

Peran Notaris Sebagai Tergugat Atas Kekurangan Pihak Dalam Akta Perjanjian (Analisis Putusan Mahkamah Agung Nomor 1263 K/Pdt/2021) = The Role of Notary as a Defendant on The Lack of Party in The Deed of Agreement (Analysis of The Decision of The Supreme Court Number 1263 K/Pdt/2021)

Adela Destaliya, author

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Abstrak

Seorang Notaris dalam menjalankan jabatannya memiliki kewajiban antara lain amanah, jujur, saksama, mandiri, dan tidak berpihak menjaga kepentingan pihak yang terkait dalam kepentingan hukum sebagaimana diatur dalam Undang-Undang Nomor 30 Tahun 2004 Tentang Jabatan Notaris beserta perubahannya (UUJN). Notaris harus memperhatikan subjek hukum dan meneliti para penghadap sesuai dengan yang diatur dalam Pasal 39 UUJN. Tesis ini mengangkat dua permasalahan utama yaitu adalah peran Notaris terhadap kekurangan pihak yang dapat berdampak pada tidak sahnya suatu akta perjanjian (pembatalan akta autentik) berdasarkan Undang-undang jabatan Notaris dan Kitab Undang-Undang Hukum Perdata; dan analisis pertimbangan hukum atas putusan: (i) Pengadilan Negeri Selong No. 87/Pdt.G/2019/PNSel tertanggal 16 September 2019; (ii) Putusan Pengadilan Tinggi Mataram Nomor 76/PDT/2020/PT.MTR tertanggal 27 Juli 2020; dan (iii) Putusan Mahkamah Agung No. 1263 K/Pdt/2021, tentang kasus kekurangan pihak dalam akta perjanjian tersebut. Metode penelitian yang dipergunakan adalah yuridis-normatif melalui studi kasus serta menelaah teori, asas-asas hukum serta peraturan perundang-undangan dan pertimbangan-pertimbangan hakim dalam putusan-putusan tersebut. Data yang digunakan untuk menganalisis permasalahan berupa data sekunder yang diperoleh dari studi pustaka dan wawancara dengan narasumber. Kesimpulannya, berdasarkan analisis didasari oleh metode penelitian tersebut dapat disimpulkan bahwa akta perjanjian tidak memenuhi syarat subyektif dan objektif serta hasil perbandingan dari ke-3 putusan tersebut, penelitian ini mengkritisi Putusan PT dan MA dan setuju dengan Putusan Pengadilan Negeri Selong No. 87/Pdt.G/2019/PNSel berdasarkan pertimbangan majelis hakim dalam membatalkan akta perjanjian.

.....A Notary in carrying out his/her position has the obligations of among others, being trustworthy, honest, thorough, independent, and impartial in protecting the interests of the parties involved in the legal matters as regulated under Law Number 30 of 2004 concerning the Position of Notary and its amendments (Notary Position Law). Notaries must pay attention to the legal subjects and examine the appearers in accordance with what is stipulated in Article 39 of the Notary Position Law. This thesis raises two main issues, namely the role of the Notary in the lack of parties that can have an impact on the invalidity of a deed of agreement (cancellation of an authentic deed) based on the Notary Position Law and the Indonesian Civil Code and the analysis of legal considerations on the following decisions: i) Selong District Court Decision Number 87/PDT.G/2019/PNSEL dated 16 September 2019; (ii) Mataram High Court Decision Number 76/PDT/2020/PT.MTR dated 27 July 2020; and (iii) SC Decision, regarding the case of the lack of parties in the deed of agreement. The research method used is juridical-normative through case studies and the examinations of theories, legal principles and laws and regulations and judges' considerations in such decisions. The data used to analyze the problem is in the form of secondary data obtained from literature

studies and interviews with resource persons. In conclusion, according to the analysis based on this research method, it can be concluded that the deed of agreement does not meet the subjective and objective requirements, and the results of the comparison of the three decisions, this research criticizes the High Court and Supreme Court decisions and agrees with the Selong District Court Decision Number 87/PDT.G/2019/PNSEL basing on the considerations of the panel of judges on cancelling such deed of agreement.