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Responsibility of Notaries in The Inclusion of The Names of Instrumentary Witnesses Who Were Not Present at The Signing of Authentic Deeds (Study of The Decision of The Rantau Prapat District Court Number 26 / Pdt.G / 2020 / PN RAP)

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A R T I C L E I N F O

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ABSTRACT

In essence, the scope of the task of carrying out the position of a Notary is to make evidence as desired by the parties who appear to carry out a certain legal action. The case raised in this study originated from a lease agreement made before a Notary. Based on the applicable laws and regulations, the Notary is obliged to read the Deed in front of an audience in the presence of at least 2 witnesses, or 4 witnesses specifically for the making of a private will, and signed at the same time by the appearer, witness, and the Notary. However, the Notary in this case included the name of a witness in the relevant Lease Deed, even though the witness was actually not present on the day of making, reading, and signing of the deed by the parties. Therefore, one of the parties in the Lease Deed filed a lawsuit against the Notary because he felt aggrieved by the possibility that the Lease Deed would lose its proving power as an Authentic Deed because it did not meet the requirements as regulated in the laws and regulations. The main issue raised in this study is the responsibility of the Notary in including the name of the Instrumental Witness who was not present at the signing of the Authentic Deed and its implementation in the decision of the Rantau Prapat District Court Decision Number 26/Pdt.G/2020/PN RAP. This research is normative judicial research. The type of data used is secondary data obtained through literature study. To further elaborate the main issue, it is further described in the introduction, a discussion of the Instrumental Witness and the responsibilities of the Notary in relation to the inclusion of the name of the Instrumental Witness who was not present at the signing of the Authentic Deed, and closing.

ABSTRAK

Pada dasarnya, ruang lingkup tugas pelaksanaan jabatan Notaris adalah untuk membuat alat bukti sebagaimana diinginkan oleh para pihak yang menghadap untuk melaksanakan suatu tindakan hukum tertentu. Kasus yang diangkat dalam penelitian ini berawal dari perjanjian sewa menyewa yang dibuat di hadapan Notaris. Berdasarkan peraturan perundang-undangan, Notaris wajib membacakan Akta di hadapan penghadap dengan dihadiri oleh paling sedikit 2 orang saksi, atau 4 orang saksi khusus untuk pembuatan Akta wasiat di bawah tangan, dan ditandatangani pada saat itu juga oleh penghadap, saksi, dan Notaris. Namun, Notaris dalam kasus ini menyertakan nama seorang saksi dalam Akta Sewa Menyewa yang bersangkutan, walaupun saksi tersebut sesungguhnya tidak hadir pada hari pembuatan, pembacaan, dan penandatanganan akta oleh para pihak. Oleh karena itu, salah satu pihak penghadap dalam Akta Sewa Menyewa tersebut mengajukan gugatan terhadap Notaris karena merasa dirugikan dengan adanya posibilitas bahwa Akta Sewa Menyewa tersebut akan kehilangan kekuatan pembuktiannya sebagai Akta Autentik karena tidak memenuhi persyaratan sebagaimana diatur dalam peraturan perundang-undangan. Pokok permasalahan yang diangkat dalam penelitian ini adalah tanggung jawab Notaris dalam penyertaan nama Saksi Instrumenter yang tidak hadir pada penandatanganan Akta Autentik dan implementasinya dalam putusan Pengadilan Negeri Rantau Prapat Nomor 26/Pdt.G/2020/PN RAP. Penelitian yang dilakukan adalah penelitian yuridis normatif. Jenis data yang digunakan adalah data sekunder yang diperoleh melalui studi kepustakaan. Untuk menjelaskan pokok permasalahan, selanjutnya diuraikan dalam pendahuluan, pembahasan mengenai Saksi Instrumenter dan tanggung jawab Notaris sehubungan dengan penyertaan nama Saksi Instrumenter yang tidak hadir pada penandatanganan Akta Autentik, dan penutup.

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I. INTRODUCTION

In essence, humans as social beings tend to live in society. This tendency is driven by a human sense of wanting to get together with others. In his life, man cannot live alone or provide for himself. In these needs, sometimes humans need the intervention of even other humans in solving and meeting their needs. Although the human being has a position and wealth, he still always needs other humans. This is in accordance with the teachings of Aristotle who stated that man is a zoon politicon, which means "that man as a being by nature always wants to get along and gather with other fellow human beings, so a creature that likes to be social. Because of their sociable nature with each other, humans are called social beings"(Kansil, 1979).

Every human being tends to interact, communicate and socialize with other human beings, so it can be said that humans from birth have been referred to as social beings. For this reason, humans are also said to be social beings, because in humans there is an impulse to relate (*interact)* with others (Effendi, 2006). Humans in achieving something also need the role of other human beings, one of which is in the fulfillment of daily needs. In achieving these needs, legal acts such as agreements between humans are needed to obtain a goal. Where the agreement is as a form of proof of rights and obligations for one human being with another in order to obtain a mutually agreed purpose both in the form of a written agreement and an oral agreement.

Although a treaty is an agreement that is made freely between human beings, the clauses in the agreement are still in and not contrary to norms, public order, decency and applicable law (azas pacta sunt servanda). With the freedom to include clauses, it must still be supported by legal proficiency (*rechtsbekwaamheid)* and legal authority (*rechtsbevoegdlheid)* that are prevalent.

Based on Article 1313 of the Civil Code, an agreement is "*An agreement is an act in which one or more persons bind themselves to one or more other persons".* The agreement is a binding legal act that gives rise to an event containing provisions of rights and obligations between the parties who make it with the freedom of the rules as long as the rules do not violate the applicable provisions. The agreement is closely related to the agreement as stipulated in Article 1233 of the Civil Code which states "*The engagement was born because of an agreement or because of a law".*

A treaty is a concrete form of an agreement while an agreement is an abstract form of a covenant. This can be interpreted as the existence of a legal relationship between two parties whose content is rights and obligations, a right to demand something and vice versa an obligation to fulfill these demands(Subekti, 1992). Based on Article 1320 of the Civil Code, in order for valid approval to occur, four conditions need to be met, namely: It was their agreement that bound him; The ability to make an attachment; A specific subject matter; A cause that is not forbidden.

The first two conditions are subjective conditions because they relate to the persons entering into the agreement as subjects, while the last two conditions are objective conditions because they relate to their own agreement or the object of the legal act carried out. On the first condition, the word agreement in an agreement is a condition that indicates the will of both parties is mutually acceptable to each other. In this case, they together do not reject what each party wants and want something reciprocally. In this regard, Article 1338 of the Civil Code in principle states that the binding force of the agreement after the conclusion of the word agreement is very strong, since the agreement cannot be unilaterally withdrawn and can only be withdrawn by agreement of both parties, or for reasons allowed by law (Supramono, 2014).

The party making an agreement must also be legally capable. In principle, every person who is an adult or axle and healthy in mind, is capable according to the law. In Article 1330 of the Civil Code, referred to as persons who are incapable of making an agreement are as follows: immature child; persons placed under guardianship; women who have been married in matters prescribed by law and in general all persons who by law are prohibited from making certain consents.

It is undeniable that from the point of view of a sense of justice, the person who makes a covenant and will later be bound by the covenant must have sufficient ability to insinuate truly the responsibility he bears with his deeds. In addition, from the point of law order, a person who makes a treaty means risking his wealth so that person must be a person who is truly entitled to be free to do with his wealth(Subekti, 2005).

Regarding immature persons it is further regulated in Article 330 of the Civil Code which states that "The immature are those who have not reached the age of even 21 (twenty-one) years and did not marry before. If the marriage is dissolved before they are even 21 (twenty-one) years old, then they do not return to an immature position". In addition, in Article 7 paragraph (1) of Law Number 1 of 1974 concerning Marriage, it is stated that the age for marriage for men is 19 (nineteen) years and for women it is 16 (sixteen) years. So that if a person is not even 21 (twenty-one) years old but has married, it has consequences of being able to act. Thus, the basis of the age of ability to act is 21 (twenty-one) years old or married if not for special purposes.

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Based on the above, it can be understood that it is necessary to distinguish between subjective terms and objective terms. If the objective conditions are not met, the agreement will be null and void, that is, the agreement is considered never born and the agreement never existed. The purpose of the parties entering into the agreement to give birth to a legal agreement is to fail. Unlike the case if the subjective conditions are not met then the agreement is not null and void, but one of the parties has the right to request that the agreement be voidable. The party who can request the cancellation is the incompetent party or the party who gave the agreement (*the permit*) in a non-free manner. So, the agreement that has been made is binding as well, as long as it is not cancelled by the judge at the request of the party entitled to request such annulment.

In general, an agreement can be made under the hand or made by an authentic deed. The deed has 2 (two) important functions, including the formality function (formality causa) namely for its completeness or perfection (*not for its validity)* a legal act must be made a deed, and the function of evidence (*probationis causa)* that is, the deed was made from the beginning deliberately for proof in the future, the written nature of an agreement in the form of a deed does not make the agreement valid, but only so that it can be used as evidence at a later date(Mertokusumo, 1999). A deed under the hand is a deed signed under the hand, a letter, a register, a letter of domestic affairs and other writings made without the intercession of a general officer as stipulated in Article 1874 of the Penal Code, while an Authentic Deed is a deed made in the form prescribed by law by or before the general officer authorized to do so at the place where the deed was made as stipulated in Article 1868 of the Penal Code. In this case, the general official in question is a Notary as an extension of the Government in carrying out some of the state's affairs or duties, especially in the field of civil law as regulated in Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary ("UUJN").

Basically, the scope of the task of carrying out the position of Notary is to make evidence as desired by the parties facing to carry out a certain legal action. Without any request from the parties, the Notary will not make any deeds. In this case, the Notary makes the deed in question based on the evidence or information or statements of the parties stated or explained or shown before the Notary, and furthermore the Notary frames it outwardly, formally and materially in the form of a Notarial deed, while still relying on the rules of law or procedures or procedures for making deeds and legal rules related to the legal action concerned as stated in the deed (Wawan Tunggal, 2001).

In making the deed, the Notary is obliged to present 2 (two) witnesses, whose introduction to the identity and authority of the witness is expressly mentioned in the deed. In the scope of notarization, two kinds of witnesses are known, namely Attesterend Witnesses and Instrumenter Witnesses. Instrumentary witnesses are required by law to be present at the making of a Notarial deed. The duty of the witness of this instrumenter is to affix signatures, give testimony to the correctness of the contents of the deed and the fulfillment of the formalities required by law. In general, those who become Witnesses of this Instrumenter are employees of the Notary himself. Meanwhile, the Attesterend Witness is the witness who introduces the interceptor to the Notary.

If the deed made in the future causes a dispute, it is necessary to question the cause of the dispute, namely from the fault of the Notary who deliberately wants to benefit one of the parties to the interception, or which is caused by the mistakes of the parties who did not provide documents appropriately and appropriately. If the deed made or issued by the Notary contains a legal defect due to the fault of the Notary either due to the negligence or intentionality of the Notary itself, then the Notary must give moral and legal responsibility after obtaining proof.

Referring to the decision of the Rantau Prapat District Court Number 26 / Pdt.G / 2020 / PN Rap with the main problem that will be discussed in this study, namely the liability of a Notary in connection with the inclusion of the name of the Instrumenter Witness who was not present at the signing of the Authentic Deed. Thus, the study was delivered under the title "The Responsibility of Notaries in the Inclusion of The Names of Instrumenter Witnesses Who Were Not Present at the Signing of authentic deeds (Study of the Decision of the Rantau Prapat District Court Number 26/Pdt.G/2020/PN RAP)". Based on the background previously outlined, the subject matter

what will be raised in this paper is How is the position and role of instrumenter witnesses in authentic deeds and how is the notary's responsibility for the legal consequences caused by the inclusion of

the name of instrumenter witnesses who are not actually present at the signing of the Authentic Deed and its implementation in the Rantau Prapat District Court Decision Number 26 / Pdt.G / 2020 / PN Rap?

II. RESEARCH METHOD

This research was carried out using a normative juridical research method that focused on the responsibility of the Notary in connection with the inclusion of the names of witnesses who were not present at the signing of the Authentic Deed in the decision of the Rantau Prapat District Court Number 26 / Pdt.G / 2020 / PN RAP. The type of data used in this study is secondary data obtained through the study of documents. The secondary data sources in question include: laws and regulations as primary legal material; books, papers, scientific articles, and so on as secondary legal material; and a handbook as a material for tertiary law. All data obtained are processed and analyzed with a qualitative approach.

III. RESULT AND DISCUSSION

1. The Position and Role of Instrumentary Witnesses in Authentic Deeds.

Basically, Article 1 of the UUJN states that a Notary is a general official who is authorized to make authentic deeds and other authorities as referred to in the Law (Undang-Undang Tentang Perubahan Atas Undang-Undang Nomor 30 Tahun 2004 Tentang Jabatan Notaris, UU No. 2 Tahun 2014, (Selanjutnya UU No. 2 Tahun 2014), LN Nomor 3, Tahun 2014, TLN No. 5491, 2004). A deed made by a Notary has an authentic nature not because the law stipulates so, but because the deed is made by or before a general officer as referred to in Article 1868 of the Penal Code which states "An authentic deed is a deed made in the form prescribed by law by or before the general officer authorized for it at the place where the deed was made". The thing that must be used as an important note in the making of authentic deeds by notaries is that the initiative to make authentic deeds must come from the parties who want the legal act to be carried out and then stated in a deed. The duties and authorities of this Notary are generally closely related to agreements, deeds and provisions that give rise to rights and obligations between the parties, namely providing guarantees or evidence against these agreements, deeds and provisions so that the parties involved in it have legal certainty.

One of the conditions that must be met in order for a deed to obtain authenticity is the authority of the Notary concerned to make a deed. The authority includes 4 (four) things, including (Notodisoerdjo, 1993): The notary is authorized to the extent that the deeds he makes are concerned; The notary is authorized as long as it concerns the person for whose benefit the deed is made; The notary is authorized as long as it is regarding the place where the deed was made; and Notary authorized as long as the time of making the deed.

In this case, the Notarial deed as an authentic deed has 3 (three) evidentiary powers, including (Adriano, 2015): Outward Evidentiary Power; The Power of Formal Proof; Material Evidentiary Power.

The three powers mentioned above in an authentic deed are the perfection of the position of a notarial deed as evidence in the law of proof, especially in civil procedural law and have binding force for parties related to the deed. An authentic deed recognizes the principle of *acta publica probant sese ipsa,* which means a deed that appears to be born as a deed and meets the predetermined conditions, then the deed is valid or considered an authentic deed. This means the signature of the official, regarded as the original, until there is proof to the contrary. If anyone denies then the burden of proof lies with the party who denies the deed.

Based on Article 16 paragraph (1) letter m of the UUJN, the Notary is required to read the Deed in front of the presenter with at least 2 witnesses attended, or 4 special witnesses for the making of the Deed of will under the hand, and signed at that time by the presenter, witness, and Notary (Undang-Undang Tentang Perubahan Atas Undang-Undang Nomor 30 Tahun 2004 Tentang Jabatan Notaris, UU No. 2 Tahun 2014, (Selanjutnya UU No. 2 Tahun 2014), LN Nomor 3, Tahun 2014, TLN No. 5491, 2004). The deed referred to in these provisions is further defined as an authentic deed made by or before a Notary according to the forms and procedures stipulated in the UUJN. In carrying out a legal act, the Notary has the obligation to present 2 (two) witnesses, where the explanation regarding the identity and authority of the witness must be expressly stated in the deed.

In general, witnesses are one of the evidence recognized in the legislation. As valid evidence, a witness is a person who gives testimony, either verbally or in writing or a signature, that is, explaining what he witnessed himself, be it in the form of an act or action of another person or a circumstance or an event. The witnesses in the Notarial deed are divided into 2 (two) among others:

a) Witness Instrumenter (*Instrumentaire Getulgen*)
Witness Instrumenter is a witness who serves as long as the matter of the deed where they must be present at the making of the deed i.e. at the time of reading the deed and co-signing the deed. Thus, the Instrumentary Witness serves to witness in the attestation of a deed whether the Notary has carried out the formalities of the authenticity of a deed. The Instrumenter Witness must be known by the Notary, if the instrumenter witness is not known by the Notary, then it must be introduced and must be declared at the end of the Deed.
b) Attesterend Witnesses (*Attesterend Getulgen*)
Witness Attesterend is a witness whose job is to introduce the previously unknown notary to the Notary.

For an unknown interceptor, one Attesterend Witness is required, while if there are more than 2 (two) interceptors, then they can introduce each other to the Notary. Thus, at the time of signing the deed, an Attesterend Witness is not required to sign, but if they still wish to affix their signature, there is no prohibition on it (G.H.S Lumban Tobing, 1999).

The witnesses listed in the Notarial deed are only limited to Instrumentary Witnesses, meaning witnesses desired by law. The presence of 2 (two) witnesses is absolute, but that does not mean it must be 2 (two) persons, it can be more if circumstances require. Instrumenter Witnesses are required by law to be present in the making of a Notarial deed. The duty of this witness is to affix signatures and testify to the correctness of the contents of the deed as well as the fulfillment of the formalities required by law.

In general, Instrumenter Witnesses who are none other than Notary Employees have a significant role as a neutral party in the inauguration of deeds, including in legal traffic that has legal consequences. Therefore, if there is a problem that arises in the future related to the Notary deed, then the Instrumenter Witness is naturally involved in the matter. In addition, Article 40 of uujn also emphasizes the provision that every deed read by a notary is attended by at least 2 (two) witnesses, unless the laws and regulations specify otherwise. Article 40 of the Uujn provides that the witness as referred to must meet the following requirements: at least 18 (eighteen) years of age or previously married; capable of carrying out legal acts; understand the language used in the Deed; can affix signatures and paraphrases; and has no marital or blood relationship in a straight line up or down without restriction of degree and sideways line up to the third degree with the Notary or the parties.

The witness as referred to must be known by the Notary or introduced to the Notary or explained about his identity and authority to the Notary by the presenter. The introduction or statement of the identity and authority of the witness is expressly stated in the Deed (Undang-Undang Tentang Perubahan Atas Undang-Undang Nomor 30 Tahun 2004 Tentang Jabatan Notaris, UU No. 2 Tahun 2014, (Selanjutnya UU No. 2 Tahun 2014), LN Nomor 3, Tahun 2014, TLN No. 5491, 2004).

As is known, proof in civil cases based on Article 1866 of the Criminal Code stipulates that evidence includes written evidence, witness evidence, presumption, confession, and oath. As valid evidence, a witness is someone who gives testimony both orally and in writing to explain what he sees and hears himself either in the form of actions or actions of others or a circumstance or an event. The testimony of a witness who is inconsistent or not accompanied by sufficient causes and reasons for how he can know a particular event, cannot be used as perfect evidence. The testimony of a witness who is not his own knowledge and experience cannot prove the truth of his testimony (Nasir, 2005).

In the Decision of the Rantau Prapat District Court Number 26/Pdt.G/2020/PN Rap, the Notary included the name of a witness, namely the ISH, in the making of the Lease Deed Number 05 dated April 04, 2019, even though the witness was not actually present on the day of the making, reading, and signing of the Deed by the parties. Therefore, one of the parties to the Lease Deed filed a suit in which in his posita it was stated that at the time of signing Deed No. 05 dated April 04, 2019 there were no witnesses on behalf of ISH, but the Notary still listed ISH's name as a witness on the Deed.

This makes the Plaintiff object to the treatment of the Notary who lists ISH as an Instrumenter Witness on the Deed, but the Instrumenter Witness in question was not actually present and did not sign the Deed as referred to. The plaintiff stated that under Article 1868 of the Penal Code, the Notary as a general officer is widely authorized to make a deed because a form of deed is as prescribed by law and is made before the authorized general officer at the place where the deed is made.

Against the objection of the Plaintiff, the Notary as the Defendant in the case denied by stating that the witness in the Procedural Law is different from the witness on the Deed, because a Deed is fully accounted for by the Notary, and the witness is only as an instrument in the Deed. Furthermore, the testimony of the trial witnesses from the Defendant stated that the witness on behalf of ISH on that day did not sign, but the next day ISH signed the deed.

In this case, in essence, the Panel of Judges gave consideration as page 26 of the Rantau Prapat District Court Decision No. 26/Pdt.G/2020/PN Rap quoted among others:

"Considering, that as referred to in Article 1320 of the Civil Code regarding the conditions for the validity of an agreement, both Subjective and Objective conditions, it turns out that Deed Number 5 dated April 4, 2019 concerning the lease agreement has fulfilled the validity of an agreement, but after being connected with the petitioner's lawsuit regarding the defendant's actions that made Ikbal Solin Hutahaean a witness in Deed No. 5 dated April 4, 2019 concerning the lease agreement, it turned out that these circumstances could not result in the cancellation of Deed No. 5 dated April 4, 2019 concerning the lease agreement".

In connection with the case in the Decision of the Rantau Prapat District Court Number 26 / Pdt.G / 2020 / PN Rap, in fact Article 16 paragraph (1) letter m and Article 40 paragraph (1) uujn also stipulate that in carrying out his position, the Notary has the obligation to read the deed before the interceptor, attended by at least 2 (two) witnesses which must then be signed at that time by the

interceptors, witnesses and notaries present. In addition, the position of the instrumentary witness in its function to fulfill the formality requirements of the Notary deed as stipulated in Article 1868 of the Criminal Code and Article 38 paragraph (4) letter c of the UUJN which stipulates that the end or closing of the Deed contains: a description of the reading of the Deed; a description of the signing and place of signing or translating of the Deed if any; the full name, place and date of birth, occupation, position, position, and residence of each witness of the Deed; and a description of the absence of changes that occurred in the making of the Deed or a description of the existence of changes that can be in the form of additions, crosses outs, or replacements and the amount of changes thereto (Undang-Undang Tentang Perubahan Atas Undang-Undang Nomor 30 Tahun 2004 Tentang Jabatan Notaris, UU No. 2 Tahun 2014, (Selanjutnya UU No. 2 Tahun 2014), LN Nomor 3, Tahun 2014, TLN No. 5491, 2004).

It is understood that the particulars that must be contained in the end or closing of the Deed above must be made in real terms and in accordance with the actual circumstances. The Notarial Deed is said to be complete if all the formality requirements are met so that the Notarial Deed has a perfect evidentiary value and becomes an Authentic Deed and the presence of Instrumenter Witnesses in the Notarial Deed can be legally accounted for and guarantee legal certainty about a legal event that occurs.

2. Notary Responsibility for Legal Consequences Arising from the Inclusion of the Name of the Instrumenter Witness who was Actually Not Present at the Signing of the Authentic Deed and Its Implementation in the Rantau Prapat District Court Decision Number 26/Pdt.G/2020/PN Rap

The position of witnesses on notarial deeds is certainly different from witnesses in general who are witnesses who hear and/or see for themselves a situation or an event. Its position as one of the formal requirements in the Notarial deed as stated in Article 38 paragraph (4) letter c of the UUJN, that at the end or closing of the deed must contain the full name, place and date of birth, occupation, position, position, and residence of each witness. When such formal conditions are not made as they are, then the deed will remove its position as a evidentiary force as an underhand deed.

There are 3 (three) witness obligations, including (Samudera, 2004): Obligations face; Obligation to swear; and Must provide correct information. As explained in the previous paragraph, the Notary is obliged to present 2 (two) Instrumentary Witnesses at the time of making, reading, and signing the Notary deed. In the presence of Witness Instrumenter, the witness may testify that the formalities in the making of the deed prescribed by law have been reached (Nanda, 2016). Notary Employees who act as Instrumenter Witnesses are required to have the ability to match the identities of interested parties whose names will be recorded in the deed before the deed is signed by the parties, and are inseparable from the instructions and directions of the Notary. The existence of Instrumentary Witnesses in every notarial deed is strictly required. The role of the Instrumenter Witness in an authentic Notarial deed also aims to provide security for the Notary if the deed made is disputed by the party who acts as a deed compensatory or third party, and has a function as valid evidence considering that the Instrumenter Witness can give testimony at trial and this includes as evidence with witnesses or confessions. The existence of this Instrumenter Witness as a witness is to hear the reading of the deed by the Notary and see firsthand the signing of the deed by the relevant parties. The Instrumenter Witnesses must be present at the making, i.e. the reading and signing of the deed. With the presence of Witness Instrumenters on the making of the deed, they may testify, that it is true that the formalities prescribed by law have been fulfilled, namely that the deed before being

signed by the parties, has been first read by the Notary to the appellants and then signed by the parties concerned, all of which were done by the Notary and the parties before the witnesses. The existence of Instrumenter Witnesses is something required by UUJN to provide authenticity value to notarial deeds.

In general, the Instrumenter Witness plays a role in fulfilling the formalities of the deed assigned by the Notary to him such as preparing the concept of the deed, adjusting personal data through data verification, preparing a letter that has a relationship with the parties whose names will be recorded in the deed, also seeing directly the deed read, signed, and signing the deed related to his function as an Instrumenter witness. Based on Article 16 paragraph (1) letter f and Article 40 of the UUJN, The Instrumenter Witness has a legal position in terms of supporting the authenticity of a Notary deed related to the obligation of the Notary in storing the confidentiality of the deed whose manufacture was made by him.

Associated with the Decision of the Rantau Prapat District Court Number 26 / Pdt.G / 2020 / PN Rap, as for ISH as a Notary employee, it is not responsible for the correctness of the contents of the deed. Referring to Article 65 of the UUJN, it is clearly stated that a Notary, a Substitute Notary, a Special Substitute Notary, and a Temporary Notary Officer are responsible for every deed he makes. On this basis, Article 65 of the UUJN considers that is (Adjie, 2009): They are appointed as Notaries, Substitute Notaries, Special Substitute Notaries, and Temporary Notary Officers are considered to be carrying out personal and lifelong duties so that there is no time limit of liability. The liability of a Notary, a Substitute Notary, a Special Substitute Notary, and a Temporary Notary Officer is considered inherent, the ability and wherever the former Notary, the former Substitute Notary, the former Special Substitute Notary, and the former Temporary Notary Officer are located.

The responsibility of the Notary as a general officer related to the material truth of the deed he made, is divided into 4 (four) categories, including (Ansori, 2009): The notary's civil responsibility for the material correctness of the deed he made; The notary's responsibility is criminally for the material truth in the deed he made; The responsibility of the Notary based on the regulations of the notary's position under the UUJN to the material truth in the deed he made; The responsibility of the Notary in carrying out the duties of his position based on the Notary code of ethics.

Observing the problems in this decision, it is necessary to pay attention to the requirements for the formal preparation of the deed, including: Made before an authorized official, namely before a Notary; Attended by the parties; The parties are known or introduced to the Notary; Attended by 2 (two) witnesses; Mention the identities of notaries, interceptors and witnesses; Mentioning the place, day, date, month, year in which the deed was made; The notary reads the deed in the presence of the appellant and the witnesses; Signed by all parties, witnesses and Notaries on the day of such signing; Affirmation of reading, translation, and signing on the closing of the deed; and Regarding the position of a Notary in the district or city area.

If it is related to the judgment, the inclusion of the name of the Instrumenter Witness who was not actually present at the time of the reading and signing of the Deed by the parties on the pretext that the Instrumenter Witness signed it on the next day would result in the notarial deed containing a defect, which results in the deed losing its perfect evidentiary power, and only becoming an underhand deed. In general, the signatures of the interceptors, witnesses, and Notaries are required in a Notarial deed in order to become an authentic deed that has perfect proof. This indicates that the parties have agreed and agreed on what is or is agreed by the parties. Signing is something that has the meaning of seeing (reading) and agreeing on what happened and written in a deed.

Notaries who are proven to have committed acts that are not in accordance with applicable law in carrying out their profession are obliged to account for their actions. In imposing these sanctions, there are several conditions that must be met, including fulfilling the formulation of the act prohibited by law, the existence of losses caused and being unlawful, both dormil and material. The measuring aspect in terms of violations committed by a notary is seen under the UUJN.

A notary as a general officer authorized to make authentic deeds may be liable for his deeds in connection with his work in the making of deeds. The legal responsibilities of a Notary in carrying out their profession are classified as, among others: Civil Law responsibility, namely if the Notary makes a mistake because he breaks a promise as specified in the provisions of Article 1234 of the Civil Code or an unlawful act as specified in the provisions of Article 1365 of the Civil Code. The error has caused losses on the part of the client or other party. Criminal Law responsibility if the Notary has committed legal acts prohibited by law or committed an unlawful mistake/act either intentionally or negligently that causes harm to the other party. Administrative responsibilities and code of ethics for the position of Notary (Kusumawati, 2006).

If there is a Notary doing an act that is not in accordance with the applicable law in making an authentic deed, then the Notary can be subject to civil liability in the form of sanctions to reimburse costs or compensation to the aggrieved party for the actions committed by the Notary. Administrative liability can be in the form of sanctioning an oral reprimand, a written reprimand, a temporary dismissal, a respectful dismissal or a disrespectful dismissal as a Notary. Responsibility for the Notary's code of professional ethics in the form of sanctions of reprimand, warning, temporary dismissal (*schorsing),* dismissal (*onzetting)* or disrespectful dismissal from membership of the association. Meanwhile, a person's criminal liability can be in the form of giving criminal sanctions of imprisonment or confinement for unlawful acts committed by him.

IV. CONCLUSION

1. The position and role of the Instrumentary Witness in the Authentic Deed is in accordance with what is regulated and stated in the UUJN, that the Notary is obliged to read the Deed before the presenter in the presence of at least 2 witnesses, and signed at that time by the interceptor, witness, and Notary. In this case, the Instrumentary Witness is in charge of affixing signatures, testifying to the correctness of the contents of the deed, and fulfillment of the formalities required by law. In practice, often the one who becomes the Instrumenter Witness is an employee of the Notary himself. As stipulated in the UUJN, it can be seen that instrumentary witnesses are required by law to be present at the making of a Notarial deed. The position and role of the Instrumenter's witness is one of the conditions that must be met in order for a deed to be said to be an authentic deed and have perfect proof. When the conditions of the formil are not met, then the deed will deprive it of its evidentiary power as an Authentic Deed and will have the power of proof as a deed under the hand.
2. Basically, reimbursement of costs, compensation, and interest can be sanctioned for unlawful acts committed by a Notary in the civil field. While the responsibility of a Notary who commits unlawful acts in the field of administration, the sanctions can be in the form of verbal reprimands, written reprimands, temporary dismissals, dismissals with respect, to dismissal with disrespect. Meanwhile, accountability in the context of the Notary professional code of ethics is in the form of sanctioning reprimands, warnings, temporary dismissal (schorsing), dismissal (onzetting) and disrespectful dismissal from the membership of the association. Then, the Law on the Position of Notary does not provide for criminal sanctions for Notaries who violate the UUJN. Therefore, the liability of a Notary is criminally subject to the provisions of criminal law.

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