

ANALYSIS LEGAL PROTECTION OF INSTRUMENTARY WITNESSES IN THE MAKING OF NOTARY ACTS (STUDY OF INDONESIAN NOTARY ASSOCIATION OF REGIONAL MANAGEMENT OF MEDAN CITY)

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Abstract

The main purpose of this study is to analyze and examine the position and aspects of legal protection for instrumental witnesses in making a notarial deed. In giving his testimony at trial on a deed made by a Notary, the witness has an obligation to provide information with actual facts, if a witness submits false information, he can be punished according to the Criminal Procedure Code. The role of the instrumental witness is currently not getting enough attention from law enforcement even though an instrumental witness plays a major role in revealing a problem that arises as a result of legal actions from a Notary act. The Regional Board of the Indonesian Notary Association of North Sumatera often hears about several problems regarding instrumental witnesses in the practice of notary positions. The method used in this research is normative juridical. The nature of the research used in this research is descriptive analysis by describing the problem systematically and comprehensively. The purpose of descriptive analytical research is to describe accurately the nature of an individual, a symptom, a situation or a particular group. The data collection method used in this writing is using library research methods. To further develop this research data, an analysis was carried out directly to the informants using interview guidelines that had been prepared in advance. Interviews were conducted with the Chairperson of the Regional Board of the Indonesian Notary Association of North Sumatera to obtain facts in the practice of Notaries in Medan City regarding instrumental witnesses. The position of the instrumental witness in the Notary act is certainly different from the position of the witness in general, who is a witness who has heard and/or witnessed an event that has occurred. The position of the instrumental witness as one of the formal requirements of a Notary act is stated in Article 38 paragraph (4) letter c of the UUJN, that at the end or closing the deed must contain the full name, place and date of birth, occupation, position, position and residence of each witness. In accordance with Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims, the legal protection provided for instrumental witnesses in making a Notary act in providing information is protected by the Witness and Victim Protection Agency (LPSK).

Keywords: Notary act, Indonesian Notary Association, Legal Protection, Instrumental Witness.

1. INTRODUCTION

The scope of the implementation of the duties of a Notary's position is to make evidence that is desired by the parties for a certain legal action, and the evidence is at the level of Civil Law and that the Notary makes a deed because there is a request from the parties who appear before the Notary. Without a request from the parties, the Notary will not make any deed and the Notary will make the deed in question based on the evidence or information or statements of the parties presented, stated or explained or shown before the Notary, then the Notary compiles it outwardly, formally and materially in the form of a notarial deed, while still based on the rule of law or the procedures and procedures for making the deed and the legal rules relating to the legal action concerned as outlined in the deed (Wawan, 2001) (Wawan Tunggal Alam, *Law of Talking Cases in Daily Life*, (Jakarta: Millennium Popular, 2001).

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If the deed made by the Notary turns out to be late in the day containing a dispute, then this needs to be questioned, whether this deed is the Notary's fault intentionally to benefit one of the parties appearing or the fault of the parties who did not provide the actual documents. If the deed made/issued by a Notary contains legal defects due to the Notary's fault either due to negligence or because of the Notary's own intention, the Notary must provide moral and legal responsibility and of course this must first be proven.

If a notary is proven to have made mistakes both personal and related to the professionalism of the position in making a deed that contains elements against the law, then several stages of the procedure that can be put forward in the field include summoning a notary as a witness, then being promoted as a defendant in a civil court. regarding accountability for deed made to be used as evidence which previously had tolerance from the Notary Supervisory Council, then followed up with punishment, namely the Notary can be used as a witness or suspect in a criminal case as well as confiscation of the minuta bundle of deed kept by the Notary. In addition to written evidence, the testimony of witnesses can also justify or strengthen the arguments put forward before the court. Some of the witnesses happened to see and experience the incident themselves, while others were deliberately asked to witness a legal action that was being carried out (Subekti, 1989).

Instrumental witnesses are required by law to be present at the making of a notarial deed. The task of this instrumentary witness is to sign and provide testimony about the truth of the contents of the deed and the fulfillment of the formalities required by law. Usually in practice the instrumentary witness is the Notary's own employee. An identifying witness is a witness who introduces the appearer to the Notary. Identification witnesses consist of two people who are at least 18 (eighteen) years old or married and capable of carrying out legal actions. For an unknown appearer, it is required that there be one attested witness, whereas if there are more than 2 (two) appearers, they can introduce each other to the Notary. Thus, in one of the roofs of the verlijden, namely at the time of signing the deed, an attestereend witness is not required to sign, but if they still want to put their signature there is no prohibition against this (Tobing, 1983).

The witnesses listed in the Notary act are only instrumental witnesses (*instrumentalize getuigen*), meaning that the witnesses are required by the laws and regulations. The presence of 2 (two) instrumental witnesses is absolute, but it does not mean that it must be 2 (two) people, it may be more if the circumstances require (Sutrisno, 2007). Instrumental witnesses are required by law to be present at the making of a notarial deed. The task of this instrumental witness is to put a signature, give testimony about the truth of the contents of the deed and the fulfillment of the formalities required by law. The Instrumental Witness, who is none other than the Notary Employee, acts as an instrumental witness in the inauguration of the deed, has entered into legal traffic which has legal consequences, so that if a Notary act in the future there is a problem or case, the Notary employee will automatically be involved in the problem or case (Notodisoerjo, 1993).

The presence of an instrumentary witness in making a deed is an obligation that must be carried out as stipulated in Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary (hereinafter referred to as UUJN). Without a deed witness, the notary's deed only has the power of proof as a private deed as stipulated in Article 41 UUJN (Benni, 2019). Instrumental witnesses themselves must be competent to act in law, understand the language of the deed, there may not be close family relationships in the sense of lines up and down without boundaries and lines sideways to the third degree, both with the Notary himself and with his appearers. In general, a witness is one of the pieces of evidence that is recognized in legislation. As a legal means of evidence, a witness is someone who gives testimony, either orally or in writing or by signature, that is, explaining what he himself witnessed, whether in the form of actions or actions of another person or a situation or an incident.

Notary employees as witnesses in cases of Notary acts must also receive legal protection and safety must be guaranteed in the event of a case or lawsuit in court against a deed made by a notary where the employee is a witness, even though the actions of the notary employee are instrumental witnesses in the formalization of the Notary act. already included in the notarial field, but UUJN does not provide legal protection for witnesses in the formalization of deeds, especially for Notary employees.

In UUJN, only Notaries receive legal protection, so that legal protection for Notary employees as instrument witnesses in the inauguration of Notary act is not found in the law. In the absence of regulation in the Notary Position Act regarding protection for Notary employees who are instrumental witnesses in the inauguration of the deed, then legal protection for Notary employees who act as witnesses can only be found in positive law in Indonesia, namely provisions outside the Notary position regulations, namely Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims. Although the law does not specifically regulate witnesses in the inauguration of a Notary act, the provisions in the law can be applied to the position of a notary employee as an instrumental witness in the inauguration of the deed. The law is comprehensive for all witnesses summoned in a court case.

Information given by a witness that is not appropriate or not accompanied by sufficient causes and reasons how he can know about a certain event cannot be used as perfect evidence. The testimony of a witness that is not based on his own knowledge and experience cannot prove the truth of his testimony (Nasir, 2005). Instrumental witnesses, besides having an important role in the process of ratifying the Notary act also have a responsibility role in keeping the authenticity of the deed secret.

It is important to carry out research related to instrumentary witnesses to analyze and find out how the position of instrumentary witnesses is and how the legal protection is given to an instrumentary witness. Therefore, all parties, especially in this case, are notary organizations that should be at the forefront of protecting the dignity and good name of the notary profession. Notaries unite in a Notary Organization called the Indonesian Notary Association which is the only free and independent Notary profession formed with the aim and objective of improving the quality of the Notary profession (vide Article 82). It is further stated in the Articles of Association of the Indonesian Notary Association Article 8 Paragraph (4) that the purpose of this Association is to fight for and maintain the interests, existence, role, function and position of the Notary institution in Indonesia in accordance with the dignity of the notary profession. To see how the role of the INI Regional Administrator looks at the position and protection given to instrumental witnesses in the city of Medan.

2. IMPLEMENTATION METHOD

The method used in this research is normative juridical. Normative legal research is a method or way of researching library materials. Normative legal research is research aimed at obtaining objective law (legal norms), namely by conducting research on legal issues (Soekanto, 2007). The nature of the research used in this research is descriptive analysis by describing the problems in a systematic and comprehensive manner. The purpose of descriptive analytical research is to accurately describe individual characteristics, a symptom, a particular situation or group (Koendjorodningrat, 1997). The main material of this research is secondary data which is carried out by collecting materials in the form of primary legal materials, namely regulatory documents that are binding and determined by the authorities. The data collection method used in this paper is *library research*. To further develop this research data, an analysis was carried out directly to the informants using interview guidelines that had been prepared in advance. Interviews were conducted with the Chairperson of the Regional Board of the Indonesian Notary Association of North Sumatera to obtain facts in the practice of Notaries in Medan City regarding instrumentary witnesses

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3. RESULTS AND DISCUSSION

3.1 Position and Accountability of Instrumental Witnesses for Making Notary acts

In general, a witness is someone who gives testimony, either orally or in writing, which explains what he has witnessed himself, whether it is an act or action of another person or a situation or an event. The definition of a witness according to the Legal Dictionary is a person who witnessed an incident himself, a person who gives an explanation in a court session for the benefit of all parties involved in a case, especially the defendant and the accuser; a person who can provide information about everything that is heard, seen and experienced for the sake of investigation, prosecution and trial regarding a criminal case (Sudarsono, 2009).

Witnesses as one of the pieces of evidence recognized in the legislation. As legal evidence, a witness is a person who gives testimony, either orally or in writing or by signature, i.e. explaining what he has witnessed himself, whether it is an act or action of another person or a situation or an event. The types of witnesses in a Notary act are Instrumental Witness (*Instrumentaire Getulgen*) and Introducing Witness (*Attesterend Getulgen*). An identifying witness is a witness whose job is to introduce the appearers to the Notary. Instrumental witnesses are witnesses who are on duty as long as they are concerned with the *partij deed*, they must be present at the making of the deed, in the sense of reading and signing the deed, as well as signing the deed.

Article 1 paragraph (26) of the Criminal Procedure Code (KUHAP) states that, a witness is a person who can provide information for the benefit of investigators, prosecutions and trials regarding a criminal case that he has heard for himself, saw for himself, and experienced for himself, so that the witness is also valid evidence (Lubis, 1992). Whereas in Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims, Article 1 states that a witness is a person who can provide information for the purposes of investigation, investigation, prosecution and examination in court proceedings about a criminal case that he heard about, saw for himself, and/or experienced for himself.

The importance of witnesses in a legal event, so that in civil procedural law, witness evidence is evidence that is in second place after letter evidence (Article 1866 of the Civil Code). Even in criminal procedural law, witness evidence is the main evidence (Article 184 of the Criminal Procedure Code). Civil procedural law does not place witnesses as the main evidence, for several reasons, namely: (a) Humans forget easily; (b) Human memory is very limited; (c) Humans will surely die one day, so there is a time limit (Day, 2005).

The role of the witness of the Notary act in making the deed is very important, so that if the witness for this deed is not fulfilled, then based on Article 41 UUJN, the deed only has the power of proof as a private deed. In each *verlidjen* (reading and signing) of a Notary act, the Notary is required to present 2 (two) deed witnesses. With the presence of witnesses when legalizing the deed, they can testify that the formalities in making the deed, both the documents and the information stipulated by law, have been complied with. Based on their role, deed witnesses can act as witnesses as referred to in the Criminal Procedure Code, considering that deed witnesses are witnesses who deliberately witness the process of making a Notary act.

The witnesses must be known or introduced by the Notary, whether their identity or authority is declared to the Notary by one or more of the witnesses. Except in cases where the Civil Code requires a special position to be mentioned separately regarding witnesses, all persons who, according to the provisions of the Civil Code, are capable of giving testimony under oath before a court, understand the language of the deed and can write signs. his hand in the deed. Witnesses have obligations in making a notarial deed, including: (a) Obligation to face; (b) Obligation to swear; (c) Must provide correct information (Samudera, 2004).

Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of a Notary in Article 40 stipulates the requirements for witnesses, in making a Notary act, including: (a) Every deed read by a Notary is attended by at least 2 (two) witnesses, unless the laws and regulations provide otherwise; (b) The witness as referred to in paragraph (1) must meet

the following requirements: (1) At least 18 (eighteen) years old or married; (2) Capable of carrying out legal actions; (3) Understand the language used in the deed; (4) Can put signature and initials, and; (5) Do not have marital relations or blood relations in a straight line up or down without restrictions on degrees and sideways up to the third degree with a Notary or the parties. (c) The witness as referred to in paragraph (1) must be known by the Notary or introduced to the Notary or explained about his identity and authority to the Notary by the appearer. (d) The introduction or statement of the identity and authority of the witness is stated explicitly in the deed.

Instrumental witnesses must be present at the drafting, namely the reading and signing of the deed. Only by being present at the drawing up of the deed can they testify that the formalities prescribed by law have been fulfilled, namely that the deed was read before being signed by the parties, first read by the Notary to the appeasers and then signed by the deed. the party concerned, all of which are carried out by the Notary and the parties before the witnesses (Soska, 2022). The role of an instrumentary witness in every notarial deed is still required. Because the existence of an instrumentary witness besides functioning as evidence can also help a notary's position to be secure in the event that a deed made by a notary is challenged by one of the parties to the deed or a third party.

In practice, the nature and position of witnesses, the witnesses also listen to the reading of the deed, also witness the action or fact that is confirmed and the signing of the deed. The witnesses do not need to understand what was read and there is no obligation for them to keep the contents of the deed in their memory. However, witnesses are obliged to know what constitutes a legal act in it. Because then if there is a dispute on the deed, the investigator can ask for information regarding legal actions in the deed, or matters concerning the reading of the deed before a notary. The presence or absence of the parties at the time of reading or information on the identity of the parties when given to the Notary (Lubis, 2022). The witnesses are not responsible for the contents of the deed.

Witness testimony or a testimony is the certainty given to the judge in the trial about how the disputed event is by way of verbal and personal notification by a person who is not a party to the case summoned at trial. The information that must be given by the witness before the trial is about the existence of legal actions or events that the witness saw related to legal actions from the issuance of a Notary act, what he heard and experienced himself and the reasons or basis behind this knowledge. In this case the witness is not allowed to conclude, make assumptions or give an opinion about his testimony, because this is not considered as testimony. This is in accordance with the provisions of Article 1907 of the Civil Code.

With testimony taken from opinions or estimates obtained by way of thought, it is not a testimony. Judges in looking at the evidence for witnesses, based on Article 1908 of the Civil Code, are required to pay attention to the similarities/adjustments between the statements of the witnesses, the adjustments between the statements and what is known from other aspects of the case, the reasons that prompted the witnesses to present their statements, to their way of life, morality, the position of the witnesses and everything related to the information presented.

The existence of an instrumental witness is one of the imperative requirements aimed at strengthening the authenticity of a notarial deed (a requirement for the authenticity of a deed), so that its presence is mandatory for witnesses to attend (see the form and procedure for making a deed article 16 paragraph 1 letter m *jo* 38 UUJN Existence as an instrumental witness associated with legal responsibilities is only limited to the formal truth of the making of a notarial deed, not including the contents of the deed (Lubis, 2022).

The application of evidence with witnesses is confirmed in Article 1895 of the Civil Code which reads "Evidence by witnesses is permitted in all matters that are not excluded by law". So that witness evidence covers all fields and types of civil disputes, unless the law itself determines that a dispute can only be proven by a deed, then witness evidence cannot be applied.

The position of the instrumental witness in the Notary act is certainly different from the position of the witness in general, who is a witness who has heard and/or witnessed an event that

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Rosnidar Sembiring, Zulfi Chairi, Ivana Novrinda Rambe

has occurred. The position of the instrumental witness as one of the formal requirements of a Notary act is stated in Article 38 paragraph (4) letter c of the UUJN, that at the end or closing the deed must contain the full name, place and date of birth, occupation, position, position and residence of each witness. When these formal requirements are not met, the deed is relegated to the power of proof as a private deed. The existence of the instrumental witness in the making of the Notary act is an order from the law, so the law should also provide sufficient legal protection for the instrumental witness.

It is undeniable that the role of instrumental witnesses is very influential on a deed according to the provisions of the UUJN, especially the authenticity of a deed is highly dependent on the presence of witnesses (the presence of witnesses is imperative), so legal protection of instrumental witnesses in making a notarial deed is absolutely necessary. so as not to provide opportunities for the confidentiality of the deed in accordance with the provisions of Article 4 paragraph 2 in conjunction with 16 paragraph 1 letter f in conjunction with Article 66 and Article 54 of the UUJN regarding the confidentiality of the deed.

3.2 Legal Protection Against Instrumental Witnesses in Making Notary acts in Medan City

The law or the Law on Notary Positions does not provide strict rules even though legal protection for instrumental witnesses needs to be regulated in writing. Nowadays, it is very necessary to form and procedure for legal protection for instrumental witnesses in making a notarial deed which is an inseparable part of the function of the law itself to provide justice, order, certainty, benefit and peace (Lubis, 2022).

In practice, law enforcers often summon and examine instrumental witnesses related to the making of a Notary act, and such law enforcement seems as an alternative for law enforcement officers as a result of the need for an approval process for the Notary Territory Honorary Council to summon a Notary or Notary holding a protocol to give information before investigators. public prosecutor or court. In addition, the steps taken by law enforcement to examine instrumental witnesses are misinterpreted as if they can ask for testimony relating to the substance or content of the deed. Whereas instrumental witnesses can only be asked for information related to the formalities of the truth of the testimony of the presence of the parties. The Regional Managers, especially in the Medan City Regional Managers, the Indonesian Notary Association, do not have data regarding the examination of instrumental witnesses, but several times they have received news of problems with instrumental witnesses in practice (Lubis, 2022).

Deed witnesses who are usually not civil servants of course only participate in making the deed (instrument) and are only responsible for the formality of the deed required in the UUJN, after that the witness signs the deed, then this is referred to as an instrumental witness. An identifying witness can be defined as a witness whose job is to introduce things that prevent a notary from making an authentic deed (Nanda, 2016). As a profession engaged in services, of course, notaries need the assistance of workers, in this case notary employees. Notaries generally prioritize their employees to be instrument witnesses, considering that instrument witnesses must be known by the notary. Moreover, related to the trust, identity and credibility of notary employees, of course it is difficult for notaries to get from other people to be witnesses in the deed (Utomo and Safi'I, 2019).

The form of legal protection that should be given to instrumental witnesses cannot be separated from the obligation of the position of a notary to keep all the contents and information obtained in the making of the deed confidential. In addition, although legal protection or at least the procedure or procedure for summoning followed by examination of instrumental witnesses is not expressly regulated in the law, it should be in the context of law enforcement processes that the juridical and philosophical aspects of the existence of instrumental witnesses are required by UUJN which must also maintain confidentiality. the contents of the deed. If later the instrumental witness is summoned for examination in the context of law enforcement, the notary should provide input to law enforcement regarding the presence of the instrumental witness nor may he provide

information regarding the substance of the deed, and the presence of the instrumental witness is required by law (Lubis, 2022).

Instrumental witnesses, in providing information regarding the disputed deed, get the same protection as a notary if they are used as witnesses before the court. Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims explains clearly that a person gets protection by the Witness and Victim Protection Agency from the start of the investigation until the end of the trial process. The Law on the Protection of Witnesses and Victims contained in Article 3 explains that this law is based on: (a) The principle of protection, meaning that it refers to the obligation of the State to protect its citizens, especially those whose safety can be threatened; (b) The principle of feeling safe, this right also includes the right not to be tortured or treated cruelly and inhumanely; (c) The right to justice, suspects and defendants have been given a set of rights in the Criminal Procedure Code and a witness should also receive justice; (d) Respect for human dignity and worth, the role of a witness has never received adequate attention from law enforcers even though they play a major role in disclosing a crime.

In Article 5 paragraph (1) letter a of the Law on Witness and Victim Protection states that "Obtain protection for personal security, family and property and be free from threats relating to testimony that will be, is being or has been given". This then proves that in giving testimony at trial, his safety will be guaranteed by law and protection will not only be given to himself personally, but also to protect his family and property from the Witness and Victim Protection Agency (LPSK).

4. CONCLUSION

The position of the instrumental witness in making a Notary act is in accordance with what is stated in Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of a Notary, that at the end or closing the deed must contain the full name, place and date of birth, occupation, position, position, and place of residence of each witness. When these formal requirements are not met, the deed is relegated to the power of proof as an underhand deed. So, in this case, every Notary is obliged to present two witnesses to participate in the deed in witnessing the making of the deed. Because in a Notary act, the position of the instrumental witness is one of the formal requirements of a deed so that the deed can become an authentic and legally valid deed.

In accordance with Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims, the legal protection provided for instrumental witnesses in making a Notary act in providing information is protected by the Witness and Victim Protection Agency (LPSK). LPSK guarantees the protection of safety both for themselves when a witness is giving testimony, up to protection from threats or pressure from other parties that can make a witness reluctant to give testimony before the trial.

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ANALYSIS LEGAL PROTECTION OF INSTRUMENTARY WITNESSES IN THE MAKING OF NOTARY ACTS (STUDY OF INDONESIAN NOTARY ASSOCIATION OF REGIONAL MANAGEMENT OF MEDAN CITY)

Rosnidar Sembiring, Zulfi Chairi, Ivana Novrinda Rambe

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