

Notarial Deed on Transfer of Rights Potential Conflict



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ABSTRACT: This study examines the Notary Deed on Transfer of Rights with Potential Conflicts. The potential for disputes over the transfer of rights agreement made before a Notary, starting from the beginning of the transfer of rights agreement has the potential to contain disputes, however, the complainants still ask to be made a deed by the Notary and one of the parties reneges on the consensus made and agreed before the Notary. The potential for the deed made before the Notary Public has the potential to contain disputes related to the Transfer of Civil Rights and Transition Civil Authority. The types of Deeds in question include: Deed of Power of Attorney / Power to Sell followed by Deed of Agreement / Binding of Sale and Purchase, Deed of Recognition of Debt with Guarantee followed by the preparation of the Deed of Binding Sale and Purchase and Power of Sale, Deed of Cancellation, Entry and Amendment of CV Deed, Lease Agreement, Power to Rent and Recognition of Debt with Collateral, and Deed of Will. Meanwhile, the deed related to the Transfer of Civil Authority is a stand-alone Power of Attorney Deed. The excesses of criminal acts in the implementation of the Notary office are very close to the crime of forgery of letters, because this is significant with the Notary's position as a General Official. Meanwhile, the provisions on Extortion, Embezzlement, Fraud, Land Seizure and Theft are not related to the capacity of Notaries as Public Officials but as private persons just like society in general. This condition requires a solution to anticipate the deed made by or before a Notary. This becomes increasingly relevant for practical needs because of differences in viewpoints and interests that imply a degradation of objectivity in assessing an authentic deed. Judgment no longer refers to the standard of authenticity of an authentic deed that clearly positive law has set it out. This condition should be a valuable lesson and experience by being a progressive Notary, to be part of the solution and not part of the problem.

KEYWORDS: Notary Deed, Transfer of Rights, Potential Conflict

INTRODUCTION

Notaries are also human beings, this expression indicates their existence as individuals living in a community called society. In this dimension, the Notary concerned is predominantly subject to non-legal rules. Meanwhile, in another dimension, Notaries have the capacity as legal officers. In such a capacity, Notaries will always be bound and subject to the world of binding legal rules. This condition does not mean that a Notary Public becomes shackled without freedom. In other words, Notaries still have freedom in shaping their own world through subjective meanings (Anthony Giddens: 1971: 155). In relation to this Kartini Soedjendro mentioned that Notaries are more accurately referred to as *agents* (Kartini Soedjendro: 2001: 30).

The definition of Notary as *an agent* means that Notaries are tasked with translating general rules into more meaningful for real daily struggles. Furthermore, in Giddens' theory of Structuration, it is revealed that the actions of a person (Notary) are not solely bound to shared values and norms, but are also related to expected goals based on certain reasons. (Kartini Soedjendro: 2001: *ibid*).

In the midst of binding legal regulations, Notaries still have the freedom to translate these regulations into concrete cases that they are facing. This freedom in literature study is known as "discretion". It's just that the use of this discretion by Notaries is like a double-edged knife, on the one hand it can be a solution to the actions of the confronters of the legal actions they do and on the other hand it can be a tool to stab the Notary concerned. The use of discretion by Notaries must be placed on the basis of functional considerations of the position attached to the Notary and on the basis of the legal objective to be achieved, which is to make the law more meaningful in concrete cases.

The potential for disputes over the transfer of rights agreement made before a Notary is caused by several reasons: *First*, from the beginning of the transfer of rights agreement it has the potential to contain disputes, however, the complainants still ask for the deed to be made by the Notary. *Second*, the agreement made by the contenders is the truth of the consensus formulated into legal provisions derived from a statement / statement of the facers. If one party or both parties leave the consensus, it is certain that disputes arise between these parties and often drag the Notary Public to be the party responsible for the deed he made.

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The emergence of disputes for the second reason is caused by: (a) the legal language formulated in a Notary Deed often opens up space for interpretation of the meaning of the words in the deed, and (b). A copy of the deed once issued, then the wording in the copy no longer means what the maker wants but also belongs to the legal user, the consequence of which is that conflicts of interpretation are inevitable.

LITERATUR REVIEW

The Transfer of Rights Agreement consists of two main elements, namely the Agreement and the Transfer of Rights. Theoretically, the agreement regulates the legal relationship between person and person as stipulated in Book III of the Code. Civil. In this legal relationship, each party has reciprocal rights and obligations. One party has the right to demand something from the other, and the other party is obliged to comply with that demand, and vice versa. The party who has the right to demand something is called a creditor, while the party who is obliged to fulfill the demand is called a debtor. Something that is demanded is called achievement. Performance is the object of the agreement, which is something demanded by the creditor against the debtor or something that the debtor must fulfill against the creditor. Achievements are wealth that is measured or can be valued with money.

According to Abdulkadir Muhammad, the agreement is a legal relationship arising from legal acts that can be in the form of deeds, events, and circumstances. Regarding the object of legal relations is wealth that can be valued with money (Muhammad, 1990: 199). In line with that view, Sudikno Mertokusumo in one of his writings stated that what is meant by "overeenkomst" is both his legal actions and his legal relationship (Mertokusumo, 1990: 7). In terms of form, agreements can be classified into written agreements and oral agreements (Setiawan: 1993: 77). In terms of binding power, the agreement can be classified into an agreement under hand and an agreement with an authentic deed made before a Notary – PPAT as a General Officer.

RESEARCH METHODS

The typology of rights transfer agreements that have the potential to generate conflict is a literature review supported by field data (primary data). Legal materials used primary legal materials and secondary legal materials, primary legal materials in the form of legislation and secondary legal materials, namely writings such as journals, proceedings, and papers related to study materials which are then processed and analyzed with analytical descriptive.

RESULT AND DISCUSSION

Agreements made under the hands or made notarially must meet the standards of validity. By referring to the provisions of Article 1320 of the Code. Civil, it is stated that there are 4 (four) conditions that must be met for the validity of the agreement, namely:

(1). Agree from those who bind themselves

The word agreement which means the conformity of the will that gives birth agreement for both parties concerned, where the law does not provide a measure to determine the presence or absence of agreement.

Regarding this agreement, the law considers that against the word agreement there may be interference, in the sense, the word agreement is imperfect or not given voluntarily. There are 3 (three) factors that can interfere with the agreement, namely: (a) coercion factors, (b) oversight factors, and (c) fraud factors.

(2). Ability to make agreements

Being able to make agreements is legally capable. In principle, all people who are mature and healthy in mind are considered capable. In Article 1329 of the Code. Civil law states that every person is capable of making engagements, if he is not declared incompetent by law. Furthermore, Article 1330 of the Code. Civil law states that those who are considered incompetent to make an agreement are: (a) Those who are not yet adults, (b) Those who are placed under guardianship, and (c) Women in matters stipulated by law and generally all persons to whom the law has prohibited making certain agreements.

(3). About a particular thing

In a covenant that is promised, it must be about a certain thing, meaning that a covenant must have a clear object. Therefore the object of the agreement must be specific or something that is agreed must be clear and detailed. The object of an agreement is an important condition for establishing the rights and obligations of both parties if a dispute arises. An agreement is not allowed to promise something less clear. If an agreement does not meet these conditions, then such an agreement is considered null and void, meaning that from the beginning it has no legal effect so that it does not require cancellation (void by itself).

(4). A lawful cause

Cause or *causa* is interpreted as the content of the agreement. In accordance with Wirjono Prodjodikoro's understanding that the *causa* in the agreement is the content and purpose of an agreement that causes the existence of the agreement (Prodjodikoro, 1980: 35, see also J Satrio: 2001). Regarding the content of the agreement, it must be halal, meaning that it does not contradict the law, norms of decency, and public order.

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The four conditions above are conditions that must be met for the validity of an agreement. The first and second conditions are about the agreement and the competence of the parties to the agreement is a subjective condition, because it involves the subject or party to the agreement. If the first and second conditions are not met, then the agreement that has been entered into can be requested for cancellation.

Furthermore, the third and fourth conditions are called objective terms, because they involve the agreement itself, or the object of the legal act carried out by the subject or the parties. If these third and fourth conditions are not met, then the agreement is null and void, meaning that from the beginning it was considered that an agreement never occurred. Conversely, if an agreement has fulfilled the four conditions determined by article 1320 of the Code. Civil, then the agreement is valid.

In carrying out his profession, a Notary Public is bound by the limits of authority derived from applicable laws and regulations as well as based on the code of professional ethics. Legally, Notaries in carrying out their duties basically rely on formal-procedural deed making activities. It is said so because its obligation only serves the legalization of legal acts from parties who use its services. In addition to these duties, Notaries can also provide legal advice.

Furthermore, at the empirical level, the potential for transactions or legal actions carried out by the parties in the form of agreements before Notaries is also vulnerable to problems that are not only formal juridical but also non-juridical. Therefore, various potential problems with social, economic, cultural, and perhaps political dimensions can be an *inherent* part of the act. Precisely because the duties and authorities of Notaries are only in the nature of witnessing and certifying legal acts made by the parties, the potential for problems is a necessity in a deed.

Notaries in Indonesia are classified as Latin Notaries (Kartini Soedjendro, 2001: 28), which according to Black is a person who records what is said by others or people who copy what has been written by others. The hallmark of the Latin Notary Public is that it carries out the task of serving the needs of society within the scope of private/civil law. In essence, the main theme of civil law is property rights and agreements. This means that the duty and authority of Notaries in serving the needs of the community, one aspect of which is the preparation of agreement deeds with the intention of obtaining legal certainty regarding the implementation of the agreement and providing justice in the sense of equal distribution of rights and obligations or responsibilities to the parties.

Transfer of Rights contains 2 (two) elements that are the reasons for the transfer. A right is because it is transferred and because it is transferred. The switching terminology occurs due to legal events so that the transition process does not require certain legal acts. Meanwhile, the term transfer occurs because of certain legal acts so that the transition process requires certain legal acts as well and the agreement is one of the important instruments used as a basis for transition by the parties. In relation to the types of agreements that have the potential for conflict, Kartini Soedjendro in a writing stated because (2) two things, namely: (1) written conditions are not fulfilled and (2) unwritten conditions are not met (Kartini Soedjendro: 2001: 115).

Non-fulfillment of one of these conditions or both conditions is very potential that the agreement made will contain disputes. This happens because of the imperfect conditions needed to carry out these legal acts. More specifically, legal actions that will be carried out related to the transfer of rights. Because with the transfer of rights agreement will be the cause of one party will lose his rights and on the other hand there is a possibility that other parties who feel entitled / participate immediately also lose their rights. With this point of view, the principle of propriety and prudence is needed in formulating a transfer of rights agreement with a Notary Deed.

CONCLUSION

Deeds made before Notaries that have the potential to cause disputes are those related to the Transfer of Civil Rights and the Transfer of Civil Authority. A potential Notary Deed gives birth to conflicts for subjective and objective reasons. The reason for the subject is because: (1) There is another party who feels entitled / also entitled and (2) One party (face) feels absent to sign the minuta deed. Meanwhile, related to the reason for the object, namely in the Land sector, forgery of the Power of Attorney because the person concerned feels that he has never signed the letter (signature denial). The content of the power of attorney is not in accordance with the intention of one of the facers, the Deed made and signed is not in accordance with the intention of one of the facers, and the falsification of documents.

SUGGESTIONS

The Notary Honor Council should be an important pillar in providing legal protection to Notaries, so efforts to improve the scientific quality and professionalism of members of the Honorary Council, the Supervisory Board of Notary Elements and the Notary Honor Board must continue to be developed in line with the increasingly intelligent and critical society as a reflection of the success of the government in developing education. Guidance by the Honorary Council, Supervisory Board and Honorary Board to Notaries is a UUJN order that must be carried out in an orderly and orderly manner to improve the professionalism of Notaries in carrying out their positions. Furthermore, Notaries should be more careful in making deeds that are substantively deed of transfer of rights.

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