

## Validity of Notarial Deeds that are Not Read by the Notary in Front of the Participants and Witnesses When Signing the Deed

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**Abstract.** *This study aims to analyze the validity of notarial deeds signed without being read out before the parties and witnesses and to identify obstacles and solutions related to the legal consequences arising from the problem. This study applies a normative legal method to assess the validity of notarial deeds that are not read out in front of the relevant parties during signing. This approach relies on laws and regulations, jurisprudence, and other legal sources. Data were obtained through literature studies, including official documents and legal literature. The analysis was conducted prescriptively to evaluate the legal status of notarial deeds and provide recommendations regarding legal compliance in notarial practices in Indonesia. The legal validity of a notarial deed depends on the fulfillment of formal requirements according to the law, including the reading procedure involving the notary, the person appearing, and witnesses. If these procedures are violated, the deed may lose its authentic status, and the notary may face sanctions. Solutions to this problem include compliance with the Notary Law, providing copies of draft deeds to related parties, and increasing the professionalism and supervision of the Notary Supervisory Board. By complying with these regulations, the rights of all parties and the validity of the deed will be guaranteed.*

**Keywords:** *Legal; Notary; Procedure; Sanctions; Validity.*

### 1. Introduction

Notarial Deeds are made according to the wishes of the interested parties to ensure or guarantee the rights and obligations of the parties, certainty, order and legal protection of the parties which can be useful as evidence if a dispute occurs in Court. Notarial Deeds essentially contain formal truths in accordance with what the parties have notified the public officials (Notary, Land Deed Making Official, Auction Official, Civil Registry Office Employee).

The notary is obliged to include in the deed what has been truly understood according to the will of the parties and read to the parties about the contents of the deed. The statements or statements of the parties are stated by the notary in the notarial deed. In reality, it is possible that the deed made before the notary will be questioned by the parties later on, the notary can be called to be questioned by the police investigators in relation to alleged violations of the law on the deed he made.

Therefore, in the practice of making notarial deeds, there are legal provisions that require the reading of notarial deeds in the presence of the parties and witnesses. Witnesses who

are required to be present and witness directly the making of authentic deeds by a Notary are known as instrumental witnesses. The duties of this instrumental witness are to affix their signature, provide evidence of the truth of the contents of the deed and fulfill the formalities required by law. Instrumental witnesses aim to be evidence so that they can help a Notary's position become safe in the event that the deed made by the Notary is sued by one of the parties in the deed or a third party.

## 2. Research Methods

This type of research is normative legal research.<sup>1</sup>The approach method in this study is the statute approach. This means that the researcher uses the statutes as the initial basis for conducting the analysis. This statute approach is carried out by examining all statutes related to the legal issues being studied. In addition, in this study the author also uses a conceptual approach.<sup>2</sup> The type and source of data in this study are secondary data. Secondary data is data obtained by researchers from the literature which is the result of research. Which is already available in the form of books that are usually provided in the library.<sup>3,4</sup>

## 3. Results and Discussion

### 3.1. Legal Validity of Notarial Deeds That Are Not Read Before the Applicants and Witnesses When Signing the Deed

The established rules serve as a requirement for a deed to have an authentic nature. The authenticity of a deed arises as a result of the implementation of formal obligations that must be fulfilled in the process of preparing the deed. The importance of the formal validity of a deed can be seen from the presence of witnesses to the deed who are specifically invited to provide testimony that the deed-making process has complied with the formal provisions set for authentic deeds. In addition to the obligations that must be fulfilled when making a deed, a notary also has a responsibility after the deed is completed, namely to submit a copy of the deed to the parties involved. The entire series of activities before, during, and after the making of the deed is an inseparable process in the formation of an authentic deed. Negligence committed by a notary in the process of making an authentic deed can have certain legal consequences and of course will have consequences that must be accounted for by the notary, if the party who feels aggrieved then files a claim for accountability.

Reading of the deed is part of the "verlijden" requirements as stated in Article 1868 of the Civil Code, which includes the preparation, reading, and signing of the deed. In making a deed, a notary is obliged to pay attention to whether the deed that has been prepared is in accordance with the wishes of the parties and has fulfilled the provisions of the applicable laws and regulations. To find out, the notary is obliged to read carefully and understand the contents of the deed in its entirety before the deed is read before the

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<sup>1</sup>Mukti Fajar and Yulianto Achmad, 2015, *Dualism of Normative and Empirical Legal Research*, 3rd Edition, Pustaka Pelajar, Yogyakarta, p.34

<sup>2</sup>Hajar M, 2015, *Models of Approach in Legal and Fiqh Research*, UIN Suska Riau, Pekanbaru, p. 41

<sup>3</sup>Hilman Hadikusuma, 1995, *Methods for Making Working Papers or Legal Thesis*, Mandar Maju, Bandung, p. 65

<sup>4</sup>Mukti Fajar and Yulianto, *Op.cit.*, p.36

parties and signed by them. By having the deed read by the notary to the parties, the notary will gain an understanding of the suitability of the deed with the wishes of the parties. If in the reading process there are aspects that are considered not in accordance with the wishes of the parties, the deed can be revised before the final signing is carried out.

The reading of a deed by a notary does not merely mean conveying the contents of the writing contained in the deed. However, this reading requires the notary to deeply understand the material contained in the deed and, based on the legal knowledge he has, analyze the substance of the contents of the deed and evaluate the conformity of the material with applicable laws and regulations. Therefore, in the reading process, the notary does not only act in the interests of the parties, but also to ensure the legal certainty of the deed in question. Furthermore, in the reading process, the notary also provides an explanation to the parties. This aims to prevent misunderstandings regarding the contents of the deed, where what is stated in the deed may not be in accordance with the wishes of the parties. Thus, the reading of this deed will provide certainty to the notary that the parties have understood the contents of the deed and that what is stated in the deed is in accordance with the expectations of the parties.

Notarial deed, as an authentic deed, must meet the formal requirements in accordance with the provisions stipulated in Article 1868 of the Civil Code (KUH Perdata). This is especially related to the form of the deed which must be in accordance with that stipulated by law. In addition, there are several other formalities that must be met in making an authentic deed, known as "verlijden". In general, verlijden is understood as a series of actions carried out by the notary, witnesses, and the parties appearing, which form a series of processes. This process begins with the preparation and making of the deed by the notary, followed by the reading of the deed by the notary to the parties appearing and witnesses, and ends with the signing of the deed by the parties appearing, witnesses, and the notary immediately after the deed has been read.<sup>5</sup>

If one of the three conditions related to the verlijden is not fulfilled, then the resulting deed will only have the evidentiary force of a private deed.

### **Implications for the Validity of the Deed**

The loss of authenticity of a deed has a detrimental impact on all parties involved in making the deed. The purpose of making an authentic deed is not achieved, and also results in legal uncertainty. This problem is further exacerbated by the awareness of notaries in carrying out their duties, where there are still notaries who underestimate the importance of the formal truth of a deed. For example, in practice it was found that several notaries violated formalities in the process of preparing the deed. Submission of the preparation of the deed to a notary employee that was not followed by further examination by the notary could result in non-compliance with statutory provisions, both in content and in the authority to act before the notary. In addition, notarial practice also shows that many notaries deviate in the process of reading and signing the deed.

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<sup>5</sup>R. Soegondo Notodisoerjo, *Indonesian Notary Law, An Explanation*, (Jakarta: Raja Grafindo Persada 1993), p.59.

Examples of such deviations include the actions of a notary who signs a deed outside his/her area of office, signs a deed without first reading it, and reads and signs it without the presence of witnesses or only accompanied by one witness. A more serious situation is when the entire process of drafting, reading, and signing is completely handed over to a third party, where the notary only signs the deed that has been signed by the parties and witnesses without paying attention to the truth of the material contents of the deed and does not meet the formal truth requirements. This is a serious violation of the duties of a notary, which is a position of trust.

The reading of the deed also aims to provide an opportunity for the notary and the parties to re-evaluate, ask questions, and if necessary, change the contents of the deed.<sup>6</sup>If the reading is done by a party other than a notary, this can cause confusion among the parties appearing, because it is not certain that the notary's employees have the same legal knowledge and understanding as the notary. This situation has the potential to result in the reading of the deed not touching on the substance of the material, but only reading the text. Therefore, the reading of the deed should be accompanied by an explanation that outlines the substance and consequences of the agreement, so that the parties appearing fully understand the contents of the deed and its impact on them.

Therefore, there needs to be strict sanctions that specifically regulate notaries who deviate and lie about the matters stated at the beginning and end of the deed as a statement from the notary in an authentic deed. Because, at the beginning and end of the deed, the formal truth of a deed is clearly stated by the notary. However, in practice, it is not uncommon for certain notaries to consider the beginning and end of the deed as merely editorial writing that has no meaning and legal consequences. In fact, any deviation from the statement at the beginning and end of the deed can have an impact on the validity of the authenticity of a deed.

For example, if at the end of the deed two witnesses have been listed, but in practice the notary is only accompanied by one employee when reading and signing the deed. In addition, the notary's statement that after this deed is read, the deed will be signed by the parties, witnesses, and notary, is often irrelevant to reality. In various cases, certain notaries do not read the deed, and the signing of the deed is often not carried out separately between the parties and witnesses, both in time and place. This phenomenon often occurs and is carried out routinely by a number of certain notaries. However, this actually has very large and detrimental legal consequences, especially for the parties. If the reading is not carried out, the deed will only have the same legal force as a deed made privately.

In the Notary Position Regulations, it is emphasized that reading a deed is a mandatory step without exception, without considering any reason. This is different from the provisions in the Notary Position Law (UUJN), where there are certain provisions that allow reading by a Notary not to be carried out. This provision can be found in Article 16 paragraph (7) UUJN, which states that reading a deed as referred to in paragraph (1) letter l is not mandatory if the person appearing states his/her wish for the deed not to be read,

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<sup>6</sup>Tan Thong Kie, *Study Notariat (All About Notary Practice) Book II*, PT Ichtar Baru Van Hoeve, (Jakarta), p. 288.

on the condition that the person appearing has read, knows, and understands the contents of the deed. In addition, this must be stated in the closing of the deed, and each page of the minutes of the deed must be initialed by the person appearing, witnesses, and the Notary.

Based on the provisions of Article 16 paragraph (7) UUJN, a Notary is permitted to deviate from the obligation to read the deed before the parties, if there is a request from the person appearing not to read the deed. However, this deviation must be recorded in the closing of the deed and each page of the minutes of the deed must also be initialed by the person appearing, witnesses, and the Notary. Furthermore, if the deed that is not read causes a dispute in the future and results in losses for the parties or other interested parties, the Notary cannot be held responsible, because the decision is the will of the person appearing and has been stated at the end of the deed.

A different situation would occur if the Notary did not include this in the closing of the deed, and if each page of the deed was not initialed by the person appearing, witnesses, and the Notary. Changes in the provisions regarding the reading of this deed can be considered an appropriate step, considering that in practice, especially in the preparation of corporate deeds, the parties often already understand the contents of the deed to be prepared. The preparation of the deed is generally carried out by parties who are competent and experienced in the legal field, through a long and detailed negotiation process, and the draft deed has gone through repeated review and research. In addition, it is not uncommon for certain agreements to produce very long documents, making it impossible to read them in one session.

In order to create efficiency in making such deeds, without violating the provisions regarding the reading of the deed, it is possible to carry out a mechanism for signing the deed without going through the reading process first. Technically, this mechanism can be applied in certain situations, where the Notary notes that the reading was not carried out at the request of both parties because they claimed to have understood the contents of the deed, and then the parties were asked to initial each page.

Thus, this regulation sufficiently accommodates the interests of the parties, while still paying attention to the validity and authenticity of the notarial deed. This also allows the Notary to fulfill the wishes of the parties who do not want the deed to be read, without violating the applicable provisions, so that the notarial deed still has perfect evidentiary power. Regarding the reading of the deed during the validity period of the Notary Position Regulation, Tan Thong Kie is of the opinion that Indonesia cannot apply the same deed reading system as the Netherlands. This is due to the difference in the level of progress, where the Netherlands is a developed country with a low percentage of illiteracy, while Indonesia is still in the development stage with a relatively high percentage of illiteracy.<sup>7</sup>

Article 16 paragraph (1) letter l and Article 16 paragraph (7) UUJN are included in the category of defects in the form of Notarial deeds, considering that the reading of the deed by the Notary in front of the person appearing and witnesses is an obligation to reaffirm that the deed made is in accordance with the wishes of the person appearing. After the reading is done, this must be stated at the end of the Notarial deed. The same situation

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<sup>7</sup>Ibid., p. 210

also applies if the Notary does not do the reading, but the person appearing wants to read the deed independently and states that he understands the contents of the deed; in this case, the wishes of the person appearing must be stated at the end of the Notarial deed.

From the explanation above, it can be concluded that both Notarial deeds that are read and those that are not read, must be stated explicitly at the end of the deed. If there is no clear explanation regarding this, then it can be assumed that there are formal aspects that are not fulfilled, resulting in the deed being defective in terms of form.<sup>8</sup>

The importance of involving two witnesses in the deed-making process is basically intended to protect the notary from any accusations that doubt the implementation of the formal aspects of the deed. However, in practice, there are still some notaries who ignore the presence of witnesses in the deed-signing process, assuming that it is troublesome. In fact, by involving two witnesses, the notary can easily refute accusations that state that the notary does not fulfill the formal aspects in making the deed, especially regarding the reading of the deed.

After understanding the violations that can occur in relation to the provisions on reading a deed that can cause the deed to only have the power of proof as a private deed and harm the related parties, the next discussion will be about how UUJN regulates sanctions for notaries who are proven to have violated the provisions on reading the deed. The discussion on sanctions will refer to the provisions in UUJN regarding unlawful acts committed by notaries. Provisions on sanctions can be found in Chapter XI concerning Sanctions Provisions, which consists of two articles, namely Article 84 and Article 85 of UUJN.

Based on the many cases that occur in society, it can be analyzed that the mechanism for implementing sanctions for these violations is still ineffective in creating a deterrent effect for Notaries in carrying out their obligations in fulfilling the formal aspects of making deeds. Article 84 of the UUJN states that civil liability must go through a court process. Meanwhile, Article 85 of the UUJN indicates that administrative liability does not have a significant impact on the injured parties. In terms of demanding compensation, where the parties must go through a court process, there is a tendency for the parties to avoid resolving the case through legal channels, due to the long process and the high costs. As a result, many parties are reluctant to file a lawsuit against the actions of Notaries in carrying out their duties.

### **3.2. Obstacles and Solutions to the Legal Consequences of Notarial Deeds That Are Not Read by the Notary in Front of the Applicants and Witnesses When Signing the Deed**

#### **1) Obstacle**

##### **a. Validity of the Deed.**

Failure to read the deed can result in the deed being deemed not to meet the formal requirements as an authentic document, as regulated in Article 16 paragraph (1) letter m of the Notary Law (UUJN). The deed can lose its evidentiary power as an authentic document and only be considered a deed under hand.

##### **b. Misunderstanding of the Contents of the Deed**

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<sup>8</sup>Habib Adjie, *Observing the Treasures of Indonesian Notaries and PPATs (Collection of Writings on Notaries and PPATs)*, 1st edition, (Bandung; Citra Aditya Bakti, 2009). p. 96.

The parties may not fully understand the contents of the deed, which could potentially lead to misunderstandings or disputes later on.

c. Potential Lawsuits

The parties can file a lawsuit to cancel the deed if they feel they have been harmed due to the contents of the deed not being in accordance with the initial agreement.

d. Notary Responsibilities

Notaries may be deemed to have violated their obligations in accordance with the UUJN, which may result in administrative, civil, or even criminal sanctions.

2) Legal Consequences

a. Degradation of Deed Status: The deed loses its status as an authentic deed and is only valid as a private deed (Article 1869 of the Civil Code).

b. Civil Liability: If the parties are harmed, the notary can be asked to be responsible for the loss in accordance with Article 1365 of the Civil Code (unlawful acts).

c. Administrative Sanctions: Based on Article 16 paragraph (11) of the UUJN, notaries who do not fulfill their obligations can be given a warning, temporary suspension, or permanent suspension by the Notary Supervisory Board.

d. Criminal Sanctions: If an element of intent or malicious intent is found in the action, the notary can be subject to criminal sanctions, for example for falsifying documents (Article 263 of the Criminal Code).

3) Solutions to Obstacles and Legal Consequences

Notaries must comply with Article 16 paragraph (1) letter m of the UUJN by reading the deed in front of the parties and witnesses. This process is important to ensure the authenticity of the deed. Notaries need to improve their knowledge and understanding of related regulations and carry out their duties responsibly and professionally. In certain cases, notaries can record the process of reading and signing the deed for additional evidence if a dispute arises later. Before signing, the notary can provide a copy of the draft deed to the parties to study, so that at the time of reading, the parties already understand the contents of the deed. The Notary Supervisory Board (MPN) needs to actively provide guidance and supervision so that this practice does not occur in the field. Recovery of Problematic Deeds, if the deed has been made without reading, the notary can take the initiative to invite the parties back to make a clarification report to strengthen the contents of the deed. However, this must be done with the consent of the parties.

In the provisions of Law No. 30 of 2004 concerning the Position of Notary (UUJN), Article 16 paragraph (1) letter m: Notaries are required to read the deed in front of the parties and witnesses before signing. This aims to ensure that the parties understand the contents of the deed. Article 16 paragraph (9): If a notary violates this provision, the deed only has evidentiary force as a private deed. Article 16 paragraph (11): Violations can be subject to sanctions in the form of a warning, temporary suspension, or permanent suspension. In the provisions of the Civil Code, Article 1868: An authentic deed is a deed made by an authorized official and meets the form determined by law. Article 1869: If the deed does not meet formal requirements (such as not being read), the deed loses its status as an authentic deed and only has evidentiary force as a private deed. If proven to have committed a criminal act, for example Article 263 of the Criminal Code: Forgery of documents, the notary can be sentenced in accordance with the provisions of the Criminal Code, such as imprisonment or a fine.

#### 4) Hypothetical Case Study Example

A notary made a deed of land sale and purchase agreement. However, the notary did not read the contents of the deed in front of the parties due to time constraints. After the deed was signed, the buyer felt aggrieved because it turned out that there was an additional clause that gave certain rights to the seller, which had never been agreed to before. As a consequence, the buyer sued the deed, filed a lawsuit with the court to request the cancellation of the deed because it was considered not to meet the authenticity requirements. In this case, the deed was degraded or only considered a deed under hand, so that its evidentiary power was lower. So that the notary was held accountable, the notary was also subject to administrative sanctions by the Notary Supervisory Board (MPN). And if it is proven that there is an element of negligence or intent, the notary can be sued civilly for the losses suffered by the buyer. The impact on the Status of the Deed made by the notary, the deed cannot be used as authentic evidence in court.

#### 4. Conclusion

The legal validity of a notarial deed is highly dependent on the fulfillment of formal requirements stipulated by law, especially regarding the reading procedure in the presence of the person appearing and witnesses. An authentic deed prepared in accordance with the provisions has high evidentiary power. The notary must ensure that each stage of the deed is carried out correctly. The deed reading process is a crucial element, in which the notary must be directly involved to ensure that all parties understand the contents of the deed and can provide input if necessary. The reading of the deed must not be done through an assistant so as not to damage the understanding of the contents and consequences. Violation of this procedure can threaten the validity of the deed and create legal risks. Therefore, the notary must be responsible and carry out the procedure properly. Legal education for the public is also important so that they understand the role and legal implications of notarial deeds.

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