized in two key points. First, the reading and signing of a notarial deed is a mandatory requirement as outlined in Article 16 Paragraph (1) of the UUJN. If the notary fails to read the deed aloud, this must be explicitly noted at the conclusion of the document for it to retain its status as an authentic deed. Without the reading and signing occurring in the presence of a notary, the deed breaches the UUJN and the Notary Code of Ethics, thus relegating it to the status of an underhand deed with diminished evidentiary strength.

Second, a notary who neglects to read and sign the deed in front of the parties is in violation of the UUJN and the Notary Code of Ethics, exposing them to civil, criminal, and administrative liabilities. Should the notary's oversight lead to any losses, they may face civil lawsuits for tort. Additionally, if their actions meet the criteria outlined in the Criminal Code and contravene the UUJN and the Notary Code of Ethics, they may also be subject to criminal charges. To mitigate such risks, it is crucial for notaries to adhere strictly to the provisions of the UUJN and the Notary Code of Ethics when drafting deeds and to implement a precautionary approach to safeguard the interests of all parties involved. Upholding professionalism and good faith in the execution of their duties is essential for notaries to effectively perform their roles and prevent negligence.

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