

Ratio Decidendi District Court Decision in Case of Deed Not Read Based on Notary Position Law (Decision No 873/Pdt.G/2013/ Pn.Sby)

Gita Ayu Thaharah*¹, Yenni Eta Widyanto², Fathul Laila³

^{1,2,3} Program Magister Kenotariatan, Fakultas Hukum Universitas Brawijaya Malang

*Corresponding Author

Email: tharaayu7@gmail.com, yenni.eta@ub.ac.id, Flnotaris@gmail.com

Abstract

This research is aimed at analyzing the Ratio Decidendi of District Court Decision No. 873/Pdt.G/2013/PN.Sby against notaries who do not read their deeds. The purpose of this research is to determine and analyze the Decidendi Ratio of District Court Decision No. 873/Pdt.G/2013/PN.Sby regarding deeds that were not read by a notary. Then to analyze the responsibilities of notary officials based on article 16 paragraph 1 letter (m) of the Law on Notary Positions. This type of research uses normative juridical research using a statutory approach and a conceptual approach using literature study legal material search techniques. The analysis technique used in this research is the interpretation technique used is systematic interpretation. Based on this, the problem formulation is (1) What is the judge's consideration (Ratio Decidendi) regarding Decision No. 873/Pdt.G/2013/PN.Sby regarding deeds that were not read by a notary? and problem formulation (2) What are the responsibilities of notary officials for deeds that are not read out based on article 16 paragraph 1 letter m based on the Law on Notary Positions? (1) Ratio Decidendi, namely the implementation of a decision with a ruling that the lawsuit cannot be accepted (Niet Ontvankelijk verklaard) in District Court Case No. 873/Pdt.G/2013/PN.Sby, even though in principle the lawsuit is not accepted, the notary still has responsibility for deed that he has made. Even though in principle the lawsuit is not accepted, the judge should consider not carrying out the obligation to read the deed by a notary (2) The Notary's responsibility for a deed that is not read, in this case the Notary can be sued because the authentic deed is downgraded to a private deed and then be sued civilly, namely regarding compensation based on 1365 of the Civil Code, as well as administrative sanctions based on the Code of Ethics. Notary. The advice that can be given is that during the examination of the case, if the lawsuit contains formal defects, it is better to stop it so that the decision is not rejected. Then the parties in the lawsuit must make a detailed lawsuit so that the lawsuit can be granted. Then there are administrative sanctions for the notary who does not carry out the obligation to read the deed. less severe and less of a deterrent effect, then the supervisory board should ensure that the deed made by the notary is truly authentic or not during its inspection and there should be a clear place for complaints for the public to the regional supervisory board.

Keywords: Ratio Decidendi, District Court Decision, Deed Not Read

INTRODUCTION

The definition of a notary official is someone who has the power of attorney from the government to certify and witness various agreements, wills, deeds and so on. Notary is a state official or public official who can be appointed by the state to perform state duties in terms of legal services to the community aimed at achieving legal certainty as an authentic deed-making official in civil matters. The existence of a notary is to serve the public interest. Notary is the only public official who has the right to make an authentic deed as a perfect proof. Notary is an extension of the state which is obliged to fulfill some of the duties of the state in the field of civil law. The state in order to provide legal protection in the field of private law to citizens who have delegated part of their authority to notaries to make authentic deeds. Therefore, when performing their duties, notaries must be positioned as public officials who carry out their duties (Dody, 2001)

Based on Law No. 2 of 2014 on amendments to Law No. 30 of 2004 on notary position (hereinafter referred to as UUJN). Article 1 point 1 UUJNP States, Notary is a public official

who is authorized to make authentic deeds and has other authority as referred to in this law or based on other laws.

The Notary Office Act stipulates the form and procedure for making a notarial deed as an authentic deed. Notary in carrying out their duties must be with full discipline, professional, and moral integrity should not be doubted, because the notary in making the deed must meet the requirements specified by law so that the deed becomes authentic. Everything that is contained in the deed from the beginning to the end of the deed is an expression at the time of making the deed describing the actual situation. This is the responsibility of the notary (Tan Thong Kie. 2000). Article 65 of the UJNP States this expressly that, notaries, substitute notaries, and notarial interim officials are responsible for every deed they make even though the notarial Protocol has been submitted or transferred to the notarial protocol depository.

The material truth of the deed made by the Notary is the responsibility of the Notary as a public official, the responsibility can be divided into four points, namely (Abdul Ghofur Ansori. 2009): 1. Responsibility for the material truth of the notarial deed in a civil manner; 2. Responsibility for material truth in a notarial deed in a criminal manner; 3. Responsibility for material truth in notarial deed based on notary office regulations; 4. Responsibilities in carrying out the duties of a notary based on the notary Code of ethics.

At the time of carrying out the duties and authority of a notary must be based on applicable regulations, responsibility for duties and authority will remain attached even though his term of office has expired until the notary dies. When the Notary has entered retirement, the Notary is no longer allowed to carry out their duties and authority in making authentic deeds automatically. Notaries whose term of office has expired may propose other notaries as holders of the notary protocol to the regional Supervisory Council (MPD). However, even though the notarial Protocol has been transferred to another Notary, the Notary who owns the protocol is still responsible for the notarial Protocol, including if it is known that there are errors in the deed that he has made.

The reading of the deed by a notary is a must in every authentic deed making, this reading is part of the *verlijden* or inauguration of the deed (reading and signing). The reading of the deed is not only useful for notaries but also useful for the face, here are some of the benefits of reading the deed done by notaries, including notaries still have the opportunity to correct mistakes that were not previously seen. The reading of the deed is the last possibility for a notary to check the deed that has been made, but this benefit is not the only one, the perpetrators get the opportunity to ask about things that are not clear in the contents of the deed, the reading of the deed gives the opportunity to the notary and the perpetrators at the last.

RESEARCH METHODS

This study uses the type of normative juridical research (normative legal research). In this case, normative legal research that emphasizes the use of written legal norms which in writing can be in the form of books, theses, laws, court decisions, and literature from libraries. Namely reciting the Quran related to the notary's responsibility for deeds that are not read (Case Study of District Court Decision No. 873 / Pdt.G / 2013 / PN.Sby using the typology of research used is explanatory research typology, namely by describing and explaining more in the existing legal events.

RESULT AND DISCUSSION

General Overview Of Notaries

The term notary basically comes from the word “Notarius” (latin), that is, the name given to the Romans in whose task it was to carry out the work of writing or the people who made the records in those days. There is also an opinion that the name “Notaries” is derived from the word “nota literaria” means a sign (letter mark or character) that states something said (Notodisoerjo, 1982). According to the Indonesian dictionary, a notary is a person who has the power of attorney from the government (in this case the Ministry of Justice) to certify and witness various agreements, wills, deeds, and so on. Almost for over a century, the existence of notaries in holding their positions is based on the provisions of the regulation of Het notaries Ambt in Nederlandsch No. 1860 : 3 which entered into force July 10, 1860. Which is now known as PJN, in that period PJN experienced several changes. and currently, notaries have their own laws with the birth of Law No. 30 of 2004 on notary positions which was later amended by Law No. 2 of 2014.

The task of the Notary is to establish the legal relationship between the parties in a written form and in a certain format, so that it is an authentic deed. He was a strong document maker in a legal process (Tan Thong Kie, 200). Notary position is a position whose existence is required in order to realize the legal relationship between the subjects of civil law.

In Article 1 of Law No. 30 of 2004 and Law No. 2 of 2014 concerning the position of notary, it is expressly stated that the notary is the only public official authorized to make an authentic deed, unless the law exists that determines otherwise.

Based on the provisions of Article 15 Paragraph (1) of Law No. 30 of 2004 concerning the position of Notary, the authority of a notary is to make an authentic deed regarding all deeds, agreements, and provisions required by laws and regulations and or desired by the interested party to be stated in the authentic deed, ensure certainty of the date of making the deed, save, all such insofar as the enactment of the acts is not also assigned and exempted to any other office or other person prescribed by law.

In addition to the authority to make an authentic deed in the sense of “verlijden” (drafting, reading and signing), but also based on Article 16 letter d of Law No. 30 of 2004 Jo Law No. 2 of 2014 on notary public notary public is obliged to make it, unless there is a reason that has a basis for refusing to make it.

General information about the deed

The deed in Dutch is called "acte" or “deed” and in English it is called “act” or "deed". Deed according to Sudikno Mertokusumo is a signed letter containing the events that form the basis of a right or alliance, which was made from the beginning deliberately for proof (Sudikno Mertokusumo, 2006). According to Subekti, deed is different from letter, which is a writing that is deliberately made to be used as evidence of an event and signed (Subekti, 2005).

According To R. Subekti, the word deed in Article 108 of the Civil Code does not mean a letter but must be interpreted with a legal act, derived from the word “acta” which in French means action (Subekti, 2001). So it can be concluded that what is meant by the deed is: 1. This is a broad understanding of the law 2. A writing that is made to be used or used as proof of the legal act, that is, in the form of writing aimed at proving something.

Deed is a letter that is done so by or before an authorized employee to make it sufficient evidence for both parties and their heirs as well as related to the other party as a legal relationship, about all matters referred to in the letter as a notice of direct relationship with the subject matter of the deed. The deed has 2 important functions, namely the deed as a formal function which means that the legal act will be more complete if a deed is made. The function of evidence is the

deed as a means of proof where the deed is made by the parties bound by an agreement intended for proof in the future.

According to Article 1867 of the Civil Code, which reads proof in writing is done by authentic deed or by deed under hand. Based on the provisions mentioned above, there are two types of Deeds, namely authentic deeds and deeds under hand, which can be explained as follows:

1. Authentic Deed

Authentic deed is a deed made by an official authorized for it by the ruler, according to the provisions that have been established, either with or without the assistance of the interested party, which records what is requested to be contained in it by the interested party, the authentic deed mainly contains a description of an official, which explains what he does and sees.

2. The work under the hand

Deed under hand is a deed made and signed by the parties to the agreement or between the parties concerned only. According to Sudikno Mertokusumo, the deed under hand is a deed deliberately made for proof by the parties without the help of an official. So solely made between interested parties in Article 101 Paragraph (b) of Law No. 9 of 2004 on administrative justice, states that the deed under hand is a letter made and signed by the parties concerned with the intention to be used as evidence of the events or legal events listed in it. In Article 1874 of the Civil Code, it states that what is considered underhand writing is a deed signed under hand, a letter, A list, a letter of domestic affairs and other writings made without the intermediary of a public official.

General greening of the agreement

The notion of agreement has been regulated in Article 1313 of the Civil Code, which states that an agreement or agreement is an act by which one or more people bind themselves to one or more other people. The word consent is a translation of the word *overeekomst* in Dutch. The word *overeekomst* is commonly translated also with the word agreement. So consent in Article 1313 of the Civil Code is synonymous with agreement. There is also the opinion that the agreement is not the same as the agreement (Sudikno Mertokusumo, 1985).

Agreement is a translation of *overeekomst* whereas agreement is a translation of *toestemming* which is interpreted as *wilsovereenstemming* (*rapprochement of will/consensus*). According to the widely held opinion (*communis opinio doctortinz*) agreement is a legal act based on consensus to cause a legal consequence. It also agrees with Sudikno, " the agreement is a legal relationship between two or more parties based on an agreement to cause a legal consequence".

Article 1321 BW provides that "no agreement is valid if it is given by mistake, or obtained by coercion or fraud." Agreements basically do not always give birth to a valid agreement, if there is an agreement in terms of containing defects of will. Then the legal consequences of the agreement containing the defect of the Will are revocable (*voidable/vemietigbaar*). Before any attempt to cancel the agreement still has legal force like a valid agreement.

General information about the judge

Normatively according to Article 1 Paragraph (5) of Law No. 48 of 2009 on judicial power, what is meant by a judge is a judge on the Supreme Court and a judge on a judicial body subordinate to it in the general court, religious court, Military Court, Administrative Court, and a judge in a special court within the judicial environment. The definition of Judge is also found in Article 1 point 8 of the Criminal Procedure Code, a judge is a state judicial official who is authorized by law to judge.

The basis of the judge's consideration in passing a conditional civil decision needs to be based on theory and research results that are interrelated so that maximum and balanced research results are obtained at the level of theory and practice. One of the efforts to achieve legal certainty

with strict law enforcement is through the judiciary, where the judge is a law enforcement officer through his decision can be a benchmark for the achievement of a legal certainty.

The principle of judicial power is regulated in the Constitution of 1945 Chapter IX Article 24 and Article 25 as well as in Law Number 48 of 2009. The 1945 Constitution guarantees an independent judiciary. This is expressly stated in Article 24, especially in the explanation of Article 24 paragraph (1) and explanation of Article 1 Paragraph (1) of Law No. 48 of 2009, namely the power of the judiciary is the power of an independent state to administer justice in order to enforce law and justice based on Pancasila and the Constitution of the Republic of Indonesia in 1945, for the implementation of the rule of Law of the Republic of Indonesia.

The judge's decision is the final action of the judge in the trial, determining whether the perpetrator is at law or not, so the judge's decision is a statement from a judge in deciding a case in the trial and has permanent legal force. Based on the theoretical vision and judicial practice, the judge's decision is:

"The verdict pronounced by the judge because of his position in the trial of criminal cases that are open to the public after going through the process and procedural Criminal Procedure generally contains amar conviction or acquittal or release from all lawsuits made in written form with the aim of resolving the case (Lilik Mulyadi, 2007).

The judge's decision is basically a work of finding the law, namely determining how it should be according to the law in every event that concerns life in a legal state another understanding of the judge's decision is the result of deliberations that stem from the indictment with everything that is proven in the trial examination.

Discussion

Consideration of the judge (ratio Decidendi) against Decision No. 873 / Rev.G / 2013 / PN.Sby on deed that is not read by a notary

Ratio decidendi or consideration of the judge is an argument or reason used by the judge as a legal consideration to be the basis in deciding a case. Some understanding of the ratio decidendi, ratio decidendi is the decision of the board of judges who are made aware of the material facts (i.e.P.M Ranuhandoko 2003). Ratio decidendi is a latin term often translated literally as the reason for that decision. Kusumadi Pudjosewojo argues in the guidelines for the study of law itself defines as true factors material fact, essential factors that actually result in a decision (Kusumadi Pudjosewojo, 2004).

In finding out about the ratio Decidendi in a decision is usually contained in certain parts. To arrive at one of the decisions the judge must write down the reasons, namely the ratio decidendinya. In Indonesian law that adheres to the civil law system, the decidendi ratio can be found in the consideration of "weighing " the subject matter. It cannot be denied that the judge's action to give reasons that lead to the decision is an action that needs to have the instinct to interpret a law creatively.

The Ratio is not impossible to choose from a variety of possibilities. Ratio can be found by taking into account the material facts and decisions based on those facts, thus a material fact can occur because of the existence of 2 (two) possible conflicting decisions that determine the ratio decidendi the decision (Lilik Mulyadi, 2009).

That the decision of the District Court of Surabaya with Case Number: 873 / Pdt.G/2013 / PN.Sby is one of the cases stated that the plaintiff's lawsuit and dupilknya declared NO by the panel of judges. That according to the judge or according to the defendants is a case in which the contents of the complaint are vague or unclear (Obscur Libel). In the letter of the lawsuit is not described the basics that are used as the reason for the act of default, the material of the reconsideration lawsuit does not need to be considered further .

The case began when Plaintiff P.T Imperium Happy Puppy which is legally represented by Mr. Santoso Setyadi sued the defendant, Mr. Iwan due to default. This happens because

notaries do not carry out their obligations in accordance with Law Number 2 of 2014 concerning amendments to Law Number 30 of 2004 concerning the position of Notary (State Gazette of the Republic of Indonesia year 2014 Number 3).

The reading of the deed by a notary is a must in every authentic deed making, this reading is part of the *verlijden* or inauguration of the deed (reading and signing). The reading of the deed is not only useful for notaries but also useful for the face, here are some of the benefits of reading the deed done by notaries, including notaries still have the opportunity to correct mistakes that were not previously seen.

The reading of the deed is the last possibility for a notary to check the deed that has been made, but this benefit is not the only one, the interlocutors have the opportunity to ask about things that are not clear in the content of the deed.

The panel of judges also considered that the contents of the franchise agreement agreed by the plaintiff were valid and in compliance with Government Regulation No. 42 of 2007 on the franchise then, fulfilling all elements of the agreement from the provisions of articles 1320 and 1338 of the Civil Code.

Legal considerations of judges in the plaintiff's lawsuit and the plaintiff's lawsuit *rekovens* consideration of the panel of judges in deciding the case number: No. 873 / Pdt.G/2013 / PN.Sby whose verdict reads the lawsuit is not acceptable or NO (*niet ontvankelijke verklaard*) is based on the defendant where before submitting an answer to the subject matter first filed an exception and then make an effort defendant to sue the plaintiff back in a similar case.

Which, in essence, states that the plaintiff's lawsuit in the subject matter has been declared unacceptable, because the plaintiff's lawsuit is vague, does not describe the basics that serve as the reason for the act of default, which is the material for the reconsideration lawsuit. That in the judge's consideration of the claim by the plaintiff as follows :

- It is worth considering, that as decomposed in the plaintiff's lawsuit *posita* about the first payment of Rp.50.000.000, - (fifty million rupiah) it is not clear the allocation, as well as in the lawsuit there is a claim of default, but there is no legitimate claim of an agreement that is used as the basis for the act of default thus it is not clear what actions have been done by the defendant, resulting in default
- Considering that based on the description of the above considerations, the Assembly concluded that the plaintiff's claim was vague
- Considering that because the plaintiff's claim in the main case has been declared unacceptable, because the plaintiff's claim is vague, the basics are not outlined as the reason for the act of default, the material of the recourse lawsuit does not need to be considered further, thus the recourse lawsuit from the recourse plaintiff should also be declared unacceptable (*niet Ontvankelyk Verklard*)
- On the subject of the case : declaring the plaintiff's claim inadmissible (*Niet Ontvankelyk Verklaard*)

That according to the researcher on the consideration of the judge stated that the lawsuit is vague and unacceptable (*niet Ontvankelyk Verklard*) because there is negligence in it can be considered an obscure libel lawsuit. This is because of the lawsuit there is a claim of default, but there is no legitimate claim of an agreement that is used as the basis for the act of default, so it is not clear what actions have been carried out by the defendant, resulting in default. Then *posita* plaintiff's lawsuit about the first payment of Rp.50.000.000, - (fifty million rupiah) was not clear allocation. That the lawsuit is less detailed about the negligence of the defendant in default. According to the researcher, in his lawsuit, the plaintiff emphasizes more about the cancellation of the unilateral deed and compensation based on the franchise agreement No. 57 dated april 24, 2012. That in connection with the non-payment of the defendant's second license payment to the plaintiff gave birth to losses to be borne by the plaintiff, then as the plaintiff's letter dated October

2, 2012, reff.IHP LGLM-121005, regarding the cancellation of the franchise, which essentially states that as of October 2, 2012 franchise agreement No.57 dated April 24, 2012 declared void / no longer legally binding, then as stipulated in Article 44 paragraph (4) Franchise Agreement No.57 dated April 24, 2012, stated that :

“in the event that this agreement is requested to be terminated by one of the parties due to evidence of violation of the other party as referred to in this article, the wrong party is obliged to pay a fine of rp. 500.000.000, - (five hundred million rupiah) to the other party in cash within 30 (thirty) days from the date of termination."based on the above provisions, the defendant is obliged to pay compensation or a fine of rp. 500.000.000, - (five hundred million rupiah) to the plaintiff”

That based on the facts that occurred in the Franchise Agreement No. 57 dated April 24, 2012, according to the plaintiff regarding the deed of agreement that the defendant has signed is proof of achievement obligations that must be fulfilled by the defendant. That the defendant tried to contact the plaintiff so that the matter could be discussed to get the best solution, but the plaintiff insisted that the defendant pay the license for the second time under the franchise agreement agreement Number 57 dated April 24, 2012.

That then the consideration of the next judge stated melonak defendant's lawsuit because :

- Considering, that on the other hand, the franchise agreement, by the defendant postulated that the defendant did not read the agreement and did not get an explanation from the Notary who made it, but the defendant was directly presented with the agreement to be signed and because the defendant had a good suspicion of the plaintiff, the defendant signed the franchise agreement.
- Considering that based on the above description, The Assembly is of the opinion that whether the franchise agreement signed by the plaintiff and the defendant There is a defect of Will that the plaintiff has used the abuse of circumstances (*Misbruik Van Omstandigheden*).
- Considering that because the plaintiff's lawsuit in the main case has been declared unacceptable, because the plaintiff's lawsuit is vague, it is not described the basics that are used as the reason for the act of tort then the material of the recusal lawsuit does not need to be considered further, thus the recusal lawsuit from the recusal plaintiff should also be (*Niet Ontvankelyk Verklard*)
- The plaintiff's claim of inadmissibility (*Niet Ontvankelyk Verrklaard*)

That according to the researcher on the consideration of the judge above, the defendant cannot prove that the deed is defective or gradated into a deed under hand, that the deed is authentic. That the defendant argued that the deed was not read by a notary, but according to researchers if the deed of agreement has been signed by both parties then the parties are considered to understand the contents of the deed.

This is reinforced by the presumption of validity (*Vermoeden van Rechtmatigheid*) or *Presumptio Iustae Causa*. This legal presumption principle can be used to assess notarial deeds, namely notarial deeds that must be considered valid until there are parties who declare the deed invalid. As long as and as the lawsuit runs until there is a court decision that has permanent legal force, the notarial deed remains valid and binding on the parties or anyone who has an interest in the deed. this legal presumption is related to the general explanation of law 30/2004 which states that: “as the strongest and most complete written evidence, what is stated in the notarial deed must be accepted, unless the interested party can prove the opposite satisfactorily before a court hearing.”

That the Indonesian proof system is to use written evidence that is used as the main or primary evidence, because written evidence bears the main level among other evidence as set forth by law while prioritizing written evidence because written evidence is indeed used as evidence. Has been mentioned in the Civil Code authentic deed is a deed issued in the form that

has been regulated in law, issued by or in front of public officials who are competent in the field in place or where the deed is made, and as for public officials who are competent to issue authentic deeds, namely a notary and PPAT.

That it is true that the judge did not accept the plaintiff's lawsuit or the applicant's application or with kat alain the plaintiff's lawsuit was not accepted because the plaintiff's lawsuit did not meet the legal requirements both formally and materially. In the event of an exception justified by the judge, the judge always makes the decision that the plaintiff's claim is inadmissible or accepts the plaintiff's claim. Although there is no exception, the judge because of his position can decide the plaintiff's lawsuit is not accepted if it does not meet the requirements of the law, or there are things that are used as a reason for the exception. The decision not to accept can be handed down after the answer stage, except in the case of verstek whose lawsuit turned out to be unwarranted or against the right so that it can be dropped before the answer stage. The judgment does not accept yet assess the subject matter or arguments of the lawsuit but only assess the terms of the lawsuit alone. If the requirements of the lawsuit are not met, the main claim or the arguments of the lawsuit cannot be examined (Aris prio agus Santoso, 2022).

According to the researcher, the judge should also consider the contents of the defendant's lawsuit regarding the defendant's statement about the deed that was not read by a notary. that the defendant stated that the defendant did not read the agreement and did not get an explanation from the notary RAA who made it, but the defendant was immediately presented with the agreement to be signed. That based on the notary deed notary requires reading the deed under Article 16 Paragraph 1 letter m of the notary deed: "read The Deed in front of the face in the presence of at least 2 (two) witnesses, or 4 (four) witnesses specifically for the Making of a will under hand, and signed at the same time by the face, witness, and Notary"

That the judge should consider this that after the trial takes place it is known that the contents of the agreement from both parties do not contain the terms of a valid agreement, and there are defects in the Act which has been graded into a deed under hand and is no longer fit to be evidence in the trial. It should be recalled that if the judge rejects the plaintiff's claim because it is proven that there is no validity of an agreement that is the basis of the agreement, this should be evidence to grant the defendant's claim that the act is flawed. And after further examination that later proved in the agreement in general the contents of the agreement, the position of the defendant is very disadvantaged and unbalanced with the position of the plaintiff, where the defendant as a franchisee in the agreement more must meet the achievements when compared with the plaintiff then because the deed was not read before being signed the defendant, while long before the defendant signed a memorandum of understanding, the defendant had cooperated with other companies engaged in the same field as the plaintiff. That berdsarakan District Court Decision No. 873/Rev.g/2013 / PN.This Sby is proof that dass sein and das sollen based on Article 16 Paragraph 1 letter m of the Notary Office Act on the obligation to read the deed does not run in accordance with written regulations.

And if referring to Article 70 of the notary position law of the regional supervisory council in charge of receiving reports from the public to report the problematic notary who will then be sanctioned by the regional supervisory council, based on the regulation of the Minister of Law and Human Rights of the Republic of Indonesia number 61 of 2016 on the procedure for imposing administrative sanctions against notaries in Article 6 paragraph 1 and Paragraph 3 that notaries who violate the rules will be subject to a written warning sanction by the regional supervisory council. that this regulation is ineffective because if no one reports, the notary will not be sanctioned by the regional supervisory Assembly. that the notary should be subject to 2 sanctions, namely written warning sanctions and civil sanctions 1365 of the civil code on claims for compensation.

Responsibilities of notary officials based on Decision No. 873 / Pdt.G/2013 / PN.Sby

In carrying out the duties of his position, in addition to having to carry out the authority or task given by law, namely making an authentic deed, a notary must also be responsible for the deed he has made. The theory of legal responsibility is needed in order to explain the relationship between the responsibilities of notaries related to the authority of notaries based on UUJN which is in civil law. Responsibility and ethics of the notary profession is closely related to morality and integrity, so that if a notary does not have integrity and good morals, a notary cannot be said to have responsibility and good professional ethics.

The scope of the notary's responsibility is to include the material truth of the deed that has been made. Regarding the responsibility of a notary to the truth of the material, can be divided into four points, namely (Abdul Ghofur, 2009):

- 1) Civil notary responsibility for the material truth of the deed that has been made
- 2) criminal liability of the notary to the material truth of the deed he has made
- 3) the responsibility of the notary under the Notary Office Act to the material truth of the deed he made
- 4) the responsibility of the notary in carrying out the duties of his position based on the notary code of ethics.

Basically, the Notary is not responsible for the contents of the deed made before him, because the content of the deed is based on the agreement and the will desired by the parties. So that the notary in this case, is only responsible for the form of a formal authentic deed, as stipulated in the law (Kunni Afifah, 2017). A notary, can be asked for civil liability based on claims against the law.

In the Notary Office Act there are several qualifications authentic deed can be declared legally defective so that the notary can be penalized for reimbursement of costs, damages and interest contained in the following articles, among others, Article 44, Article 48, Article 49, Article 50 and Article 51. Based on the above-mentioned articles, an authentic deed is considered legally defective if the Act violates the provisions contained in the above - mentioned articles. So that the injured parties can demand reimbursement of costs, damages, and interest to the notary concerned in making the deed. In addition to violating the articles mentioned above, the notary concerned in the above case also violated Article 16 letter m which contains “ ” read the deed before the court in the presence of at least 2 (two) witnesses, or 4 (four) special witnesses for the manufacture of a will under hand, and signed at that time by the court, witnesses, and Notary” Article 44 paragraph 1 “immediately after the deed was read, the deed was signed by each court, witness, and Notary, unless there is a person who can not sign the signature by stating the reason.”

From the explanation of Article 16 letter m, it can be concluded that in the above case, in this case the Notary who is authorized in making the lease deed violates Article 16 letter m. This is because, in signing the franchise agreement deed, the notary did not read the contents of the agreement deed to the defendant. That the notary directly presented the deed without being read to be signed immediately. In such cases also the plaintiff does not have good faith. In this case, it can be said that the signing process is not valid, because in signing the notarial deed, the deed is not read which causes it not to know the contents of the agreement. Therefore, based on the chronology of the case above, the notary concerned can be sued for damages for the lease deed he made which has caused losses for the parties. According to the researcher, a notary official is a position of trust that must be in harmony with those who carry out the duties of a notary as a trusted person. Notary as a position of trust does not mean anything if it turns out that they are carrying out their duties as a notary is a person who cannot be trusted.

In this case, between the notary and his officials (who carry out the duties of the notary) should be in line like two sides of the coin that can not be separated (Habib Adjie, 2004). The

precautionary principle is one of the most important principles that must be applied or implemented by a notary in carrying out the duties of his position as a public official. The precautionary principle requires notaries to always be careful in carrying out their positions, in the sense that they must always be consistent in implementing the rules of negotiation in the field of notary based on professionalism and good faith.

The notary law in its articles does not specifically mention the precautionary principle but the elements of certainty, precision and prudence are clearly reflected in most of the articles of the notary law. The notary is seen as a figure whose information is reliable, trustworthy, whose signature and seal (stamp) provide guarantees and strong evidence in the authentic deed he made.

A deed can be categorized as an authentic deed when in making the deed in accordance with the procedures that have been determined based on the provisions of Article 38 UUJN, a notarial deed can be said to qualify as an authentic deed if the notarial deed is in accordance with the procedures and procedures that have been determined under the provisions of Article 39 UUJN to Article 53 UUJN, then the notarial deed can be said to be an authentic deed that has perfect proof of strength for the parties who make it. If the notary's obligations are violated, then in relation to the deed there is a loss that can be accounted for by unlawful acts stipulated in Article 1365 of the Civil Code, namely: "every act that violates the law and brings harm to others, requires the person who caused the loss through his fault to replace the loss".

Degradation is defined as a decrease in rank, quality, morale, deterioration, decline, or can also place a lower level. In relation to the notarial deed, the term degraded occurs when the notarial deed as an authentic deed that has the strength of perfect and binding evidence, and has met the minimum limit of valid evidence without the need for other evidence in civil law disputes has deteriorated, deteriorated, or decreased quality in the sense of its lower position in strength as a complete and perfect evidence to be the beginning of proof such as a deed under hand and has a legal defect that causes the cancellation or invalidity of the notarial deed (Andre, P. R. 2015). A notarial deed can be degraded from an authentic deed to a deed under hand or the deed becomes null and void and can be used as a basis for suing for damages (Zulkarnain, 2013).

Making a deed done by a notary, can not automatically be referred to as an authentic deed. This is due to the provisions of the law which states that on certain formal matters, the authentic deed will fall into force into the deed under hand. That if there is a defect in the form of the authentic deed. Based on Article 84 UUJN stated that the act of violation committed by a notary against the provisions referred to in Article 16 Paragraph (1) letter i, Article 16 Paragraph (1) letter k, Article 41, Article 44, Article 48, Article 49, Article 50, Article 51, or Article 52 which resulted in a deed only has the force of proof as a deed under hand or a deed becomes null and void can be a reason for the party who suffered losses to demand reimbursement of costs, damages, and interest to the notary.

That according to researchers notary worthy of civil liability, Notary has the authority where the authority can be burdened with responsibility for his actions in making authentic deeds that are not in accordance with applicable regulations. Civil liability is closely related to unlawful acts and compensating for losses due to actions that have been committed.

CONCLUSION

Based on the analysis of the problems in this legal research, it can be concluded that in the ratio Decidendi the judge should consider the plaintiff's statement about the deed that was not read by 1 notary, that in the District Court Decision No. 873/Pdt.G/2013 / PN.Sby neither party asked for the deed of the agreement not to be read. However, it was the notary RAA who directly presented the deed to the parties without performing his obligation to read the deed. That

the deed drawn up and issued by a notary is not read to the faces or parties, without the consent and will of the faces or parties, this is a form of violation that results in the deed made and compiled into a legal defect, and can be degraded into a deed under hand. A notarial deed that is used as evidence but is considered invalid or legally flawed is a notarial deed that loses its authenticity, it will only be useful as a preliminary proof in writing. The deed cannot be used as evidence because the deed no longer has the power of proof outwardly, formally and materially in accordance with the provisions under Article 1886 of the Civil Code. The reading of the deed is an obligation for notaries, notaries are given authority by the state through the Notary Public Act to make authentic deeds and notaries should follow all the rules contained in the Notary Public Act.

Then the responsibility of notary officials for deeds that are not read under Article 16 Paragraph 1 letter m based on the Notary Office law, namely, civilly the parties concerned who have suffered losses under Article 1365 of the Civil Code, can be asked for compensation by their party to the notary. Based on the Notary Office Act, it is stated that the act of violation committed by the notary against the provisions as referred to in Article 16 Paragraph (1) letter I, Article 16 paragraph 9, Article 41, Article 44 paragraph 1, Article 44 paragraph 5 which resulted in a deed only having the power of proof as a deed under hand or a deed becomes null and void. And in the notary code of ethics Article 6 paragraph 1, if a notary official has been proven to have committed a violation that is required or meets the provisions prohibited by laws and regulations, administrative sanctions will be imposed, namely a written warning, temporary dismissal, dismissal with respect, or dismissal with disrespect. From the results of research that has been obtained, it can be given recommendations in the form of relevant suggestions, among others, namely: To the parties in the trial, regarding the regulation, it is expected that the establishment of rules regarding the authority of judges to be able to stop the examination of civil cases in court if the panel of judges has stated that the lawsuit letter from the plaintiff contains a formal defect so as not to produce a negative decision or a decision by *niet Ontvankelijk Verklaard* to better ensure the enforcement of Article 2 Paragraph (4) of the Judicial Power law which is the firmness of the principle of fast, simple and light justice. That it is clear that this is detrimental to the plaintiff and defendant because they are tired of litigation, incur a lot of costs, which in the end the lawsuit must be repeated with a new lawsuit. Then the defendant should file a lawsuit perfectly, that is, in the content of the lawsuit must be based on the reasons and the actual facts. This means that the lawsuit can be proved true and in accordance with the evidence submitted. Then mention, expose, and describe the true description of the facts of the actual incident, from the beginning to the conclusion. And the filing of a lawsuit is based on common sense or the logic of proper fairness based on the losses suffered by the plaintiff and it is proven that the losses were caused by the defendant. That further to the parties relating to notary officials regarding sanctions, there should be regulations that contain sanctions against authentic deeds that are graduated to be under hand, then not only subject to civil sanctions under Article 1365 of the Civil Code on claims for compensation. That administrative sanctions are somewhat less deterrent effect to notary officials who violate the rules, that the reprimand sanctions are less effective but can be subject to more severe sanctions, namely temporary dismissal. Then to the Supervisory Council, the regional supervisory council should in its examination ask whether each deed made is truly authentic, and what should be questioned is whether it is in accordance with applicable law and whether the deed is properly read first before being signed by the parties. Then the notary Supervisory Council should be more active in conducting socializations regarding the rules for the implementation of Notary duties in order to avoid violations committed by notaries that can harm notaries, notary societies, and also people who use notary services. And there should be a definite place to report, which can use a phone number.

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