

The Authenticity of Deed Made By Notary with Unfairly Physical Health

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Abstract : This research entitled The Authenticity of Deed made by Notary with Unfairly Physical Health. This research discusses the physical healthy boundaries for Notary As well as the validity of the deed made by Notary who is not physically fit. The purpose of this research is to analyze the physical healthy boundaries for Notary As well as regarding the validity of the deed made by the Notary who is not physically fit. This research uses the type of normative legal research with the statutory approach (Statute approach) and the conceptual approach (Conceptual Approach). The results of this study is concluded hat the limits on physical health required by the Law -The Notary Public Office is physically and spiritually healthy as stated by the doctor's certificate, so that in carrying out his position if there is a Notary who suffered physical disability, the healthy restriction in determining a Notary can continue his position shall be supervised by the Assembly of Supervisor Notaries. Regarding the physical boundaries for the Notary who suffer physical disability at the time of course affect the authenticity of the authentic deed he made, then regarding the validity of the deed as long as it is made in accordance with the provisions of Article 38 UUJN, the authentic deed may be considered valid. Regarding of the physical health restrictions contained in the law of office of a notary should be described in more detail in the law, so the candidates of the notaries will be better prepared to be a professional notary.

Keywords -Authenticity Deed, Notary, Physical Health

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I. INTRODUCTION

1.1 Background

Notary is one of the positions of law products of colonial or colonialization era which at that time is regulated in the Regulation of Position Notary. Notary is a profession designation for someone who has obtained legal education licensed by the government to do legal things. Notary is a general official / authorized official (gemachtigdeambtenaren) appointed by the State to perform the duties in the legal service to the public for the achievement of legal certainty as an official of authentic deed in civilization.

According to GHS LumbanTobing, in his book Notary Regulation, a notary institution appears in Indonesia at the beginning of the 17th century with Vereenigde Oost Ind. Compagnie (VOC) in Indonesia. Since the presence of the VOC in Indonesia, the traffic of trade law is done by notarial deed, it is based on the opinion of Notodisoerjo that "Notariat Institution has been known in the country of Indonesia, since Indonesia was colonized by the Dutch, originally the institute is reserved for Europe, especially in the field of civil law, *BurgelijkWetboek*". Based on the data, the notarial institution which is only intended for the European class in the field of civil law, but in subsequent developments the people of Indonesia in general can make an agreement with the Notary.

Notary is a public official authorized to create an authentic deed, as the authentication of such deed is not reserved to the other Public Official. Notary as a public official is a person who carries out part of the public function of the State, particularly in the field of civil law. The process of making an authentic deeds is required by Regulation Legislation in order to create certainty, order and legal protection.

In addition to the authentic deeds made by or before the notary not only because it is required by the Law and Regulations but also desired by the interested parties to ensure the rights and obligations of the parties for the sake of certainty, order and legal protection for the interested parties as well as for the community as a whole. Authentic nature essentially contains formal truth in accordance with what the parties notify to the Notary. However, a Notary has an obligation to make sure what is contained in the Notarial deed is fully understood and in accordance with the wishes of the stakeholders, that is by reading it, so the contents of Notary deed becomes clear, as well as providing an access to get the information, and access to legislation

related to the parties signing the deed. Accordingly, the parties may decide freely to approve or disapprove the contents of the Notarial Deed which they sign.

Authentic deeds are written agreements made by or in the presence of a Notary, with the aim that the deed may be used as strong evidence in the event of a dispute between the parties or a claim from another party. Therefore, the notarial deed is so important in order to avoid the illegality of a deed, the notary institution is regulated in Law Number 30 of 2004 concerning Notary Position (referred to UUJN). A general official of a Notary in the performance of duties is protected by law.

As stipulated in the Notary Law (UUJN) Law, Article 1 paragraph (1), a Notary is a public official authorized to make an authentic deed and have other powers as intended in this law or by other laws. And in article 15 paragraph (1) which affirms that the Notary has the authority to make an authentic deed of all acts, agreements and stipulations required by legislation and / or desired by the interested parties to be declared in an authentic deed, , preserve deeds, grant deeds, copies and excerpts of deeds, all of which during the making of the deed are not affirmed or excluded to other officers or persons laid down by law.

Performing the task as a Notary should not make mistakes in making authentic data because it will be fatal if there is a mistake especially in making of authentic deeds that become tasks in the field. Article 14 of the Law on Position of Notary (UUJN) has explained further provisions regarding the terms and procedures for appointment and dismissal as referred to in Article 3, Article 8, Article 9, Article 10, Article 11, Article 12, and Article 13 regulated in the Regulation of the Minister of Justice and Human Rights of the Republic of Indonesia No. 62 of 2016 on Amendment to Regulation of the Minister of Justice and Human Rights No. 25 of 2014 on Terms and Procedures for Appointment, Transfer, Dismissal and Renewal of Notary Period.

Further explained in Article 3 letter (d), the requirement to be appointed as a Notary as intended is physical and spiritual health which is stated by a certificate from a doctor and a psychiatrist. Regarding Article 3 letter (d) which sounds physically and spiritually has been subjected to material test to the Constitutional Court and decided through the Decision of the Constitution Mahkamah Number 009-014 / PUU-III / 2005. According to the applicant the requirements must be more detailed, for example by stating that Notary must not be blind both eyes, hearing impaired, paralyzed his hand so that it can not affix signature. With respect to the above petition, the Court is referred to the formulation as mentioned in Article 3 letter (d) is sufficient.

Therefore, to become a Notary must pass health starting with physical examination and psychiatric condition by doctor or psychiatrist. Doctors and psychiatric examinations usually include sensory functions ranging from the eyes, ears and usually accompanied by x-rays to find out the internal parts of the body such as the lungs, heart and so on, whether functioning normally or not.

In addition to physical examination it is necessary to also a spiritual health examination by a a psychiatrist, so that in carrying out a job as a notary actually did not suffer from health problems, so that documents or deeds issued can be accountable for the validity. Proof of physical and spiritual health must be strengthened by a certificate from a government doctor. Surely this health requirement is not too difficult for people who are really healthy physically and spiritually, but for those who have disabilities or disabled / disability would certainly dashed his hope to become a Notary even if the person has the skills supported by science and competence it has.

But what if a person who has been appointed a Notary has a physical and mental disability concerning the body of a Notary. As an example when a Notary who has an accident that resulted in physical or physical defect Notary. This will certainly greatly affect the Notary in carrying out his position, then the necessary inspection and supervision for a Notary. The importance of examination and supervision of these health conditions is not to discriminate against a Notary who is physically or physically disabled, but merely aims to the Notary to be completely mentally unbalanced which would interfere with his daily duties and functions in serving the community.

Based on the provisions of Article 3 paragraph (1) letter d which require the appointment, a Notary must be physically and spiritually healthy as stated by a doctor's certificate. Limits on what physical and spiritual health is intended in the Article so that the appointment of a notary candidate or a notary who has been appointed is deemed to be eligible so that the authentic deed made by the notary may be considered valid.

1.2 Research Problem

Moving from the background as described above, the writer can formulate legal issues or the formulation of the problem as follows:

1. Healthy physical boundaries for Notary?
2. Legal deed made by Notary who is not physically fit?

1.3 Purpose of the Research

To analyze the First, the physical healthy boundaries for the Notary. Second, the validity of the deed made by Notary who is not physically fit.

II. RESEARCH AND DISCUSSION RESULT

2.1. Terms of appointment of Notary

Notary is the General Officer authorized to make the Authentic Deed and other Authorities regulated in the Notary Act. Notary is appointed and dismissed by Minister of Law and Human Rights.

a. Conditions of Taking Notary's License:

1. Indonesian citizen
2. Be cautious of God Almighty
3. At least 27 years old
4. Physical and Spiritual Health
5. Graduated Law Degree and Graduate Level Strata 2 Notary
6. Has been an Apprentice or has actually worked as a Notary's employee within 12 consecutive months at the Notary's office on his own initiative or on the recommendation of the Notary Organization after graduating from the two stages of notarization
7. Not having status as a civil servant, state official, advocate or not taking other positions which by law are prohibited to be caught with a Notary's Office.

b. Appointment Procedures

1) Make a letter of appeal for the appointment of Notary and enclose:

a) Photocopies certified Notary:

- i. Notary Education Specialist Notary or Master of Notary
- ii. Letter marks have attended technical training
- iii. ID cards and birth certificates
- iv. Marriage Deed
- v. Taxpayer Identification Number (NPWP) on behalf of the applicant
- vi. The Charter passed the examinations held by the Notary Organization
- vii. Training Certificate organized by the Directorate General of AHU

b) Statement Letter:

- i. does not hold concurrency except as an official of the land deed
- ii. enough stamp duty stating willing to be placed throughout the territory of Indonesia
- iii. sufficient stamp duty stating the willingness to be designated to accommodate other notary protocols

c) Certificate:

- i) From a Notary that has been apprenticed in Notary's office for 2 consecutive years after graduating from Education Specialist Notary or Magister Kenotariatan legalized by Local Notary Profession Organization
- ii) Good behavior of the Police
- iii) Physical and Spiritual Health from Government Doctors
- d) A curriculum vitae made by the applicant using the form provided by General of General Law Administration and Director of Civil
- e) The latest 4x4 color 4x color photograph
- 2) Submit the application letter to the Director General of General Law Administration and Director of Civil
- 3) Decree of appointment as Notary and Notary Minutes of Notary shall be issued by the Minister of Law and Human Rights

c. Post-Appointment

Within 30 days from the date of the swearing-in / pledge of Notary's office, the person concerned shall:

- Carry out his or her position in real
- Delivering the oath of Notary's pledge to the Minister, Notary Organization, and Regional Supervisory Board
- Submitting the address of the office, the signature sample, and the initials, and the imprint of the red notary's position / stamp to the Minister and other officials responsible for agrarian land, notary organization, the president of the District Court, the Regional Supervisory Board, and the regent or mayor in place of Notary raised

2.2. Physical Healthy boundaries for a notary

One of the requirements to become a Notary is to be physically and spiritually healthy as stated by the physician and psychiatrist's description which has been described above. As outlined in the Law of the Republic of Indonesia Number 36 Year 2009 regarding health is a health condition, physically, mentally, spiritual and social enabling each person to live productive socially and economically. Further described in Article 4 of the health legislation which states that everyone is entitled to health. In its consideration states that health is a human right and one of the elements of welfare that must be realized in accordance with the ideals of the Indonesian nation as referred to in Pancasila and the Law the basis of the Republic of Indonesia 1945.

Then it is also explained in the Law of the Republic of Indonesia Number 18 Year 2014 about mental health article 1 mentions that mental health is a condition where an individual can develop physically, mentally, spiritually and socially so that the individual is aware of his own ability, can cope with pressure, can work productively, and able to contribute to its community.

The Notary's office law states that the appointment of a Notary must be physically and spiritually healthy as stated by a certificate from a doctor and a psychiatrist. Regarding the healthy understanding of the body has the characteristics, among others, is a fit and fresh body condition, good body resistance, not tired, normal body function, productivity work normally, no disruption or disease in the body, can undergo activity well and normally.

Prior to appointment as a Notary, a Notary candidate should perform a medical test conducted at the Government Hospital and that is examined are all members of the body including also for diseases in the example of heart, lung and other examination. Condition of physical and spiritual health as a candidate Notary as defined in Article 3 Sub-Article d in the law of the notary's office must be done so that the notary candidate can perform the duties properly. A good notary is when the duties and responsibilities can be done well and on time so that clients who expect the deed / documents from the notary is satisfied and not let down.

Basically health includes four aspects of health from the physical aspect, health from the mental aspect, health from the social and health aspects of the economic aspect. Health conditions are absolutely done and it is intended that the notary is expected to really be able to carry out their duties well obstacles to health problems.

Regarding the limitation of health criteria as a requirement for the appointment of a notary is:

1. Notary must not be color blind or can not see;
2. Notary must have a fit and fresh body condition;
3. Notaries must have organs function normally;
4. Notary there is no disorder or disease in the body;
5. The notary must avoid the symptoms of psychiatric or psychiatric disorders;
6. Notaries have normal work productivity;
7. Notary has the ability to adapt to the community, the environment in which he (notary) resides;
8. Notary able to solve the problem;
9. Notary must have a healthy mind;
10. Notary must be able to control his emotions.

When a Notary in carrying out his position, beyond a sudden suspicion of a catastrophic accident that caused the limb body is not functioning normally. So the healthy terms on the basis of it are as follows:

1. Notary must not lose the basic of senses;
2. The notary must be reasonably and mentally healthy;
3. Notary must be competent;
4. Notary must have a fit and fresh body condition;
5. Notaries must have organs function normally;
6. Notary there is no disorder or disease in the body;
7. Notary has the ability to adapt to society;

Regarding the legal requirements of a notary as mentioned above is legally accountable are those to whom the law is deemed to be allowed to take legal action, while those deemed incapable are immature or underage and those placed under their pardon. These, without with the permission of the representative, their parents or guardians according to the law. The ability is related to the age factor, and this age factor is based on the assumption that certain underage people are not fully aware of the consequences of their actions, it can be concluded that the problem of incompetence acts within the law, not necessarily in accordance with reality or with words another inadequacy here is juridical incompetence or incomprehensible incompetence (*juridische onbekwaamheid* or *overonderstelde onbekwaamheid*), not real incompetence (in accordance with reality).

At the time the Notary wishes to extend the term as mentioned in Article 8 of Law Number 2 Year 2014 which reads:

- (1) Notary is terminated or dismissed from his position with respect due to:

- a. Die;
 - b. Has been 65 (sixty five) years old;
 - c. Own request;
 - d. Not being able to spiritually and / or physically to perform the duties of Notary's continuously for more than 3 (three) years; or
 - e. Serve concurrently the position as referred to Article 3 (three) letter g.
- (2) The stipulation of age as referred to paragraph (1) letter b may be extended to the age of 67 (sixty seven) years by considering the health of the person concerned.

The above description shows clearly that health is a requirement that must be obeyed from the start of the appointment, during the term and at the time of extension of term of position, where health becomes one of the requirements that must be obeyed because the candidate Notary and after becoming a Notary itself must be free from any diseases as evidenced by a letter from a doctor of the Government.

Healthy restrictions on the extension of term of position are the same as the previous health restriction, but it is recommended that the Notary who wishes to extend his / her term of office shall conduct a re-examination and attach the examination result from the physician or psychiatrist before applying for an extension of term of office.

Based on the description, it can be understood that the health requirement for the Notary candidate after becoming a Notary is expected to be able to perform the duties properly without any obstacle to health problems, so that the notary can serve the people who need the deeds or documents required as perfect evidence. If the health examination is not found any symptoms or diseases that interfere with health then it is clear the person has a fit and fresh body condition, good body resistance, not quickly tired, normal body function, productivity work normally, so that productivity work increased. This is very necessary for the notary because in doing the activity requires a healthy body condition and normal.

2.3. Authenticity of Authentic Deed made by Notary who is not physically fit

Notary is a public official appointed by the state to exercise some authority from the special state power to make written and authentic evidence in the field of civil law. As the authority granted to the notary by the state is the authority of attribution that is the authority granted directly by the Law of Notary, then a notary's position is not a structural position within a government organization.

In connection with the appointment of a notary as a public official, it has been arranged separately concerning the appointment and dismissal of a notary publicly conducted by the Minister of Law and Human Rights. This matter has been mentioned in Article 2 of Law Number 2 Year 2014. Similarly, the requirement to be appointed as a notary, has been regulated in Article 3 of Law Number 2 Year 2014 which reads as: Indonesian Citizen, faithful to God Almighty, Aged at least 27 years old, Physically and mentally healthy stated by certificate of doctor and psychiatrist, Graduate of Law and a graduate of two stages of notarization, Has an apprenticeship or has worked in a notary office for 24 consecutive months at the notary's office on his own initiative or on the recommendation of a notary organization after graduating from the two notary stages, Not a civil servant, a state official, advocate or not taking other positions, the law is prohibited to be coveted with a notary position and has never been imprisoned by a court decision that has obtained permanent legal force for committing a crime punishable by imprisonment of 5 (five) years or more.

In the event that all conditions of appointment have been fulfilled, a notary before performing his or her official duties must express his / her official duties before the competent authority, in this case the Minister of Justice and Human Rights. It is related with creating legal certainty in every legal relationship. In addition to notarial deed is authentic, the deed is also made as perfect evidence in every problem related to notarial deed tersebut. The power of notary deed as an evidence is located on peculiar character of the Person who made the deed, that is notary designated by law as a public official authorized to make the deed.

Authentic Deed is a deed made by or in the presence of an official authorized for it by a ruler, in accordance with established provisions, whether with or without the assistance of an interested party, what is requested to be published therein by the interested party, an authentic Act mainly contains an official statement, which explains what it does and sees it in front of it.

Sudikno Mertokusumo declares that the deed is: "a signed letter, which contains an event on which the basic, rights or attachment are based, originally made deliberately for proof. So, to be classified in the sense of deed then the letter must be signed ". According to Abdul Kohar "deed is the writing that deliberately made to be used as evidence".

Article 1867 of the Civil Code states that there is an authentic deed and Article 1868 of the Civil Code provides the limitations of the elements referred to by the Authentic deed:

- a. The deed must be made by (*door*) or in the presence (*ten overstaan*) of a Public Official.
- b. The deed must be made in the form prescribed by the Act.

c. A public employee or a public official by or before whom the deed is created shall have the authority to make such deed.

One more thing to add is the authentic deed which has perfect proof power, because in the authentic deed within it includes all elements of evidence, there are :

- a. Posts;
- b. Witnesses;
- c. Suspects;
- d. Recognition;
- e. Oath.

Authentic deed is a deed which must fulfill the requirement as meant in Article 38 of notary act law that every deed consists of the beginning of deed or head of deed, deed and end of deed or cover of deed. If a deed qualifies as explained, it can be said to be an authentic deed.

The authentic deed is the perfect evidence, as described in Article 1868 of the Civil Code, but in practice the notarial deed may experience the degradation of its evidentiary power, as described in Article 1869 KUHP that is a deed which can not be treated as an authentic deed, either because it is not authorized or incompetent the said general authority concerned and in the form of a defect in the form, the deed has the power of writing under the hand if it is signed by the parties, this provision that a deed does not have the power as an authentic deed but only a substantiation force under the hands in the case of Public Officials not authorized to make an authentic deed, the general official is incapable to make an authentic deed, and the authentic deed is flawed in its form.

In relation to the authority of the general official in making authentic deeds, the authentic deed does not consider who makes it, even if the notary makes authentic deeds in an unhealthy or physical disability but is still deemed capable of carrying out his / her position, the deed is legitimate in accordance with the provisions of Article 1868 Civil Code and in accordance with the provisions of Article 1869 of the Civil Code. If an authentic deed does not meet the provisions or conditions as set forth in Article 38 of the UUJN then, the deed may be degraded as a deed of disobedience.

III. CONCLUSION

Regarding the limitation of healthy criteria as a requirement of notary appointment, a Notary should not be color blind or can not see, Notary must has a fit and fresh condotion, Notary must has a body function that work normally, and there is no interference or disease in body, Notary must be avoided from psychiatric symptoms or mental illness, and has normal work productivity, Notary has ability to adjust to society, environment where he (notary) stay, Notary able to solve problem happened, Notary must has a healthy mind, Notary must be able controlling his emotions. When a Notary id carrying out his position of healthy terms on the basis of it is as follows that Notary should not lose the basic of senses, Notary must be healthy mind and mental, Notary must be proficient, Notary must has fit and fresh condotion, Notary must has an organt who works normally, Notary there is no interference or disease in the body, Notary has the ability to adjust to the community. Healthy restrictions on the extension of term of office are the same as the previous health restriction, but it is recommended that the Notary who wishes to extend his / her term of office shall conduct a re-examination and attach the examination result from the physician or psychiatrist before applying for an extension of term of office.

The authority of the general official in making the authentic deed so that the authentic deed does not regard who makes it, even if the notary makes authentic deeds in an unhealthy or physical disability but is still deemed capable of carrying out his / her position, the deed made is valid in accordance with the provisions of Article 1868 Civil Code and accordingly with the provisions of Article 1869 of the Civil Code. If an authentic deed does not meet the provisions or conditions set forth in Article 38 of the UUJN then, the deed may be degraded as a deed under the hand.

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