JURNAL KONSTATERING
published by
Master of Notary Law, Faculty of Law
Sultan Agung Islamic University



# Practice of Making Notarial Deeds in Cases of Appearing at Different Times and Places and the Legal Consequences

**Khoirun Nisa**

Faculty of Law, Universitas Islam Sultan Agung, Semarang, Indonesia, E-mail: nisakhoirunnisa203@gmail.com

***Abstract.*** *The practice of making notarial deeds in the case of the parties appearing at different times and places will have legal consequences for the deeds made. The legal consequences in question are related to the evidentiary power of the deed made, whether it has the evidentiary power as an authentic deed or not, or in other words, whether the notarial deed is legally valid. Based on the background of the problem, this study discusses the practice of making notarial deeds in the case of the parties appearing at different times and places and its legal consequences. The purpose of this study is to determine and analyze the practice of making deeds in the case of the parties appearing at different times and places and its legal consequences. This study uses a sociological legal approach. Data collection was carried out through interviews, literature studies and documentation studies. Data analysis was carried out descriptively qualitatively. This study shows that the practice of making deeds in the case of the parties appearing at different times and places as determined by laws and regulations as a form of deviation from the making of deeds due to the demands of the development of the times. This happens because the time owned by the parties is limited and/or an interest that cannot be abandoned so that for reasons of practicality the parties appear at different times and places when making the deed. This cannot be separated from the mutual trust between the parties so that the management of making the deed is handed over to one of the parties. Such practices are a breakthrough effort against the obstacles that arise in making deeds so that the effectiveness of making deeds can be realized. The legal consequences of making a deed in the event that the parties appear at different times and places include the legal consequences for the authentic deed and the legal consequences for the notary. The legal consequences for the deed are that the deed in question remains valid as an authentic deed if the makingThe deed is executed at the notary's domicile and the reading and signing of the deed is done in the presence of the parties witnessed by at least or at least 2 (two) witnesses, except in cases where the parties wish that the deed in question not be read. If this is not fulfilled or the deed is signed at a different time and place, then the deed in question is degraded*

*in its legal force to become a private deed. The legal consequences for the notary arise in the event that the deed in question is degraded in its legal force as a private deed, then the notary can be subject to administrative sanctions in the form ofwritten warning, temporary dismissal, honorable dismissal, or dishonorable dismissal. Notaries can be held civilly liable in the form of compensation and criminally liable in the form of criminal sanctions in the event that an authentic deed that is degraded into a private deed causes losses to other parties.*

***Keywords:*** *Appearing; Consequences; Deed.*

## 1. Introduction

Proof is a stage that has an important role for judges to make decisions. The process of proof in the trial process can be said to be central to the examination process in court. Proof becomes central because the arguments of the parties are tested through the proof stage in order to find the law that will be applied (rechtoepasing) or found (rechtvinding) in a particular case. Proof is historical in nature, which means that this proof tries to determine what events have occurred in the past which are currently considered to be true, events that must be proven are relevant events, because irrelevant events do not need to be proven.[1]

This stage of proof is the events that lead to the relevant truth according to law. The purpose of proof is to establish the legal relationship between the two parties in court to be able to provide certainty and confidence to the judge regarding the arguments accompanied by evidence submitted in court, at this stage the judge can consider the verdict of the case that can provide a truth that has the value of legal certainty and justice.[2]

The legal system of evidence adopted in Indonesia is a closed and limited system where the parties are not free to submit types or forms of evidence in the process of resolving a case. The law has firmly determined what is valid and valuable as evidence. Restrictions on freedom also apply to judges where judges are not free and at liberty to accept anything submitted by the parties as evidence. If the parties to the case submit evidence outside the provisions contained in the governing law, the judge must reject and set it aside in resolving the case.

Evidence (bewijsmiddel) comes in various forms and types, which are able to provide information and explanations about the issues being litigated in court. Evidence is submitted by the parties to justify the arguments of the lawsuit or the arguments of the objection. In the civil case process, of the five pieces of evidence

[1]Subekti, 2001, Law of Evidence, Pradnya Paramita, Jakarta, p. 33
[2]Teguh Samudra, 2012, Law of Evidence in Civil Procedure, Alumni, Bandung, p. 22

that can be submitted, written evidence is the evidence that is prioritized, because of the characteristics of civil cases and civil legal acts themselves which are formal. All formal legal acts that are stated in writing are carried out clearly and concretely in order to realize civil procedural law as regulated in the Civil Code and to provide legal force to guarantee the rights of a person.[3]

Written evidence or letters are anything that contains reading signs that are intended to pour out one's heart or convey one's thoughts and are used as proof. Letters as written evidence are divided into two, namely letters that are deeds and other letters that are not deeds, deeds are letters as evidence that are signed, which contain events that are the basis of a right and obligation, which are made from the beginning intentionally for proof, the requirement for a letter to be signed in order to be called a deed is regulated in Article 1886 of the Civil Code. Signatures that have no other purpose than to distinguish one deed from another or deeds made by other people, to provide characteristics. While non-deeds are other letters that are not included in deeds, namely registers and household affairs letters.[4]One deed that has an important position as evidence is a notarial deed.

Notarial deed as a means of proof has perfect, strongest and full evidentiary power. This causes notarial deed to prevent disputes in addition to providing legal certainty. Making a notarial deed for an interest such as explaining an act, making an agreement, or a stipulation is a better action when compared to making a letter under hand, even though the letter in question is signed on a stamp, also strengthened by the signatures of witnesses.[5]This shows that notarial deeds are very useful in terms of proving certain legal acts or events compared to other written evidence.

It is not uncommon in practice for disputes to arise due to a consequence of the existence of a notarial deed. Moreover, it has become commonplace that in criminal cases that position a notary as a suspect is the result of the notary's duties in making a deed that deviates or does not comply with applicable laws and regulations. Problems related to notarial deeds are usually regarding the validity of the notarial deed which is questioned by the parties.

Based on the provisions of Article 1 number 7 of Law Number 30 of 2004 concerning the Notary Office (UUJN) as amended by Law Number 2 of 2014, a notarial deed is an authentic deed made by or before a Notary according to the form and procedures stipulated in the Notary Office Law. In the General Explanation, it is stated that a notarial deed in principle contains a formal truth as

[3]M. Natsir Asnawi, 2013, Law of Evidence in Civil Cases in Indonesia, UII Press, Yogyakarta, p. 31
[4]Ibid, p. 32.
[5]Arief Rachman, 2011, Authenticity of Authentic Deeds, https://notarisarief.wordpress.com/2011/05 /15/otenisitas-suatu-akta-otentik/, accessed March 10, 2024.

conveyed by the parties to the notary when the parties in question meet the notary to make a deed. However, the Notary Office Law (UUJN) does not provide further challenges to what is meant by an authentic deed.

The legal field has experienced very rapid development along with the rapid development of the world of education in the intellectual field. Such conditions encourage people to always obtain authentic evidence of the legal acts they have committed. The authentic evidence referred to is in the form of written evidence which is important evidence in the legal field. This has been realized considering that the legal field is a field that is in almost all areas of life. Written evidence as authentic evidence in the legal field will certainly intersect with the profession of a notary as a public official who makes authentic deeds who presents written evidence of the authentic deeds they have made. The existence of a notary and the recognition of authentic deeds made by a notary encourages the public to always pour every legal act into an authentic deed in order to obtain strong and perfect written evidence.

Initially, authentic deeds made by notaries did not have the power of proof as authentic deeds but as private deeds. This was because at the beginning of the emergence of notary institutions around the 2nd and 3rd centuries, their servants known as tabiliones were not appointed by the general authorities to provide services to the community in making deeds. Due to this situation, namely the absence of appointment by the general authorities as the authorized party, the deeds issued did not have authentic power but their power was only equal to a deed made privately. This situation then changed in the 13th century where the authentic nature of the deed meant that a public deed (openbaar geschrift) had been recognized if the deed in question was made by a notary appointed by a government official. However, the evidentiary power (bewijskracht) of the deeds in question had not yet been fully recognized. It was only in the 15th century that the evidentiary power (bewijskracht) of the deeds in question was truly recognized. This is the beginning, notarial deeds are no longer made only as a means of remembering past events that have occurred, but their making is also oriented towards the interests of the evidentiary power of the deed.[6]

The modern era with the rapid development of people's lives increasingly requires authentic deeds as the strongest and most complete means of proof, especially in legal relations that occur in people's lives. The need for authentic deeds as written evidence is increasing for various business activities such as business, banking, land, social activities and so on. This cannot be separated from the demands for legal certainty in every legal relationship carried out by the community.

[6]Ibid.

The existence of an authentic deed is expected to provide a guarantee of legal certainty that can minimize the occurrence of disputes because it has been clearly determined regarding the rights and obligations of the parties and various provisions that serve as guidelines for the parties in carrying out their legal relationship. An authentic deed is also a means of proof in resolving a dispute when a dispute occurs that cannot be avoided. Through an authentic deed, dispute resolution can be carried out easily, cheaply and quickly.

A notary is a public official who has the authority to make authentic deeds as long as there are no other public officials who are specifically tasked with making authentic deeds. In order to realize certainty, order and legal protection, the making of authentic deeds is required by laws and regulations. The making of authentic deeds by or before a notary is something that is desired by those who have interests as an effort to guarantee the certainty of the rights and obligations of the parties to realize the guarantee of certainty of order and legal protection for parties who have interests including for the interests of the general public. In addition, the making of authentic deeds by or before a notary is something that is mandatory as determined by laws and regulations.

In principle, an authentic deed contains a formal truth regarding matters conveyed by the parties to the notary. To ensure that what is conveyed by the parties to the notary which is stated in the authentic deed has been truly understood and is in accordance with what is desired by the parties, the notary reads the contents of the deed so that the contents of the notarial deed become clear. In addition, the notary also provides an explanation regarding the laws and regulations relating to notarial deeds and the signing of notarial deeds. Based on this, the parties have the freedom to determine whether or not to approve the contents of the notarial deed that they wish to sign.

A notarial deed is the strongest and most comprehensive means of proof which contains the consequence that what is contained in the notarial deed must be accepted, unless the party who has an interest can prove the contrary truthfully before a court hearing. This means that the party who denies the contents of the deed must be able to prove before the court that his denial is with the evidence he has and that the evidence in question is indeed true.

According to Sudikno Mertokusumo, a notarial deed is an authentic deed, where an authentic deed is a deed that is signed, which contains an event that is the basis for a right or obligation, the creation of which was intended from the start with the intention of being a means of proof.[7]Based on this, in order to be categorized as a deed, a letter must have a signature. The requirement for a signature for a letter to be categorized as a deed is required by Article 1869 of the

[7]Sudikno Mertokusumo, 1993, Indonesian Civil Procedure Law, Fourth Edition, Liberty, Yogyakarta, p. 121

Civil Code, which states that a deed that is due to the inability or incompetence of the employee referred to above (Article 1868 of the Civil Code) or due to a defect in its form, cannot be treated as an authentic deed, but nevertheless has the force of a private writing if it is signed by the parties. This means that a letter that does not have a signature, such as a parking ticket, is not included as a deed.[8]Based on this, it can be said that a signature is one of the requirements in an authentic deed.

The signature as a requirement of a deed has the purpose of differentiating each deed, namely between one deed and another or to distinguish it from a deed made by another person. Based on this, it can be said that the signature on a deed has the function of providing a characteristic or to individualize a deed. This is because the identification of a deed can be seen from the signature affixed to the deed in question. What is meant by the signing in the deed in question is the affixing of the name of the person signing, so that affixing an initial, namely an abbreviation of the signature alone is considered insufficient, but the name in question must be written by hand by the person signing it himself and of his own will.[9]

The requirement for a signature in a deed is determined by Article 44 of Law Number 30 of 2004 concerning the Position of Notary, which states that every notarial deed must be signed by the parties, witnesses and the notary. Based on this, the act of giving a signature is a legal act that is always carried out by a notary. This can be seen from every closing of a notarial deed which states the sentence "After I, the notary, read this deed to the parties and witnesses, then immediately the parties, witnesses and I, the notary, sign this deed".[10]All notarial deeds must be signed by each party appearing immediately after the deed has been read.[11]So the signing of the deed is done after the reading of the contents of the deed. This is a sign that the parties understand the deed that is read and give their approval through the intended signature. Based on this, the signature in a deed is also a manifestation of the will in the form of approval regarding the contents of the deed that has been read in addition to being a differentiator between one deed and another.

There are still other requirements that must be met by an authentic deed besides the requirement for a signature, namely the requirement for the parties to appear before a notary in making an authentic deed. The requirement for the parties to appear before a notary when making an authentic deed is determined by Article 1 to 7 of the Notary Law (UUJN) which states that a notarial deed is an authentic

[8]Hadi Suwignyo, 2009, The Validity of Thumbprints as a Substitute for Signatures in Making Authentic Deeds,*http://ejournal.undip.ac.id/index.php/notarius/article/view/1126/910*,accessed March 10, 2024
[9]Ibid.
[10]Komar Andasasmita, 1983, Notary II, Sumur, Bandung, p.. 150
[11]GHS. Lumban Tobing, 1999, Notary Regulations, Erlangga, Jakarta, p. 31.

deed made by or before a Notary according to the form and procedures stipulated in the Notary Law (UUJN). Based on this, a notarial deed requires that it be made before a notary. A deed that is not made before a notary does not have legal force as an authentic deed, but its legal force is only as a deed under hand.

The making of a notarial deed cannot always run smoothly as expected, for example in the making of a notarial deed the parties appearing appear at the same time and place. If in the making of a notarial deed the parties appearing appear at the same time and place it will expedite the making of the deed. However, in reality this cannot always be implemented because sometimes in the making of the deed the parties appearing appear at different times and places.

The making of a notarial deed in the case of the parties appearing at different times and places is still possible. This can happen for a reason, for example the party appearing has an interest that cannot be abandoned or the party appearing is sick which causes the parties appearing to be unable to appear together at the same time and place. An example of the practice of making a notarial deed carried out at different times and places is the making of a fiduciary deed in a financing or leasing company with a debtor.

In the making of the fiduciary deed in question, the implementation is generally carried out at different times and places or separately between the director of the financing company and the debtor. The director of the financing company who has a high level of activity does not have enough time to always meet the notary with the debtor to make a financing agreement. So for reasons of practicality, the making of the fiduciary deed in financing is carried out at different times and places.

The practice of making notarial deeds in the case of the parties appearing at different times and places will have legal consequences for the deeds made. The legal consequences in question are related to the evidentiary power of the deed made, whether it has the evidentiary power as an authentic deed or not, or in other words, whether the notarial deed is legally valid. Based on the background of the problem, this study will discuss further the practice of making notarial deeds in the case of the parties appearing at different times and places and its legal consequences. The problem that is the main topic of discussion is how is the practice of making deeds in the case of the parties appearing at different times and places and what are the legal consequences of making deeds in the case of the parties appearing at different times and places?

## 2. Research Methods

This type of research is socio-legal research with qualitative methods. The sociological approach method sees the working of law in society or the law interacts with its society. The socio-legal approach aims to explain the problems studied in relation to legal aspects and tries to explore empirical reality in society.

Law is not only seen as an independent or theoretical normative entity, but also as a real part of the social system related to other social variables. The research approach method in compiling this thesis is included in qualitative research with analytical descriptive research specifications, namely research that aims to describe legal regulations or other applicable norms that are associated with the practice of implementing or enforcing them. Qualitative research is a research procedure that produces descriptive data in the form of written or spoken words from people and observable behavior; the approach is directed at the background and individuals holistically. Kirk and Miller as quoted by Abdussamad explain that qualitative research is a particular tradition in social science that fundamentally depends on observations (of) humans in their own area and relates to those people in their language and terminology.[12]

Data sources come from primary data and secondary data. Data collection methods include interviews, literature studies and documentation.This research uses a qualitative descriptive data analysis method, namely analysis carried out on data, both in the form of qualitative data.[13]

## 3. Results and Discussion

### 3.1. Practice of Making Deeds in Cases of Appearing at Different Times and Places

The practice of making authentic deeds cannot always run well and smoothly. One of the problems in making authentic deeds is regarding the time and place of the person appearing when making authentic deeds. The problem is that the parties involved cannot always appear before the notary at the same time and place. According to Article 44 of Law Number 30 of 2004 concerning the Position of Notary. The provisions of the article state that every notarial deed must be signed by the parties, witnesses and the notary. All notarial deeds must be signed by each of the parties, immediately after the reading of the deed is completed.[14]In addition to the signature, the parties must appear before a notary in making an authentic deed. This is as stated in Article 1 to 7 of the Notary Law (UUJN) which states that a notarial deed is an authentic deed made by or before a Notary according to the form and procedures stipulated in the Notary Law (UUJN). In relation to the problem in question, in practice sometimes making of notarial deeds by the parties appearing at different times and places.

The practice of making notarial deeds in the case of the parties appearing at different times and places is influenced by the development of the times. Reasons of practicality and speed are often the considerations for the practice

[12]Zuchri Abdussamad, 2021, Qualitative Research Methods, CV Syakir Medis Press, Makasar, p. 30
[13]P. Joko Subagyo, 1997. Research Methods in Theory and Practice, Rineka Cipta, Jakarta., p.106.
[14]GHS. Lumban Tobing, 1999, Notary Regulations, Erlangga, Jakarta, p. 31.

of making notarial deeds in the case of the parties appearing at different times and places.

The rapid development of the era requires people to do everything in a fast time. Growing business activities require all processes and procedures to be fast. The increasing busyness of business actors demands the most efficient use of time. A person's busyness often has to sacrifice some of their time for other more important interests. This often has an impact on the making of notarial deeds by the parties. Often the parties cannot be present before the notary to complete the making of the notarial deed.

The time constraints of the parties also sometimes affect the making of a notarial deed. There are times when the parties cannot be present together to face the notary in making a deed. The busyness of each party that cannot be combined with time causes the parties to be unable to be present together in facing for the sake of making a notarial deed.

The need for legality of legal acts that require a notarial deed requires a person to follow the procedure in making a notarial deed. However, due to certain circumstances, the parties cannot be present at the time and place of the notary together. This is common in the practice of making notarial deeds. Reasons of practicality are also put forward by parties who deliberately cannot be present together.

Based on an interview with Laela, in the making of a notarial deed, sometimes the parties are not present together when appearing. The parties come separately at different times and places for some reason. Usually because of time constraints or other interests that require one of the parties to not be able to appear together. In addition, sometimes the parties already trust each other regarding the contents of the deed to be made so that they entrust their trust to one of the parties to take care of the making of the deed.[15]

The making of a notarial deed in the case of the parties not being present at the same time can occur in various possibilities. Sometimes the absence of the parties at the same time is only for a certain time, for example when conveying the will of the party regarding the legal act for which the deed will be made. For this case, sometimes the parties can come together when reading and signing the deed. For cases like this, the reading and signing of the deed are carried out together in front of a notary. Based on this, the parties who come to appear at different times and places are not a problem because the reading of the deed and its signing can be done together.[16]

[15]Interview with Laela, Notary in Pekalongan, September 22, 2024
[16]Ibid

However, there are also some who appear and/or both cannot be present together at the same time and place for the entire deed-making process. Thus, the deed will be read and signed at different times and places. If one of the appearers and/or both cannot be present together at the same time and place for the entire deed-making process, then the deed reading and signing cannot be done at the same time and place. The place referred to in this case is the domicile or office in the notary's work area.[17]

To overcome such matters, notary Laela conditions the parties to be present together at the specified time and place, namely at the notary's office when reading and signing the deed. The parties can come individually at different times only in order to convey their intentions and wishes when providing information regarding the legal act for which the deed will be made and in submitting the required files. In this case, a delay is made in reading the deed and signing it until both parties can come together to appear for reading the deed and signing.[18]

This is done to avoid unwanted risks that may arise for the notary or the parties. If the signing of the deed is not done together, there may be a denial by the parties to the signatures that have been affixed. This can be a problem if the deed in question becomes evidence in a court hearing. The judge will prove the authenticity of the deed in question. If one or both parties deny it due to a time difference, the authenticity of the deed will be questioned and this will have an impact on the notary concerned. The notary will be held accountable for the procedure for making the notarial deed.[19]

Based on the above, it can be concluded that the making of a Deed in the case of the parties facing inward, different time periods and places is not a problem as long as the reading and signing of the deed is done at the same time and place before a notary and attended by two witnesses. The place in question is the place of the notary's domicile.

The practice of signing notarial deeds without a notary sometimes occurs, especially in the practice of notary cooperation with several financing institutions, both banking and non-banking institutions. In this case, usually the notary comes to the financing institution to sign deeds such as credit agreement deeds and fiduciary encumbrance deeds. When a notary has cooperation with several financing institutions, it can happen that the signing of the deed is not carried out in the presence of the parties. This incident occurs because the notary cannot be in different places at the same time. For this, the notary tries to ensure that the signing of the deed can be done at the

[17]Interview with Laela, Notary in Pekalongan, September 20, 2024
[18]Ibid
[19]Ibid

same time and place. The notary usually schedules the signing of the deed in the event that it occurs at the same time with different places.[20]

If by necessity the signing of the deed cannot be done together, the notary ensures that this is at the will of the parties, proven by a letter of agreement or statement, then stated explicitly in the deed. This is to avoid legal problems if the deed becomes evidence in the trial process.[21]

According to Habib Adjie, this can be anticipated by "circulating" the signing of the deed. According to Habid Adjie, in practice, there are also Notarial deeds whose signing is "circulated" by the Notary from one party to another party. Is this permissible? Habid Adjie believes that this is permissible if it has previously been agreed in writing by the parties that the reading and signing will be circulated by the Notary himself, and then the Notary reads it to each party and is always accompanied by a witness to the deed and it is also agreed that the deed will be given a time (hour/time) according to the last party. But do not do the circularization by the Notary's employees or by the parties themselves, because they do not have the authority to read and explain the deed to the parties, there is even a possibility of forgery of the signatures of the parties. Although this method can still be debated by Notaries.[22]

There was also an incident where a Notary was reported by one of the parties whose name was mentioned in the deed, that he did not appear at the time/hour stated in the beginning of the deed, but appeared 4 (four) hours later than the previous person appearing. Indeed, the dispute was initially unrelated to the Notarial deed, but because one of the parties felt aggrieved by the substance of the deed desired by the persons appearing themselves. But in the end it spread and spread to the procedure for making the deed. And the party who reported it to the authorities, could prove that he did not appear at the time/hour stated in the beginning of the deed. But the person who appeared was the person who came first. This seems trivial, but it can make the Notary anxious.[23]

Viewed from the theory of legal effectiveness,The practice of making deeds in the case of the parties appearing at different times and places is an effort to make the implementation of the law more effective. This is because in practice, making deeds that require the parties appearing at the same time and place sometimes cannot be done for a reason, for example because of limited time.or one of the parties has other interests that cause one of the parties to be unable to appear together. Given this, a mechanism is needed that can be

[20]Interview with Laela, Notary in Pekalongan, September 20, 2024
[21]Ibid
[22]Habib Adjie, Circular Notarial Deed, http://rkhba.com/article/189037/akta-notaris-cepat-sirklik.html, accessed 20 September 2024
[23]Ibid.

implemented but does not violate the applicable legal provisions so that the law can still be implemented effectively.

According to Hans Kelsen, when talking about the effectiveness of law, it also talks about the Validity of law. The validity of law means that legal norms are binding, that people must act according to what is required by legal norms, that people must obey and apply legal norms. The effectiveness of law means that people actually act according to legal norms as they should act, that those norms are actually applied and obeyed.[24]

The ineffectiveness of the law in making deeds can be seen from the existence of pauthentic deed making practices that cannot always be carried out properly and smoothly. One of the legal issues that is a problem in making authentic deeds is the matter of the time and place of the person appearing when making an authentic deed. The problem in question is that the parties cannot always appear before the notary at the same time and place as required by Article 44 of Law Number 30 of 2004 concerning the Notary Office. Another problem is the signature, the parties must appear before the notary in making an authentic deed as required by the provisions of Article 1 to 7 of the Notary Office Law (UUJN). In order for the provisions regarding the provisions of the time and place to appear before the notary for the parties required to be carried out simultaneously, a breakthrough is needed by the notary.

The breakthrough is intended to make legal provisions regarding time and place of the person appearing at the time of appearing when making an authentic deed, namely at the same time and place. The breakthrough in question is in the form of making a deed in the case of the person appearing at different times and places. In order for the breakthrough to be legally acceptable, it is carried out by reading and signing the deed at the same time and place before a notary and attended by two witnesses. The place in question is the place of the notary's domicile. This meansthe making of a deed in the event that the parties appear at different times and places is not a problem, provided thatThe reading and signing of the deed is carried out at the same time and place before a notary and attended by two witnesses.

If it is connected with the factors that influence the effectiveness of the law as stated by Soerjono Soekanto, it can be stated that the implementation of the provisions as required by the laws and regulations on the making of notarial deeds related to the requirement for the parties to appear at the same time and place still encounters obstacles. According to Soerjono Soekanto, the factors that influence the effectiveness of the law include the legal factors

[24]Sabian Usman, 2009, Basics of Sociology, Pustaka Belajar, Yogyakarta, p. 12.

themselves, law enforcement factors, law enforcement facilities/facilities, community factors and cultural factors.

In its legal factor itself in its form as a regulation, namely the Notary Law (UUJN), it is good if implemented in accordance with applicable provisions. However, problems arise from the community factor itself and notaries as law enforcement factors that implement the intended regulations.

Viewed from the notary factor as a law enforcement factor, there are still deeds that are not in accordance with the provisions required by the Notary Law (UUJN). The making of deeds that are not in accordance include reading and signing of deeds carried out at different times. Meanwhile, from the community factor itself, there are still people who meet notaries at different times and places so that the making of notarial deeds still encounters obstacles. For notaries, they must wait for the parties to have the same time to sign the deed. This causes the making of deeds to take a long time. In terms of community culture, it is no longer a public secret that community culture has shifted along with the development of the era, namely a practical community culture that demands the making of deeds that meet practicality so that the making of deeds is often carried out not in accordance with statutory regulations where the parties appear at different times and places.

### 3.2. Legal Consequences of Making a Deed in Cases of Appearing at Different Times and Places

Legal consequences are the consequences given by law for a legal event or action of a legal subject.[25]According to the Indonesian Dictionary, consequence means something that is the result or outcome of an event, condition, or condition that precedes it.

According to Jazim Hamidi. The words legal impact / legal consequences contain the meaning of direct, strong or explicit legal impact or consequences.[26]According to legal literature, there are three types of legal consequences, namely: a. Legal consequences in the form of the birth, change, or disappearance of a certain legal situation; b. Legal consequences in the form of the birth, change, or disappearance of a certain legal relationship; c. Legal consequences in the form of sanctions, which are not desired by the legal subject (unlawful acts).

The legal consequences used in this study are legal consequences in the form of the birth, change, or disappearance of a certain legal condition and legal

[25]Marwan Mas, 2003, Introduction to Legal Science, Ghalia Indonesia, Bogor, p.39
[26]Jazim Hamidi, 2006, Indonesian Legal Revolution: Meaning, Position, and Legal Implications of the Proclamation Manuscript of August 17, 1945 in the Indonesian Constitutional System, Konstitusi Press & Citra Media, Yogyakarta, p. 200.

consequences in the form of the birth, change, or disappearance of a certain legal relationship. In addition, the legal consequences in this study are in the form of legal consequences in the form of sanctions, which are not desired by the legal subject (unlawful acts) in this case the notary. Legal consequences for the notary as a consequence of the duties and responsibilities of the notary as the maker of the notarial deed.

Based on this, then the legal consequences of making a deed in the event that the parties appear at different times and places include the legal consequences for the deed and the legal consequences for the notary as the person making the deed. Each of these legal consequences can be described as follows:

a. Legal consequences of the deed

As explained above, the legal consequences of a deed made when the parties appear at different times and places are: the birth, change, or disappearance of a certain legal condition and the legal consequences in the form of the birth, change, or disappearance of a certain legal relationship.

In relation to authentic deeds whose creation is not in accordance with the provisions of laws and regulations, it will have legal consequences regarding the legal status of the authentic deed in question. This is related to the validity of the authentic deed in question if its creation is made by the parties appearing at different times and places. The validity in question is also related to the form of the deed, namely authentic deeds and private deeds. If the parties appearing at different times and places, does the authentic deed in question still have legal standing as an authentic deed or will its position change to a private deed.

The intended legal consequences do not change the legal status of the authentic deed as an authentic deed or will it change into a private deed in the case where the parties appear at different times and places. It is also possible that the intended legal consequences will not change the legal status of the authentic deed in certain cases even though the parties appear at different times and places. In essence, the validity of the intended authentic deed becomes the legal status in the case where its creation is carried out with the parties appearing at different times and places.

An authentic deed is a deed made by and before a notary as determined by statutory regulations. In relation to the legal consequences of making a deed in the event that the parties appear at different times and places, it will give rise to two legal consequences. The intended consequences are that the deed in question will be in the position of an authentic deed or a

private deed in the event of certain circumstances. This means that a deed made in the event that the parties appear at different times and places will remain valid as an authentic deed or its validity will change to a private deed in certain circumstances.

The validity of an authentic deed made in the event that the parties appear at different times and places remains as an authentic deed as long as the deed in question is made at the notary's domicile and is read and signed in the presence of the parties witnessed or attended by at least 2 (two) witnesses, except in the event that the parties wish that the deed in question not be read. If the said conditions are not fulfilled or the deed of signing is carried out at different times and places, then the deed in question has legal force as a private deed or does not have validity as an authentic deed. This is in accordance with the provisions of Article 16 paragraph (1) letter m, paragraph (7) and paragraph (9) and Article 44 of the Notary Law (UUJN).

Article 16 paragraph (1) letter m of the Notary Law (UUJN) states that in carrying out his/her position, a 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 Notary. Meanwhile, 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 himself/herself, 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 initialed by the person appearing, witnesses, and Notary. Then, paragraph (9) states that if one of the requirements 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 deed under hand.

Article 44 of the Notary Law (UUJN) states that (1) Immediately after the Deed is read, the Deed is signed by each person appearing, witness, and Notary, unless there is a person appearing who cannot sign by stating the reason. (2) The reason as referred to in paragraph (1) is stated explicitly at the end of the Deed. (3) The Deed as referred to in Article 43 paragraph (3) is signed by the person appearing, Notary, witness, and official translator. (4) The reading, translation or explanation, and signing as referred to in paragraph (1) and paragraph (3) and in Article 43 paragraph (3) are stated explicitly at the end of the Deed. (5) Violation of the provisions as referred to in paragraph (1), paragraph (2), paragraph (3), and paragraph (4) results in a Deed only having evidentiary force as a

private deed and can be a reason for the party suffering a loss to demand reimbursement of costs, damages, and interest from the Notary.

Based on this, there is a degradation of the evidentiary power of an authentic deed to become a deed under hand if in making the deed as referred to in Article 44 of the Notary Law (UUJN) if in making the notarial deed the parties appear at different times and places in terms of reading and signing the deed.

According to the Great Dictionary of the Indonesian Language, the word degradation means a decrease, regarding rank, quality, morals and so on, decline, deterioration or can also be placed at a lower level. Meanwhile, cancellation is a process, method, or act of canceling something. In relation to a Notarial deed, the term degraded occurs when a Notarial deed as an authentic deed that has perfect and binding evidentiary power, and has met the minimum limit of valid evidence without the need for other evidence in a Civil legal dispute experiences a decline, deterioration, or 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.[27]

Degradation of the evidentiary power of a Notarial deed can occur if in its making there is a violation of the provisions of the requirements based on applicable law. Some examples of things that cause the degradation of a Notarial deed are, the making of deeds that do not correspond to the facts, the Notary in making the deed does not guarantee the formal truth of the deed, the parties do not appear before the Notary, the deed made is not read by the Notary to the person appearing and witnesses, and the deed is not signed on the same date by the persons appearing. In this journal, the term degradation of the evidentiary power of a Notarial deed is focused on the change in the status of a Notarial deed as an authentic deed that has complete and perfect evidentiary power and has binding force, experiencing a decrease in quality, decline, or deterioration in status in the sense that its position is lower in terms of evidence. The deed experiences a decrease in position from complete and perfect evidentiary power to the beginning of evidence as referred to as a private deed.[28]

A private deed is a deed made in a form not specified by law, without an intermediary or not before an authorized Public Official. The definition of

[27]Idris Aly Fahmi, Legal Analysis of the Degradation of Evidential Power and Cancellation of Notarial Deeds According to Article 84 of Law Number 30 of 2004 Concerning the Position of Notary,https://media.neliti.com/media/publications/41438-ID-analysis-yuridis-derad-powered-pemcepatan-dan-pembatalan-akta-notaris-menur.pdf, accessed 20 September 2024
[28]Ibid.

a private deed can be seen from Article 101 paragraph b of Law No. 5 of 1986 concerning State Administrative Courts, which states that a private deed is a letter made and signed by the parties concerned with the intention of being used as evidence of an event or legal event stated therein. In addition, the definition of a private deed can also be seen in the provisions of Article 1874 of the Civil Code, which states that what is considered a private writing is a deed signed privately, letters, lists, household affairs letters and other writings made without the intermediary of a public official.[29]

To determine a Notarial deed that has the power of proof as a private deed can be seen and determined from the contents (in) certain articles that directly state that if the Notary commits a violation, then the deed in question is included in the deed that has the power of proof as a private deed. If it is not expressly stated in the relevant article as a deed that has the power of proof as a private deed, then other articles that are categorized as violating according to Article 84 of the UUJN are included in deeds that are void by law.[30]

Article 1869 of the Civil Code determines the limitations of a Notarial deed that has the power of proof as a private deed if it does not meet several conditions as follows: (a) the relevant public official is not authorized, (b) the relevant public official is incapable, and (c) defective in its form. In connection with the degradation of the Notarial deed's evidentiary power from an authentic deed to a private deed, Article 44 states that (1) Immediately after the Deed is read, the Deed is signed by each person appearing, witness, and Notary, except if there is a person appearing who cannot sign by stating the reason. (2) The reason as referred to in paragraph (1) is stated expressly at the end of the Deed. (3) The Deed as referred to in Article 43 paragraph (3) is signed by the person appearing, Notary, witness, and official translator. (4) The reading, translation or explanation, and signing as referred to in paragraph (1) and paragraph (3) and in Article 43 paragraph (3) are stated expressly at the end of the Deed. (5) Violation of the provisions referred to in paragraph (1), paragraph (2), paragraph (3) and paragraph (4) results in a Deed only having evidentiary force as a private deed and can be a reason for the party who suffers a loss to demand reimbursement of costs, damages and interest from the Notary.

If we look at the classification or limitations as stated in Article 1869 of the Civil Code, then the articles contained in Article 44 of the Notary Law

[29]Ibid.
[30]Habib Adjie, 2011, Cancellation and Revocation of Notarial Deeds, Refika Aditama, Bandung, , p.. 66.

(UUJN) which emphasizes that violations of these provisions result in a Notary deed having evidentiary power as a private deed, can be analyzed as follows: Article 16 paragraph (1) letter m and Article 16 paragraph (7) and paragraph (9) are included in the defective form of a Notary deed, because the reading of the deed by the Notary in front of the parties and witnesses is an obligation to explain that the deed made is in accordance with the wishes of the parties concerned, and after the reading is carried out it must be included at the end of the Notary deed. Likewise, if the Notary does not read it before the parties, but the parties wish to read the deed themselves, then the wishes of the parties must be included at the end of the Notary deed. Thus, whether the deed is read or not read, it must be included at the end of the deed. If this is not done, there is a formal aspect that is not fulfilled which results in the deed being defective in terms of form. Likewise, with the provisions of Article 44 of the Notary Law (UUJN).

According to the HIR system, in civil proceedings the judge is bound by valid evidence, meaning that the judge may only make decisions based on the evidence specified in the law. The evidence that can be allowed in a trial is stated in Article 164 HIR, which consists of documentary evidence of alleged witnesses, confessions and oaths.[31]

According to Article 153 of the Civil Code, proof with written or written evidence can only be done with an authentic deed or a private deed. While Article 1868 of the Civil Code stipulates that an authentic deed must be made based on the form as determined by the laws and regulations made before an authorized official for that purpose at the place where the deed was made. In addition to notaries, there are still officials who make authentic deeds such as PPAT, Civil Registry Office Employees and Auction Officials. Private deeds according to Article 1874 of the Civil Code, the form in which they are made is not determined by laws and regulations and is not before a public official or authorized official. Based on this, the making of authentic deeds and private deeds aims to be a means of proof of the existence of a certain event and/or legal act. The difference between an authentic deed and a private deed lies in its evidentiary value. An authentic deed has perfect evidentiary power. The perfect evidentiary power in an authentic deed means that the deed does not require any other interpretation. different from private deeds, the evidentiary value of which requires acknowledgement from the parties or without denial by one of the parties.

[31]Amrullah Sidik, 2015, Evidence in Civil Procedure Law,https://amrullahsidik.wordpress.com/2015/02/11/alat-detik-dalam- Hukum-acara-perdata/, accessed 20 September 2024

According to the provisions of Article 1875 of the Civil Code, a private deed will have perfect evidentiary power like an authentic deed if the private deed is acknowledged by the parties. However, if one of the parties denies it, he is required to prove his denial and the assessment of the denial rests on the judge's shoulders.

Authentic deeds and private deeds are deeds that contain certain events and/or legal acts involving two or more parties. As an agreement, it must meet the requirements for a valid agreement as referred to in Article 1320 of the Civil Code. The agreement applies as a law for the parties and/or is binding and must be obeyed as referred to in Article 1338 of the Civil Code.

Regarding the requirements for the validity of an agreement, it is regulated in Article 1320 of the Civil Code. The first two requirements are called subjective requirements, because they concern the people or subjects who enter into the agreement, while the last two requirements are called objective requirements because they concern the agreement itself or the object of the legal act carried out.[32]For more details, the conditions for the validity of an agreement can be explained as follows:

1) Agree upon those who bind themselves.

By agreement or also called permission, it is meant that the two subjects who enter into the agreement must agree, consent or be of one mind regarding the main things of the agreement made. What is desired by one party, is also desired by the other party. They want something that is the same reciprocally.[33]

2) Capable of making an agreement.

The person who makes an agreement must be legally competent. In principle, every person who is an adult or of puberty and of sound mind is competent according to the law. In Article 1330 of the Civil Code, people who are not competent to make an agreement are referred to as:[34]

a) People who are not yet adults;

b) Those who are placed under guardianship;

c) Women in cases stipulated by law, and all persons with whom the law has prohibited making certain agreements.

[32] Subekti, 1979, Law of Contracts, Intermasa, Jakarta, p. 17.
[33] *Ibid.*p. 17.
[34] Ibid. p. 17

Indeed, from the perspective of a sense of justice, it is necessary that the person who makes an agreement and will later be bound by the agreement, has sufficient ability to truly realize and be responsible for his actions. While from the perspective of legal order, because sometimes a person who makes an agreement means risking his wealth, then the person must be someone who truly has the right to act freely with his wealth.[35]

A person who is not of sound mind is unable to realize the responsibility borne by a person who enters into an agreement. A person who is placed under guardianship according to law cannot act freely with his assets. He is under the supervision of the guardian. His position is the same as a minor child. If a minor child must be represented by his parents or guardian, then an adult who has been placed under guardianship must be represented by his guardian or curator.[36]

According to the Civil Code, a married woman, in order to enter into an agreement, requires assistance or permission (written power of attorney) from her husband (Article 108 of the Civil Code).[37]In practice, notaries have now begun to allow a wife who is subject to Western Civil Law to make an agreement before them. Also, from the Circular Letter of the Supreme Court Number 3/1963 dated August 4, 1963 to the Chief Justice of the District Court and High Court throughout Indonesia, it turns out that the Supreme Court considers Article 108 and Article 110 of the Civil Code regarding the authority of a wife to carry out legal acts and to appear before the Court without permission or assistance from her husband, to no longer apply.[38]

3) Regarding a particular matter.

As the third condition, it is stated that an agreement must be about a certain thing, meaning what is agreed upon, the rights and obligations of both parties if a dispute arises. That the goods referred to in the agreement must at least be determined by type. That the goods already exist or are already in the hands of the debtor at the time the agreement is made, is not required by law. Also, the amount does not need to be stated, as long as it can be calculated or determined later. For example, an agreement regarding the tobacco harvest in a field in the coming year is valid, but a tea sale and purchase agreement for

[35]Ibid. pp. 17-18.
[36]Ibid, p. 18.
[37]Ibid, p. 18.
[38]Ibid, pp. 18-19.

one hundred rupiah without using any clearer terms must be considered not clear enough.[39]

4) A lawful cause.

What is meant by the cause or causes of an agreement is the contents of the agreement itself. In a sale and purchase agreement, the contents are: one party wants money. In a rental agreement: one party wants the enjoyment of an item, the other party wants money. Thus, if someone buys a knife in a shop with the intention of killing someone with the knife, the sale and purchase of the knife has a lawful cause or cause, like buying and selling other goods. It's different if the matter of killing is included in the agreement, for example: the seller is only willing to sell the knife if the buyer kills someone. The contents of this agreement are something that is prohibited.[40]

An authentic deed is an agreement between parties whose creation must meet the requirements stipulated by laws and regulations. One of the provisions of laws and regulations that must be fulfilled in the creation of an authentic deed or notarial deed is the provision of Article 1868 of the Civil Code which states that an authentic deed is a deed made in the form stipulated by law by or before a public official authorized for that purpose at the place where the deed is made.

Authentic deeds are required to fulfill the requirements in Article 1868 of the Civil Code, are cumulative or must cover everything. Deeds that are made, even though signed by the parties, but do not fulfill the requirements of Article 1868 of the Civil Code, cannot be treated as authentic deeds, only have the power as private deeds as determined in Article 1869 of the Civil Code.

Based on this, the reading and signing of the deed which was not done in the presence of a notary and at the same time violates the provisionsArticle 16 paragraph (1) letter m, paragraph (7) and paragraph (9) and Article 44 of the Notary Law (UUJN). This means that the deed is not in accordance with the provisions of the law, so based on the provisions of Article 1869 of the Civil Code, the deed has legal force as a private deed.

Viewed from the theory of legal certainty that the validity of an authentic deed made in the case of the parties appearing at different times and places is still considered an authentic deed as part of the

[39]Ibid., p. 19.
[40]Ibid. p. 20.

objective of realizing legal certainty as required by an authentic deed. However, the legal certainty in question must be met with the requirement that as long as the deed in question is made at the notary's domicile and is read and signed in the presence of the parties witnessed or attended by at least 2 (two) witnesses, except in the case where the parties wish that the deed in question not be read.

If the aforementioned matters are not fulfilled or the deed of signing is carried out at a different time and place, then the deed in question has legal force as a private deed or does not have validity as an authentic deed. This is in accordance with the provisions of Article 16 paragraph (1) letter m, paragraph (7) and paragraph (9) and Article 44 of the Notary Law (UUJN). This means that the legal certainty of a private deed can still be doubted. In order for a private deed to have strong legal certainty, the private deed in question must be legalized by a notary.

For private deeds, a notary also has the right to validate and register private deeds in accordance with Article 15 paragraph (2) of the Notary Law. So as a notary, he has the function of a public official who validates and registers private deeds made by the parties themselves, as long as the private deed is signed by the parties. Because according to Victor M. Situmorang, a letter can be called a deed if the deed is signed and if it is not signed by the maker, then the letter is not a deed.[41]

Furthermore, regarding the requirements that must be met so that a letter can be called a deed and have the power to prove the existence of a legal act that has been carried out by the parties concerned, the letter must contain the following requirements: 1. The letter must be signed. 2. The letter must contain events that form the basis of a right or obligation, and 3. The letter is intended as evidence.[42]

A private deed that has been made by the parties and signed by the parties themselves without involving public officials in its making, then the evidentiary power of the deed is limited to the parties who made it. This is in accordance with the provisions of Article 1338 of the Civil Code which states that: "all agreements made legally apply as laws for the parties who made them"

Notary according to its function in legalizing private deeds, then according to Notary Laela that a notary only guarantees or ensures the date and signature of the parties, which means that the notary only acknowledges the date the deed was made and the signing of the deed

[41]Victor M. Situmorang and Cormentyna Sitanggang, 1993, Gross Deeds in Evidence and Execution, Rinika Cipta, Jakarta, pp. 26-28.
[42]Ibid.

according to the presence of the parties who appeared at the notary's office and according to the date of the ratification book owned by the notary. If before the parties appear before the notary, it has been made, signed, and dated by the parties, then the notary does not guarantee this, because this was not done in front of a notary.[43]

Notary Laela added that in addition to ensuring the correctness of the signatures by the parties, the notary is also required to provide legal counseling regarding the legalization of private deeds, namely regarding the contents of the deed, the notary must read and explain to the parties and if the contents of the deed violate the law, public order or morality, the notary is required to order the parties to change the contents of the deed.

In practice, a notary, in addition to providing legal certainty in this case the date and signature of the parties in the legalization of a private deed, a notary is required to be able to provide legal counseling or provide explanations/information related to the deed to be made by the parties along with the consequences of the actions of the parties themselves. This is to prevent disputes in the future and to provide legal certainty and smoothness and also protect the civil interests of the parties.

b. Legal consequences for notaries

PThe making of a deed in the event that the parties appear at different times and places will have legal consequences for the notary as the maker of the deed in the event that the deed in question is degraded as a deed under hand. This is because the notary in making a deed in the event that the parties appear at different times and places is not carried outat the notary's place of residence and the deed is not read and signed in the presence of the parties witnessed by at least 2 (two) witnesses as determined byArticle 16 Paragraph (1) Letter (l) of Law Number 2 of 2014 concerning the Position of Notary (UUJN). This means that the notary in making the authentic deed is not carried out as determined by statutory regulations.

The Validity of a Deed made before a Notary if there is a violation of Article 16 Paragraph (1) Letter (l) of Law Number 2 of 2014 concerning the Position of Notary (UUJN), it is emphasized that; "In carrying out his position, a Notary is obliged to read the deed before the person appearing in the presence of at least two witnesses and signed at that time by the person appearing, witnesses, and Notary". If the formal

[43] Interview with Laela, Notary in Pekalongan, September 20, 2024

requirements for making a deed are not met, then the deed made by the Notary only has the power of proof as a private deed.

A material or formal aspect in a deed is very important to measure the validity of the deed, so that the advice given by a Notary can guarantee the agreement made by the parties. This is normatively related to the theory of legal certainty as quoted in the opinion of Peter Mahmud Marzuki, that the theory of legal certainty contains 2 (two) meanings, namely:[44]

*First*, the existence of clear rules that provide an understanding to someone to do or not to do a certain act. This means that in this case a degradation of a Deed made by a Notary as stated in Article 16 Paragraph (1) Letter l and Paragraph (7) of Law Number 2 of 2014 concerning the Position of Notary is not fulfilled, the deed in question only has the power of proof as a deed under hand. However, the article does not explain the degradation of a Notary Deed if Article 16 Paragraph (1) Letter (a) of the UUJN is not implemented. Whereas in the article a Notary is required to act in a trustworthy, honest, fair, independent, impartial manner, and protect the interests of the parties involved in the legal act;

*Second*, with the existence of general legal rules, every citizen can know what burdens of responsibility can be imposed by the State on him and to free every citizen from the arbitrariness of the state in imposing punishment. Legal certainty is not only in the form of articles in the law but also the consistency in the decisions of judges between the decisions of one judge and the decisions of another judge for similar cases that have been decided.[45]

In this case, a notary is given the authority to carry out all acts as stated in Article 1 of Law Number 2 of 2014 concerning the Position of Notary, "A notary is a public official who is authorized to make authentic deeds and has other authority as referred to in this law or based on other laws". As stated in Article 16 Paragraph (1) Letter (a) of the UUJN, if a notary does not implement the article above, sanctions can be imposed in the form of a written warning, temporary dismissal, honorable dismissal, or dishonorable dismissal.

Based on this description, it can be concluded that the legal consequences for notaries who carry out pthe making of a deed in the event that the parties appear at different times and places which

[44]Lorika Cahaya Intan, "Consequences of Violations by Notaries on the Making of Notarial Deeds", Jurnal Cakrawala Hukum, Vol.7, No.2 December 2016, p. 209
[45]Marzuki, Peter Mahmud, 2008, Legal Research. Kencana, Jakarta, p. 158.

causes the deed in question to be degraded as a private deedmay be subject to administrative sanctions in the form of a written warning, temporary dismissal, honorable dismissal, or dishonorable dismissal.

Furthermore, apart from administrative sanctions, in the case of notary who does pThe making of a deed in the event that the parties appear at different times and places which causes the deed in question to be degraded as a deed made under hand which causes losses to another party, then the notary in question can be held responsible both civilly and criminally.

1) Civil liability

In relation to civil lawsuits related to authentic deeds that have been made by and/or before a notary, there are two possible positions for a notary in the civil lawsuit, including:[46]

a) A notary is summoned in his capacity as a witness in court in relation to a deed that has been made before or by him which is used as evidence in a civil case.

b) The notary was summoned in his capacity as a defendant who was brought to court regarding an authentic deed he had made because it was deemed to have caused harm to the plaintiff.

Civil evidence, an authentic deed made before or by a notary is a perfect evidence for the interested party. In the event of denial, the party denying it must be able to prove the untruth of the deed regarding the certainty of: 1. Day, date, month and year of the person appearing. 2. Time (hour) of appearing. 3. Signature listed in the minutes of the deed. 4. Feeling never appearing. 5. The deed was not signed before a notary. 6. The deed was not read. 7. Other reasons based on the formality of the deed.

Denial of the above matters can be done by filing a lawsuit to the district court by the party questioning the authenticity of the notarial deed. If the lawsuit regarding the untruth of the deed made by the notary is not proven in court, then the notarial deed remains valid as evidence that has perfect value and binds the parties interested in it as long as it is not canceled by the parties themselves or based on a court decision. However, if the lawsuit to deny the untruth of the deed is proven, then the position of the notarial deed will be degraded to a private deed where the

[46]Habib Adjie, 2009, Indonesian Notary Law, Refika Aditama, Bandung, p. 21.

evidentiary value will depend on the party or judge who assesses it.

Based on Habib Adjie's opinion, the degradation of a notarial deed into a private deed which has an impact on material losses experienced by the party suing and the party can prove the losses experienced, then the plaintiff can request a certain amount of compensation. Likewise, in the case of an authentic deed being degraded into a private deed because its creation was carried out in the event that the parties appeared at different times and places without the deed being read and signed at the same time and place witnessed by two witnesses as stipulated in Article 16 Paragraph (1) Letter (l) of Law Number 2 of 2014 concerning the Position of Notary (UUJN).

2) Criminal liability

The criteria that limit the criminal penalties for a notary are as follows:[47]

a) If intentionally and with full awareness a notary participates together with one of the parties to take legal action against the formal aspects of a deed made in front of or by a notary to benefit one party and harm the other party.

b) If the deed made before or by a notary can be proven to have no basis in its making or to be in conflict with the law on the office of notary, changes can be made.

c) If the supervisory board considers that the legal actions taken by the notary in carrying out his/her duties are not in accordance with the provisions governing the notary profession.

Based on the above description, the making of a notarial deed in the right of the person appearing at different times and places which causes the degradation of an authentic deed into a private deed is a practice of making a deed without basis or contrary to the law on the office of a notary. Based on this, the notary can be held criminally responsible or can be subject to criminal penalties if the private deed in question causes losses to other parties.

As long as the legal action taken by the notary has met the above criteria, the notary in question can be prosecuted because it is

[47]Ibid, p. 127.

considered to have met the elements of a violation contained not only in the UUJN but must also be based on the criteria for violations that are the limitations in the notary's code of ethics and also the provisions in the Criminal Code. It is not permissible to prosecute a notary by only adhering to the provisions of the violation contained in the Criminal Code alone, because this is a form of error in understanding the position of a notary as a position.

## 4. Conclusion

The practice of making a deed in cases where the parties appear at different times and places as determined by laws and regulations as a form of deviation from the making of deeds due to the demands of the development of the times. This happens due to the limited time owned by the parties and/or an interest that cannot be abandoned so that for reasons of practicality the parties appear at different times and places when making the deed. This cannot be separated from the mutual trust between the parties so that the management of making the deed is handed over to one of the parties. Such practices are a breakthrough effort against the obstacles that arise in making deeds so that the effectiveness of making deeds can be realized. The legal consequences of making a deed in the event that the parties appear at different times and places include the legal consequences for the authentic deed and the legal consequences for the notary. The legal consequences for the deed are that the deed in question remains valid as an authentic deed if the makingThe deed is executed at the notary's domicile and the reading and signing of the deed is done in the presence of the parties witnessed by at least or at least 2 (two) witnesses, except in cases where the parties wish that the deed in question not be read. If this is not fulfilled or the deed is signed at a different time and place, then the deed in question is degraded in its legal force to become a private deed. The legal consequences for the notary arise in the event that the deed in question is degraded in its legal force as a private deed, then the notary can be subject to administrative sanctions in the form ofwritten warning, temporary dismissal, honorable dismissal, or dishonorable dismissal. Notaries can be held civilly liable in the form of compensation and criminally liable in the form of criminal sanctions in the event that an authentic deed that is degraded into a private deed causes losses to other parties.

## 5. References

**Books:**

GHS. Lumban Tobing, 1999, *Peraturan Jabatan Notaris*, Erlangga, Jakatrta.

Habib Adjie, 2009, *Hukum Notaris Indonesia*, Refika Aditama, Bandung.

Jazim Hamidi, 2006, *Revolusi Hukum Indonesia: Makna, Kedudukan, dan Implikasi Hukum Naskah Proklamasi 17 Agustus 1945dalam Sistem Ketatanegaraan RI*, Konstitusi Press & Citra Media, Yogyakarta.

Komar Andasasmita, 1983, *Notaris II*, Sumur, Bandung.

M. Natsir Asnawi, 2013, *Hukum Pembuktian Perkara Perdata di Indonesia*, UII Press, Yogyakarta.

Marwan Mas, 2003, *Pengantar Ilmu Hukum*, Ghalia Indonesia, Bogor.

Marzuki, Peter Mahmud, 2008, *Penelitian Hukum. Kencana*, Jakarta.

P. Joko Subagyo, 1997. *Metode Penelitian Dalam Teori dan Praktek,* Rineka Cipta, Jakarta.

Sabian Usman, 2009, *Dasar-Dasar Sosiologi*, Pustaka Belajar, Yogyakarta.

Subekti, 1979, *Hukum Perjanjian,* Intermasa, Jakarta.

Sudikno Mertokusumo, 1993, *Hukum Acara Perdata Indonesia*, Edisi Keempat, Liberty, Yogyakarta.

Teguh Samudra, 2012, *Hukum Pembuktian dalam Acara Perdata*, Alumni, Bandung.

Victor M. Situmorang dan Cormentyna Sitanggang, 1993, Gross Akta dalam Pembuktian dan Eksekusi, Rinika Cipta, Jakarta.

Zuchri Abdussamad, 2021, *Metode Penelitian Kualitatif,* CV Syakir Medis Press, Makasar.

**Legislation**

Law Number 30 of 2004 Concerning the Position of Notary

Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 Concerning the Position of Notary.

**Journal:**

Lorika Cahaya Intan, "Akibat Pelanggaran oleh Notaris terhadap Pembuatan Akta Notariil", *Jurnal Cakrawala Hukum*, Vol.7, No.2 December 2016.

**Internet:**

Amrullah Sidik, 2015, *Alat Bukti dalam hukum Acara Perdata,* https://amrullahsidik.wordpress.com/2015/02/11/alat-bukti-dalam-hukum-acara-perdata/,

Arief Rachman, 2011, *Otentisitas Akta Otentik,* https://notarisarief.wordpress.com/2011/05 /15/otentisitas-suatu-akta-otentik/,

Habib Adjie, *Akta Notaris Secara Sirkuler,* http://rkhba.com/article/189037/akta-notaris-secara-sirkuler.html,

Hadi Suwignyo, 2009, *Keabsahan Cap Jempol Sebagai Pengganti Tanda Tangan Dalam Pembuatan Akta Otentik,* *http://ejournal.undip.ac.id/index.php/notarius/article/view/1126/910*,

Idris Aly Fahmi, *Analisis Yuridis Degradasi Kekuatan Pembuktian Dan Pembatalan Akta Notaris Menurut Pasal 84 Undang-Undang Nomor 30 Tahun 2004 Tentang Jabatan Notaris,* https://media.neliti.com/media/publications/41438-ID-analisis-yuridis-degradasi-kekuatan-pembuktian-dan-pembatalan-akta-notaris-menur.pdf, accessed on 20 September 2024