



LEGAL PROTECTION FOR APPEARERS WHEN THE NOTARY'S EXISTENCE IS UNKNOWN (*AFWEZEGHEID*)

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ABSTRACT

This research examines the legal protection of clients when the notary's whereabouts are unknown (*afwezigheid*). describe and analyze the certainty of legal protection for appearers who are harmed by a notary whose whereabouts are unknown *afwezigheid* and to analyze and formulate forms of legal protection that can guarantee legal certainty for appearers who are harmed by a notary whose whereabouts are unknown *afwezigheid*. This research is a normative juridical research through literature study using statutory approach (statute approach) and conceptual approach (conceptual approach). The main issues were analyzed using primary legal materials including Provisions of Article 463 in conjunction with Article 467 of the Civil Code, provisions of Article 15, Article 16, Article 17, Article 62, Article 63 Article 67, Article 69 and Article 70 of Law Number 30 of 2004 concerning the Position of Notary Public juncto Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary, Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 15 of 2020 concerning Procedures for Examining the Supervisory Board of Notaries and Notary Code of Ethics. Legal materials were analyzed based on prescriptive analysis and grammatical and systematic interpretation techniques. Based on the research results it is known that Legal protection for appearers who are harmed by a notary whose whereabouts are unknown *afwezigheid* based on the analysis of UUJN Amendment) is weak, because basically ("UUJN") juncto ("UUJN") Amendment has accommodated arrangements regarding the presence of a notary in the exercise of his office.

Keywords: *Publiuc, Research And Protection*

1. INTRODUCTION

The determination of the state of Indonesia as a rule of law country as contained in the provisions of Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, means that in a country based on law there are various aspects of regulations that are coercive and have strict sanctions if violated. One of the state's efforts to guarantee legal certainty and legal protection for its citizens is to appoint a public official who is tasked with meeting the need for evidence for legal events experienced by the community. In this case, the public official appointed is a Notary based on Law Number 30 of 2004 concerning the Office of a Notary. The presence of a Notary as a public official is the answer to the community's need for legal certainty for every engagement they undertake, especially engagements related to legal actions in accordance with the Notary's authority. Thereby a Notary is engaged in the service sector, namely as an official who is authorized to serve the public in the civil field. Referring to the provisions of Article 17 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary (UUJN Amendment), it is known that it regulates actions that are prohibited for notaries. This arrangement regarding actions that are prohibited for a notary is aimed at maintaining the

responsibility of a notary for the obligations and authorities he has. In the provisions of Article 17 paragraph (1) letter b it has been regulated that, "notaries are prohibited *leave the area of office for more than 7 (seven) consecutive working days without a valid reason;*". Such arrangements are related to the notary's obligation to carry out his position in a real way. In addition, the prohibition in the provisions of Article 17 paragraph (1) letter b is also associated with the notary's obligation to keep minutes of the deed and the obligation to issue a copy of the deed. Fulfillment of the need for a copy of the deed for appearers and the need for minuta deed during the evidentiary process in court, causes the notary to carry out his position in his office.

Violations by a notary against the provisions of Article 17 paragraph (1) letter b were encountered by researchers in the city of Surabaya, East Java Province. A notary with the initial B is known to have left his area of office for more than 7 (seven) consecutive days and cannot be contacted afwezigheid. Not knowing the whereabouts of Notary B causes losses for parties and appearers who are bound by legal relations with him, both legal relations that arise within the UUJN corridor and those outside UUJN. In this case, the legal relationship in the corridor of the UUJN in question is the relationship that arises between the appearer and Notary B relating to the legal services provided by Notary B. Appearing Notary B requires a copy of the deed or minuta deed for the evidentiary process at trial. Whereas, What is meant by legal relations that arise outside the corridors of UUJN are engagements that occur between B personally (not as a notary) and other parties. Furthermore, B once offered to arrange for the renewal of the Building Use Rights certificate at the Surabaya National Land Agency to PT. EJ, domiciled and having its head office in Jakarta based on an offer letter from B dated 03 November 2015. Based on the offer letter, PT. EJ agreed to use the services of extending the Building Use Rights certificate, namely the Building Use Rights certificate Number 516 Panjangjiwo Village, Rungkut District, Surabaya City and the Building Use Rights certificate Number 515 Panjangjiwo Village, Rungkut District, Surabaya City. Party B harms PT. EJ because B still has achievements that have not been fulfilled for PT. EJ, namely the processing of the extension of the Building Use Right certificate No. 515 Panjangjiwo Village, Rungkut District, Surabaya City has not been completed. In addition, when the whereabouts of party B were unknown, the original building use rights certificate belonging to PT. EJ. Still under the control of party B. PT. EJ, it is known that notary office B is closed/sealed.

The occurrence of events where the notary's whereabouts are unknown afwezigheid does not yet have legal provisions in UUJN. Normatively, Notary B's actions can be categorized as an act that violates the provisions of Article 17 paragraph (1) letter b of the Amended UUJN. Basically UUJN has regulated sanctions as preventive legal protection efforts if the notary leaves the area

position for more than 7 (seven) consecutive working days without a valid reason, namely in the provisions of Article 17 paragraph (2) which states as follows:

"(2) Notaries who violate the provisions referred to in paragraph (1) may be subject to sanctions in the form of:

- a. Written warning
- b. Temporary stop
- c. Honorable discharge; And
- d. Dishonorable discharge."

However, the existing arrangements in UUJN have not been able to accommodate violations that have been committed by Notary B. The imposition of sanctions in the provisions of Article 17 paragraph (2) is also difficult to apply because the existence of Notary B himself is unknown. Based on the description above, it appears that the loss that occurs when the notary's whereabouts are unknown is also related to the availability of minutes of the deed. (Law Of Notary 2012) Referring to the provisions of Article 1 number 13 it is known that it stipulates that Notary Protocol is a collection of documents which are state archives that must be kept and maintained by a Notary in accordance with statutory provisions.



Article 32 paragraph (1) which stipulates that "Notaries who take leave are obliged to submit the Notary Protocol to a Substitute Notary." If the notary's leave ends, then according to the provisions of Article 32 paragraph (2) it is stipulated that the Substitute Notary returns the notary's protocol to the notary. In addition, UUJN has regulated the submission of notary protocols to the provisions of Article 62 UUJN, namely as follows:

"Submission of the Notary Protocol is carried out in the event that the Notary:

- a. die;
- b. the term of office has ended;
- c. ask yourself;
- d. spiritually and/or physically unable to carry out the duties of office as a Notary continuously for more than 3 (three) years;
- e. appointed as state officials;
- f. move the position area;
- g. temporarily dismissed; or
- h. dishonorably discharged."

Continuing from the provisions of Article 62, it is further regulated in the provisions of Article 63 of the Amended UUJN regarding how the submission of the notary protocol is carried out. With regard to submission of notary protocols, UUJN has not accommodated how to arrange notary protocols when a notary violates the provisions of Article 17 paragraph (1) letter b and the whereabouts of the notary concerned are unknown. Therefore, the incomplete arrangements regarding the absence of a notary and the arrangement of the notary protocol need to be analyzed and studied further to fulfill the guarantee of legal certainty and legal protection as preambled in UUJN. From the matters described above, the incompleteness of legal norms in the provisions of Article 17 paragraph (1) letter b of the Amended UUJN needs to be studied further so that the purpose of establishing the Notary Position Law is to fulfill the need for authentic evidence to guarantee legal certainty and protection. can be achieved. Therefore the researcher is interested in studying and researching these legal issues in a thesis entitled "Legal Protection of Appearers when the Notary's Existence is Unknown afwezigheid".

2.METHODS

This research is a normative juridical research, because this research examines legal issues at the level of legal norms. The choice of normative legal research is aimed at finding a rule of law, legal principles, and legal doctrines in the process of answering the legal issues at hand (Peter Mahmud 2013). The research approach uses a statutory approach and a conceptual approach. The statute approach is an absolute thing in normative juridical research by examining all laws and regulations related to the legal issues being handled and the conceptual approach to find new meanings in the terminology studied, or to examine legal phrases. this in theory and practice, in the form of books, journals, news, and official reports, secondary ie and tertiary. The tracing technique used in this study was carried out through library research, namely research on various primary, secondary and tertiary legal materials. The legal material analysis technique used in this study is prescriptive analysis, namely studying legal material to obtain coherence between legal norms and legal principles, between legal rules and legal norms, and between individual behavior and legal norms. Prescriptive analysis in this study regarding how the arrangement should be used as a guide when an event occurs where the notary is not known. (Peter Marzuki 2016)

3.RESULTS AND DISCUSSION

The results of the study show that the Notary Office Law cannot be used as a guide when an incident of a notary whose whereabouts are unknown occurs. The a quo law does not yet fully regulate the presence of a notary in the exercise of his office, resulting in legal uncertainty when an

incident of a notary whose whereabouts are unknown afwezigheid occurs. This legal uncertainty causes legal protection to be guaranteed for the plaintiff who is harmed by a notary whose whereabouts are unknown. Legal construction efforts are needed to form arrangements regarding the absence of a comprehensive notary. The results of legal construction show the need for arrangements that accommodate elements of legal protection for appearers who are harmed by a notary whose whereabouts are unknown, which includes: 1) Arrangements for the Notary's Absence along with Sanctions for Violations, 2) Arrangements for Notary Protocol Management belonging to a Notary whose existence is unknown in the Notary Office Law. In addition, the Notary Supervisory Board needs to function to take action to arrange notary protocols belonging to notaries whose whereabouts are unknown.

Normatively, the foundation of a notary in carrying out his position is based on Law Number 30 of 2004 concerning the Position of Notary (UUJN) juncto Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary (UUJN Amendments), the regulations regulations issued by the Minister of Law and Human Rights as well as the Notary Code of Ethics. Therefore, to find out how the arrangements regarding presence in the exercise of the position of a notary public are based on a systematic interpretation of the a quo laws and regulations and the Notary Code of Ethics. The meaning of presence in this research is firstly based on the understanding of presence grammatically. Referring to the Big Indonesian Dictionary of the Ministry of Education and Culture, the word attendance is defined as "attendance; the existence of (a person, group of people) in a place". Continuing from this understanding, what is meant by the presence of a notary in this study is the presence of a notary in carrying out his position in a place.

UUJN Amendment does not explicitly use the word "presence" or "presence" in regulating the existence of a notary. This can be seen in the provisions of Article 7 paragraph (1) letter a, legislators use the word "real". According to the KBBI Kemdikbud, the real word is defined as "really exists;" Thus, a notary is required to carry out his position in a real way (actually exists) in his position and area of office as of the date of taking the oath of office. If within the 60 (sixty) day deadline the notary has not actually carried out his position, then according to the provisions of Article 7 paragraph (2) the notary is subject to administrative sanctions in the form of:

- a) written warning;
- b) temporary stop;
- c) honorable discharge; or
- d) dishonorable discharge.

The provisions in Article 7 paragraph (1) and paragraph (2) a quo are also found in Regulation of the Minister of Law and Human Rights Number 19 of 2019 concerning Requirements and Procedures for Appointment, Leave, Transfer, Dismissal and Extension of the Notary's Term of Office. the terms "absence" and/or "absence" which in the researcher's opinion can describe the condition of a notary whose whereabouts are unknown. Furthermore, the term absence is a translation of the Dutch term afwezigheid. Referring to R. Soebekti, he translated the term afwezigheid in Burgerlijk Wetboek (BW) into the Civil Code with the term absence.

There is no formulation of a definition of absence (afwezigheid) in statutory regulations. The regulatory reference when asking about this absence is the provisions of Article 463 of the Civil Code (Code of Civil Code). The content of the provisions of Article 463 a quo is in line with the definition of absence from Tan Thong Kie, which is stated as follows: "A person is said to be absent, if he leaves his residence without making a power of attorney to represent his business and interests or to manage his assets and interests. although the UUJN juncto UUJN Amendment stipulates that the notary's office area covers 1 (one) province from his place of domicile, but the notary is not given the authority to carry out his position outside the office and/or place of domicile successively. In order to find out the



meaning of "consecutive" in the provisions of Article 19 paragraph (3) a quo, based on a systematic interpretation of the provisions of Article 17 paragraph (1) letter b it is known that the "consecutive" is within a duration of 7 (seven) days .

The presence of a notary in carrying out his position according to the Notary Code of Ethics is part of the notary's obligations. This is as stipulated in the provisions of Article 3 number 8 juncto number 15 which is stated as follows:

Article 3 number 8 :

"Notaries and other people (as long as the person concerned is carrying out the position of Notary) must: Establish an office at the domicile and the office is the only office for the Notary concerned in carrying out daily office duties;"

Article 3 number 15 :

"Notary and other people (as long as the person concerned holds the position of Notary) is obliged to: Carry out the position of Notary in his office, except for certain reasons;"

Arrangements for the presence of a notary and the notary's obligations to carry out his position in his office, according to the researcher's opinion, are closely related to other notary's obligations to maintain the secrecy of the deed. The obligation to keep this deed secret is also related to the position of a notary who is a position of trust, in another sense as a public official holding the public's trust. Referring to the provisions of Article 16 paragraph (1) letter f, it is regulated as follows:

"In carrying out his position, the Notary is obliged to: keep everything confidential regarding the Deed he made and all information obtained for making the Deed in accordance with the oath/pledge of office, unless the law determines otherwise;"

the action of a notary not opening an office can be made possible from incomplete arrangements in the UUJN. The provisions in UUJN only require a notary to have 1 (one) office and carry out the notary's position in the office. Meanwhile, the actions of a notary to open an office and how the working hours of a notary's service are not strictly regulated, both in UUJN, implementing regulations and in the Code of Ethics. Reviewing the position arrangements of the Land Deed Making Officer (PPAT), especially in the provisions of Article 45 letter f of the Regulation of the Head of the National Land Agency Number 1 of 2006 concerning Provisions for Implementing Government Regulation Number 37 of 1998 concerning Regulations for PPAT Positions, it has been regulated regarding acts of opening offices and working hours PPAT which is formulated as a PPAT obligation is stated as follows:

"f. Open the PPAT office every working day except when taking leave or on official holidays with the working hours of the PPAT office being at least the same as the working hours of the local Land Office."

the incompleteness of legal norms in UUJN regarding the obligation to open a notary's office and working hours has an effect on the notary's obligation to provide legal services to the public in his office. Regarding the unknown whereabouts of a notary and absence, in the opinion of researchers it is necessary to conduct a study related to the time limit used as a reference to determine whether a person is absent or not. Referring to the UUJN, namely the provisions of Article 17 paragraph (1) letter b, it is known that a notary is prohibited from leaving his/her area of office (not being present at his/her office) for more than 7 (seven) consecutive days. Thus, based on the researcher's interpretation of the a quo article, the law determines the time limit for a notary to be absent (leaving his position and office) for less than 7 (seven) consecutive or non-consecutive days.

4.CONCLUSION

Legal protection for appearers who are harmed by a notary whose whereabouts are unknown afwezigheid based on an analysis of Law Number 30 of 2004 concerning the Position of Notary (UUJN) in conjunction with Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 regarding the Position of Notary (UUJN Amendment) is weak. Basically UUJN juncto UUJN Amendment has accommodated arrangements regarding the presence of a notary in the exercise of his position. Based on the existing arrangements, the factors of the presence of a notary in carrying out his position are: actually carry out his position in his office, at his place of domicile and in his area of office. The existence of such an arrangement indicates that the law requires the presence of a notary in carrying out his position. However, there are incomplete norms in the arrangements for the absence of a notary in UUJN juncto UUJN Amendment. The incompleteness of these norms has resulted in UUJN juncto UUJN Amendment not being able to accommodate the presence of a notary whose whereabouts are unknown afwezigheid, including not being able to guarantee legal protection to appearers who are harmed by it. It is known that there are indicators for absences. The prohibited construction in the provisions of Article 17 paragraph (1) letter b does not accommodate indicators of complete absence of a notary, so that when the absence of a notary occurs there is no provision in the UUJN juncto UUJN Amendment which is used as a guideline. The incompleteness of these norms results in legal uncertainty which causes legal protection for aggrieved appearers to be also not guaranteed



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