

LEGAL ASPECTS OF THE VALUE OF EVIDENCE IN NOTARY DEED

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Abstract

A notary is a public official sworn in by the state to provide legal services to the public. One of the leading powers of a notary is to make a notarial deed or an authentic deed which is a form of written evidence. An authentic deed is made by or before a notary and made at the place where the deed was done and its form is strictly regulated by law. The problem raised in this research is the value of proof of a notary deed for a legal act by the parties. The research method used is a form of normative juridical law research. The type of data used is secondary data. Secondary data is obtained through a literature search/library study consisting of primary, secondary, and tertiary legal materials. The responsibility of a notary is to guarantee the truth of the existence of a legal action carried out by the parties. In practice, notaries have often considered parties to the deed, but in fact the notary deed contains something desired by the parties who bind themselves in an agreement. The notary is only authorized to write the parties' will into a notarial deed so that the deed in question only contains a statement or original legal action of the parties' will written using legal sentences. If the contents of the deed are disputed, then the problem should be the problem of the parties.

Keyword: Notary Public; Notarial Deed; Authentic, Proof

Abstrak

Notaris adalah pejabat umum yang disumpah oleh negara untuk memberikan jasa hukum kepada masyarakat. Salah satu kewenangan utama notaris adalah membuat akta notaris atau akta otentik yang merupakan salah satu bentuk alat bukti tertulis. Akta otentik dibuat oleh atau di hadapan Notaris dan dibuat di tempat dibuatnya akta itu dan bentuknya diatur dengan tegas oleh undang-undang. Permasalahan yang diangkat dalam penelitian ini adalah nilai pembuktian akta notaris terhadap suatu perbuatan hukum oleh para pihak. Metode penelitian yang digunakan adalah penelitian hukum yuridis normatif. Jenis data yang digunakan adalah data sekunder. Data sekunder diperoleh melalui penelusuran pustaka/studi kepustakaan yang terdiri dari bahan hukum primer, sekunder, dan tersier. Tanggung jawab notaris adalah menjamin kebenaran adanya perbuatan hukum yang dilakukan oleh para pihak. Dalam prakteknya notaris sudah sering mempertimbangkan pihak-pihak yang membuat akta, namun pada kenyataannya akta notaris memuat sesuatu yang dikehendaki oleh para pihak yang mengikatkan diri dalam suatu perjanjian. Notaris hanya berwenang menuliskan wasiat para pihak ke dalam suatu akta notaris sehingga akta yang bersangkutan hanya memuat pernyataan atau perbuatan hukum asli dari wasiat para pihak yang ditulis dengan menggunakan kalimat-kalimat yang sah. Jika isi akta dipersengketakan, maka masalahnya harus menjadi masalah para pihak.

Kata kunci: Notaris; Akta Notaris; Otentik, Bukti

INTRODUCTION

Notaries in carrying out their positions have the function of providing services in civil law, especially if there is a legal action between the parties made in the form of a deed. Notaries issue a product, namely a deed, where the deed is expected to be a form of certainty and legal protection for the parties. In Article 1 point 1 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of a Notary (from now on referred to as UUJN) it is emphasized that a Notary is a public official who has the central authority to make authentic deeds and other authorities, as intended of this law or other laws.¹

Furthermore, the rules regarding the authority of a Notary are regulated in Article 15 of the UUJN, namely that a Notary has the authority to make an authentic deed that contains all actions, agreements and stipulations required by laws and desired by the interested parties to be mentioned in an authentic deed, guaranteeing certainty of the date of making the deed, keeping the deed, providing copies and quotations of the deed, *grosse*, as long as the making of the deed is not given to other officials or other people determined by law.²

In addition, other authorities are: to ratify signatures and to determine the certainty of the date of the letter under the hand in a particular book to be registered; book a letter under the hand in a particular book to be registered; make an original copy of the letter under the hand in the form of a copy containing the description as written and described in the letter; carry out validation of the compatibility of the photocopy with the original letter; provide legal counseling related to the making of the deed; make a deed of minutes of auction; as well as other authorities that have been regulated by law.

The deed is a collection of writings poured by the parties who agreed on a legal act and the deed can function as evidence and the basis for the judge's consideration in deciding a case in court. The notary deed, in principle, has complied with the provisions in Article 1868 of the Civil Code (from now on referred to as the Civil Code), which states that a deed made by or before a public official is authorized to make it, in this case a notary, and made at the place where the deed was done and its form. explicitly regulated by law.³

A notary deed has perfect and evidentiary solid power. The notarial deed must be considered binding and valid against the parties by what has been described in the deed until there

¹ Amrizakar, *Tabir Kesaktian Akta Notaris*, Cetakan Pe (Jakarta: Depok: Khalifah Mediatama, 2020).

² G H S Lumban Tobing and Peraturan Jabatan Notaris, "Erlangga" (Jakarta, 1996).

³ Suci Harumi and Amin Purnawan, "Law Enforcement by Judge to Notary after Amendment of Notary Law," *Sultan Agung Notary Law Review* 2, no. 3 (2020): 261–71.

is a final and binding decision; this is known as the principle of presumption of validity (presumption *instans causa*).⁴

A notarial deed is done based on the will of the parties, thus the contents of the deed contain a statement or original legal act of the will of the parties written using legal sentences in the form of an authentic deed. The notary's responsibility is to guarantee the truth of the existence of a legal action carried out by the parties, starting from the date, time, and place of doing the deed.

While the content of a legal act written in the deed is the parties' responsibility. As a legal service to the parties, a notary can provide opinions and legal solutions for a legal act by considering the rule of law.⁵

The notary must hear the statements of the parties without a tendency towards one of the parties, which is then stated in the notarial deed as a result of the parties' statements. Furthermore, the notary deed must be read directly and agreed upon by the parties, and finally the parties sign the notarial deed before the notary.⁶

A notary deed can guarantee the civil rights of legal subjects, after the authenticity of the agreement. As long as there is no attempt to cancel the parties entitled, the civil rights of the legal subject cannot be contested.⁷

For example, the rights of legal subjects listed in the Credit Agreement made in a notarial deed, one of which is to receive installment payments every 25th of a month, and if it is not paid within a certain period, there are inevitable legal consequences. Based on the provisions contained in the notarial deed, the civil rights of legal subjects must be properly respected. Based on the above, the problem discussed in this study is the value of the proof of a notary deed for a legal act by the parties.

RESEARCH METHODS

The form of research used in this research is normative juridical or referred to as library law research. This method is used to get the absolute truth by referring to the applicable laws and regulations, especially those related to notarial law. The type of data used is secondary data.

Secondary data is obtained by conducting a literature search/library study consisting of

⁴ Amrizakar, *Tabir Kesaktian Akta Notaris [Sumber Elektronik]* (Depok: CV. Khalifah Mediatama, 2020).

⁵ Habib Adjie, "Kebatalan Dan Pembatalan Akta Notaris, Bandung: PT," *Refika Aditama*, 2011.

⁶ I Ketut Tjukup et al., "Akta Notaris (Akta Otentik) Sebagai Alat Bukti Dalam Peristiwa Hukum Perdata," *Acta Comitas* 2 (2016): 180–88.

⁷ Rahmawati Boty, "Kekuatan Akta Notaris Dalam Menjamin Hak Keperdataan," *JCH (Jurnal Cendekia Hukum)* 3, no. 1 (2017): 85–98.

primary, secondary, and tertiary legal materials.⁸ Primary legal materials are legal materials that have binding power, namely the laws and regulations related to this research.⁹ Including the Civil Code, and Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary.

Secondary legal materials are legal materials that provide additional information on primary legal materials, and help understand, explain, and analyze primary legal materials. Secondary legal materials use books, scientific articles, research results, and other sources.¹⁰

Tertiary legal materials are legal materials that provide information on primary legal materials and secondary legal materials. Tertiary legal materials are used to gain an understanding of a term obtained from primary legal materials and secondary legal materials.

RESULTS AND DISCUSSION

Proof with the civil law system in Indonesia uses a written evidence system as the primary evidence, because written evidence is in the top position among other evidence according to the provisions of the law. Based on Article 1866 of the Civil Code specifying the types of evidence, namely written evidence, witness statements, allegations, confessions, and oaths. One form of written evidence is an authentic deed.

This is clearly stated in Article 1868 of the Civil Code that an authentic deed is made by or before a public official authorized to make it and made at the place where the deed was made and its form is strictly regulated by law. The public official with the right to make the deed is a notary.

An authentic deed has perfect and strong evidentiary power, can bind the parties by the contents of the deed, until there is a final decision on the objection or refutation of the party who disputed the deed. However, his objections and rebuttals did not reduce the authenticity of the notary deed. This is because the notarial deed is an authentic deed made by the authorized public official and its contents have been agreed upon by the parties that bind the two. The notary deed can be a rule for the parties who bind themselves.

Based on Article 1867 of the Civil Code, it is also explained that proof with written evidence is carried out in authentic writing or in writing under the hand, from the evidence there are essential things to carry out proof, namely proof of the deed made. Deed is a collection of authentic writings made as evidence of a legal act signed by the parties who bind themselves.

⁸ Soerjono Soekanto, "Soerjono Soekanto Dan Sri Mamudji, Penelitian Hukum Normatif Suatu Tinjauan Singkat" (Cet, 1985).

⁹ Soekanto.

¹⁰ Soekanto.

Therefore, the main element in the deed is an action to make written evidence and sign the deed.

Article 15 paragraph (1) of the UUJN explains that a Notary has the authority to make a notarial deed based on the interests of the parties. so that the notarial deed can be referred to as the deed of the parties. Notaries are only authorized to make a deed containing provisions that bind the parties to a mutual agreement for a legal act.¹¹ The notary is not a party to the deed made before him.

The notary deed guarantees certainty regarding the materials mentioned in the deed. Therefore, the Notary provides legal certainty for the parties, and has a preventive nature which is an effort to prevent legal problems by making a notary deed made before him regarding a legal act as a form of perfect written evidence.¹²

The authority attached to the Notary is general. This means that the authority is concerned with making various deeds, except for deeds that a notary does not make. Notaries are only authorized to make certain deeds according to the mandate in the UUJN.

To avoid sentences that have multiple interpretations or become problems of meaning, reasonable faith efforts are needed in making the deed by the parties. Article 1343 of the Civil Code explains that if all the words in an agreement can be given various interpretations, the intentions of the parties agreeing must be investigated, rather than sticking to the meaning of words based on letters.

As far as any interpretation or reasons that lead to the cancellation of the contents of the deed, the parties must stick to what has been stated in the deed, not based on reasons other than what has been stated in the deed. This is explained in Article 1349 and Article 1350 of the Civil Code, that if there is doubt, an agreement must be interpreted based on the loss of the party requesting the agreement as well as the benefit of the party who binds himself in the agreement, and if the meaning of the sentence used for the preparation of an agreement is tremendous.

The agreement is only limited to what the parties intended at the time of agreeing. Therefore, the meaning of authentic in the deed is the understanding when the agreement is made, not when the agreement has been made before a notary.

Suppose there are two different meanings in the contents of the deed. In that case, the meaning used is the understanding according to the custom where the agreement is made which is defined as the custom where the notary deed is made as a reference, not referring to where the parties are located. This is regulated in Article 1344 and Article 1346 of the Civil Code, that if a

¹¹ Dei Fandy Tumembouw, "Tinjauan Yuridis Akta Otentik Sebagai Alat Bukti Dalam Perkara Perdata," *Lex Privatum* 7, no. 6 (2019).

¹² Komang Ayuk Septianingsih, I Nyoman Putu Budiarta, and Anak Agung Sagung Laksmi Dewi, "Kekuatan Alat Bukti Akta Otentik Dalam Pembuktian Perkara Perdata," *Jurnal Analogi Hukum* 2, no. 3 (2020): 336–40.

promise is given two meanings, then the promise must be understood based on a promise that can be carried out, not based on a promise that is not possible to be carried out. where the agreement was made.

Furthermore, it is also emphasized in Article 1339 of the Civil Code which states that an agreement is not limited to pressing matters clearly stated in it, but also for all matters concerning the nature of the agreement required by propriety, custom or law. The notary deed binds both materially and formally to the parties which are then obeyed as regulations for a legal act regulated therein.

Article 38 paragraph (3) letter c of the UUJN states that the contents of the deed contain the will or commitment of the interested parties. Based on these provisions, it can be interpreted that the contents of the deed are the will of the parties who come face to face with the notary who clearly states the parties' desire to bind themselves in an agreement, where the notary only accommodates the wishes of the parties into the notary deed, if the contents of the deed are disputed, then the problem is the problem of the parties, not the notary's problem. Thus, the Notary does not need to be sued by law enforcement for any reason.¹³

There needs to be a better understanding by the parties and the public regarding the notary deed which considers that the notary deed was made at the will of the notary himself. In the law it is evident in Article 38 paragraph (2) letter d and Article 44 paragraph (1) UUJN that a Notary is obliged to write down the full name and place of domicile.

The notary at the beginning and the end of the deed must include the parties' signatures, witnesses and the notary himself. This is a form of UUJN's mandate on the form of a notary deed which distinguishes it from an underhand deed. The difference lies in using a Notary's signature on a notary deed as a public official authorized to make a deed of a legal act by the parties and the presence of witnesses in the notary deed.

UUJN prohibits notaries from mentioning their interests and family interests in the notarial deed made before them, this is stated in Article 52 paragraph (1) of the UUJN which explains that the Notary is not willing to do a deed for personal, wife/husband or other people's interests. who has a family relationship with a Notary either from marriage or from a straight line up/down without any degree limit, and from the side line to the third degree, as well as being a party for a person, or in a position or with an intermediary of power.

Everything written by the Notary on the deed made before him is a form of deed based on the provisions of the UUJN. The contents of the deed are the wishes of the parties, even the Notary is prohibited from including information for himself and his family on the deed.

¹³ Adjie, "Kebatalan Dan Pembatalan Akta Notaris, Bandung: PT."

In the notarial deed there are central elements, as in the agreement there are 3 (three) elements, namely:¹⁴

A. Essential Elements

The essentialia element is an element that must exist, contains the main things as an absolute requirement and must be listed in the deed. The essentialia elements in the notary deed consist of objective elements and subjective elements, which are as follows:

1. Objective Element

- a. The form of the deed is by the provisions in UUJN and made at a place where the Notary is domiciled in a work area;
- b. The deed made before a Notary has a systematic, consisting of the beginning of the deed, the body of the deed, and the end of the deed. This has been regulated in Article 38 of the UUJN;
- c. The contents of the deed are the will of the parties for a legal action;
- d. There is an element of good faith from the parties which is stated by the existence of information to request a notarial deed to be made;
- e. The deed made is not a prohibited deed and its contents do not conflict with the law, the principle of propriety, and the principle of decency;
- f. The deed made is by the mechanism regarding authentic deeds as regulated in the law on authentic deeds.

2. Subjective Element

- a. Elements of public officials, have the authority to make the deed in question and there is no prohibition to make deed of public officials;
- b. Elements of the parties who meet the requirements as the appearers;
- c. The element is attended by 2 (two) instrumenter witnesses who meet the requirements as witnesses and are not prohibited from being witnesses;
- d. The element of the agreement of the parties is indicated by a statement of the will to have a deed made by the Notary in front of him.

B. Natural elements

The element of naturalia is an element that is generally inherent in the deed, namely elements that without having to be agreed in detail in the deed are automatically considered to be in the deed. The element is that the notary guarantees the authenticity of the notarial deed made before him with the parties and the parties guarantee the truth of the will stated in the notary deed. Another element, namely the Notary, ensures that the systematics of the deed (beginning of the

¹⁴ Amrizakar, *Tabir Kesaktian Akta Notaris [Sumber Elektronik]*.

deed, body of the deed, and the end of the deed) are by the provisions of the UUJN and the Notary Code of Ethics which regulates the form and process of making the deed.

C. Accidental Elements

Accidental elements are matters that are specifically regulated and clearly stated and agreed upon by the parties. This element in the notarial deed states that the contents of the deed contain elements of article by article based on the parties' will for a legal act which then arises rights and obligations as a form of achievement.

In a notarial deed as a form of agreement between the parties, the parties sign the deed. This is an essential element in making a notarial deed. The conditions regarding the signing of the deed are contained in Article 1874 of the Civil Code which states provisions regarding writings made by Indonesians or their equivalent. The writings are divided into 2 (two) groups, including deeds and other writings. By signing a notarial deed, the parties are deemed to know the facts stated in the deed.¹⁵

In carrying out his position, the Notary must maintain the confidentiality of the notarial deed made before him based on the law's mandate. The provisions regarding the secrecy of the position can be found in Article 1909 of the Civil Code, namely that all qualified persons to be witnesses must testify in court. However, this may ask to avoid having to give testimony:

1. People who have blood kinship in a line to the side of the second degree/family by marriage of one of the parties;
2. People who have blood relations in an unlimited straight line as well as in a lateral line in the second degree with the husband/wife of one of the parties;
3. People who because of their position, work or position are required by law to keep a matter entrusted to them secret because of their position, work and position.

The notary has a privileged position which he is prohibited from conveying regarding the contents of the deed and all information received on the making of the notary deed. However, this is excluded for the parties and the heirs. If a position has an office secret or is obliged to keep something secret under the law's mandate, then if a secret is opened without conditions that allow it, it is against the law. This is as explained in Article 322 of the Criminal Code regarding the prohibition of opening office secrets, namely:

1. Whoever deliberately discloses a secret, based on his job or position, either now or in the past, is obliged to keep it, if he violates, he is subject to a maximum imprisonment of 9 (nine) months or a maximum fine of Rp. 9,000;

¹⁵ Ragil Atmaja et al., "Life Skill Sebagai Langkah Pemberdayaan Masyarakat Menuju Kemandirian Ekonomi," *Journal of Millennial Community* 3, no. 2 (January 2022): 94–106, <https://doi.org/10.24114/JMIC.V3I2.32344>.

2. If the crime is committed against a specified person, then the act is only prosecuted for reporting that person.

The provisions regarding the secrecy of the position of a Notary are clearly emphasized in Article 16 paragraph (1) letter f of the UUJN which states that the Notary in carrying out his position is obliged to keep the contents of the deed made in front of him secret as well as all information obtained to make the deed by the promise/oath of office. excluded if the law provides otherwise. The secrecy of the position of a Notary is required to protect the interests of the parties, both the identity and content of the agreement. Still, it can be excluded from persons determined by law.

To maintain the confidentiality of the position, Notaries are provided with a right, namely the right to deny (*verschoningrecht*). This right of denial is a form of protection in carrying out the position of a Notary. Because Notaries are often sued in court, whether criminal, civil, or state administration.

In this situation, the Notary is considered a party, the defendant, the defendant, even the suspect or other assumptions. So that the Notary can carry out his position correctly by the law's mandate, the Notary can use the right of denial. The right of refusal is used when the Notary can carry out his position correctly on the deed made before him.

The legal provisions regarding the right to deny a Notary are regulated in Article 16 paragraph (1) letter e of the UUJN that a Notary is obliged to provide services by the rules of this law, unless there is a reason to refuse it and Article 16 paragraph (1) letter f of the UUJN which requires the Notary to keep the contents of the deed and all statements of the parties confidential according to the promise/oath of office.

These provisions make the Notary have the right to renege by the mandate of the UUJN to achieve the confidentiality of the contents of the deed made before him, because the oath of office of the Notary has bound him. If the right of denial is violated, the consequence is that it can be subject to a violation of Article 4 of the UUJN regarding the oath of office of a Notary, Article 54 of the UUJN concerning the authority of a Notary can only provide information on the deed made before him against the parties, heirs and parties who are entitled to it.

Article 66 of the UUJN concerning the mandate of the UUJN to collect minute data, examine, and summon a Notary must require permission from the Notary Honorary Council. As a result of this violation, a Notary may be temporarily dismissed from his position for violating his obligations, prohibition of position, and the Notary's code of ethics. This has been explained in Article 9 paragraph (1) letter d of the UUJN.

Based on these legal provisions, a Notary with the position he is serving can request convenience not to present information or testimony because it is clear that a legal act in question

has been written in the deed. Suppose all parties have understood the principle of the position of a Notary, especially regarding the right to deny. In that case, all parties can respect each other because the Notary in carrying out his position also relies on the provisions of the Law, namely UUJN.

In practice, Notaries often get unreasonable actions about the right of denial. If a Notary is summoned by law enforcement for questioning or as a witness for a deed made before him. The parties who challenged the contents of the deed considered that the Notary did not have a privileged position, especially the right to deny the Notary. In addition, the Notary community does not understand the meaning of the right of denial, even knowing it after using the right of denial in the trial.¹⁶

If a Notary uses the right of denial in a trial, it has legal consequences, namely that the Notary must be free from having to give testimony or be a witness in court. Because legally, the testimony that will be submitted based on his knowledge is considered contrary to the secret of office or violating the notary's oath of office. And the Notary can be free from all lawsuits from interested parties, if the judge rejects the Notary's right to deny or he is required to provide information at trial based on legal provisions.¹⁷

If in the future there is something that must be kept secret because the position is then opened or there is coercion to reveal something that must be kept secret, the provisions of Article 322 of the Criminal Code which regulates the act of revealing the secret of the position may apply.

CONCLUSION

A notary deed is a form of written evidence made by or before a public official authorized to make it and made at the place where the deed was made and its form is strictly regulated in law, this is regulated in Article 1868 of the Civil Code. The authorized public official is a Notary. This authority is granted based on the mandate of the UUJN, contained in Article 15 paragraph (1) of the UUJN which states that a notary has the authority to make a notarial deed based on the will of the parties concerned.

Notaries are only authorized to make a deed containing provisions that bind the parties to a mutual agreement for a legal act. Therefore, a notarial deed is a deed of the parties. The notary is not a party to the deed made before him. Article 38 paragraph (3) letter c of the UUJN states that the contents of the deed contain the will or commitment of the interested parties. That is, the

¹⁶ Muhammad Ilham Arisaputra, "Kewajiban Notaris Dalam Menjaga Kerahasiaan Akta Dalam Kaitannya Dengan Hak Ingkar Notaris," *Perspektif* 17, no. 3 (2012): 173–83.

¹⁷ Bagus Gede Ardiartha Prabawa, "Analisis Yuridis Tentang Hak Ingkar Notaris Dalam Hal Pemeriksaan Menurut Undang-Undang Jabatan Notaris Dan Kode Etik Notaris," *Acta Comitatus: Jurnal Hukum Kenotariatan* 2, no. 1 (2017): 98–110.

Notary only accommodates the wishes of the parties to be stated in the notary deed. If it is disputed, then the problem is the problem of the parties. Therefore, a Notary does not need to be sued by law enforcement for any reason. The contents of the notary deed are also prohibited from containing the interests of the notary himself or his family. This is regulated in Article 52 paragraph (1) UUJN. In carrying out his duties, The notary must maintain the confidentiality of the notarial deed made before him based on the law's mandate. The provisions regarding the secrecy of the position of a Notary are clearly emphasized in Article 16 paragraph (1) letter f of the UUJN which states that the Notary in carrying out his position is obliged to keep the contents of the deed made in front of him secret as well as all information obtained to make the deed by the promise/oath of office excluded if the law provides otherwise. To maintain the confidentiality of the position, Notaries are provided with a right, namely the right to deny (*verschoningrecht*). This right of denial is a form of protection in carrying out the position of a Notary. The legal provisions regarding the right of notary publicity are regulated in Article 16 paragraph (1) letter e of the UUJN and Article 16 paragraph (1) letter f of the UUJN. If the Notary violates the right of denial.

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