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THE POSITION OF INSTRUMENTER WITNESS IN MAKING OF NOTARY DEEDS

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Abstract

Instrumenter witnesses must be present while notaries are preparing an authentic deed. Therefore, the testimony of instrumenter witnesses can be the primary evidence against Notary deeds that violate legal norms, thus ensuring the safety of the Notary's position. The purpose of this study is to see and make an analysis of the requirements of instrumenter witnesses in the making of Notary deeds and review and analyze the testimony of instrumenter witnesses that can be used as the primary evidence against Notary deeds that violate legal norms. The type of research used in this study was normative legal research, which referred to primary legal materials, secondary legal materials, and tertiary legal materials. The approaches were the statute approach and the conceptual approach. The technique of collecting legal materials was the technique of literature studies. The results showed that the absence of procedures for notary employees was a weakness in providing certainty and information to investigators. The vague legal norms in UUJN were related to the position and requirements of instrumenter witnesses in the making of Notary deeds. The role of instrumenter witnesses did not get legal certainty in the case of a problem regarding the deed made by the Notary. There must be legal protection for instrumenter witnesses who give evidence at trial because the role of the instrumenter with witnesses is generally different. Therefore, the instrumenter witness position in the notary deed involvement is given additionally in the clause in UUJN article 40, which regulates the witness in the making of the deed.

Keywords: Instrumenter witness; notary deed; legal norms

1. INTRODUCTION

Notaries have the authority to provide legal counseling regarding the making of authentic deeds to the general public so that the public will receive legal protection and legal certainty. In providing legal counseling, it is not solely due to material or payment, but rather to the social function, idealism and dedication of the Notary function. One form of protection provided by law to a Notary in connection with the making of an authentic deed is the presence of witnesses (Krisna Adi Kusuma, 2022). A witness is a person who gives testimony, either orally or in writing, which explains what he has witnessed himself (waarnemen), whether it is an act or action of another person or a situation or an event. Sudarsono explained that the witnesses were :

"a person who witnessed an event for himself; a person who gives explanations in court proceedings for the benefit of all parties involved in the case, especially the defendant and the accuser; a person who can provide information about everything that is heard, seen and experienced for the sake of investigation, prosecution and trial regarding a criminal case (Pakpahan et al., 2021).

Article 1 number 26 of the Criminal Procedure Code (hereinafter referred to as the Criminal Procedure Code), states that:

"Witness is a person who can provide information for the purposes of investigation, prosecution and trial regarding a criminal case which he has heard for himself, he has seen and experienced for himself".

Article 1 point 1 of the Law of the Republic of Indonesia Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning the Protection of Witnesses and Victims (hereinafter

referred to as the Law on the Protection of Witnesses and Victims of Amendment), states that:

"Witness is a person who can provide information for the purpose of investigation, investigation, prosecution, and examination in a court session about a criminal act which he has heard, seen, and/or experienced himself".

Such is the importance of witnesses in a legal event, so that in civil law, witness evidence is evidence that is in second place after letter evidence as stated in Article 1866 of the Civil Code (hereinafter referred to as the Civil Code) (Cinantya et al., 2022). In criminal procedural law, witness evidence is legal evidence and ranks first as Article 184 of the Criminal Procedure Code (Daus et al., 2019).

The Law on Notary Positions does not regulate the types of witnesses required (Saputra, 2023). Within the scope of the notary, there are two kinds of witnesses, namely identifying witnesses and instrumenter witnesses. An identifying witness is an identifying witness who introduces the appearer to the Notary. The identifying witnesses consist of two persons who are at least 18 (eighteen) years old or have been married and are capable of carrying out legal actions, while the instrumenter witnesses are witnesses who are required by law to be present at the making of a Notary deed.

The witnesses listed in the notary deed are only instrumenter witnesses (instrumentaire getuigen), meaning that the witnesses are required by the laws and regulations. The presence of 2 (two) instrumenter witnesses is absolute, but that does not mean it has to be 2 (two) people, maybe more if the situation requires (Sutrisno, 2007).

Witness requirements are as regulated in Article 40 of the UUJN, which reads:

Every deed read by a Notary is attended by at least 2 (two) witnesses, unless the laws and regulations provide otherwise.

The witnesses as referred to in paragraph (1) must meet the following requirements;

"at least 18 (eighteen) years old or previously married;

capable of carrying out legal actions;

understand the language used in the Deed;

may affix signature and initials; and

do not have marital relations or blood relations in a straight line up or down without restrictions on degrees and sideways up to the third degree with a Notary or the parties.

The witness as referred to in paragraph (1) must be known by the Notary or introduced to the Notary or explained about his identity and authority to the Notary by the appearer.

The introduction or statement of the identity and authority of the witness is stated expressly in the Deed."

In accordance with the above provisions, if the witness is not present at the making of a Notary deed, then the deed only has the power of proof as a private deed as regulated in Article 41 of the UUJN. In the provisions of Article 16 paragraph (1) letter f UUJN, states that:

"Keep everything about the deed he made and all information obtained for the making of the deed in accordance with the oath / promise of office, unless the law provides otherwise".

According to this provision, a notary must keep everything about the deed he made and all information obtained for the making of the deed in accordance with the oath or promise of office, unless the law provides otherwise (Safira et al., 2021).

The existence of instrumenter witnesses besides being intended as evidence can also help a Notary's position be safe in the event that a deed made by a Notary is sued by one of the parties in the deed or a third party, but in reality, a Notary can still be prosecuted both criminally and civilly even though in making the authentic deed has been witnessed by the witness instrumenter.

The Notary Profession is a dignified profession, where a Notary is bound by the Code of Ethics and the Law on Notary Positions. The notary in making an authentic deed must be witnessed by an instrumenter witness. However, Notaries often stumble upon various legal cases reported by parties or third parties in connection with authentic deeds. The Notary profession does not have legal immunity, the Notary must be responsible for his actions that violate the law. Some of these things are the deed was made with the condition that the parties did not face each other, the identity data of one of the parties in the deed was deemed incorrect, or deemed to provide false information, the data regarding the object being agreed did not match the actual

facts, the data provided by one of the parties. or both parties are not correct, there are two deeds circulating between the parties, the number and date are the same but the contents are different, the signature of one of the parties in the minutes is falsified, the appearer uses the identity of another person.

2. METHOD

The type of research used in this research is normative legal research. Normative legal research includes research on legal principles, research on legal systems, research on levels of vertical and horizontal synchronization, comparative law and legal history. Normative legal research refers to primary legal materials, secondary legal materials and tertiary legal materials. The type of approach used in this research is a statutory approach and a conceptual approach. The sources of legal materials used in this study consist of primary legal materials consisting of statutory regulations, secondary legal materials consisting of literature books, journals, papers and other written legal materials. Then tertiary legal materials that are supportive of primary and secondary legal materials consisting of legal dictionaries and Indonesian language dictionaries (Erlina & Sinaulan, 2021; Utama, 2019).

The technique of collecting legal materials used is a literature study technique. The legal materials used in this research are legal materials obtained through library research, for example understanding and studying more deeply about the literature and laws and regulations that have a correlation with direct or indirect discussions (Amiruddin & Asikin, 2004). The legal materials that have been collected are then continued with the analysis process, namely analyzing the collected materials using several techniques, namely description, interpretation, systematization and evaluation techniques and then concluded with argumentation techniques. The description technique is a technique of analyzing legal materials by describing and connecting the problems discussed in this study, namely regarding the position of instrumenter witnesses in making a Notary deed with the theories and literatures that have been collected.

3. RESULT AND DISCUSSION

Requirements for Instrumenter Witness in Making Notary Deeds

A legal event can occur in various fields of law, such as in the field of criminal and civil law. So that from these legal events it can be distinguished into private law events (civil) and public law events (criminal). Events in private (civil) law, for example in the case of buying and selling transactions, are civil events that are most often carried out by people to obtain property rights to an object. Most of the objects that are owned by someone, the ownership rights to the object are obtained because of the delivery by another party, namely the seller. Some people are aware of the importance of evidence so that every legal event committed between them is bound in a deed, it can be in the form of a notary deed or under the hands of two or more witnesses (Hustam Husain et al., 2022; Widiyoko, 2021).

Legal events in the field of public (criminal) law, for example in the case of a criminal act of participating in falsifying an authentic deed is a criminal event committed by a Notary, because in its implementation there is a Notary who deliberately falsifies the documents of the parties, gives fake signatures, even withholds documents. the client who is in the Notary's office, where the Notary is reported to be tried before the court. In this case, it is important that every legal event is witnessed by two or more witnesses, because the presence of witnesses in addition to functioning as evidence can also assist a Notary's position in the event that a deed made by a Notary is sued by one of the parties in the deed or a third party.

In the Legal Dictionary, a witness is defined as someone who has experienced, seen, heard, felt something in a civil or criminal case (Hieriej, 2012). So if you look at the comparison between the definition of witness in the Big Indonesian Dictionary and the definition of witness in the Legal Dictionary, it can be said that the definition of witness according to the Big Indonesian Dictionary is broader than that of the Legal Dictionary (Kholik et al., 2022). The definition of a witness is accommodated in the Criminal Procedure Code, the witness is specified in Article 1 number 26 of the Criminal Procedure Code, which states that:

"Witness is a person who can provide information for the purposes of investigation, prosecution and trial regarding a criminal case which he himself heard, saw and experienced himself."

Another thing about the definition of a witness is contained in Article 1 point 1 of the Law on the Protection of Witnesses and Victims of Amendment, stating that:

"Witness is a person who can provide information for the purpose of investigation, investigation, prosecution, and examination in a court hearing about a criminal act which he has heard himself, seen himself, and/or experienced himself."

Based on the above understanding, it can be concluded that, a witness is someone who sees or knows, and experiences for himself about an event or certain events that occur in social life.

In connection with the above, several opinions from experts related to witnesses in the field of civil law, especially those related to the notarial field, the researcher took the opinion of Tan Thong Kie who also stated that (Kie, 1994: 198) "Witness is someone who testifies with explain what is seen and heard. Sudarsono explained that the witnesses were:

"A person who witnessed an event for himself; a person who gives explanations in court proceedings for the benefit of all parties involved in the case, especially the defendant and the accuser; a person who can provide information about everything that is heard, seen and experienced for the sake of investigation, prosecution and trial regarding a criminal case.

Such is the importance of witnesses in a legal event, so that in civil law, witness evidence is evidence that is in second place after letter evidence as in the provisions of Article 1866 of the Civil Code which states that "Evidence consists of: written evidence, evidence with witnesses, conjectures, confessions, oaths" (Wijaya & Suparno, 2022).

According to Hari Sasangka and Lily Rosita, what is meant by evidence is everything that has to do with an act, where with the evidence, it can be used as evidence in order to raise the judge's belief in the truth of a criminal act that has been committed by the defendant (Budiarsih, 2021; Sasangka & Rosita, 2003). According to the legal dictionary, tools that have been determined in formal law, which can be used as evidence in court proceedings, this means that apart from these provisions cannot be used as legal evidence.

Witness is one of the evidences, whose statement is needed for the purposes of the evidentiary process before a judge, in a case at trial (Trismala & Rahayu, 2022). This is because witnesses are one of the keys in disclosing cases or crimes that have occurred.

In criminal procedural law, witness evidence is the main evidence as stipulated in Article 184 of the Criminal Procedure Code. Witness testimony will only become evidence if it is submitted before the court as stipulated in Article 185 paragraph (1) of the Criminal Procedure Code. Regarding the testimony of a witness alone is considered insufficient, starting from the provisions of Article 185 paragraph (2) of the Criminal Procedure Code, which states that the testimony of a witness alone cannot be considered as sufficient evidence to prove the guilt of the defendant or unus testis nullus testis, it means that if the evidence it is stated that the public prosecution only comes from one witness, without being added to the statements of other witnesses, a single testimony like this cannot be judged as evidence (Harahap, 1993). The relationship of witness testimony with other evidence is very important to support a proof. The evidence itself is everything related to an event that is used as consideration for the judge in deciding a case.

In civil law, witness evidence is in accordance with the provisions of Article 1866 of the Civil Code (Parmono et al., 2024), witnesses who are presented at least two adults and are legally capable, the testimony of one witness before the trial cannot be trusted as long as it is not supported by other evidence, in accordance with the provisions of Article 1905 of the Civil Code which states "The testimony of a witness alone, without any other evidence, cannot be trusted before the Court."

The testimony of a witness alone without other evidence is not considered as sufficient evidence, in accordance with the principle of unus testis nullus testis (a witness is not a witness) as stipulated in Article 1905 of the Civil Code. The evidentiary strength of the testimony of a witness alone should not be considered as perfect by the Judge. The lawsuit must be rejected if the plaintiff in defending his argument only presents a witness without any other evidence. The testimony of a witness coupled with other evidence can only be perfect evidence, for example adding an allegation or confession of the defendant.

The source of his testimony must be clear and true so that his testimony can be

accepted by the judge to determine an event. The testimony of witnesses is not justified from their suspicions or thoughts or opinions, in accordance with the provisions of Article 1907 of the Civil Code which states:

"Each testimony must be accompanied by, reasons for knowing the things explained. Specific opinions or estimates, obtained by reasoning, are not testimony."

It can be concluded that the testimony of witnesses that can be used as evidence that has perfect and binding evidentiary value is the testimony of witnesses originating from two or more witnesses who are mutually compatible, or the statements of witnesses that have a relationship or are in accordance with other evidence.

In making a Notary deed, the Notary is obliged to recognize the parties who are the parties to the Notary deed. The introduction of the appearers by the Notary is formal in nature, in the sense that every appearer who also signs the Notary deed must be known by the Notary. The appearers in this case are those who want an agreement or stipulation to be written authentically in a notarial deed. This means that the appearer must be a party with an interest in the matters to be stated in the notary deed. The deed made by the Notary must be properly signed by the appearers so that the function of the deed is that the appearers, with the signature and information (facts) from the Notary, cannot deny the facts contained in the deed (Tobing, 1983). In every legal event, including the making of a deed by a Notary, of course, the presence of witnesses is required. The notary is in charge of making a deed in this case by presenting the parties and witnesses. Witness is one of the evidences recognized in the legislation as legal evidence. In making a notarial deed, witnesses are needed who know about the contents of the deed.

The position of a witness in making a notarial deed is certainly different from the position of a witness in general who is a witness who has heard and/or witnessed an event that has occurred. The position of the witness in making a Notary deed as one of the formal requirements of a Notary deed is stated in Article 38 paragraph (4) letter c UUJN.P, that "The end or closing of the deed contains: full name, place and date of birth, occupation, position, position, and the place of residence of each witness to the deed". When these formal requirements are not met, the deed is degraded into the power of proof as an underhand deed. Judging from the nature and position as witnesses, the witnesses also listened to the reading of the deed, also witnessed the action or fact that was confirmed and the signing of the deed. The witnesses do not need to understand what was read and there is no obligation for them to keep the contents of the deed in their memory. However, witnesses are obliged to know what constitutes a legal act in it. Because then if there is a dispute on the deed, the Investigator can ask for information regarding legal actions in the deed, or other matters concerning the reading of the deed before a Notary. The presence or absence of the parties at the time of reading or information on the identity of the parties when given to the Notary. The witnesses are not responsible for the contents of the deed (Tobing, 1983).

So the role of the two witnesses in making a Notary deed is to find out if there is a legal event between the parties that was made before a Notary by affixing a signature on the deed so that witnesses here are needed if one day there is a lawsuit from another party who considers the deed that was made not valid. If the witness is legal, then this witness can be asked for information to rectify the problems that arise.

The UUJN does not regulate the classification of witnesses in a Notary deed, but according to Tan Thong Kie there are two types of witnesses in the notary world, namely identifying witnesses and instrumenter witnesses. Introducing Witness or what can be called as Attesterend Witness is a witness who introduces the appearer to the Notary at the beginning when he wants to make a deed. But in practice, this identification witness no longer exists because now almost everyone already has an identity in the form of an ID card, driver's license or other identities. The second is the instrumenter witness, namely the witness who understands and understands and participates in the making of the deed. Instrumenter witnesses must also ensure that the preparation and contents of the deed are in accordance with the applicable law (Kie, 1994).

The task of the instrumenter witness is when making the deed, the instrumenter witness must be present when the deed is read until the deed is signed, and

participate in signing the deed. Because the instrumenter witness was present at the time of making the deed, the instrumenter witness could testify that it was true that the deed had fulfilled the formalities stipulated by the law. Formality in this case means that the instrumenter witness can confirm that the deed has been read by the Notary before it is signed by the parties and this is done by the Notary in the presence of the witnesses and also the parties in the deed.

The scope of the notary witness in the making of a Notary deed is called an instrumenter witness, while in the Act it is not explained about the instrumenter witness itself, the opinion of Notary I Made Pria Dharsana, is as follows:

"Instrumenter witness in the scope of notary is a process of terminology which is determined from the word instrumenter itself. Instrument which means the completeness that must be present in the making of an authentic deed, because the instrumenter witness is witness evidence, the presence of the instrumenter witness can indeed provide the value that is needed to fulfill the requirements for the authenticity of the deed, because in UUJN it is not explained what an instrumenter witness is. alone".

Furthermore, it is explained that the instrumenter witness must meet the following requirements, namely

"Instrumenter witness must be present, know and understand the language of the deed, then present is meant to be present at the time of reading and signing as required from the provisions stipulated in UUJN.P in the provisions of Article 40, so it should not be interpreted differently/ interpreted differently according to the provisions of the law."

Instrumenter witnesses are witnesses who are common in the making of a notary deed, in practice, the notary employees are often used as instrumenter witnesses. Instrumenter witnesses are witnesses in a Notary deed, which are witnesses who must be able to act in law, understand and understand and are present or participate in making the deed, present means being present at the time of reading and signing the deed. Instrumenter witnesses must also ensure that the preparation and contents of the deed are in accordance with the applicable law. The identity of the instrumenter witness is affixed at the end of the deed and also co-signs the deed, together with the parties and also the Notary.

Regarding the legal certainty stated by Peter Mahmud Marzuki above, that the existence of rules as a form of general legal certainty makes individuals know what actions may or may not be done. Against instrumenter witnesses who are indeed common witnesses in the making of a Notary deed, but in the Criminal Procedure Code, the Law on the Protection of Witnesses and Victims, and the UUJN are not stated, explained and have not been regulated explicitly and specifically in the laws and regulations in Indonesia regarding the instrumenter witness himself. In addition, the provisions in Article 40 of the UUJN only stipulates the requirements to be a witness in the making of a notary deed, so that the UUJN does not provide legal certainty regarding instrumenter witnesses.

In addition, the actions of instrumenter witnesses in each Notary deed are included in the notary field, if it is related to Article 16 paragraph (1) letter f of the UUJN concerning keeping everything about the deed made by a Notary secret, the Notary employee as an instrumenter witness must be able to keep the contents of the deed confidential. , if it is related to the judicial process and investigators by the Public Prosecutor that in the article only a Notary is required to attend the examination relating to the Deed he made with the approval of the Notary Honorary Council. In relation to instrumenter witnesses, there are no clear arrangements regarding the summoning of Notary employees as instrumenter witnesses and UUJN does not explain how the authority of Notary employees is to provide Notary deed information, because in UUJN, the procedure for providing information on the contents of the deed is only the Notary himself. The absence of procedures or procedures for Notary employees is a weakness in providing certainty in providing information to Investigators.

The ambiguity of legal norms in UUJN relates to the position of the instrumenter witness in the notary deed, the position of the instrumenter witness does not get legal certainty in the event of a problem regarding the deed made by the notary. Instrumenter witnesses who will be summoned by the investigators to provide their statements as evidence in this case need a concrete rule for the procedure for the requirements of instrumenter witnesses in making a Notary deed so that there is no violation of the law that can cause harm to all parties related to the

deed, including instrumenter witnesses. . The existence of an Instrumenter Witness is not only intended as evidence, but it can also help a Notary's position be secure in the event that a deed made by a Notary is sued by one of the parties in the deed or a third party. However, in reality, a Notary can still be prosecuted both criminally and civilly even though the making of an authentic deed has been witnessed by an Instrumenter Witness.

The power of proof and the responsibility of the instrumenter witness is only limited to the formalities of making the deed. Because the Notary is in charge of making the deed at the request or desire of the parties, then in this case it shows that between the Notary and the parties there has been a legal relationship. The notary must guarantee that the deed he made is in accordance with the legal rules that have been determined, and the notary is responsible for the deed he made only to the extent of the truth of the certainty of the place where the deed was made, the certainty of the date the deed was made, and the certainty of the people as parties to the deed. . It is the notary who understands the contents or clauses in the deed and has been known by the parties. So that if there is a dispute, the witness only provides information to the extent of what he knows about the formalities of the deed, but is not responsible for the contents of the deed.

Statements Of Intrumenter Witnesses As The Main Evidence Against Notary Deeds That Violate Legal Norms

Evidence is an important and very important topic in the trial process. In the trial process in court, evidence is a series that must be carried out by the judge in assessing the facts or statements that are disputed in court to be able to prove their truth. The determination of a suspect by the police, being a defendant by a prosecutor and a convict by a judge in a trial, is greatly influenced by the evidentiary factors in the investigation, investigation and trial process. This is because in the end the judges in deciding a defendant to be a convict, namely by looking at the existing evidence, which shows that the actions committed are correct or in accordance with the existing evidence.

Evidence evidence with witnesses in the trial in the form of testimony. The definition of testimony is evidence that is notified orally and personally by an impartial witness in the case, to provide certainty to the judge before the trial regarding the disputed event. Thus, the elements that must exist in the evidence of testimony are (Ali & Heryani, 2012) :

"The testimony of the witness was spoken by the witness himself orally before the trial.

The purpose of the testimony is to provide certainty to the judge about the events in dispute.

The witness is not a party to the litigation."

Witness testimony is the preferred evidence or number one evidence when compared to other evidence in criminal cases, as referred to in Article 184 paragraph (1) of the Criminal Procedure Code, namely:

"Witness testimony;

Expert testimony;

Letter;

Instruction;

Defendant's statement."

When compared between Article 1866 of the Civil Code and Article 184 of the Criminal Procedure Code, there are striking differences regarding the primacy of the evidence used. In civil law as in Article 1866 of the Civil Code the main evidence is letter evidence or written evidence because the purpose of proof in civil law is to seek formal truth which is always proven in written evidence. In contrast to the purpose of proof in criminal law as described in Article 184 of the Criminal Procedure Code which seeks material truth which does not lie in documentary evidence, but in other evidence as listed in the first order, namely the statements of witnesses. Such is the importance of witness testimony in a civil or criminal law event.

Thus, to be able to impose a sentence on a person there must be a minimum of two pieces of evidence from the five pieces of evidence regulated in Article 184 of the Criminal Procedure Code which regulates legally valid evidence. The above also implies that the Criminal Procedure Code also adheres to the principle of the Minimum Limit of Evidence which regulates the limits on the requirements that must be met in proving the defendant's guilt. Apart from the five pieces of evidence, it is not allowed to be used in proving the defendant's guilt. The

evidence that is justified and has the power of proof is only the five pieces of evidence. Proof with evidence other than the five pieces of evidence above, has no value and has no binding force. In this case, both judges, public prosecutors, defendants and legal advisors are all bound by the provisions of the procedure and assessment of evidence as determined by law.

Proof is a stage that has an important role in making a decision. The process of proof in the trial process can be said to be the center of the examination process in court. Because the evidentiary stage determines the decision handed down by the judge, proof becomes central where the arguments of the parties are tested through the evidentiary stage in order to find the law to be applied (rechtoepasing) or found (rechtvinding) in a particular case (Tjandra & Chandera, 2001). The parties involved in the evidentiary stage are processed in court, each of which has an obligation to prove the truth of what is argued in accordance with the contents of Article 1865 of the Civil Code which states that:

"Everyone who postulates that he has a right, or in order to confirm his own right or to refute a right of another, refers to an event, he is obliged to prove the existence of that right or event."

Evidence (bewijsmiddel) in various forms and types, which are able to provide information and explanations about the problems being litigated in court. The evidence is submitted by the parties to justify the argument of the lawsuit or the argument of rebuttal (Tjandra & Chandera, 2001). Witness testimony has an important meaning in a proof, both civil and criminal. In deciding cases, judges are bound to valid evidence, one of which is testimony evidence. As evidence, testimony has an important meaning in providing additional information to explain a civil or criminal case.

Witness testimony will only become evidence if it is submitted before the court as stipulated in Article 185 paragraph (1) of the Criminal Procedure Code. Regarding witness testimony alone is considered insufficient, starting from the provisions of Article 185 paragraph (2) of the Criminal Procedure Code, which states that the testimony of a witness alone cannot be considered as sufficient evidence to prove the guilt of the defendant or unus testis nullus testis, it means that if the evidence presented is public prosecution only from one witness, without being added to the testimony of other witnesses, a single testimony like this cannot be judged as evidence. So that the relationship of witness testimony with other evidence is very important to support a proof. The evidence itself is everything related to an event that is used as consideration for the judge in deciding a case. Whereas in civil law the evidence is regulated in the provisions of Article 1866 of the Civil Code which states that "Evidence consists of: written evidence, evidence with witnesses, suspicions, confessions, oaths."

The strength of evidence attached to an authentic deed is perfect strength and means that the proof is sufficient with the deed itself unless there is opposing evidence (tegen bewijs) which proves otherwise or proves otherwise from the deed. made in accordance with the legal provisions of a deed as regulated in the Civil Code. The existence of witnesses besides being intended as evidence can also help the position of a Notary because it is very likely for them to see, hear and experience for themselves events related to legal events committed by a Notary, so that it can help a Notary's position be safe in terms of the deed made by a Notary. Notary is sued by one of the parties in the deed or a third party. However, in reality, notaries can still be prosecuted both criminally and civilly even though the authentic deed has been witnessed by witnesses.

The position of the witness as evidence in the trial is to provide testimony in the form of information needed for the purposes of the evidentiary process before the judge, in a case at trial. This is because the witness is one of the keys in disclosing the case or crime that occurred, because the witness is someone who has seen, heard and experienced the events related to the legal event and the testimony of witnesses that can be used as evidence in the trial is the testimony of witnesses who come from from two or more witnesses who are mutually compatible, or the statements of witnesses that have a relationship or are in accordance with other evidence.

Written evidence or letters are the most important evidence in the realm of civil law. In contrast to evidence in criminal cases, the main evidence is witness testimony as described above. This is because someone who commits a crime always tries to get rid of or eliminate evidence in the form of writing and

anything that allows the disclosure of the crime in question, so that evidence must be sought from the statements of people who saw, heard or experienced the crime. On the other hand, in civil practice, for example, in the legal actions of the parties within the framework of their contractual relationship, the parties concerned generally make writings intentionally for the purposes of later proof. The main evidence and the determining factor in civil cases is written evidence. If later there is no evidence in the form of writing, then the party who is required to prove something tries to get people who have seen, heard or experienced the event. These people may also have been intentionally asked to witness the events that took place at the time the incident occurred, and there may also be people who coincidentally saw, heard and experienced the event themselves.

The position of a witness in making a notarial deed is certainly different from the position of a witness in general who is a witness who has heard and/or witnessed an event that has occurred. In making a notary deed, the presence of an instrumenter witness is the fulfillment of one of the formal requirements of the deed concerned. They, by affixing their signatures, testify about the truth that has been done and the fulfillment of the formalities required by the laws and regulations, which are stated in the deed in question and witnessed by the witnesses (Tobing, 1983). As stated in Article 38 paragraph (4) letter c UUJN.P, that "The end or closing of the deed contains: full name, place and date of birth, occupation, position, position, and place of residence of each witness to the deed". When these formal requirements are not met, the deed is degraded into the power of proof as an underhand deed.

Instrumenter witnesses are witnesses who are common in the making of a notary deed, but in the Criminal Procedure Code, the Law on the Protection of Witnesses and Victims, and the UUJN are not stated, explained and have not been regulated explicitly and specifically in the laws and regulations in Indonesia regarding instrumenter witnesses. itself. UUJN only regulates witness requirements in the provisions of Article 40 UUJN.P which stipulates that:

"Every Deed read by a Notary is attended by at least 2 (two) witnesses, unless the laws and regulations provide otherwise.

The witness as referred to in paragraph (1) must meet the following requirements:

At least 18 (eighteen) years old or previously married;

Capable of carrying out legal actions;

Understand the language used in the Deed;

Can put signature and initials; and

Do not have marital relations or blood relations in a straight line up or down without restrictions on degrees and lines up to the third degree with a Notary or the parties.

The witness as referred to in paragraph (1) must be known by the Notary or introduced to the Notary or explained about his identity and authority to the Notary by the appearer.

The introduction or statement of the identity and authority of the witness is expressly stated in the Deed".

The instrumenter witness who is usually an employee of a Notary as a person who participates in the making of the deed and is considered to understand the process of making it (Tobing, 1983) Especially for Notary employees who put their signatures at the end of the deed which is a sign that they testify to the truth that they have done and fulfilled the formalities when making the deed in accordance with what is required by UUJN (Tobing, 1983).

However, the possibility to be summoned and testify in court is not limited only to Notary employees who are witnesses in the making of the deed, Notary employees who are not witnesses in the making of the deed can also be summoned because it is highly likely for them to see, hear and experience the events related to the deed themselves. a criminal act committed by a Notary, in accordance with the understanding of a witness according to Article 1 number 26 of the Criminal Procedure Code. testimony from instrumenter witnesses plays a role in the trial process as evidence if other evidence is deemed lacking or non-existent to provide information on an incident/ dispute, the presence of instrumenter witnesses in addition to being intended as evidence can also help the position of a notary to become safe in the event that the deed made by the Notary is sued by one of the parties in the deed or a third party, the instrumenter witness in giving testimony in the form of his testimony before the trial relating to the Notary deed

is only limited to his responsibilities carried out according to the tasks given by the Notary. So it is limited to the formalities of making the deed and limited to what was ordered or assigned by the Notary in preparing the deed, so that the witness is not responsible for the contents of the deed.

The instrumenter witness who became one of the witnesses' evidence, it was clear that when the instrumenter witness was summoned in the trial, he could only testify to his responsibilities in the process of making the deed. The responsibility of the instrumenter witness is to see the presence of the appearer, the truth of the appearer is to sign and to see and hear the deed read by a notary. If the deed stumbles in legal issues, the instrumenter witness can testify in court relating to his responsibilities. the strength of evidence and the responsibility of the instrumenter witness is only limited to the formalities of making the deed. Because the Notary is in charge of making the deed at the request or desire of the parties, then in this case it shows that between the Notary and the parties there has been a legal relationship. The notary must guarantee that the deed he made is in accordance with the legal rules that have been determined, and the notary is responsible for the deed he made only to the extent of the truth of the certainty of the place where the deed was made, the certainty of the date the deed was made, and the certainty of the people as parties to the deed. . It is the notary who understands the contents or clauses in the deed and has been known by the parties. So that if there is a dispute, the instrumenter witness only provides information to the extent of what he knows about the formalities of the deed, but is not responsible for the contents of the deed.

Legal protection put forward by Philipus M. Hadjon the existence of legal protection guarantees everyone to obtain their rights to resolve disputes that occur, where legal protection also functions to provide justice and can be a means to realize the welfare of the people. In the case of Notary law above involving instrumenter witnesses in the trial, several witnesses who were present at the trial to give their statements were employees of the defendant as well as instrumenter witnesses, namely H. Herlinawaty and Sovia Agustina. In this case, it can be seen that it is important to have legal protection for instrumenter witnesses who testify at trial, because the role of the instrumenter witnesses themselves and the witnesses are generally different, in the case of cases concerning this Notary deed in UUJN that only a Notary has legal protection, so that legal protection against Notary employees as instrument witnesses in the making of a Notary deed are not found in the law.

In the absence of provisions in UUJN regarding protection for Notary employees who are instrumenter witnesses in making the deed, then legal protection for Notary employees who act as witnesses can only be found in provisions outside the Notary position regulations so that it is still a vague legal norm. Instrumenter witnesses in providing information regarding the disputed deed, get protection as witnesses in general before the trial.

The Witness and Victim Protection Act only clearly explains that a person gets protection by the LPSK from the start of the investigation until the end of the process, as explained above in Article 5 paragraph (1) letter a of the Law on the Protection of Witnesses and Victims Changes and refers to Article 2 juncto Article 4 of the Law on the Protection of Witnesses and Victims states that this Law will provide protection for witnesses in all stages of the criminal case court process within the judiciary with the aim of providing a sense of security to witnesses in providing information in every judicial process, and so that witnesses in the court process, they can apply for legal protection so that their rights as witnesses also get protection, including their rights to provide information to the extent of the formalities of making a deed/verlijden of a deed. Instrumenter witnesses in giving testimony at the trial of instrumenter witnesses receive legal protection only to the extent of witnesses in general which are regulated in the Law on Protection of Witnesses and Victims because until now there have been no provisions that specifically and specifically regulate the position of instrumenter witnesses.

4. CONCLUSION

The requirement for an instrumenter witness who is indeed a common witness in the making of a notary deed, but in the Criminal Procedure Code, the Law on the Protection of Witnesses and Victims, and the UUJN the requirements are not stated, explained and have not been regulated explicitly and specifically in the laws and regulations in Indonesia. Indonesia regarding the instrumenter witness itself. the provisions in Article 40 of the UUJN

only regulates the requirements to become witnesses in the making of a notary deed, so that the UUJN does not provide legal certainty regarding instrumenter witnesses, and when it is associated with the judicial process and investigators by the public prosecutor, there is no clear regulation regarding the summons of notary employees. as an instrumenter witness and UUJN does not explain how the authority of a Notary employee to provide information on a Notary deed, because in UUJN, the procedure for providing information on the contents of a deed is only the Notary himself.

The value of instrumenter witness testimony can be used as evidence against the existence of a notary deed, so it is necessary to provide legal protection. The importance of legal protection for instrumenter witnesses who provide testimony at trial, because the role of instrumenter witnesses themselves and witnesses are generally different, in terms of cases concerning notary deeds, while in UUJN only Notaries receive legal protection, so that legal protection for Notary employees as instrumentary witnesses in the making of a notarial deed is not found in the law.

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