

LEGAL CONSEQUENCES ON THE DEED OF MINUTES OF THE FOUNDATION FOUNDER MEETING MADE BY A NOTARY WHICH DOES NOT ACCORDANCE WITH THE FOUNDATION'S BUDGET (Case Study of Medan High Court Decision Number 247/Pdt/2020/PT MDN)

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Abstract: *Deed of Minutes of Meeting is a deed made by a Notary in the form of an official deed (also called a deed of relaas) meaning that the Notary is present at the meeting to record, write down the writings in the deed of what was seen, heard, and decided by the parties present at the meeting. Then, in terms of accountability, because the Notary is present at the meeting, the Notary can be held accountable for the correctness of the contents of the meeting he attended. Notaries must carry out their positions in accordance with applicable regulations. However, in practice there are still Notaries who violate this, such as the case that befell Notaries in the Medan High Court Decision Number 247/Pdt/2020/PT MDN.*

Key Words: *Deed, Notary, Foundation, Minutes of Builder's Meeting.*

1. INTRODUCTION:

Notaries as public officials are required to be responsible for the deeds they make. If the deed later contains a dispute, then it needs to be questioned, whether it is the fault of the Notary or the fault of the parties who did not provide the document truthfully, the parties provided incorrect information beyond the knowledge of the Notary, or whether there was an agreement made between the Notary and one of the facing parties. In addition to being a defendant in the parties' legal problems, Notaries are also vulnerable to lawsuits from parties who feel harmed in the making of a deed. Notaries' mistakes in carrying out their duties are due to a lack of knowledge, experience, and understanding of the legal issues underlying the making of a deed, acting dishonestly, being negligent or careless and favoring one of the parties. [1] Therefore, in making a deed related to the foundation, the notary must really understand the provisions set out in the law and foundation budget. This is because if there is an error in the legal product that has been made by the notary, then there are also sanctions that will be given when the deed is not in accordance with the applicable legal regulations. In addition to that, the notary must also pay attention to the correctness and completeness of the document evidence provided by the client, this aims to ensure that there are no matters that will harm the parties concerned, including the notary and third parties.

2. THEORITICAL FRAMEWORK:

a. Legal Certainty Theory

According to Sudikno Mertokusumo, legal certainty is a guarantee that the law is enforced, that those entitled by law can obtain their rights and that decisions can be enforced.[2]

b. Agreement Theory

According to Fuady, many definitions of contracts have been given and each depends on which parts of the contract are considered very important, and it is these parts that are highlighted in the definition.[3]

c. Responsibility Theory

According to Hans Kelsen, the concept of legal responsibility that a person is legally responsible for a certain act or that he bears legal responsibility, the subject means that he is responsible for a sanction in the event of a conflicting act.[4]

3. LITERATURE REVIEW:

The establishment of a foundation can also be carried out based on a will, in which case if the beneficiary or heir does not carry out the will of the testator to establish a foundation, then at the request of the interested party, the court may order the heir or beneficiary to carry out the will.[5]

The form of an Authentic deed is determined by law or statutory regulations at the same level as the law. Until now, only notaries have been given the authority to make authentic deeds. This is solely because it is based on statutory provisions that must be fulfilled so that a deed is an authentic deed. Officials authorized to exercise part of the state's powers in the field of civil law are called public officials, appointed by the state through laws are notaries.[6]

Notaries are public officials and therefore have a very important role in aspects of people's lives in legal events, especially in the field of civil law, including in their authority to make deeds and other authorities in accordance with applicable legal provisions.

4. METHOD:

The method used in this study is a normative legal approach, which is an approach focused on studying and researching legal material by referring to legal norms contained in laws and regulations, court decisions and legal norms that exist in society.[7]

5. DISCUSSION:

A Notary in carrying out his position must act professionally and always implement the law and uphold the Code of Professional Ethics. Apart from that, a notary is also expected to be able to act honestly, thoroughly, independently, impartially, and safeguard the interests of the parties involved in legal interests, as stipulated in Article 16 paragraph 1 letter a, Article 1 number 1 Law Number 2 of 2014 jo Law Number 30 of 2004 concerning the Position of Notary (hereinafter referred to as UUJN). In this case the Notary did not take a thorough stance, that the Notary did not carefully look at the documents submitted to him, such as meeting invitations that had to be examined, took sides and did not take care of the interests of the parties concerned, namely that the Notary continued to make the deed, which the Notary should have known based on the documents submitted to him.

6. ANALYSIS:

A. Judge's Considerations Regarding Making Deeds of the Minutes of Foundation Trustees' Meetings Made by Notaries That Are Not In Accordance with the Foundation's Articles of Association (Medan High Court Decision Case Study Number 247/Pdt/2020/Pt Mdn)

Meeting of members of the Trustees of the Islamic University of North Sumatra (UISU) which was held on April 9 2019 whose results according to the Panel of Judges were invalid because it was proven contrary to Article 10 of the UISU Foundation Articles of Association, because the results of the Supervisory meeting on April 9 2019 were invalid, the Minutes of the April 9 2019 meeting as stated in Minutes of Meeting of North Sumatra Islamic University Foundation Trustees Number 77 dated 25 April 2019 made by Notary Mauliddin Shati, SH. It must also be stated that it has no legal force. because the meeting of the Trustees on April 9 2019 was invalid, the replacement of the position of Plaintiff I/Appellant I from the position of chairman of the Trustees which was decided at the meeting of the Trustees on April 9 2019 according to the Panel was also invalid. In connection with the invalidity of Defendant I/Appellant I's replacement as well as answering the exception of the Defendants/Appellant who stated that T. Hamdy O. Delikhan's position in the *a quo* was *error in persona* and the plaintiff's/Appellant's plaintiff's/Appellant's claim was blurred was groundless;

B. Legal Consequences of Deeds of Minutes of Foundation Trustees' Meetings Made by Notaries That Are Not In Accordance with the Foundation's Articles of Association (Case Study of Medan High Court Decision Number 247/Pdt/2020/Pt Mdn)

The legal consequences of the decision handed down by the court against a Notary, make a Notary in practice required to be more professional in carrying out his/her position. Therefore, the Notary is required to be active in knowing the truth in the field even though it is not as complete as possible and even though it is not an obligation for the Notary to know, at least the Notary must know and understand the provisions governing the deed he will make. Thus the Notary is required to be more careful and thorough in making the deed as stipulated in Article 16 paragraph (1) UUJN. If due to the Notary's actions, this will have an impact on the loss of trust in the Notary and the losses suffered by the parties as a result of the Notary's carelessness in making the deed, then that party can claim compensation, costs, and interest by filing a lawsuit against District Court. Another legal remedy that can be taken is by reporting it to the Regional Supervisory Board so that the Notary concerned is subject to sanctions.

7. CONCLUSION

From the discussion as explained earlier, several conclusions can be drawn, including:

- 1) The Board of Trustees meeting held by the Defendants/Apparators on April 9 2019 regarding the selection or replacement of the Chairperson of the UISU Foundation Trustees as contained in Deed Number 15 dated April 9 2019 and the Meeting on April 25 2019 regarding the election and appointment of Foundation Management and Supervisory Organs UISU was stated in Deed Number 77 dated 25 April 2019, both of which were made before the Co-Appellant III was an unlawful act. The plaintiff (T. Hamdy O Delilih) as the Chairperson of the UISU Foundation Trustees never issued an invitation to a meeting of the UISU Foundation Trustees, both an invitation to the First UISU Foundation Trustees Meeting on 01 April 2019, and an Invitation to the Second Trustees Meeting on 09 April 2019. In the Invitation Letter for the Supervisory Meeting, the agenda for the meeting was not clearly stated and the timeframe for holding the second Supervisory Meeting was not in accordance with the UISU Foundation Articles of Association.
- 2) The judge's considerations in making the deed of the minutes of the supervisor's meeting made by the Notary in the Medan High Court Decision Number 247/PDT/2020/PT MDN stated that the matters and objections contained in the Memorandum of Appeal, and the Counter Appeal Memory of the Panel of Judges The Court of Appeal did not find new matters that could invalidate or weaken the decision of the Panel of Judges of first instance, moreover the matters and objections had been correctly and correctly considered by the Panel of Judges of first instance, so that the considerations of the decision were taken over and made into legal considerations. The High Court itself in deciding this case is at the appeal level, therefore the decision of the Medan District Court dated 12 February 2020 Number 307/Pdt G/2019/PN Mdn, which the appeal was requested for, must be upheld.

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