

## Implementation of Notary's Principle of Prudence in Making Authentic Deeds Between Housing Developers, Banks and Home Buyers in Ngawi Regency

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**Abstract.** *Notaries in carrying out their duties and positions are very important to implement the principle of caution in the process of making authentic deeds, considering the frequent legal problems with authentic deeds made by notaries because there are parties who commit crimes such as providing fake letters and false statements into the deeds made by notaries. The objectives of this thesis research are: 1) To find out and analyze the urgency of the notary's principle of caution in making authentic deeds of housing developer credit agreements; 2) To find out and analyze the application of the notary's principle of caution in making authentic deeds in Ngawi Regency. The conclusion of the results of this study are: 1) The forms of precautionary principles carried out by notaries in the process of making deeds are, introducing the identity of the person appearing, verifying the subject data and carefully the object of the person appearing, giving a grace period in the process of making deeds, acting carefully, carefully and precisely in the process of making deeds, fulfilling all technical requirements for making deeds and reporting if there is an indication of money laundering in transactions at the notary, forms of precautionary principles like this should be mandatory for notaries to implement in order to prevent notaries from having legal problems with authentic deeds they make in the future. 2). Implementation of the Notary's precautionary principle in making authentic deeds in Ngawi Regency has implemented the precautionary principle and if there is falsification of letters and false information provided by the parties in the process of making deeds, then material responsibility is the responsibility of the parties who have provided false data or false information to the notary. And the parties can be prosecuted and held responsible for the Criminal Act of Forged Letters and False Statements in accordance with Articles 263, 264 and Article 266 of the Criminal Code.*

**Keywords:** *Consequences; Fake; Letters; Precautionary.*

## 1. Introduction

The property and banking industries play a crucial role in a country's economy, and notaries are often involved in these transactions. Notaries have a great responsibility, especially in making authentic deeds involving developers, banks, and property buyers. The Notary profession is a special profession alongside other noble professions. Notaries as Public Officials (*openbaar ambtenaar*) must be professional because they represent the state in carrying out their duties and functions in making deeds as evidence in the form of Authentic Deeds.<sup>1</sup>

The existence of a Notarial deed in a state of law, especially Indonesia, has a crucial function. The recognition of a Notarial deed as a deed that has perfect evidentiary power makes the position of a Notarial deed as the first and main evidence in civil evidentiary law, so that its existence also needs to be regulated in such a way that the evidentiary power of the notarial deed does not become a boomerang for the parties who make it.<sup>2</sup>

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 UUJNP), a Notary is defined 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. The duties of a notary's position generally lie in his authority to make authentic deeds, by a notary the deeds he makes have strong evidentiary power when compared to private deeds. As long as the degradation from an authentic deed to a private deed does not cause any loss, the notary concerned cannot be held legally liable through Article 1365 of the Civil Code concerning Unlawful Acts. The form of liability adopted by Article 1365 of the Civil Code is liability based on fault, in this case the fault inherent in a notary regarding the deed he makes. The degradation of the evidentiary force of a notarial deed to a private deed generally applies since a court decision that has permanent legal force (*inkracht*).<sup>3</sup>

The position of Notary is held or its presence is required by legal regulations with the aim of helping and serving the community who need authentic written

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<sup>1</sup>Alfian Christian, 2020, Conflict of Norms Related to the Right to Refuse in the Office of Notary Reviewed from the Notary Law and the Notary Code of Ethics. *Journal of Education and Development of the South Tapanuli Education Institute*, Volume 8, Number 1, p. 89

<sup>2</sup>Nawaaf Abdullah and Munsyarif Abdul Chalim, 2017, Position and Authority of Notaries in Making Authentic Deeds, *Jurnal Akta*, Volume 4 Number 4, p.657

<sup>3</sup>Edwin Azhari, Ali Murtadho, and Djauhari, 2018, Notary's Responsibilities in Making Nominee Deeds of Agreement in Relation to Land Ownership by Foreign Citizens in Lombok, *Jurnal Akta*, Vol 5 No 1, p.45

evidence regarding circumstances, events or legal acts.<sup>4</sup>On that basis, those who are appointed as Notaries must have the spirit to serve the community and for that service, the community who have felt served by the Notary in accordance with their duties and positions, can provide an honorarium to the Notary. Therefore, a Notary means nothing if the community does not need it. The Notary Institution was born in the Unitary State of the Republic of Indonesia as the will of the state or the Notary Office is an institution created by the state to carry out part of the state's authority in the field of civil law, by making written evidence recognized by the state, therefore, to the Notary Office. Notary as a position is regulated in Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Positions, where this Law is a unification in the field of regulating Notary positions, meaning the only legal regulation in the form of a law that regulates Notary positions in Indonesia so that all matters relating to Notaries in Indonesia must refer to Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Positions. Placing a Notary as a position is a field of work or task that is deliberately made a legal rule for certain purposes and functions (certain authorities) and is continuous as a permanent work environment. Every authority given to a position must have legal rules. As a limitation so that the position can run well and not collide with the authority of other positions. thus if an official (Notary) carries out an action outside the authority that has been determined, it can be categorized as an act of violating authority.<sup>5</sup>

Notaries in carrying out their duties and positions are very important to implement the principle of caution in the process of making authentic deeds, considering the frequent legal problems with authentic deeds made by notaries because there are parties who commit crimes such as providing fake letters and false statements in the deeds made by notaries. The legal consequences of agreements in the contents of notarial deeds made based on fake letters and false statements according to Article 1320 paragraph (4) and Article 1335 of the Civil Code, namely an agreement made based on a false cause is null and void (*nitiegbaarheid*) and the deed made has its evidentiary force degraded from an authentic deed to a private deed, however, the formal truth contained in the head and cover of the deed remains binding on the parties who made it.<sup>6</sup>So, to prevent crimes that can lead notaries to be involved in legal problems, it is necessary to re-regulate the Notary Law regarding guidelines and demands for

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<sup>4</sup>Ibid

<sup>5</sup>HS. Lumban Tobing, 1983., Notary Regulations, Erlangga, Jakarta, p. 44

<sup>6</sup> Aulia Farazenia, Winanto Wiryomartani, Widodo Suryandono, Notary's Responsibility in Making a Sale and Purchase Deed Based on a Sale and Purchase Agreement in Full, the Payment of which is Returned to the Buyer (Case Study of the Decision of the Notary Central Supervisory Board Number 04/B/Mppn/Vii/2019)., Jurnal Universitas Indonesia, p.1

notaries to act more carefully, precisely and cautiously in the process of making authentic deeds.

The forms of prudential principle that should be carried out by a notary in the process of making a deed are, to identify the identity of the person appearing, to carefully verify the data of the subject and object of the person appearing, to give a grace period in the process of making the deed, to act carefully, precisely and precisely in the process of making the deed, to fulfill all the technical requirements for making the deed and to report if there is an indication of money laundering in the transaction at the notary, these forms of prudential principle should be mandatory for notaries to implement so that later the notary can prevent legal problems arising regarding the authentic deed that they make in the future.<sup>7</sup>

Based on the background above, the problems in this research are as follows:

1. What is the basis for applying the principle of notarial prudence in making authentic deeds?
2. How is the application of the notary's principle of prudence in making authentic deeds in Ngawi Regency?

## **2. Research Methods**

This type of research is Sociological Juridical Legal Research. According to Mukti Fajar and Yulianto Achmad, empirical legal research with a sociological juridical research model has an object of study regarding community behavior. The approach method used in this study is a qualitative approach. A qualitative approach is a way of analyzing research results that produces analytical descriptive data, namely data stated by respondents in writing or verbally as well as real behavior, which is researched and studied as something whole.

The data used in this study is Primary Data in sociological legal research, indicating that this research must be built on social facts related to the workings of the law that the author actually faces.<sup>8</sup> Data analysis is an activity in research in the form of conducting a study or review of the results of data processing assisted by previously obtained theories. The analysis in this study is descriptive. This method aims to systematically describe the facts and data obtained, as well as the results of research both from interviews and observations as well as literature and documentary studies to then clarify the picture of the research results.<sup>9</sup>

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<sup>7</sup>Dody Radjasa Waluyo, 2001, Authority of Notary as a Public Official, Media Notariat (Menor) October-December Edition, page 6

<sup>8</sup>Ibid, p. 59

<sup>9</sup>Mukti Fajar and Yulianto, Op.cit., p. 183

### 3. Results and Discussion

#### 3.1 The Basis for Applying the Notary's Principle of Prudence in Making Authentic Deeds

##### a. Case Position

It started in 2016 when there was a prospective customer who would apply for a Home Ownership Credit at a Financing Bank and provide identification that was in accordance with the Bank's provisions that were deemed necessary, with the following requirements:

1. Indonesian citizens must be at least 20 years old or married, and maximum 65 years old when the credit matures;
2. Maximum income:
  - Not married IDR 6,000,000,-;
  - Marriage IDR 8,000,000,-
3. Maximum income specifically for Papua and West Papua:
  - Not married IDR 7,500,000,-;
  - Marriage IDR 10,000,000,-
4. The applicant and spouse do not yet own a house;
5. Never received housing subsidies from the government;
6. Have a Taxpayer Identification Number (NPWP) Have an Annual Notification Letter (SPT) for Personal Income Tax (PPH)
7. NIK is registered with Dukcapil.

After the submission of the files, the Bank reviews and surveys all the files, after being declared feasible and appropriate, the bank approves the application for the Home Ownership Credit and is carried out with the signing of the Credit Agreement in front of a Notary/PPAT in Ngawi Regency. That for the credit, initially there were no problems/smooth installment payments, but in 2018 there was a delay in installment payments, then a warning letter was given to immediately pay the delay, then further checked and found by the Bank that the identity requirements above in the form of a Divorce Certificate submitted by the Buyer turned out to be Fake, at this time for smooth installment payments as stated in the Credit Payment History Schedule. What actions are taken by the Bank and

Notary/PPAT in taking preventive measures, so that this does not happen again and does not harm other parties.

**b. The Basis for Applying the Notary's Principle of Prudence in Making Authentic Deeds**

A Notary is seen as a figure whose statements are reliable and can be trusted, whose signature and seal (stamp) provide guarantees and strong evidence in the authentic deed he makes.<sup>10</sup> However, at this time there are often legal problems in the making of deeds made by notaries. because the deeds made are indicated to contain criminal elements because the parties facing the process of making the deed provide fake documents or letters and include false information in the authentic deed made by the notary.

First, conduct an interview with DS, SH, M.Kn. Notary/PPAT in Ngawi Regency. To prevent notaries from getting caught up in legal problems, the forms of precautionary principles that can be implemented by Notaries in the process of making authentic deeds include:<sup>11</sup>

1) Conducting an Introduction to the Identity of the Applicant.

In carrying out his duties, a notary before starting to make a deed is certainly faced with parties who want to make an authentic deed, of course, before entering the identities of the parties into a deed, the notary must check the identities of the parties such as KTP, KK, or Passport and match the photos of the owner of the Identity with the parties who made the authentic deed, in order to prevent falsification of identities against the deed made by the notary.

2) Carefully verify the data of the subject and the object of the encounter.

The purpose and objective of Verification is to check the subject data of the parties whether they are authorized and competent or not in carrying out legal acts so that they can meet the legal requirements of a deed such as whether the party acting is at least 18 years old or has been married according to Article 39 paragraph 1 letter a UUJNP. While part of the process of validating object data is part of the process

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<sup>10</sup>Maria SW Sumardjono, 2001, Land Policy Between Regulation and Implementation, First Edition, Kompas, Jakarta, p. 14

<sup>11</sup>Interview with DS, SHM Kn. Notary/PPAT in Ngawi Regency on April 29, 2024

of checking the object documents brought by the person appearing, for example checking the land certificate to the National Land Agency whether the certificate is an original or fake certificate or whether or not the person concerned (the person appearing) has the certificate.

3) Provide a deadline for processing authentic deeds.

In working on a deed in order to produce a good deed, the notary should provide a time limit in the deed-making process so that it is not rushed and can work carefully and precisely so as not to cause errors in the notarial deed.

4) Act carefully, carefully and thoroughly in the process of making the deed.

Act carefully, precisely and precisely in the process of making a deed, the words written in the deed, because in its implementation, deeds made by notaries are often questioned because the words made are unclear or give rise to interpretation.

5) Fulfill all technical requirements for making a notarial deed

In order to make a notarial deed that is free from indications of legal problems, of course, the notary must fulfill the formal and material requirements for making a notarial deed based on the Notary Law. The provisions regarding the formal requirements for making a deed are regulated in Article 38 of the UUJN-P, while the material requirements that must be fulfilled in making an authentic deed are regulated in Article 1320 of the Civil Code.

6) Report to the authorities if there are indications of Money Laundering in Transactions at the Notary.

At this time, it shows that one of the criminal acts of money laundering originating from criminal acts of corruption by corruptors often utilizes notaries through the real estate sector in the form of buying and selling land or buildings.

*Second* conducted an interview with YM, SH, M.Kn. Notary/PPAT in Ngawi Regency, said that the Basis for Implementing the Notary's Prudential Principle in Making

Authentic Deeds starts from:<sup>12</sup>

- a. Providing Legal Counseling and Legal Education to the parties in accordance with Article 15 paragraph (2) letter e of the Notary Public Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Notary Public, which reads;

"Providing legal counseling in connection with the preparation of deeds"

- b. Article 16 paragraph (1) letter a of the Notary Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Notary Law, in carrying out his/her position, a notary is obliged to:

"Act in a trustworthy, honest, thorough, independent, impartial manner, and protect the interests of the parties involved in legal actions."

Based on the explanation above, it includes the basic principle of caution for notaries in making authentic deeds.

### **3.2 Implementation of the Notary's Principle of Prudence in Making Authentic Deeds in Ngawi Regency**

Notaries in carrying out a legal action must always act carefully so that the notary before making a deed, must examine all relevant facts in his considerations based on applicable laws. Examining all the completeness and validity of the evidence or documents shown to the notary, as well as hearing the statements or statements of the parties must be done as a basis for consideration to be stated in the deed. If the notary is not careful in examining important facts, it means that the notary is acting carelessly.

Notaries in carrying out their duties and positions are very important to implement the principle of caution in the process of making authentic deeds, considering the frequent occurrence of legal problems with authentic deeds made by notaries because there are parties who commit crimes such as providing fake letters and false information into the deeds made by notaries. So to prevent crimes that can lead notaries to be involved in legal problems, it is necessary to re-regulate the Notary Law regarding guidelines and demands for notaries to act more carefully, thoroughly and carefully in the process of making authentic deeds.

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<sup>12</sup>Interview with YM, SHM Kn. Notary/PPAT in Ngawi Regency on April 29, 2024



In conducting interviews with both sources, they said that in implementing the principle of caution in making authentic deeds, it had been carried out as explained above.

Based on the first source interview said that the application of the notary's principle of caution in recognizing the parties begins with each deed being made must always request the original document, then adjusted to the legal act to be carried out, the legal consequences and the solution. Then check and match the documents shown by the party appearing. Carry out legal acts in terms of making deeds in accordance with the Notary's operational standards, make them in accordance with applicable procedures; and

Based on an interview with the second source, it was stated that the Implementation of the Notary's Principle of Caution in Knowing the Applicants begins with Providing Legal Counseling and Legal Education to the applicators. Pouring out the wishes of the applicators in an authentic deed, in making the deed it must not conflict with applicable regulations, all requirements must be met by the applicators, then they must be examined, checked, and document checks must be carried out with the relevant agencies. Checking documents directly online to the government agency system. Such as in the case of checking the Population Identity Card through the online system of the Population and Civil Registry Service.

Asking and directly matching the truth of the biodata, such as the date and address on the Resident Identity Card to the face-to-face. This method is one way to apply the principle of caution in getting to know the face-to-face. If the face-to-face is not the face-to-face according to the Resident Identity Card, then it will be seen physically and behaviorally that there are irregularities and differences that can be seen directly.

The Applicants have fulfilled all the formal requirements, so that is sufficient as a basis for the Notary to carry out the legal acts desired by the Applicants. The Notary is not burdened with seeking the truth materially, but when there are doubts and oddities in the documents that are a requirement for making the deed of the Applicants. Then the Notary should seek the truth materially on the Applicants' documents. In order to achieve the principle of the Notary's caution in knowing the Applicants. If there are doubts and errors in the documents of the Applicants, the Notary should refuse to make an authentic deed, in order to achieve the principle of caution in knowing the Applicants and not become a dispute in the future.

#### **4. Conclusion**

The forms of precautionary principles carried out by notaries in the process of making deeds are, introducing the identity of the person appearing, verifying the data of the subject and carefully the object of the person appearing, giving a

grace period in the process of making deeds, acting carefully, precisely and precisely in the process of making deeds, fulfilling all technical requirements for making deeds and reporting if there are indications of money laundering in transactions at the notary, forms of precautionary principles such as these should be mandatory for notaries to implement in order to prevent notaries from having legal problems with authentic deeds they make in the future. Implementation of the Notary's precautionary principle in making authentic deeds in Ngawi Regency has implemented the precautionary principle and if there is forgery of letters and false information provided by the parties in the process of making the deed, then the material responsibility is the responsibility of the parties who have provided false data or false information to the notary. And the parties can be sued and are responsible for the Criminal Act of Forged Letters and False Information in accordance with Articles 263, 264 and Article 266 of the Criminal Code. The notary's task is only to express the wishes of the parties, not to ensure the material truth of the data brought by the parties, so that in carrying out his duties the notary must apply the precautionary principle so as not to believe as quickly as possible the parties who want to make authentic deeds.

## **5. References**

- Abdullah, Nawaaf and Chalim, Munsyarif Abdul, (2017), Position and Authority of Notaries in Making Authentic Deeds, *Journal of Deeds*, Volume 4 Number 4.
- Azhari, Edwin, Murtadho, Ali, and Djauhari, (2018), Notary's Responsibilities in Making Nominee Agreement Deeds in Relation to Land Ownership by Foreign Citizens in Lombok, *Jurnal Akta*, Vol 5 No 1.
- Christian, Alfian, (2020), Normative Conflicts Relating to the Right to Refuse in the Notary Office Reviewed from the Notary Law and the Notary Code of Ethics. *Journal of Education and Development*, South Tapanuli Education Institute, Volume 8, Number 1.
- Fajar, Mukti and Achmad, Yulianto, (2010), *Dualism of Normative and Empirical Legal Research*, First Edition, Pustaka Pelajar: Yogyakarta.
- Farazenia, Aulia, Wiryomartani, Winanto, Suryandono, Widodo, Notary's Responsibility in Making a Sale and Purchase Deed Based on a Sale and Purchase Agreement in Full, the Payment of which is Returned to the Buyer (Case Study of the Decision of the Central Notary Supervisory Board Number 04/B/Mppn/Vii/2019), *Jurnal Universitas Indonesia*.1
- Sumardjono, Maria SW, (2001), *Land Policy Between Regulation and Implementation*, First Edition, Kompas: Jakarta.

Tobing, HS. Lumban, (1983), Regulations on the Position of Notary, Erlangga: Jakarta.

Waluyo, Dody Radjasa, (2001), Authority of Notaries as Public Officials, Media Notariat (Menor) October-December Edition.

The 1945 Constitution of the Republic of Indonesia.

Civil Code.

Law Number 10 of 1998 concerning Banking.

Law Number 21 of 2011 concerning the Financial Services Authority.

Law of the Republic of Indonesia Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notaries, etc.