

Juridical Review of Notary Deeds Signing which not Performed Simultaneously by Appearing before Notary

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Abstract. *In carrying out the authority, duties and functions of a Notary, as an authentic deed maker, the problem of reading, and signing the parties has been regulated in the Law that regulates . However, in practice, sometimes the parties are unable to attend or cannot attend at the same time because the parties are running urgent business. This study aims to find out the provisions regarding the signing of the deed according to the Notary Position Act, and to find out the legal consequences if the notary deed does not meet the Verlijden principle. The approach method in this research is a normative juridical research method. The method of data analysis using the law is carried out by examining library materials or mere secondary materials. Based on the research, it can be concluded that the implementation of the provisions for signing the deed which is not carried out simultaneously in practice often occurs as long as it is done on the same day, whereas if the day and date of the signing are different, the Notary asks for a power of attorney from parties who are not present by including the contents of the power of attorney.*

Keywords: Deeds; Signing; Simultaneously; Notary.

1. Introduction

The notary position was born because the community needed it, not a position that was deliberately created and then socialized to the public. The history of the birth of a Notary begins with the birth of the scribe profession in Ancient Roman times (second and third centuries after Christ). Scribe is an educated person who is in charge of recording notes and minutes of an activity or decision

and then making copies of the documents, both public and private. The scribe profession was needed at that time because most of the people were illiterate. (Saputro, 2009) Next Latin Notary developed in Northern Italy, then reached its golden age in France. From France the Latin Notary School developed in the Netherlands, only then this school entered Indonesia¹.

Furthermore, in relation to the role of Notaries, the development of the business world has encouraged the field of civil law to always accommodate the need for written evidence. A notary in the profession is actually an institution which, with its deeds, provides written evidence with an authentic nature. (Notodisoerjo, 1993) Furthermore, Article 1868 of the Civil Code states; An authentic deed is a deed which, in the form determined by law, is made by or before public officials in power for that purpose at the place where the deed was made. The authenticity of a deed is largely determined by the fulfillment of the elements contained in the article.

Arrangements regarding Notaries are regulated in Reglement op het notarisambt in Nederlands Indie (Regulation of Notary Positions) Stb 1860 No. 3. Notary is a person who has the authority to make authentic written evidence. Article 1 of the Law on Notary Positions No. 2 of 2014 states; Notary is a public official who is authorized to make an authentic deed and has other authorities as referred to in this Law or based on other laws².

According to Ateng Syarifudin, there is a difference between the notion of authority (authority, *gezag*) and authority (competence, *bevoegheid*). Authority is what is called formal power, power that comes from the power granted by law, while authority only concerns a certain part of authority. Within authority there are powers. Authority is the scope of public legal action, the scope of government authority, not only includes the authority to make government decisions but also includes the authority in the context of carrying out tasks, and giving authority and distribution of authority mainly stipulated in laws and regulations³.

¹ A Chuasanga, Ong Argo Victoria. (2019). *Legal Principles Under Criminal Law in Indonesia Dan Thailand*, Jurnal Daulat Hukum, Vol 2, No 1 (2019) <http://jurnal.unissula.ac.id/index.php/RH/article/view/4218>

² Deen, Thaufiq., Ong Argo Victoria & Sumain. (2018). *Public Notary Services In Malaysia*. JURNAL AKTA: Vol. 5, No. 4, 1017-1026. Retrieved from <http://jurnal.unissula.ac.id/index.php/akta/article/view/4135>

³ Sukarmi, S., & Victoria, A. (2018). Cash Waqf in Sustaining Of Indonesian Society "In Legal & Economic Perspective". *AL-ITQAN: JOURNAL OF ISLAMIC SCIENCES AND COMPARATIVE STUDIES*, 2(1), 83–97. <https://doi.org/10.31436/al-itqan.v2i1.43>

In carrying out their duties the notary is obliged to read the deed before the appearer in the presence of at least 2 (two) witnesses and signed at the same time by the appearer, the witness, and the notary. This reading is carried out both on the parties' deed (*partij acte*) or official deed (*amtelijke acte*). However, in practice there are many signings that are not done before a Notary.

If this provision is violated by a Notary, it results in a deed only having the power of proof as an underhand deed or a deed becomes null and void and can be a reason for the party suffering losses to demand reimbursement of costs, compensation, and interest to the Notary. This is regulated in Article 84 of Act No. 30 of 2004 concerning the Position of a Notary.

2. Research Methods

The research approach method used in this thesis is a normative legal research method. In other words, this research examines library materials or secondary materials. In this case, research is conducted on the Notary Position Act, the Civil Code, the Criminal Code and the Notary Code of Ethics.

3. Results and Discussion

3.1. What are the provisions regarding the signing of a notary deed according to the Law on Notary Positions?

In making a notary deed, several procedures must be met, in the Law on the Position of a Notary, several procedures must be fulfilled in making a deed. The following is the procedure for making a deed:

In Article 16 paragraph (1) letter l it can be seen that before the deed is signed by the appearers, witnesses and notaries must be read out first. This reading is carried out both on the parties' deed (*partij acte*) or official deed (*amtelijke acte*).

The first sentence in Article 16 paragraph (1) of the Law on Notary Positions clearly shows who reads the deed to the parties and witnesses. Notaries have an obligation to read the deed. The reading of the deed itself is one of the obligations for the notary that must be carried out in making an authentic deed. Without reading the deed in front of the parties and witnesses, the deed will lose its authenticity. Reading is part of *verlijden*. The reading of the deed by a notary gives assurance to the parties that the deed they have signed is the deed they both heard. Thus, the notary and the parties believe that the contents of the

deed are really in accordance with what the parties want. The reading is a form of fulfillment of the formalities prescribed by law⁴.

During the reading of the deed carried out by the notary to the appearers and witnesses, the appearers are given the opportunity to make changes or additions to the contents of the deed. The wishes or wishes of the presenters can be directly conveyed to the notary.

Changes or additions to the contents of the deed (*renvooi*) are made at the will of the appearers. Each *renvooi* in the deed must be initialed by the appearers who signed the deed. The provision of this signing is intended as validation of any changes or additions desired by the appearers. *Renvooi* means the appointment to the notes on the side of the deed concerning additions, scribbles and substitutions that are legalized.

The reading of the deed is carried out using language that can be understood by the appearers. If the appearer cannot understand the language used by the notary, then the deed reading can be carried out at the closing section of the deed.

The signing of the deed must be preceded by the reading of the deed. This means that the signing of the deed is carried out after the reading of the deed by a notary. If the appearer signs the deed without it being read, the deed loses its authenticity⁵.

The signing of the deed is proof that the deed is binding on the parties so that signing is an absolute requirement for binding the deed. Affixing the signature is one of a series of inauguration of the deed (*verlijden*). The signature is done at the bottom of the deed, on the blank part of the paper. Affixing the signature on the deed must be stated explicitly in the deed section, this statement is given at the end of the deed as determined by 44 paragraph (1) of the Law on Notary Positions.

⁴ Victoria, O. A., & ., M. (2021). Doctor's Contributions in Transportation Monitoring During COVID-19 Pandemic. *KnE Social Sciences*, 5(1), 598–618. <https://doi.org/10.18502/kss.v5i1.8317>

⁵ Alam, Bahrul., & Khisni, Akhmad. (2020). Legal Protection of Holders of Land Loss Data In The City Land Office of Kendari. *JURNAL AKTA*: Vol.7, No. 2, 159-164. Retrieved from <http://jurnal.unissula.ac.id/index.php/akta/article/view/7963>

3.2. What are the legal consequences of a deed that does not meet the *verlijden* element?

In the implementation of the signing of the Notary Deed and the procedure for signing the deed in Article 16 paragraph (1) sub I it can be seen that in carrying out his position, the Notary is obliged to read the deed before an audience in the presence of at least 2 (two) witnesses and signed at the same time by the appearers, witnesses, and notaries. This reading is carried out both on the parties' deed (*partij acte*) or official deed (*amtelijke acte*)⁶.

The position of the Notary Deed whose signing time is not carried out simultaneously by the parties, the deed will remain authentic if it meets the requirements according to the applicable provisions, namely based on the provisions of Article 1868 of the Civil Code, namely:

- a. The deed must be made in the form prescribed by law;
- b. The deed must be made "by" or before a public official;
- c. The public employee (public official) must have the authority in the place where the deed was made.

If the deed is not based on the above provisions, the deed will have the power of being written under the hand, even though in signing the agreement the parties agree to make a letter of agreement that the signing will be carried out not simultaneously in front of witnesses and a notary. Unless the party who is unable to attend authorizes someone to sign the deed⁷.

According to the author, the position of a Notary Deed whose signing was not carried out simultaneously by the parties, will result in a deed only having the power of proof as an underhand deed or a deed can be null and void. This is based on that by not simultaneously signing the deed, it means that they have violated the provisions of Act No. 2 of 2014 concerning Amendments to Act No. 30 of 2004 concerning the Position of Notary, Article 16 paragraph (1) letter m

⁶ Arrohim, Mohammad B., & Wahyuningsih, Sri Endah. (2020). Analysis of Judicial Application of Criminal Penalty Against Notary / Land Deed Officials Conducting Making Crime of the Fake Authentic Deed in State Court of Semarang. *JURNAL AKTA*: Vol.7, No. 2, 183-188. Retrieved from <http://jurnal.unissula.ac.id/index.php/akta/article/view/7891>

⁷ Notodisoerjo, R. S. (1993). *Hukum Notariat di Indonesia Suatu Penjelasan*. Jakarta: PT. Raja Grafindo Persada.

and Article 44 and Article 1868 and Article 1869 of the Civil Code. Article 16 paragraph (1) letter m reads⁸:

"Read the deed before the appearer in the presence of at least 2 (two) witnesses and signed at the same time by the appearer, the witness, and the notary".

If these conditions are not met, the deed in question only has the power of proof as an underhand deed, this is regulated in Article 16 paragraph (9) of the UUJN. Article 44 reads:

"Immediately after the deed is read, the deed is signed by each appearer, witness, and notary, unless there is appearer who is unable to affix his signature by stating the reasons stated expressly in the deed".

If this provision is violated, resulting in a deed only having the power of proof as a private deed or a deed being null and void, this is regulated in Article 84 of the UUJN. While Article 1869 of the Civil Code states:

"A deed which cannot be treated as an authentic deed, either because of the inability or incompetence of the public official concerned or because of a defect in its form, has the power as a handwritten note if it is signed by the parties"⁹.

It can be explained the purpose of Article 1869 of the Civil Code when connected with this research, where the signing of the deed was carried out at a different time, meaning that the deed was not in accordance with its form so that it was no longer authentic because it deviated from UUJN. Based on Article 165 HIR, an authentic deed is perfect evidence for the parties, their heirs and those who have rights thereof. Perfect in the sense that with the existence of an authentic deed, no other evidence is needed. If the procedure for the inauguration of the deed is not carried out in accordance with what is stipulated by law, the deed becomes a private deed. In the amendment of a deed which is permitted by law, the amendment to the deed is in the form of addition, replacement, or deletion in the deed is only valid if the change is initialed or given another sign of ratification by the appearers, witnesses, and notaries, this is regulated in Article 48 paragraph (2). In making changes to the deed it must be known by the parties

⁸ Ong Argo Victoria, (2018) *Waqf Al-Nuqūd In Indonesia (In Law Perspective)*, Jurnal Pembaharuan Hukum Vol 5, No 1 Universitas Sultan Agung, <http://jurnal.unissula.ac.id/index.php/PH/article/view/2999>

⁹ Saputro, A. D. (2009). *100 Tahun Ikatan Notaris Indonesia, Jati Diri Notaris Indonesia*. Jakarta: PT. Ikrar Mandiri Abadi.

and the parties agree on the change, otherwise the deed made becomes null and void, this is in accordance with Article 84 of the UUJN¹⁰.

4. Closing

According to the results of interviews in the field, the Notary has carried out as intended for the procedure for making the deed. However, sometimes the signing of the Notary Deed is not possible simultaneously by the parties. In such case the Notary asks: The parties to make a letter of agreement that the parties agree and agree to sign the deed not simultaneously before the witnesses and the Notary on the condition that the deed to be signed, its contents have been agreed in advance between them in other words there will be no change in the contents the deed. The position of the Notary Deed which was not signed at the same time by the appearers, was not read directly by the Notary to the appearers, resulting in the deed losing its authenticity and becoming the power of proof under the hand (Article 16 paragraph (8) of the UUJN). What's more, if the contents of the deed are changed where the change is not known by one of the appearers because the appearers do not read and sign the deed at the same time as witnesses and a notary, then the deed will be null and void (Article 84 UUJN).

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