

The Legal Status of the Presuggestion of Infinity In Notary Protection Efforts Related to the Making of Authentic Deeds

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Abstract. *This study discusses the application of the legal position of the presumption of innocence in efforts to protect notaries regarding the making of authentic deeds in Pekalongan Regency. The position of a notary as a public official is related to making an authentic deed. The problems in this thesis are 1) constraints and solutions to the application of the presumption of innocence regarding the legal protection of a notary regarding the making of an Authentic deed by a notary 2) efforts to protect the notary regarding the deed he has made. The purpose of this study is to identify and analyze the obstacles and solutions to the application of the presumption of innocence regarding the legal protection of a notary regarding the making of an authentic deed by a notary. The method used in this research is a sociological juridical approach. The specification of this research uses descriptive analysis. The types and sources of data used in this study are primary data, namely from interviews, while secondary data is obtained through library research. The data collected in this study was divided into 2 (two), namely primary data collection which was carried out by interviews and secondary data collection which was carried out by collecting data contained in laws and regulations, articles, books and others. The data analysis method used in analyzing the data is qualitative analysis. Authentic deed essentially contains formal truth according to which the Notary is responsible for what is witnessed, namely what is seen, heard and also carried out by the Notary as a public official in carrying out his position. Notary legal protection is carried out by UUJN, Notary Association.*

Keywords: *Authentic; Innocence; Presumption; Protection.*

1. Introduction

Notary is a Public Official who has the authority to make Authentic Deeds regarding all actions, agreements and stipulations required by laws and regulations and/or that are desired by interested parties to be stated in an authentic deed, guarantees the certainty of the date of making the deed, saves

the deed, gives grosee, copies and excerpts of deed, all of that as long as the making of the deed is not also assigned or exempted from other officials or other people determined by law. Notary is a person who is authorized to make deeds.¹

Notary deed, hereinafter referred to as deed, is an authentic deed drawn up by or before a Notary in the form and procedure determined by the Law on Notary Position. Authentic deed has perfect evidence. With the perfection of the notarial deed as evidence, the deed must be seen as it is, without the need for different judgments or interpretations other than what is written in the deed.

Articles 1870 and 1871 of the Indonesian Civil Code (KUH Perdata) explain that an authentic deed is a perfect means of proof for both parties and their heirs and all those who have rights from it regarding what is contained in the deed. An authentic deed which is complete (binding) evidence means the truth of the things written in the deed received by the notary in accordance with what was given by the applicant. As notaries, we do not know the truth of the identity given by the applicant.

Authentic deed is a means of evidence for the parties to enter into a relationship in a legal agreement. This deed exists because of the interests of the parties, and was made by the parties. This deed can be used as evidence, thereby having perfect evidentiary power for the parties who made it. As a perfect means of evidence, it means that the truth stated in the notarial deed does not need to be proven with the help of other evidence. However, an authentic deed does not provide perfect evidence of what is contained in it as mere narrative, unless what is said has a direct relationship with the main contents of the deed.²

The legal action contained in a notarial deed is not a legal action from a notary, but the deed contains legal actions from the parties who request or require by consensus the legal action to be included in an authentic deed.³

The statements and wishes of the parties expressed before the Notary are materials for the notary to make a deed according to what is desired by the parties who have appeared before the Notary. Without any information from the parties, the Notary cannot make a deed. So if there is a statement or information that is suspected of being false or untrue listed in the Authentic deed it does not cause the deed to be fake, and does not mean that the Notary enters or includes false information in the Notary Deed. Based on the construction of Notary Law, one of the duties of a Notary's position is to formulate the wishes/actions of

¹Habib Adjie, Indonesian Notary Law, Thematic Interpretation of Law No. 30 of 2004 concerning the Office of a Notary, Refika Aditama, Bandung, 2008, p. 13

²ibid. p 111

³GHS Lumban Tobing, Notary Office Regulations, Erlangga, Jakarta, 1999, p. 39.

appearers in the form of an Authentic deed, taking into account the applicable legal rules.

The Authentic Deed itself has 3 (three) evidentiary powers, namely:

1. The strength of formal evidence that proves between the parties that they have explained what was written in the Deed.
2. Strength of material evidence which proves that between the parties the events mentioned in the Deed have actually occurred.
3. The power of proof is binding which proves that between the parties and the third party that on the date mentioned in the Deed concerned has appeared before the General Employee and explained what was written

Notaries according to their duties and functions in cases like this can also be referred to as the presumption of innocence in this case, namely regarding the making of an authentic deed. Presumption of Innocence is a principle whereby a person must be presumed innocent until a court finds that person guilty. This principle is very important in modern democracies.

The realization of the application of the presumption of innocence in civil cases is based on article 118 [1] HIR / 124 [1] Rbg. This provision requires that a lawsuit be submitted to the District Court where the defendant lives, which is known as the actor sequitor forum rei principle. Based on this principle, a person cannot be forced to appear before the District Court where the Plaintiff lives because the Defendant is not necessarily guilty or the Plaintiff's claim is not necessarily granted by the Court. The principle of actor sequitor forum rei wants the Defendant to be respected and recognized for his rights as long as the truth of the Plaintiff's lawsuit has not been proven in the form of a decision that has permanent legal force.⁴

2. Research Methods

The approach method in this writing will use the type of sociological juridical legal research. The Sociological Juridical Approach emphasizes research aimed at obtaining legal knowledge empirically by going directly to the object.⁵The research specification used in this research is descriptive analysis. Methods of data collection by interviews to obtain information. Data analysis in this research is Qualitative Analysis.

⁴E, Nurhaini Butarbutar. *Journal of Legal Dynamics. The Principle of Presumption of Innocence: Application and Regulations in Civil Procedure Law.* Faculty of Law Unika St Thomas Medan. 2011

⁵Soerjono Soekanto, 2005, *Introduction to Legal Research*, University of Indonesia Press Publisher, Jakarta, p. 51.

3. Results and Discussion

3.1. The Legal Position of the Presumption of Innocence in Notary Protection Efforts Regarding Making Authentic Deeds.

Notary is an official who is appointed and dismissed by a general authority who is given the authority and obligation to serve the community or the public in certain matters. The thing that distinguishes a Notary from other officials is that even though the other officials are appointed and dismissed by the government, the nature of the appointment is only the granting of permission to carry out a state position.

Notary as a profession can be found in the preamble to part point a of the Notary Office Law, which states that a notary is a certain position in a profession that provides legal services to the public and requires protection and guarantees to achieve legal certainty. Position can be interpreted as a job (task) in a government or organization. In this case, it can be seen that the daily affairs or work carried out by a notary are part of state affairs, so that a notary is his position and the person carrying out this position (notary).

The certainty of a Notary's position as an official is so important, because it relates to the legal product produced by the Notary himself, namely in the form of an authentic deed. Apart from that, it is also for the sake of realizing a legal certainty related to the position of a Notary as an Official. This position of notary is one whose existence is desired by the State. Because to realize legal certainty in civil interactions. The conception of legal certainty must be reflected in the practice of state and social life. An interaction both public and private must contain the values of legal certainty and justice.

The position of a notary has a tough task, not only to put the wishes of the parties into an authentic deed. Notaries are required to understand the boundaries and rules that apply in the notary world. Notaries are required to know the rules that apply in the notary world, because in fact in the notary world there are many irregularities committed by notaries both administratively and which result in material losses for society.

A notary before carrying out his position must be sworn in first. This is a consequence of the notary in carrying out his position. This also confirms that the position as a notary must be independent, namely not taking sides with these parties, so that the notary becomes a position of trust. Consequences that arise for a notary as a public official who is authorized to make authentic deeds, he must be responsible and if there is a violation or deviation from the requirements for making the deed he made, it will result in the invalidity of the deed made by the notary.⁶

⁶Sjaifurrachman and Habib Adjie, *Aspects of Notary Liability in Making Deeds*, Bandung: CV. Mandar Maju, 2011. P. 17

In carrying out his profession, a notary must also be able to be responsible for himself and socially and both in a positive legal order and notary code of ethics. The notary's code of ethics applies to all members of the association and other people (as long as the person concerned is carrying out the position of a notary), both in the exercise of office and on a daily basis.

Safeguarding positive legal violations in terms of alleged violations of the code of ethics, the minister of law and human rights of the Republic of Indonesia established a Notary Supervisory Council to carry out the task of supervising and developing notaries.

Article 1 number 6 Act No. 2 of 2014 concerning the position of a notary states that the supervisory board is a body that has the authority and obligation to carry out the guidance and supervision of notaries.

The supervisory board consists of the Central Supervisory Council (MPP) based in the State Capital, Regional Supervisory Council (MPW) based in the Provincial Capital, and Regional Supervisory Council (MPD) based in the Regency or City.

The implementation of the duties and authorities of the Notary Supervisory Council is regulated in the regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 40 of 2015 concerning procedures for appointing members, dismissing members, organizational structure, work procedures and inspection procedures.

Article 66A of the Notary Office Law states that in carrying out the training of a Notary, the Minister of Law and Human Rights forms an Honorary Council of Notaries.

Regulation of the Minister of Law and Human Rights number 7 of 2016 explains that the honorary council is a body that has the authority to carry out notary training and is obliged to give approval or refusal for the purposes of investigation and judicial process, for taking photocopies of minuta deed in summoning a notary to attend the examination relating to the notarial deed or protocol that is in storage.

Legal needs in society can be seen in the increasing number of agreements set forth in a notarial deed, where a notary is a public official authorized to make authentic deeds and other authorities as stipulated in the law.

The law on the position of a notary is the only organic law that regulates a notary as a public official and the form of a notary deed. As referred to in the Law on the position of a Notary Public, an authentic deed essentially contains a formal truth in accordance with what the parties have notified the Notary. The notary has the obligation to apply what is contained in the Notary Deed and really has been understood and is in accordance with the wishes of the parties, namely by reading it. The contents of the deed were read out to the appearers so that the contents of the Notary Deed became clear.

The notary also plays a role in providing legal advice in accordance with the problems that existed before the transaction occurred, whatever is advised is

then poured into the deed concerned, but still according to the wishes or information of the parties concerned, not solely the information from the notary. Notaries as public officials authorized to make authentic deeds, have an important role in people's lives, many sectors of life such as business transactions such as leasing, investment and so on which require the participation of a notary. In fact, there are several provisions that require or are required to use a notarial deed. Which means that if it is not made with a notarial deed, the transaction or activity does not have legal force.

3.2. Implementation of the Presumption of Innocence in Efforts to Protect a Notary against the Deeds He Has Made.

Legal actions contained in a notarial deed are not legal actions from a notary, but legal actions that contain actions, agreements and stipulations from the party requesting or wanting their legal actions to be stated in an authentic deed.

It is the parties to the deed that are bound by the contents of an authentic deed. A notary is not a craftsman making deeds or a person who has a job making deeds, but a notary in carrying out his duties is based on or equipped with various legal knowledge and other sciences that must be mastered in an integrated manner by a notary and deeds made before or by a notary have a position as a tool proof.

Responsibilities owned by a Notary adheres to the principle of responsibility based on fault (based on fault of liability), in making authentic deeds, the Notary must be responsible if the deed he made contains an error or intentional violation by the Notary.⁷

Errors or violations committed by a notary cannot be directly held accountable, the notary only records what the parties want which is then included in the deed. If there are untrue or false statements submitted by the parties, it is the responsibility of the parties themselves. The notary only puts the agreement into the form of an authentic deed so that in this case the notary is only responsible for the formal form of the authentic deed as stipulated by law.

The role of the Notary here is only to record or pour out a legal action carried out by the parties/appearers into the deed. The notary only confirms what happened, what he saw, and experienced from the parties/appearers along with adjusting the formal requirements for making an authentic deed and then pouring it into the deed. The notary is not required to investigate the truth of the material contents of the authentic deed. This requires the Notary to be neutral

⁷Andi Mamminanga, Implementation of the Authority of the Regional Notary Supervisory Board in the Implementation of Notary Office Duties based on UUJN, Thesis, Faculty of Law, Gajah Mada University, Yogyakarta, 2008

and impartial and to provide a kind of legal advice for clients who request legal advice from the Notary concerned.

The notary is responsible for what is witnessed, seen, heard and also done by the notary as a public official. In carrying out his position, the notary guarantees that the deed he made contains the truth or certainty of the date of the deed, the correctness of the signature contained in the deed, the identity of the applicant, as well as the place where the deed was made, but for the truth of the statements or documents itself is only certain between the parties themselves, the Notary is not responsible if there is incorrect information from the appearers.

Problems that can occur in a notarial deed, for example, in the deed containing a false statement, the existence of a fake document or a fake identity given by the appearer to make an authentic deed. Problems like the one above for a notary are actually apart from the responsibility of proving material from what was given by the appearer, the notary is only fully responsible for the deed he has made, because in Article 15 paragraph 1 of Act No. 2 of 2014 concerning the position of a notary stipulates that a notary is only authorized to make authentic deed based on the matters desired by the appearer to be included in the authentic deed.

An authentic deed is evidence for the parties entering into a legal contractual relationship. The existence of this deed is for the benefit of the parties, and was made by the parties. As evidence, such deed has perfect evidentiary power for the parties who make it. As a perfect means of evidence, it means that the truth stated in the notarial deed does not need to be proven with the help of other evidence. However, an authentic deed does not provide perfect evidence of what is contained in it as mere narrative, unless what is said has a direct relationship with the main contents of the deed.⁸

The strength of the proof of an authentic deed in which the appearer uses a fake identity remains as an authentic deed. Only the judge can cancel the deed. If there is a violation of the notarial deed, for example in this case there is a falsified identity, that is, in an authentic deed, the notary matches the identity at the time the deed is read.

The notary cannot do the tracing, it's just that he tries his best to prevent forgery and also now the applicant always affixes his fingerprints on a separate piece of paper whose function is as further evidence that the applicant has signed the

⁸Widhi Handoko, *State Domination of the Notary Profession Between Idea and Reality*. PT Roda Publica Kreasi, 2019.p. 111

deed before the notary. If fraud occurs, we can report it to the investigator. The notary is not responsible if there is an error due to falsification of the identity.

Notary law related to the contents of an authentic deed, if disputed by the parties, the parties come back to the Notary to make a deed of cancellation of the deed, thus the deed that has been canceled is no longer binding for the parties, and the parties bear all the consequences from the cancellation of the deed. But if the appearers do not want to cancel the deed but the notary continues to be blamed for the contents of the deed, then another way is through the court. Later the court will decide to cancel the deed. What was canceled was actually not the deed but the contents of the deed that were cancelled.

If it is true that there was an error in the making of the deed, then the case should be examined first. When making the deed, the notary does not know that the deed he has made is wrong because if it is wrong, the notary will not make it. For errors, it must be proven first what was wrong, while for the burden of proof is not on the notary, but whether proven or not is a decision from the court. The notary is only tasked with recording in the deed what is explained by the parties, and has no right to change, reduce or add to what the principal has explained to the notary.

In order to avoid or minimize the existence of forgery, in addition to affixing fingerprints, as a notary, before the parties come to make the deed, we need a photocopy of identity so that this forgery does not occur, the applicant is expected to bring the original identity card to match the photocopy. The rest of the notaries can only try to prevent such forgery from occurring.⁹

The principle of presumption of innocence is a principle where a person is not necessarily guilty until there is a decision from the court. If there is an error in making the agreement, then the case is examined first. After seeing the case, we first observe the location of the error. When making the deed, the notary does not know that the deed he has made is wrong because if it is wrong, the notary will not make it. The notary knows there is an error after the lawsuit. But that is not necessarily the fault of the notary, so it must be seen from the case first. In principle, the notary is passive because the notary only serves those parties who come to him

4. Conclusion

Notaries as public officials already have clear foundations and guidelines governing the position of a Notary, namely the Notary Office Law No. 2 of 2014.

⁹Interview results with Notary Fatiroh, SH, M.Hum, M.Kn

Notary deeds as official deeds have an important status in Indonesia. The making of an authentic deed has a relationship with the constitutional rights of citizens. This is indicated by the making of the authentic deed as the fulfillment of citizens' constitutional rights to legal certainty that is just for certain circumstances, events or legal actions under the umbrella of the Civil Code and UUJN. UUJN's legal position provides legal protection for Notaries as long as they carry out their duties in accordance with the Notary's authority and does not apply if the Notary commits an act not in carrying out his/her duties as a Notary or outside the authority of a Notary. The application of the principle of presumption of innocence, namely where a notarial deed will always be considered valid and perfect in its proving value, and has the fullest proving value, before any party denies it before the court. However, this protection only applies if the notary is still in office.

5. References

Journals:

- [1] Agustining. Tesis Fakultas Hukum Universitas Sumatera Utara. Tanggung Jawab Notaris Terhadap Akta Otentik Yang Dibuat Dan Berindikasi Perbuatan Pidana. 2009
- [2] Andi Mamminanga, Pelaksanaan Kewenangan Majelis Pengawas Notaris Daerah dalam Pelaksanaan Tugas Jabatan Notaris berdasarkan UUJN, *Tesis*, Fakultas Hukum Universitas Gajah Mada, Yogyakarta, 2008
- [3] E, Nurhaini Butarbutar. *Jurnal Dinamika Hukum. Asas Praduga Tak Bersalah : Penerapan dan Pengaturannya Dalam Hukum Acara Perdata*. Fakultas Hukum Unika St Thomas Medan. 2011
- [4] Fransisco Ch.Poae, Henry R.Ch. Memah. Marthin L. Lambonan. Pertanggung Jawaban Hukum Terhadap Notaris Dalam Kesalahan Pembuatan Akta. *Lex Et Societatis* Vol. VIII. 2020.
- [5] I Gust I Agung Oka Diatmika. *Perlindungan Hukum Terhadap Jabatan Notaris Berkaitan Dengan Adanya Dugaan Malpraktek Dalam Proses Pembuatan Akta Otentik* Jurnal Ilmiah Prodi Magister Kenotariatan, 2016 -2017.
- [6] Ida Bagus Paramaningrat Manuaba I Wayan Parsa I Gusti Ketut Ariawan. *Jurnal Ilmiah Prodi Magister Kenotariatan . Prinsip Kehati-Hatian Notaris Dalam Membuat Akta Otentik*. (Magister Kenotariatan Universitas Udayana) 2018
- [7] Innaka Dewi Indra. Tesis. 2019. Penerapan Asas Praduga Sah Terhadap Akta Notaris Dengan Adanya Figur Palsu (Studi Kasus Putusan Pengadilan Tinggi Banda Aceh Nomor 43/Pdt/2017/Pt.Bna).
- [8] NUR AINI. Tanggung Jawab Notaris Atas Keterangan Palsu Yang Disampaikan Penghadap Dalam Akta Pendirian Perseroan Terbatas. *Jurnal*

Komunikasi Hukum (JKH) Universitas Pendidikan Ganesha. Vol. 5 No. 2, August 2019

- [9] Philipus M. Hadjon dan Tatiek Sri Djatmiati, *Argumentasi Hukum* (Yogyakarta: Gadjah Mada University Press, 2005)

Internet:

- [1] Agus suhariono. Terms of authenticity of notary deed <https://www.kompasiana.com/agussuhariono8044/6172647824b0e815f5599612/conditions-keotentikan-akta-notary>. Retrieved 09 May 2022.
- [2] DPC Peradi Tasikmalaya. <https://peradi-tasikmalaya.or.id/apa-yang-dimaksud-asas-praduga-tak-bersalah/>. Retrieved December 10, 2021
- [3] Dr. Henry Sinaga, SH, Sp.N., M.Kn. <https://www.> accessed on 26 May 2022
- [4] <http://eprints.umm.ac.id/37857/3/jiptummpp-gdl-fitrianurj-51262-3-babii.pdf> accessed on 31 January 2022
- [5] http://repository.ump.ac.id/3369/3/Bab%20II_Alif%20Nur%20Choliq.pdf accessed on 31 January 2022
- [6] <http://repository.umy.ac.id/bitstream/handle/123456789/20673/e.%20BAB%20II.pdf?sequence=6&isAllowed=y#:~:text=With%20demikian%2C%20kedudukan%20Hukum%20is,%20allowed%20or%20is%20not%20allowed.> Retrieved December 20, 2021
- [7] <https://jdih-dprd.bangkaselatankab.go.id/publikasi/detail/2-pengertian-Hukum> accessed on 31 January 2022