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Validity of an Authentic Deed Signed ... (Yoga Darmawan)

Validity of an Authentic Deed Signed Without Being Read and Outside Notary Office Hours

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Abstract. This research is intended to find out and analyze the signing of authentic deeds which were done briefly with/or not reading the deed outside the Notary's office hours and also to find out and analyze the validity of deeds whose signing was done briefly with/or not reading the deed outside of hours notary office. This research uses a normative juridical approach, namely solving facts that constitute legal problems. Research that discusses problems is based on statutory regulations or literature related to these problems. The approach used in this research is a statutory approach and a conceptual approach. This research uses 2 (two) theories, namely the theory of authority and the theory of legal certainty. Problems occur when the Notary is negligent or underestimates the signing process which without realizing it can have legal impacts on the Notary and/or the parties binding themselves in the Deed. Notaries are given the authority by attribution to make authentic deeds and read the deed before it is signed by the presenters. The main purpose of reading the deed is to make corrections and clarifications to the deed made to provide legal certainty to the parties.

Keywords: Deed; Notary; Signing; Working.

1. Introduction

In this era, law is very necessary forfulfilling the needs in community life. The form of fulfilling these legal needs is carried out for the certainty of law in community life in order to establish harmonious interactions between each other. The inseparability of law and community life in Indonesia is proof that Indonesia is a country of law as written in Article 1 paragraph (3) of the 1945 Constitution (hereinafter referred to as the 1945 Constitution) which states that the State of Indonesia is a country of law, meaning that law in Indonesia has the highest position in government and law also protects and fulfills the needs of society.

A notary is one of the positions required to fulfill the law in Indonesia, especially in the field of civil law, in order to provide legal certainty in society in accordance with the mandate contained in the 1945 Constitution. This notary's mandatehas been stated in the Consideration of Law Number 30 of 2004 concerning the Notary Position (hereinafter referred to as UUJN) stating that the Republic of Indonesia as a state of law based on Pancasila and the 1945 Constitution of the Republic of Indonesia guarantees certainty, order, and legal protection, which is based on truth and justice and that to guarantee certainty, order, and legal protection, authentic written evidence is needed regarding the circumstances, events, or legal acts carried out through certain positions. Also, that a notary is a certain position that carries out a profession in legal services to the community, needs to receive protection and guarantees in order to achieve legal certainty.

The position of Notary is different from other law graduates, the position of Notary is required to be neutral to be able to represent 2 (two) parties in making an agreement, even when asked for legal assistance from one of the parties. Based on Article 1 number 1 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary (hereinafter referred to as UUJN-P) Notary is a public official who is authorized to make authentic deeds and has other authorities as referred to in this Law or based on other laws.

The position of Notary which is very much needed by the community makes the process of becoming an expert Notary important. Therefore, Notary is one of the Professions that requires a balance of the three forms of Human Intelligence (Intellectual, Emotional and Spiritual). Notary as a provider of Legal Advice to the community cannot possibly carry out his duties if he does not have Strong Legal Knowledge (Intellectual Intelligence).¹

Notaries need to pay attention to Notary ethics so that in this case it is clear that professional education without education on responsibility and professional ethics is incomplete. In the field of law, technical skills that ignore aspects concerning responsibility, Notaries have an obligation to ensure that what is contained in the Notary deed has been truly understood and is in accordance with what is desired by the parties, namely by reading it so that the contents of the deed are clear, and providing access to information, including access to

¹Central Board of the Indonesian Notary Association, 2009, 100 Years of the Indonesian Notary Association: The Identity of Indonesian Notaries Past, Present, and Future, Gramedia Pustaka, Jakarta, p. 143.

related laws and regulations for the parties signing the deed. Thus, the parties can freely determine to agree to the contents of the deed to be signed.²

In carrying out his/her position as a public official, a Notary can or is authorized to issue a legal product, namely an authentic deed bound by civil law provisions and the parties, and can be used as written evidence. An authentic deed made by a notary becomes a form of agreement and is useful for ensuring legal certainty. The authority held by a Notary is regulated in Article 15UUJN-Pwhich states that:

(1) The Notary has the authority to make authentic Deeds regarding all acts, agreements and stipulations which are required by statutory regulations and/or which are desired by interested parties to be stated in authentic Deeds, guarantee the certainty of the date of making the Deed, keep the Deed, provide grosses, copies and quotation of the Deed, all of this as long as the making of the Deed is not also assigned or excluded to another official or other person as determined by law.

(2) In addition to the authority as referred to in paragraph (1), a notary also has the authority to:

a. validate signatures and determine the certainty of the date of private letters by registering them in a special book;

b. record a letter under hand by registering it in a special book;

c. make a copy of the original private letter in the form of a copy containing the description as written and described in the letter in question;

- d. verify the conformity of the photocopy with the original letter;
- e. provide legal advice regarding the preparation of deeds;
- f. make a Deed relating to land; or
- g. make a deed of auction minutes.

Notaries are basically given the authority to make authentic deeds in legal acts, agreements and obligations in law and those desired by the parties to be included in authentic deeds, then also provide guarantees regarding when the

²Darji, Darmodiharjo and Sidharta, 2004, Main Principles of Legal Philosophy, What and How is Indonesian Legal Philosophy, PT Gramedia Pustaka Utama, Jakarta, p. 265.

deed was made, keep it, and provide a grosse, both copies as well as extracting the deed as long as no other party is assigned by law to do so.³

Notary as a profession authorized to make authentic deeds has a very important role. Authentic deeds are different from private deeds made by the parties without involving a Notary. Meanwhile, authentic deeds made by or before a Notary as regulated in Article 1868 of the Civil Code (hereinafter referred to as the Civil Code) which states that an authentic deed is a deed made in a form determined by law by or before a public official authorized for that purpose at the place where the deed was made. Authentic deeds are also agreements used as laws for the parties who make agreements or agreements therein.

The role of a Notary in an authentic deed agreement is a public official who frames the agreement of both parties or more to be made into an authentic and non-private agreement deed. The contents of an authentic and non-private agreement deed, the contents of the agreement deed are the will or desire of the parties who appear before the Notary, not the will of the Notary.

Notaries also have a role to guide clients in making the contents of the agreement so that it does not conflict with the law, public order, and morality. The agreement must be based on the Consensus or Agreement of the parties making the Agreement. With the Principle of Consensualism, an Agreement is said to have been born if there is an agreement or conformity of will between the parties making the Agreement.⁴

Agreement is one important thing in an agreement as regulated in Article 1321 of the Civil Code which states that no agreement is valid if the agreement is given due to error, or obtained by coercion or fraud. The article explains about an agreement that is flawed because the agreement occurs due to error, coercion or fraud.⁵

Notaries are required to guarantee a day, date, month, year, and time of appearance listed or stated on the Notary discussion page, as proof that the parties appeared and signed the deed on the day, month, year, and time stated in

³Engracia, Marchananda Diva, and Budi Santoso, 2023, Reasonable Limitation Rules for Making Notarial Deeds and Their Legal Consequences, Notarius, Volume 16 Number 1, Master of Notary Study Program, Faculty of Law, Diponegoro University, p. 151.

⁴Ridwan Khairandy, 2004, Good Faith in Freedom of Contract, Postgraduate Program, Faculty of Law, University of Indonesia, Jakarta, p. 27.

⁵Anggita, Vischarina Damayanti, 2016, Defects of Will in Sale and Purchase Agreements, Novum Journal, Volume 2 Number 2, Surabaya, p. 2.

the deed and all procedures for making the deed have been carried out in accordance with the rules applicable in the UUJN-P.⁶

Reading the deed before signing by a Notary is also an obligation that must be carried out. The Notary has an obligation to ensure that what is contained in the Notarial deed has been truly understood and is in accordance with what is desired by the parties, namely by reading it so that the contents of the deed are clear, and providing access to information, including access to relevant laws and regulations for the parties signing the deed. Thus, the parties can freely determine to agree to the contents of the deed to be signed. The Notary's obligations are regulated in Article 16 paragraph (1) letter m UUJN-P which states that in carrying out his/her position, the Notary is required to read the Deed before the person appearing in the presence of at least 2 (two) witnesses, or 4 (four) witnesses specifically for the making of a Deed of Will under hand, and signed at that time by the person appearing, witnesses, and the Notary.

Due to the authority held by the Notary, the Notary Position granted by the state has great responsibility. For this reason, the state provides regulations in the implementation of the position, in addition the state also provides sanctions if the rules that have been made are violated. This needs to be done because the Notary has the authority of attribution from the government in the field of civil law which is granted through the Minister of Law and Human Rights. The Notary is also a public official who is bound by a code of ethics which is related to the moral rules determined by the Indonesian Notary Association (hereinafter referred to as INI), this code of ethics must be obeyed by every member, namely the notary who is bound by the INI association.

In 2020, Tonny Hendrawan Tanjung or known as Apeng sued Notary Wahyudi Suyanto at the Surabaya District Court. Tonny Hendrawan Tanjung considered that Notary Wahyudi Suyanto had committed an unlawful act by making and signing 9 deeds, including 1 peace deed, 4 deeds of sale and purchase agreements, and 4 deeds of power of attorney between himself and his brotherin-law, Chandra Hermanto, who was also a defendant in this case. The signing of the peace deed, the deeds of sale and purchase, and the powers of attorney were carried out at the East Java Regional Police Detention Center on July 23, 2009 and in December 2020 the trial for the unlawful act lawsuit (PMH) filed by Tonny Hendrawan Tanjung was carried out at the Surabaya District Court with Case Number 1251/Pdt.G/2020/PN Sby. Then, in February 2022, the Panel of Judges at the Surabaya District Court declared that it granted the lawsuit filed by Tonny Hendrawan Tanjung with the main case granting the lawsuit in part and

⁶Giovanni Dinda Cahyawati, 2022, Notary's Ethical Responsibilities Regarding Signing Deeds Outside the Office by Sending Minutes, Thesis of the Notary Masters Study Program, Faculty of Law, Airlangga University, p. 31.

declaring Notary Wahyudi Suyanto to have committed an unlawful act (onrechtmatigedaad) as stipulated in Article 1365 of the Civil Code. Also, stating that the 9 deeds made by Notary Wahyudi Suyanto, including Peace Deed Number 058, Sale and Purchase Agreement Deed Number 059, Power of Attorney Deed Number 060, Sale and Purchase Agreement Deed Number 061, Power of Attorney Deed Number 062, Sale and Purchase Agreement Deed Number 063, Power of Attorney Deed Number, 064, Sale and Purchase Agreement Deed Number 065, Power of Attorney Deed Number 066, were declared or assessed as legally flawed by the panel of judges so that the 9 Notarial deeds were null and void and had no binding legal force against the other deeds.

In this case, what is interesting to examine in writing this research is the statement from Tonny Hendrawan Tanjung's legal counsel, namely Agus Mulyo, as stated on the online news media page JawaPos.com, According to Agus Mulyo, Notary Wahyudi Suyanto is considered to have committed an unlawful act in the process of signing the deed.authentic because the Notary carried out the signing of 9 deeds (1 peace deed, 4 deeds of sale and purchase agreements, and 4 deeds of power of attorney) in a short time and tempo starting at 20.10 WIB to 21.30 WIB. Attorney Agus Mulyo also felt that the signing was irrational according to the law which seemed rushed and forced to be completed in a very short time. In addition, the signing was also carried out outside the notary's office hours, on the basis of which Attorney Agus Mulyo considered that the signing of the agreement deed did not meet the requirements as stipulated in Article 1320 of the Civil Code⁷, which states that in order for a valid agreement to occur, four conditions must be met;

- 1. their agreement that binds them;
- 2. the ability to make a contract;
- 3. a particular subject matter;
- 4. a cause that is not prohibited.

Based on the facts, the news became a trigger in the research and provided a picture that is often ignored by Notaries, that the signing process with the parties facing especially related to the time carried out by the Notary and the party or parties is an important factor that also needs to be considered by the Notary so that it does not become a problem or is questioned by the party or parties in the

⁷Dhimas Ginanjar, 2021, Notary Wahyudi Suyanto's Lawsuit for Signing a Deed in Only 10 Minutes, https://www.jawapos.com/nasional/01313211/gugat-notaris-wahyudi-suyanto-karena-tanda-tangani-akta-hanya-10-menit,accessed on November 3, 2023.

future. Therefore, in writing this research, it discusses and explains the implementation of the signing of authentic Notary deeds and the validity of authentic Notary deeds signed in without being read and outside the Notary's office hours.

2. Research Methods

The research method used is normative juridical. namely research whose discussion of the problem is based on laws and regulations or literature related to the problem. The specification of this research uses descriptive analysis, namely research that in addition to providing a description, writing, and reporting an object or an event that is studied based on laws and regulations and also drawing general conclusions from the problems discussed related to this research. Data sources come from primary, secondary, and tertiary data. The data collection method used in this study is by collecting Literature Studies, namely a way to obtain data by studying and analyzing the entire contents of the literature (primary legal materials, secondary legal materials, and tertiary legal materials) by linking them to existing problems.⁸ The data analysis method required in this research is a qualitative method.

3. Results and Discussion

3.1. Signing Authentic Deed Without Reading And Outside Notary Office Hours

Notary is a public official who is authorized to serve the public in matters of making written evidence. In this case, the Notary acts for and on behalf of the state, because the Notary in serving the public is based on attribution authority, authority that comes directly from the law.⁹

Article 1 number 1 UUJN-P defines a Notary as a public official who is authorized to make authentic deeds and has other authorities as referred to in this Law or based on other Laws. A public official is defined as an official who is entrusted with the task of making authentic deeds that serve the public interest.¹⁰

Notaries have attributional authority from the government as outlined in the Notary Law.Attribution authority is the authority to make decisions (beluit) that are directly sourced from the law in a material sense. Attribution is also said to be a normal way to obtain government authority. So it is clear that the original

⁸Ronny Hanitijo, 1990, Legal Research Methodology and Jurimetrics, Ghlmia Indonesia, Jakarta, p. 12.

⁹Zul Fadli, 2020, Notarial Deed Law, Notary Circle, p. 6.

¹⁰Habib Adjie, 2007, Civil and Administrative Sanctions Against Notaries as Public Officials Related to the Making of Deeds Based on the Notary Law, Postgraduate Dissertation, Airlangga University, Surabaya, p. 56.

authority, because the authority is obtained directly from the legislation. In other words, attribution means the emergence of new authority, which previously was not possessed by the relevant government organ.¹¹

One of the authorities of a Notary is to make authentic deeds, which is regulated in Article 15 paragraph (1) of the UUJN-P which states that:

(1) The Notary has the authority to make authentic Deeds regarding all acts, agreements and stipulations which are required by statutory regulations and/or which are desired by interested parties to be stated in authentic Deeds, guarantee the certainty of the date of making the Deed, store the Deed, provide grosses, copies and quotation of the Deed, all of this as long as the making of the Deed is not also assigned or excluded to another official or other person as determined by law.

An authentic deed becomes a strong evidence and provides legal certainty for the parties who enter into an agreement within it, meaning that a deed which is basically an agreement becomes a legal figure that contains legal certainty, this legal certainty is interpreted as the binding force of the agreement, namely as a law for those who make it.

The authority of a Notary in making an authentic deed must be based on the request of the parties. The Notary is required to listen to the information or statements of the parties without siding with one of the parties, then the information or statement is stated in a notarial deed which is the desire of the parties. Furthermore, after the deed is read before the parties and approved by the parties, then the parties sign the deed before the notary and the deed must be in accordance with Article 38 of the UUJN-P.¹²

After the Notary has poured out the information or statement in written form in the form of a Deed, the Notary will ask the parties to sign it. This is important to do to individualize or characterize a deed made by the parties and the affixing of the signature also functions as a statement of will or agreement. The function of individualizing a deed is to distinguish one deed from another or from a deed made by another party. The presence of a signature is important to verify a document because the presence of the signature can be a marker or identity on a document. If the Notary's deed that makes a statement or agreement does not have the signature of the party, where the party does not affix his signature to the deed he made, then when viewed from the legal aspect of proof of the

¹¹Salim HS and Erlies Septiana Nurbani, 2014, Application of Legal Theory in Thesis and Dissertation Research, PT RajaGrafindo Persada, Jakarta, p. 195.

¹²I Ketut Tjukup, 2016, Notarial Deed (Authentic Deed) as Evidence in Civil Law Events, Acta Comitas, p. 182.

Notary's deed made, it cannot be said to be perfect as a deed, so it cannot be used as authentic evidence in the future if a dispute occurs.

Signing is important because the process is a form of statement of will or agreement. Notaries as public officials who have the authority to make deeds must pay attention to the process of signing the deed.

In practice, signing a Deed often causes problems later on without the Notary realizing it. Notaries are often negligent or underestimate the signing process which can unknowingly have legal impacts on the Notary and/or the parties bound by the Deed. Notaries often do not pay attention to the signing process, especially regarding time, often notaries who carry out the signing process in a short manner so as to ignore the process of reading the deed before the deed is signed. Such as the example in the case of Tonny Hendrawan Tanjung and Notary Wahyudi, which according to Tonny Hendrawan's attorney, Agus Mulyo, considered that Notary Wahyudi committed an unlawful act because in the signing process, Notary Wahyudi carried out the signing of 9 deeds (1 peace deed, 4 deeds of sale and purchase agreements, and 4 deeds of power of attorney) in a short time and tempo starting at 20.10 WIB to 21.30 WIB. Agus Mulyo's attorney also felt that the signing was irrational according to the law which seemed rushed and forced to be completed in a very short time. In addition, the signing was also carried out outside the notary's office hours, on this basis Agus Mulyo's attorney considered that the signing of the agreement deed did not fulfill the requirements as stipulated in Article 1320 of the Civil Code.¹³, which states that in order for a valid agreement to occur, four conditions must be met;

- 1. their agreement that binds them;
- 2. the ability to make a contract;
- 3. a particular subject matter;
- 4. a cause that is not prohibited.

During the deed signing process, the Notary is legally required to read the deed before the signing process is carried out. The Notary's obligation to read the deed has been regulated in Article 16 paragraph (1) letter m UUJN-P which states that the Deed must be read in front of the person appearing in the presence of at least 2 (two) witnesses, or 4 (four) witnesses specifically for making a Deed of Will privately, and signed at that time by the person appearing, witnesses, and Notary.

Philipus M. Hadjon explained that authority is obtained in two ways, namely through attribution and delegation. Attribution authority is the authority that is inherent in a position. Meanwhile, regarding delegation in the case of a transfer/assignment of an existing authority, if the authority is less than perfect, then the decision based on the authority is not valid according to law.¹⁴

Besides that, According to Philipus M. Hadjon, there is no recognition of authority or transfer of authority in a mandate, this is related to internal work promises between the ruler and the guard in which in certain cases an employee obtains authority to act on behalf of the ruler.¹⁵

It has been previously explained that Notaries have attribution authority from the government which is stated in the Notary Law. Attribution authority has a fundamental difference with, attribution is the granting of authority by the legislator in this case the government to officials through the Law. With the existence of attribution authority, notaries have the authority to make decisions (besluit) which are directly sourced from the Notary Law in the material sense.¹⁶

Differently, with delegated authority which is a form of transfer of authority by an organ or agency and/or government official holding attribution authority to another organ or agency and/or official, with the provision that responsibility and liability are transferred entirely to the recipient, who is called the delegate.¹⁷

Notaries through UUJN-P can make exceptions to the deed reading process. These exceptions are not necessarily the authority of the Notary, which in theory is the authority of the government which is attributed through UUJN-P, in other words these exceptions can be made because UUJN-P regulates this matter and is carried out with several conditions that have been determined and regulated in Article 16 paragraph (7) and paragraph (8) of UUJN-P which states that:

(7) Reading of the Deed as referred to in paragraph (1) letter m is not mandatory if the person appearing wishes that the Deed not be read because the person appearing has read it himself, knows and understands its contents, with the provision that this is stated in the closing of the Deed and on each page of the minutes of the Deed are initialed by the person appearing, witnesses and Notary.

¹⁴Philipus M. Hadjon, 2011, Introduction to Indonesian Administrative Law, Gajah Mada University Press, Yogyakarta, 2011, p. 110

¹⁵Ibid, p. 131.

¹⁶Philipus M. Hadjon, 2011, Administrative Law and Criminal Acts of Corruption, Gajah Mada University Press, Yogyakarta, p. 11.

¹⁷I Dewa Gede Atmadja and I Nyoman Putu Budiartha, Legal Theories, Setara Press, Malang, pp. 156-159.

(8) The provisions referred to in paragraph (7) are exempted from reading the head of the Deed, comparison, brief and clear explanation of the main points of the Deed, and the closing of the Deed.

If the signing is not read out as regulated in Article 16 paragraph (1) letter m UUJN-P, then the Notary needs to explain at the end of the deed that during the signing process the parties have requested that the deed not be read out in full by the Notary before signing, this is to provide legal certainty and to be a form of protection for the Notary regarding the deed.

With the relaxation of the regulation of the obligation to read by a Notary in the UUJN-P, a Notary cannot provide a guarantee that what is contained in the deed has truly been understood and is in accordance with the wishes of the parties if the parties wish the deed not to be read in accordance with the provisions of Article 16 (7) of the UUJN-P. In fact, the main purpose of the reading of the deed by a Notary is so that the parties and the Notary can mutually make corrections and clarifications to the deed they have made, considering that in essence an authentic deed contains formal truth in accordance with what the parties have notified the Notary. Thus, the parties can freely determine whether or not to agree to the contents of the deed before signing it.¹⁸

In terms of reading, because the deed is a legal product of a Notary, then the reading should also be done by the Notary himself and not have it read by the Notary's staff, as is sometimes done in practice. If the reading of the deed is done by the Notary himself, then there will be a guarantee for the parties that they sign what they hear before it is read by the Notary and on the other hand the parties and the Notary obtain confidence that the deed contains what they want. The importance of the reading of the deed by the Notary, is the basis that the process is included in the deed formalization process. so, the formalization of the deed consists of three stages, namely, first, the reading of the deed as a whole in front of the parties and witnesses. Second, the signing of the deed by the Third, is the reading of the deed by the Notary immediately after the deed is read and the Third, is the reading of the deed by the Notary himself.¹⁹

Notaries also adhere to the principles of the Code of Professional Ethics, which in principle, in addition to Notaries having to adhere to the rules contained in the Notary Law, the Code of Professional Ethics also forms the basis for Notary regulations in carrying out their duties. The Code of Professional Ethics in general, when viewed from its considerations, is basically more binding and

¹⁸Explanation of the Republic of Indonesia Law Number 30 of 2004 concerning the Position of Notary, Citra Umbara, Bandung, p. 50.

¹⁹Maya Puspita Dewi, 2021, Principles of Reading Deeds by Notaries in the Presence of Applicants and Witnesses, Journal of Notary Science, p. 106.

regulates Notaries in carrying out their duties. This is because the Code of Ethics regulates all moral, ethical, and personality rules of Notaries both during the implementation of their duties as Notaries and in their daily lives.

The Notary Professional Code of Ethics requires Notaries to perform acts that are generally referred to as obligations to be obeyed and implemented based on laws and regulations and the contents of the Notary's oath of office. This means that if a Notary violates the provisions contained in the Notary Law in this case the signing process, the Notary is the same as violating the Code of Professional Ethics that has been determined and stipulated by the INI Association.

By not carrying out the obligations stipulated in the Notary Law, it means that the Notary has also violated the Code of Professional Ethics. The Notary can be subject to sanctions in the form of reprimands, warnings, temporary suspension from membership of the association, honorable suspension from membership of the association, and dishonorable suspension from membership of the association.

Regarding the working hours of Notaries, the Notary Law and the Code of Professional Ethics do not specify the working hours that must be adhered to by Notaries. This means, Notary offices do not have any rules that regulate in a definite and binding manner the working hours of all notary offices, both hours and days like government offices and banks, where generally it is the notary who determines the hours and days the office is open, which means that notaries do not have the terms "during notary working hours" or "outside notary working hours".

Notaries have an obligation to provide services according to the provisions of the Notary Law, unless there is a reason to refuse it. The services provided by Notaries involve comprehensive aspects ranging from the ease of the public in obtaining information, contacting Notaries, coming to the Notary's place, consulting, the completeness of Notary facilities and infrastructure, as well as the friendliness of Notaries and Notary employees and so on. All of these Notary activities are integrated and centered in one place, namely the Notary's Office.²⁰

Notaries as public officials basically serve the needs of the community without having a time limit and must be ready for 24 hours. However, of course, Notaries are also not robots that can work without needing to rest, for that Notaries can determine the time when the office hours and days and Notaries are also required to be able to consider and assess the situation and conditions in the

²⁰Central Board of the Indonesian Notary Association, 2008, Identity of Indonesian Notaries, PT Gramedia Pustaka, Jakarta.

field. Notaries must be able to consider and assess which work or Deeds must be done immediately and which deeds can be postponed.

This is in line with what has been explained by Taufik, who serves as the Head of the Organizational Division of the Indonesian Notary Association (INI) in 2022 through an interview conducted by the online media page hukumonline.com, Taufik explained that Notaries are public officials who serve the needs of the community, so they are not 100% on leave because the Notary's obligation to serve the community has no time limit. Notaries can consider and assess the deeds needed to be done immediately, such as making a will or making a power of attorney for needs that cannot be postponed and deeds that can be postponed until the holiday period is over. Notaries have an obligation to serve the community because the law says so, that in principle Notaries do not have working hours and must be ready 24 hours, unlike employees in general.²¹

Also, if the Notary carries out the signing process without reading it and outside the notary's office hours, it does not make the notary directly commit an unlawful act. There needs to be evidence that states and is legally proven that the Notary did not carry out the authority and obligations of his position as a public official in accordance with applicable laws and regulations and the code of ethics of the profession.

An unlawful act is an unlawful act committed by a person and which, due to his/her fault, causes loss to another person, thus requiring that person to compensate for the loss he/she caused.²²

In the Civil Code, unlawful acts are regulated in Article 1365 of the Civil Code, which states that every unlawful act that results in loss to another person requires the person who caused the loss due to his/her fault to compensate for the loss.

From the text of Article 1365 of the Civil Code, it can be seen that this unlawful act has the following elements:²³

- 1. There is an act that violates the law (onrechtmatige daad);
- 2. There must be an error (schuld);

²¹Willa Wahyuni, 2022, Seeing the Activities of PPAT and Notaries During the Eid Holiday, https://www.hukumonline.com/berita/a/melihat-aktif-ppat-dan-notaris-saat-libur-lebaran-lt626c2968d6ee2/?page=3, accessed on January 30, 2024.

²² Munir Fuady, 2019, Civil Law Concept. Rajawali Press, Depok.

²³ EddyLisdiyono, 2019, Selected Chapters on Civil Law, Serata Press, Malang.

3. There must be a loss (schade);

4. There must be a causal relationship between the act and the loss or cause and effect (oorzaak).

The fulfillment of the four elements of an unlawful act, then it can be seen that the act committed by a Notary which results in losses for others, his act can be said to be an unlawful act as regulated in Article 1365 of the Civil Code. Also, because of his act, an obligation occurs that requires the person who committed the unlawful act to provide compensation to the person who was harmed, both materially and immaterially.

3.2. Validity of Authentic Deeds Which Are Not Signed Read Out and Outside Notary Office Hours

The term Legitimacy is a translation of the Dutch legal term rechmatig which can be interpreted as based on law. In English the term legitimacy is called legality which means lawfulnses or in accordance with the law. This concept of legitimacy was born from the concept of a state of law where government actions must be based on applicable legal provisions which are based on the application of the principle of legality in all government legal actions.²⁴

According to Sudikno Mertokusumo, a deed is a letter as evidence that is signed, containing an event that is the basis for a right or obligation that was deliberately made from the start for proof.²⁵Meanwhile, according to Subekti, a deed is a writing that is deliberately made to be used as evidence of an event and signed.²⁶

The existence of an authentic deed made by a Notary is perfect evidence, this is because the Notary as a public official is trusted by the state to carry out some of the state's administrative functions, so that the legality of his deed can be ascertained. However, of course the authentic deed must meet the requirements specified in the Laws and Regulations and by fulfilling the formal and material requirements, the deed will have legal certainty and can be used as evidence if a dispute occurs in court.²⁷

²⁴Sofyan Hadi and Tomy Michael, 2017, The Principle of Validity (rechtmatigheid) in the Determination of State Administrative Decisions, Faculty of Law, University of August 17, 1945 Surabaya, Vol. 5 No. 2.

²⁵Sudikno Mertokusumo, 2006, Indonesian Civil Procedure Law, Liberty, Yogyakarta, p. 149. 26R. Subekti, 2010, Law of Evidence, PT Pradnya Paramita, Jakarta, p. 25.

²⁷Yulies Tiena Masriani, The Existence of Notarial Deeds in Proving Sharia Economic Disputes in Religious Courts in Central Java.

Article 1868 of the Civil Code states that an authentic deed is a deed made in a form determined by law by or before a public official authorized to do so at the place where the deed is made.

If we look at the provisions of Article 1868 of the Civil Code, in general the conditions for a deed to be called an authentic deed can be determined, which include:²⁸

- 1. The deed must be made by or before a public official;
- 2. The deed must be drawn up in the form prescribed by law; And

3. The public official by or before whom the deed is made must have the authority to make the deed.

This is in line with Article 1 number 7 of UUJN-P which states that a Notarial Deed hereinafter referred to as a Deed is an authentic deed made by or before a Notary according to the form and procedures stipulated in UUJN-P. From Article 1 number 7 of UUJN-P, 3 (three) requirements for a deed to be called an authentic deed can be outlined, namely:²⁹

- 1. Made by or before a Notary;
- 2. The form is specified in the law; And
- 3. The procedures are also determined by law.

If the Notary does not carry out the obligations stipulated in the UUJN-P, then the deed made by the Notary does not meet the requirements as an authentic deed and can be said to be a deed that does not have perfect proof for the parties who made it. In relation to the signing of the deed which is done briefly and/or not read out, as stipulated inArticle 16 paragraph (1) letter m UUJN-P states that the Deed must be read before the person appearing in the presence of at least 2 (two) witnesses, or 4 (four) witnesses specifically for the making of a Deed of Will under hand, and signed at that time by the person appearing, witnesses, and Notary. Furthermore, paragraph (7) states that the Reading of the Deed as referred to in paragraph (1) letter m is not mandatory, if the person appearing wishes that the Deed not be read because the person appearing has read it themselves, knows, and understands its contents, with the provision that this is

²⁸Salim HS, 2015, One Deed Making Technique (Theoretical Concept, Notary Authority, Form and Minutes of Deed), PT RajaGrafindo Persada, Jakarta, p. 28. 29Salim HS, Op. Cit, p. 28.

stated in the closing of the Deed and on each page of the minutes of the Deed are initialed by the person appearing, witnesses, and Notary.

Article 16 paragraph (9) UUJN-P stipulates that if one of the conditions as referred to in paragraph (1) letter m and paragraph (7) is not fulfilled, the deed in question only has the power of proof as a private deed. This means that the deed is degraded and does not provide legal certainty for the parties bound by the deed.

According to Sudikno Mertokusumo, legal certainty is a guarantee that the law must be implemented in a good way. Legal certainty requires an effort to regulate the law in legislation made by authorized and authoritative parties, so that the rules have a legal aspect that can guarantee the certainty that the law functions as a regulation that must be obeyed.³⁰

Normative legal certainty is when a regulation is made and enacted with certainty because it regulates clearly and logically. Clear in the sense that it does not cause doubt (multiple interpretations) and is logical. Clear in the sense that it becomes a system of norms with other norms so that it does not clash or cause norm conflicts. Legal certainty refers to the implementation of clear, permanent, consistent and consequent laws whose implementation cannot be influenced by subjective circumstances. Certainty and justice are not merely moral demands, but factually characterize the law. A law that is uncertain and unwilling to be fair is not simply a bad law.³¹

Degradation is defined as a decrease in rank, quality, morals, decline, deterioration, or can also be placed at a lower level. In relation to Notarial deeds, the term degraded occurs when a Notarial deed as an authentic deed that has perfect and binding evidential force, and has met the minimum limit of valid evidence without the need for other evidence in civil legal disputes experiences decline, deterioration, or a decrease in quality in the sense that its position is lower in strength as complete and perfect evidence to be the beginning of proof such as a private deed and has legal defects that cause the cancellation or invalidity of the Notarial deed. The authenticity of a notarial deed can be degraded from an authentic deed to a private deed or the deed can be declared null and void by law and can be used as a basis for suing for compensation.³²

³⁰Eva Zuliana, 2022, Legal Analysis of Enforcement of Violations of the Notary Code of Ethics in Semarang City, Thesis of the Notary Masters Program, Sultan Agung University, Semarang. 31 Cst Kansil, 2009, Dictionary of Legal Terms, Jakarta, p. 385.

³²Agus Toni Purnayasa, 2018, Legal Consequences of the Degradation of Notarial Deeds that Do Not Meet the Requirements for Making Authentic Deeds, Masters Program (S2) in Notary Law, Faculty of Law, Udayana University, Bali, p. 404.

As long as the Notary carries out the signing in accordance with what has been regulated in Article 16 paragraph (1) of the UUJN-P, the deed remains valid and provides legal certainty. However, of course the Notary must also make a deed that is in accordance with the structure of the deed itself as regulated in Article 38 of the UUJN-P which stipulates that:

(1) Each Deed consists of:

- a. Beginning of the Deed or Head of the Deed:
- b. Body of the deed; and
- c. End or closing of the Deed.
- (2) The beginning of the Deed or head of the Deed contains:
- a. Title of Deed;
- b. Deed Number;
- c. Hour, day, date, month, and year; and
- d. Full name and domicile of the Notary.
- (3) The body of the deed contains:

a. Full name, place and date of birth, nationality, occupation, title, position, place of residence of the presenters and/or the person they represent;

b. Information regarding the acting position of the facing person;

c. Contents of the Deed which constitute the wishes and desires of the interested parties; And

d. Full name, place and date of birth, as well as occupation, position, position and residence of each identifying witness.

(4) The end or conclusion of the Deed contains:

a. Description of the reading of the Deed as referred to in Article 16 paragraph(1) letter m or Article 16 paragraph (7);

b. Description of the signing and place of signing or translator of the Deed if any;

c. Full name, place and date of birth, job title, position and residence of each witness to the deed; and

d. A description of the absence of changes that occurred in the making of the Deed or a description of the existence of changes which may be in the form of additions, deletions or replacements and the number of changes.

(5) The Deed of Substitute Notary and Temporary Notary, in addition to containing the provisions as referred to in paragraph (2), paragraph (3) and paragraph (4), also contains the number and date of the appointment, as well as the official who appointed him.

The notary must state the time, day, date, month, and year as real as possible without manipulation in the deed used as proof of time during the signing process. The time contained in it is the time of the incident shortly before the deed was read.

Referring to KBBI, the definition of time is

1) as a series of moments when a process, action, or condition is in place or taking place;

- 2) certain times;
- 3) tempo (time limit);
- 4) when, and;
- 5) day.

In English, time is called time, which means era, time, appointed time, period, times, condition, and promised time.

The legal definition of time is difficult to find in the law, but time is very important for various problems related to law, both civil law and criminal law. In criminal law, time is important to know and determine the time of the occurrence of a crime or criminal act. Also, to determine whether the criminal law article can be applied to try the crime that occurred, this is known as tempus delicti. Meanwhile, time in civil law is related to the time period or is called the expiration (verjaring) which has been regulated in Article 1946 of the Civil Code which states that the Expiration is a tool to obtain or to be released from an obligation by the passage of a certain time and on the terms determined by law.

Time is very important, because time is a requirement for the validity of an authentic deed made by a notary. In an authentic deed made by a notary, it is mandatory to include the time (hour, day, date, month and year) when the deed was read before the person appearing and signed by the person appearing, the time must be included at the beginning of the deed or the head of the deed as regulated in Article 38 paragraph (2) UUJN-P.

Then, in relation to the validity of authentic deeds whose signing is done outside of working hours. Notaries are allowed and the deeds made are still declared valid as authentic deeds, as long as the Notary continues to follow the rules that have been regulated in the Notary Law. However, with unlimited working hours, it also does not mean that it provides the Notary with the authority to make authentic deeds massively or as many as possible. The Code of Professional Ethics has regulated that Notaries are to make deeds in a reasonable number of limits, the number of which is determined by the Honorary Council. Furthermore, the INI association regulates this through the Regulation of the Central Honorary Council of the Indonesian Notary Association Number 1 of 2017 concerning the Reasonable Limits for the Number of Deeds Made Per Day (DKP PP INI). The reasonable limit determined by the Honorary Council is 20 (twenty) deeds per day, Notaries can make more than that on condition that the deeds made are related to other deeds as long as they can be accounted for.

The accountability of a notary is the key to making the deed itself, as long as he is able to be responsible, then he has the freedom to make a deed, but of course this accountability must be balanced with the fact that notaries do need a lot of time to formulate a deed properly and without legal defects. There is no prohibition that regulates the time of making the deed, a notary has the right to make the deed outside of normal working hours, this freedom is completely left to the notary and the parties involved in it, but the problem is the time of making various kinds of deeds that tend to be close together, it is clear that there is indeed an element of haste and it is feared that it tends to contain legal defects. This problem is often in the spotlight, so that repeated warnings are given and always reminded, however, there are still individuals who ignore it so that they continue to make many deeds within a month, many deeds are found to be made within a close time period outside the notary's normal working hours, although this is considered valid according to law, but making deeds repeatedly in a short period of time tends to make the notary's performance ineffective. And it is deemed inappropriate if the parties are present after midnight to hear the reading of the deed.³³

³³Marchananda Diva Engracia and Budi Santoso, 2023, Reasonable Limit Rules for Making Notarial Deeds and Their Legal Consequences, Master of Notary Study Program, Faculty of Law, Diponegoro University, p. 162.

In relation to Islamic law, Notaries are given a mandate by the parties which must be maintained, namely to keep everything regarding the deed confidential in accordance with Article 16 paragraph (1) letter e UUJN-P which states that Notaries provide services in accordance with the provisions of this Law, unless there is a reason to refuse it. QS An-Nisa' verse 58 which reads:

Allah Allah is the Most Gracious And He is the Most Merciful Anya The Lord O Allah, the Most Merciful O Allah O Allah, the Most Gracious And the Lord The Most High Bina Allah is the Most Gracious Anya The Most High Allah is the Most Gracious Allah Allah is the Most Gracious Naomi And the Most High Bhai Allah Allah is the Most Gracious Canaan The Most High ⁶ The Most High

"Indeed, Allah commands you to convey the trust to its owner. When you establish laws between people, you must establish them fairly. Indeed, Allah gives you the best teaching. Indeed, Allah is All-Hearing, All-Seeing."

The signing of a deed that is done without being read out and is done outside of the Notary's office hours is also legally valid. As long as the signing ispaying attention to the purpose of the signing must be in accordance with applicable Islamic law, both from the beginning, its contents, to the purpose of the signing. The notary must consider all signing processes and the notary must be able to refuse if it deviates from Islamic law.

The purpose of the contract must be correct and in accordance with the provisions of sharia. The purpose of the contract is considered valid and has legal consequences, requiring the following objective requirements:³⁴

a. The purpose of the contract is not to constitute an obligation that already exists for the parties concerned without the contract being made, the purpose should only exist at the time it is made.

- b. The goal must last until the end of the contract.
- c. The purpose of the contract must be justified by the syara'.

Al-Hurriyah (freedom) is the basic principle in agreements according to Islamic law. The parties are free to make an agreement or contract, free to determine the object, and free to determine with whom they will make the agreement, and free to determine the settlement of disputes if they occur later, as long as it does not conflict with Islamic law. The legal basis for this principle is stated in QS Al-Baqarah verse 256:

³⁴Yulies Tiena Masriani, Op.Cit.

لَآ إِكْرَاهَ فِي ٱلدِّينِ ۖ قَد تَّبَيَّنَ ٱلرُّشْدُ مِنَ ٱلْغَى ۖ فَمَن يَكْفُرْ بِٱلطَّـٰغُوتِ وَيُؤْمِنُ بِٱللَّدِ ٱسْتَمْسَكَ بِٱلْعُرْوَةِ ٱلْوُثْقَىٰ لَا آنفِصَامَ لَهَا ۖ وَٱل لَّهُ سَمِيعٌ عَلِيمٌ

"There is no compulsion to (enter) religion (Islam); Indeed, the right path is clearer than the wrong path. Therefore, whoever disbelieves in Thaghut and believes in Allah, then indeed he has held on to a very strong rope that will not break. And Allah is All-Hearing, All-Knowing."

Here the authority of the Notary plays an important role and the Notary must adhere to the applicable norms of the rules both in terms of legislation and Islamic law so that the authentic deed is valid and has legal certainty. One of the bases of Islamic law that must be adhered to by a Notary in carrying out his/her duties is QS An-Nisa' verse 59:

َيْاَيُّهَا الَّذِيْنَ أَمَنُوًّا اَطِيْعُوا اللَّهَ وَاَطِيْعُ وا الرَّسُوْلَ وَأُولِى الْأَمْرِ مِنْكُمْ فَإِنْ تَنَازَعْتُمْ فِيْ شَيْءٍ فَرُدُّوْهُ إِلَى اللَّهِ وَالرَّسُوْلِ اِنْ كَنْتُمْ تُؤْمِنُوْنَ بِاللَّهِ وَالْيَوْمِ الْاخِرِ ذَٰلِكَ خَيْرٌ وَآحْسَنُ or

"O you who believe, obey Allah and obey (His) Messenger, and the ulil amri among you. then if you have different opinions about something, then return it to Allah (the Koran) and the Messenger (sunnah), if you truly believe in Allah and the Last Day. that is more important (for you) and the consequences are better."

Notaries are legally required to obey the laws and regulations set by the ulil amri (government) in this case UUJN-P, which includes authority, obligations, and prohibitions. Notaries are not authorized to take actions outside their specified authority (for example, making deeds outside the Notary's area of office). Thus, not taking actions outside of that authority includes carrying out the orders of the ulil amri.

Notaries must also apply the Mujahid Principle for Notaries as someone who is always serious in carrying out their duties and is full of responsibility. Mujadid, because Notaries must always be able to create a new uncertain situation into certain, and have a clear legal basis. Mujtahid because Notaries must also always follow the development of science and technology that does not reduce their role in enforcing legal certainty. The mujahid principle makes notaries have to fight to uphold the truth as a conveyor of trust even though their duties are full of challenges and temptations.³⁵

³⁵ Maya Hastuti, 2022, Notary Profession in Islamic Perspective, <u>https://adv.kompas.id/baca/profesi-notaris-dalam-perspeksi-islam/</u>, accessed February 18, 2024.

4. Conclusion

Based on the Notary Law, a Notary can sign an Authentic Deed without it being read out and outside of Notary office hours if at the time of the previous signing the parties have requested that the deed not be read out. However, even if the parties wish not to have the deed read out, the Notary is still required to read out the deed head, comparison, explanation of the main points of the deed briefly and clearly, and the closing of the deed and at the end of the deed the Notary needs to provide information that the deed was not read out in its entirety as requested by the parties before the deed was signed. This needs to be done to provide legal certainty and a form of Notary's self-protection for the deed. In addition, the signing of the deed can also be done outside of Notary office hours as long as the parties wish and the notary has considered the signing process whether it needs to be done immediately or not. Because basically Notaries do not have rules governing working hours, so notaries can be said to work providing public official services for 24 hours. This is a form of Notary service to the community as a public official. Also, as a form of fulfilling the Professional Ethics of a Notary.

5. References

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