RINGKASAN

SYIFA AZZAHRA, Program Studi Magister Kenotariatan Fakultas Hukum, Universitas Jenderal Soedirman, Penerapan Prinsip Kehati-Hatian Terhadap Peralihan Hak Atas Tanah Yang Didasarkan Pada Perjanjian Pinjam Nama Di Indonesia (Studi Kasus Putusan Nomor 4223 K/Pdt/2022). Komisi Pembimbing, Ketua Prof. Dr. Tedi Sudrajat, S.H., M.H dan Anggota Rahadi Wasi Bintoro, S.H., M.H.

Prinsip kehati-hatian merupakan sikap waspada baik pada diri sendiri maupun bagi orang lain dengan memperhatikan konsekuensi dari setiap tindakan yang dilakukan. Notaris/PPAT dalam menjalankan tugasnya wajib menerapakan prinsip kehati-hatian untuk melindungi kepentingan masyarakat dalam hal mengenal penghadap dan proses pembuatan suatu akta. Berdasarkan ketentuan Pasal 16 Ayat (1) huruf a Undang-Undang Jabatan Notaris dan Pasal 2 Peraturan Menteri Hukum dan Hak Asasi Manusia Nomor 9 Tahun 2017 Tentang Penerapan Prinsip Mengenali Pengguna Jasa Bagi Notaris.

Tujuan dilakukannya penelitian ini yakni untuk menganalisis pertimbangan hukum hakim terhadap keabsahan Akta Jual Beli yang telah dinyatakan batal demi hukum akta kuasanya dalam Putusan Nomor 4223 K/Pdt/2022 dan menganalisis penerapan prinsip kehati-hatian Notaris/PPAT terhadap perjanjian pinjam nama di Indonesia. Metode penelitian menggunakkan yuridis normative dengan pendekatan perundang-undangan, kasus dan konseptual. Spesifikasi penelitian menggunakan analisis preskriptif. Sumber data yang digunakan dalam penelitian ini adalah primer, sekunder, dan tersier. Metode pengumpulan data menggunakan studi kepustakaan. Metode penyajian data dalam bentuk teks naratif. Analisis data menggunakan analisis normative kualitatif.

Hasil penelitian yang diperoleh, dari pertimbangan hukum hakim dalam Kasus Putusan Nomor 4223 K/Pdt/2022 kurang tepat, menyatakan sah jual beli atas obyek bidang tanah yang didasarkan dari akta perjanjian pinjam nama dan akta kuasa membeli yang telah dinyatakan batal demi hukum. Hal ini melanggar ketentuan Pasal 1320 Ayat (4) KUHPerdata yaitu kausa yang halal. Notaris/PPAT membantu membuat akta perjanjian pinjam nama dan akta kuasa membeli dari WNA kepada WNI, berakibat batal demi hukum dan melanggar ketentuan Pasal 21 dan 26 UUPA. Notaris/PPAT tidak menerapkan prinsip kehati-hatian dengan melanggar ketentuan Pasal 16 ayat (1) huruf a Undang-Undang Nomor 2 Tahun 2014 tentang Jabatan Notaris dan Peraturan Menteri Hukum dan Hak Asasi Manusia Nomor 9 Tahun 2017 tentang Penerapan Prinsip Kehati-hatan mengenali pengguna jasa bagi Notaris. Notaris/PPAT tidak dapat membantu membuat akta perjanjian pinjam nama dan akta kuasa membeli antara WNA dengan WNI karena akan berakibat batal demi hukum dan diharapkan Notaris/PPAT dapat memahami dan menerapkan prinsip kehati-hatian dalam pelaksanaan tugas dan jabatannya dengan memperhatikan ketentuan peraturan perundang-undangan yang berlaku.

SUMMARY

SYIFA AZZAHRA, Master of Notary Program, Faculty of Law, Jenderal Soedirman University, Application of the Principle of Prudence to the Transfer of Land Rights Based on a Name Borrowing Agreement in Indonesia (Case Study of Decision Number 4223 K/Pdt/2022). Advisory Commission, Chairperson Prof. Dr. Tedi Sudrajat, S.H., M.H and Member Rahadi Wasi Bintoro, S.H., M.H.

The principle of caution is an attitude of vigilance both for oneself and for others by paying attention to the consequences of every action taken. Notaries/PPAT in carrying out their duties are required to apply the principle of caution to protect the interests of the community in terms of recognizing the person appearing and the process of making a deed. Based on the provisions of Article 16 Paragraph (1) letter a of the Notary Law and Article 2 of the Regulation of the Minister of Law and Human Rights Number 9 of 2017 concerning the Application of the Principle of Recognizing Service Users for Notaries.

The purpose of this study is to analyze the judge's legal considerations regarding the validity of the Deed of Sale and Purchase which has been declared null and void by law as its power of attorney in Decision Number 4223 K/Pdt/2022 and to analyze the application of the Notary/PPAT's prudential principles to name-borrowing agreements in Indonesia. The research method uses normative juridical with a statutory, case-based, and conceptual approach. The research specification uses prescriptive analysis. The data sources used in this study are primary, secondary, and tertiary. The data collection method uses literature study. The data presentation method is in the form of narrative text. Data analysis uses qualitative normative analysis.

The research results obtained, from the judge's legal considerations in Case Decision Number 4223 K/Pdt/2022 are not quite right, stating that the sale and purchase of a land plot object is valid based on a deed of name loan agreement and a deed of power of attorney to purchase which have been declared null and void. This violates the provisions of Article 1320 Paragraph (4) of the Civil Code, namely a lawful cause. The notary/PPAT assisted in making a deed of name loan agreement and deed of power of attorney to purchase from a foreigner to an Indonesian citizen, resulting in it being null and void and violating the provisions of Articles 21 and 26 of the UUPA. The notary/PPAT did not apply the principle of prudence by violating the provisions of Article 16 paragraph (1) letter a of Law Number 2 of 2014 concerning the Position of Notary and Regulation of the Minister of Law and Human Rights Number 9 of 2017 concerning the Application of the Principle of Prudence to identify service users for Notaries. Notaries/PPATs cannot assist in making deed agreements for borrowing names and deeds of power of attorney to purchase between foreign nationals and Indonesian citizens because this will result in them being legally void and it is hoped that notaries/PPATs can understand and apply the principle of caution in carrying out their duties and positions by paying attention to the provisions of applicable laws and regulations.