

CONSISTENCY OF WITNESSES IN NOTARY OFFICIAL AND PPAT

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ABSTRACT

In making an Akta Autentik (Authentic Official) made by a Notary and a Land Official Making Officer or what is called a PPAT which is the authority, it consists of several parts and one of the things that must be in the Authentic Official section is a witness, which is defined as an identifier witness and an instrumenter witness. Instrumenter witness is a mandatory thing with a minimum number of two people who must have the status as employees in the related PPAT Notary Office, their important existence makes many considerations that must be taken if they have to replace one or both of them, including when the PPAT Notary cooperates with freelancers who require it become an instrumenter witness, but often the PPAT Notary does not know the legal actions and the actual identity in the draft official, he receives from the freelancer which creates a gap to create a dispute, besides that, another loss received by the Notary and PPAT is that his credibility is starting to be doubted. This study aims to find out what and what effect it has on the consistency of instrumenter witnesses in an Authentic Official, this study uses a normative juridical research method by comparing *das sein* and *das sollen* about instrumenter witnesses in an Authentic Official, in which the results of research on the consistency of complementary witnesses can lead to a dispute because the PPAT Notary in making or signing the official does not meet directly with the interested parties which can injure the making and meaning of the Authentic Official definition and is at high risk for the Notary and the PPAT itself. Therefore, with this writing, it is expected that Notaries and PPATs who have been or are new and will be actively serving to be able to be careful in carrying out their duties and positions, especially in the inclusion of witnesses in the official, including to cooperate with freelancers.

Keywords: Instrumenter witness, Authentic official, Disputing.

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INTRODUCTION

The existence of a Notary or PPAT is still needed in the life of the state in Indonesia. This certainly cannot be separated from the provisions of the Act which regulates the existence, as well as the authority possessed by the Notary himself. This can be seen in Law Number 2 of 2014 concerning the Position of a Notary, in which the existence, duties, functions, authorities, and legal products of the notary itself are regulated in the Act. Notary in simple terms is as a registrar or a notary who has the task of being a registrar or recording legal events that really need to be made a record with the need or interest of proving before the law or in a court that has perfect evidentiary power or can be called in other words. Authentic Official. The term notary comes from the word "*nola litcraria*," which means a sign (letter brand or character) that states something (Notodisoerjo, 1999). Article 1 No. 1 in UU Nomer 2 of 2014 concerning Amendments to Undang-undang Nomor 30 Tahun 2004 concerning the Position of a Notary (hereinafter referred to as UUJN-P) states that a Notary is a public official authorized to make an Authentic Official and has other powers as referred to in this Law or based on other Laws. The term Akta Autentik in English is called Authentic Official, while, in Dutch, it is called Authentieke akte van, which has been regulated in Article 1868 of the Civil Code (hereinafter referred to as the Civil Code) and various other laws and regulations (Salim, 2015).

An Authentic Official is regulated in UUJN-P in the general provisions of Article 1 number 7 that "A Notary Official, hereinafter referred to as a Official, is an Authentic Official made by or before a notary according to the form and procedure stipulated according to this law." According to article 1870 of the Civil Code, that an Authentic Official has a perfect burden of proof about what is contained in it, which makes the position of an Authentic Official made by a notary very important in terms of determining the truth of a legal event that occurs contained in the Authentic Official with note that the official was made based on the

law, but in this case, even though the Authentic Official is regulated as a perfect means of proof, the parties listed in the Authentic Official must be held accountable both in terms of their legal actions, statements, or writings made in the Authentic Official, which include the parties who carry out legal actions, Instrumenter witnesses, identifying witnesses if any, and the Notary himself, and it is possible that parties outside the official who have an interest in it must participate in taking responsibility for it before the law or court if a dispute occurs.

In the event that a Notary who makes an Authentic Official has responsibility for the writing, he contains in his official which is based on the information and statements made by the parties interested in it as long as what is written in the official is true and in accordance with the statements and statements of the parties. While the witnesses who must be more than one person because a witness is not a witness (Parlindungan, 2021) have a less burden of responsibility than a Notary who makes them, they have a responsibility, because they are considered to know, see, and listen directly without an intermediary than a legal actions that are recorded in the Authentic Official made by a Notary, the witnesses contained in the official are only limited to instrumenter witnesses (*Instrumentaire getuigen*) meaning that witnesses are desired by laws and regulations, the presence of two instrumenter witnesses is absolute, but does not mean that it must be two people, maybe more if at all possible (Nathasya). Meanwhile, the parties who carry out legal actions that are recorded in the Authentic Official by the Notary have the burden of responsibility for the actions, statements, and information that he provides to the Notary which will be included in the Authentic Official. Hence, with the division of the burden of responsibility based on the portion, a Notary and his witnesses should not have a problem with the official they made as long as what is stated in the official which is based on the parties. However, often when the Authentic Official made by a Notary is disputed or brought to justice, they often feel uncomfortable about the officials that have been made.

Witnesses are divided into two, namely, instrumenter witnesses are witnesses who actually work in the related notary office who have the duty as a witness in every notarial official he makes, instrumenter witnesses must be able to act in law and understand the language of the official; there must be no close family relationship in the law. The meaning of the line up and down without limits and the side line up to the third degree either with a Notary or with the appearers (Sutrisno, 2007). The task of this instrumenter witness is to put a signature, testify to the truth of the contents of the official, and to fulfill the formalities required by law. In the current practice, the instrumenter witnesses are notary employees themselves (Khairulnas, Nilai Keberadaan Saksi Dalam Akta Notaris, 2014).

While the identification witness who serves as a person who introduces interested parties to the Notary whose identity is also listed on the official, and affixes his signature at the end of the official who is also responsible for what happened at the official. An identifying witness is a witness who is not always present in the officials made by a Notary, sometimes when an identifying witness introduces the parties to a Notary in the first case, in the second need and so on, the same parties will come personally to the Notary before without having to bring a witness. Identification so that an identifying witness is not always present in every Notary official even though the parties appear before and ask for the official to be made repeatedly. As for instrumenter witnesses, they will always be present in every Notary official made, while they are still working in the Notary's office and have responsibilities as witnesses.

However, in different circumstances, there are many opportunities that a Notary will list many different witnesses in each official, such as witnesses A and B in official 1, witnesses A and C in official 2, and witnesses C and B in official 3, where one of the witnesses is a person who does not work as a notary employee in the related notary office, of course this will be a problem where if the official that has been made turns out to be disputed by one party or another party who has an interest in it. Hence, in this paper, we will discuss the consistency of the existence of witness in notary official and PPAT

Notary official and PPAT

Objectives

This paper is specifically intended to find out what is the difference between an identifying witness and an instrumental witness and to find out the legal consequences if in an authentic deed the instrumental witness often changes or is inconsistent.

METHODS

The research method that will be used in this research is the normative juridical research method, which emphasizes the use of written legal norms in the legislation, applicable legal norms, and codes of ethics which are expected to be able to answer in detail, systematically and thoroughly regarding consistency of the presence of witnesses in the notarial official and the PPAT.

The type of research used in this study is descriptive analysis, which is to obtain clarity on problem solving and conclusions are drawn, namely, from general matters to specific matters to describe the consistency of the presence of witnesses in Notary officials and PPAT (Prihardiati, 2021).

Sources of data used in this study are secondary data, the secondary data and the authors divide into three parts, namely:

1. Primary legal sources, namely, legal sources that are the legal basis as well as applicable laws in Indonesia
2. Secondary legal sources, namely, materials that provide an explanation of primary legal sources such as materials in the form of books, scientific works and so on
3. Tertiary legal sources, namely, materials that provide guidance on primary and secondary legal sources such as legal dictionaries, encyclopedias, and bibliographies.

The data obtained will be analyzed by descriptive analysis; the data obtained will be processed and then described in the form of a logical and systematic description to describe the consistency of the presence of witnesses in the notarial official and the PPAT.

RESULTS

Witness in the authentic official

The process of making an Authentic Official is not only for the parties and the Notary but also there must be a witness who also participates in affixing the signature in the making of the Authentic Official, because it is required by law. In its implementation, witnesses can be categorized as one piece of evidence. It can be said as a witness if the person is a person who saw directly or knows the events of an event, can provide information on an event he has seen, a person who can provide information before a judge for the sake of the trial regarding what he saw (Nathasya *et al.*, n.d.). A witness has the duty to give testimony according to what he witnessed (see), heard, and felt at the time of the incident (Dwinanda, 2016).

Notary in making the Authentic Official, there is an act of fraud or falsification of identity in the official either due to his own actions or due to the activities of the parties who falsify his identity, the Notary can be asked for information to account for the office that he made and against the witness identification the provisions of Article 39 constitution are not explained about how the position of the identifying witness and what is the responsibility of the identifying witness if there is an act of fraud or forgery by the parties introduced by the identifying witness before a Notary. The provisions in Article 40 paragraph (2) of the UUJN-P only determine the conditions for being a witness in an official. Therefore, Article 39 of the UUJN-P does not explain how the position of an identifying witness is and how the responsibility of an identifying witness is for the statements of the identities of the appearers, so, based on the legal issues, it can be said that there is a vagueness of legal norms.

The definition of witnesses can also be found in the Criminal Procedure Code (hereinafter referred to as the Criminal Procedure Code) in the provision of Article 1 paragraph 26 that it is determined that a witness is someone who can provide an explanation of what he sees, hears, and feels. Article 1 of the Law on the Protection of Witnesses and Victims provides the understanding that a witness is someone who can provide information for the benefit of the judicial process.

In the Criminal Procedure Code (KUHP), the position of a witness is one of the legal evidence according to the provisions of Article 184 of the Criminal Procedure Code, and according to the provisions of Article 1 of the Criminal Procedure Code, a witness is a person who can provide information for the purposes of investigation, prosecution, and trial regarding a crime. Criminal cases that he has heard for himself, he has seen and experienced for himself (LPSK, 2022). based on the above provisions, witnesses are seen when something has become a dispute and the stages of examination to find the truth of a problem or dispute has begun, but actually, the witness starts when the initial act or legal event itself begins. As in the sale and purchase agreement, when the two parties between the seller and the buyer have agreed on the agreement which is attended by the witness, the witness has started working at that time, because the witness must be the person who saw, heard, and experienced a legal event that occurred. If the witness in this case is intended in an Authentic Official made by a Notary or PPAT, then the witnesses included can be divided into two, namely, introducing witnesses and instrumenter witnesses.

Identifier witness

According to article 39 paragraph (2) UUJN-P that, "The appearer must be known by a Notary or introduced to him by two identifying witnesses who are at least 18 years old or have been married and are capable of carrying out legal actions or introduced by two witnesses. (two) other appearers." The position of the identifying witness is then confirmed in the official in Article 39 paragraph (3) of the UUJN-P with the word "Identifying Witness" in the official to be signed. An

identifying witness (astesterend gutelgen) can be defined as a witness whose job is to introduce the appearers to the Notary in making an Authentic Official (Dwinanda, 2016). From the above provisions, it can be concluded that identifying witnesses are witnesses who come from the community who introduce clients to the Notary due to an interest, or *vice versa*, namely, clients who bring witnesses to be included in the official requested, besides that they also have the duty to put a signature on the official that has been made which indicates that the identifying witness has contributed to the related official or at least knows that a legal action has taken place by the parties recorded by the Notary in the form of an Authentic Official.

The position of an identifying witness in making an Authentic Official is to provide legal certainty regarding his legal actions and certainty of the identity of the parties. The presence of an identifying witness further adds to the Notary's confidence in the identity of the appearers. The presence of an identifying witness can give the Notary a sense of trust regarding the parties appearing, the presence of an identifying witness can also be at the will of the appearers, because the appearers cannot introduce themselves to the Notary which could happen because the appearers are elderly or unofficial ask for help to find a person. Competent notary.

The responsibility of the identification witness in an Authentic Official is not only limited to introducing the parties to the authorized official but also when the legal actions contained in the Authentic Official are disputed by one party or another party who has an interest, the identifying witness must also be responsible and provide his testimony before the law. An identifying witness can be held criminally responsible if he intentionally gives false information to a notary regarding the identity of the appearers in the case of making a official. The criminal sanction imposed on the identifying witness is participating in assisting the criminal act, because the identifying witness is considered to know the truth of the information presented by the appearer (Hendra, 2012).

Instrumenter witness

According to Subekti, a testimony must be about events that were seen with their own eyes or experienced by a witness. Hence, the witness should not only hear from other people's words about an event. This testimony adheres to the "unus testis nullus testis" system, that is, the testimony of a witness is not a witness (Article 1950 of the Civil Code). Each event stands alone and is related to each other and is left to the judge to determine (Article 1906 of the Civil Code) (Simanjuntak, 2014).

In general, witness testimony is valid evidence, a witness is a person who gives testimony, either orally or in writing or by signature, that is, explaining what he witnessed himself (waarnemen), whether in the form of actions or actions of other people or an incident (Tobing, 1992).

Instrumental witnesses must be able to act in law, understand the language of the official, there must be no close family relationship in the sense of an unlimited upward and downward line and a side line up to the third degree either with a Notary or with the appearers. The task of this instrumenter witness is to put a signature, testify about the truth of the contents of the official, and fulfill the formalities required by law. In the current practice, the instrumenter witnesses are employees rather than notaries themselves. The stipulation that at least two witnesses must attend the reading of the notary official, is in line with the principle in the Criminal Procedure Code with the term Unus Testis Nullus Testis as regulated in Article 169 HIR/Article 306 RBg which reads the testimony of a witness only, without any other evidence before the court cannot be trusted.

Instrumenter witnesses are generally people who are actually working in the Notary's office as employees who have the duty to be witnesses in every notarial official, so if you refer to the applicable law, it means that they must always be there from the beginning consulting the appearers to the public. The notary has the duty to draw up the deed, up to the reading and settlement of the deed itself, and must always be present at every Notary's office or at least form the majority of the Notary's office.

DISCUSSION

Legal consequences on authentic officials with changing instrumenter witness

Notaries after obtaining a Decree of Appointment from the Minister of Law and Human Rights, and being appointed as PPAT by the Minister of the National Land Agency have the right to establish and open a notary office and PPAT themselves. However, in the establishment and opening of an office, the existing requirements must be met and one of them is the presence of witnesses. Two employees at the beginning of opening an office are an absolute requirement, this happens because the product from a Notary or PPAT is an Authentic Official, while an Authentic Official in it must contain at least two witnesses. These two witnesses are not random people appointed as witnesses, but these two people have to work as employees or staff at the PPAT Notary Office because the making of an Authentic Official can happen at any time when there are clients who appear for a official to be made due to a legal act.

If quoted in a Notary official or PPAT which, at the beginning of the official, is "present before me/facing me" which means that clients come to the PPAT Notary office to meet with officials and ask for a official to be made or just for consultation, whichever employees or staff who are required to have two people actually see and hear what the clients want. With time the PPAT notary office runs, of course there will be an increase in the number of clients who come and ask for a official to be made, so the number of employees or staff will also increase according to the needs needed. It is assumed that, in one PPAT notary office, there are five employees working, it is possible that the five of them alternately become Instrumenter witnesses in the official in accordance with the circumstances that define the witnesses mentioned above, but, in practice, the instrumenter witnesses are the same people, persons – the person who has the longest working period (senior) than other employees, or has more abilities than other employees, and in official the efficient use of instrumenter witnesses is like that, continuously using the same witnesses while still working in the office (Sujanayasa et al., 2016). Even though you always use the same witness, it is not necessarily that the witness is always present in every legal action that is explained by the appeared to the Notary, and it is possible that the witness only finds out after being notified of the details of the legal action before the Notary to which the witnesses are. It breaks the definition the witness himself.

The change in who is the instrumenter witness is not a problem as long as they are still part of the PPAT notary office employees and have the status as employees, besides that their identity is also listed in the Authentic Official, but it is a different story if someone other than the notary office employee is considered as if If you are an instrumenter witness, of course, it will injure the meaning of the instrumenter witness itself and can indirectly worsen the relationship with other PPAT Notaries, because it can be confirmed that the Notary cooperates with other people called freelancers. One of the things that becomes a problem when collaborating with freelancers is about the truth of the contents of the official itself, because the freelancers themselves deal with the clients, then make the official to be signed, only then signed by the PPAT Notary at a different place, time, and event so that The PPAT Notary only knows based on the draft official made by the freelancer, and the statements on the situation that come from the freelancer's own mouth without the PPAT Notary knowing directly from the parties who want it (Anggelina, 2019) if this is true, then it is not a big problem, especially in the legal action itself, but if what is brought is something that is not true and is contrary to what the party concerned wants. client, then this is a big problem that can arise at any time, and of course the parties who are officials must be held accountable for their actions, including the PPAT Notary himself.

In addition to the PPAT Notary who is responsible, of course, the instrumenter witness listed must also be responsible, if in the case of a dispute later, the witness who is considered an instrumenter can be found based on his identity in the official, then the burden borne by the

PPAT Notary is not too heavy, but if the witness turns out to be what is needed in formal and non-formal evidence cannot be presented or found, the more heavy the responsibility borne by the PPAT Notary, it is possible that the relevant official is considered guilty because he has falsified a official that harms others for his own benefit which, of course, can be threatened criminal penalties up to dismissal as PPAT Notary (Utomo and Safi'i, 2019).

On the other hand, PPAT Notaries who collaborate with freelancers have a bad impact in the eyes of other PPAT Notary friends, this can reduce the credibility of the PPAT Notaries themselves, because they are considered to be PPAT Notaries who are not or are not selling well in terms of service to the community. Another assumption that arises is that the PPAT Notary seems to receive a salary from a freelancer, even though his position is an independent position. On the other hand, this has an impact on the credibility of the PPAT Notary itself which can decrease.

Efforts that can be made against instrumentary witness outside the PPAT notary's office

A witness who is considered an instrumenter is an error or deviation from the definition in which an instrumental witness is a witness who actually works at the PPAT notary office while those who are considered an instrumenter witness are people who do not work in the relevant office but is instrumental witnesses, because they are dealing with clients and making draft from Official for signature by the relevant PPAT Notary. At least, in the event that the notary who accepts, the freelance has violated the notary code of ethics Article 4 number 5 concerning the prohibition that "signing a official whose preparation process has been prepared by another party," of course, the sanctions that can be received by the related notary can be in the form of a reprimand up to the dismissal of the association unintentionally respect.

Normically, there is no definite or strict prohibition on witnesses who are considered instrumenters, but for the common good and to overcome or prevent disputes or other unwanted matters, the first step is to refuse or not cooperate with freelancers. However, this does not necessarily make PPAT Notaries refuse to cooperate; some of them offer other, safer steps for all parties.

The PPAT Notary will make an offer to the freelancer who proposes the Cooperation while still presenting the parties before the PPAT Notary so that the related PPAT Notary can directly confirm the identity, as well as what legal actions are desired by the clients by providing fees to the related freelancers and the workload will be directly with the PPAT notary and there is a possibility that the freelancer does not need to be a witness who is considered instrumental or as an identifying witness so that in the end the PPAT notary carries out the work according to the procedures without ruling out the existence of the freelancer in fact, there are already many freelancers who have resigned after receiving a refusal to cooperate with the solutions offered by the relevant PPAT Notary (Mulyanto, 2022).

CONCLUSION

In providing services to the community related to the duties of his position, the PPAT Notary must provide a service place in the form of a PPAT Notary Office, in the establishment of the office it must be based on predetermined conditions, one of which is to have two employees who will be witnesses. Over time, instrumental witnesses develop into witnesses who are considered instrumental because there is a PPAT Notary who works with freelancers, this makes freelancers have to become tool witnesses.

Instrumental witnesses who often change in the PPAT Notary official are normally not a problem, because the Notary Code of Ethics is only prohibited from accepting draft official from other people, but when a official made by a freelancer can become a dispute because the PPAT Notary does not directly meet with interested parties which makes PPAT Notaries unable to ascertain what their wishes are and cannot check the authenticity of their identities where the burden of PPAT Notaries is much greater than witnesses who are considered instrumental, even this can reduce the credibility of the Notary PPAT itself.

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