

The Legal Protection for Notaries against Civil Efforts on Authentic Deeds That Have Been Published

Rizal Alamsyah Hadi Saputra¹⁾ & Bambang Tri Bawono²⁾

¹⁾ Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, E-mail: alamsyah785@gmail.com

²⁾ Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, E-mail: bambang@unissula.ac.id

Abstract. *Notaries have carried out their responsibilities in accordance with applicable regulations by using the principles of vigilance and prudence, but still have to deal with legal issues because provisions are also permissible, and it is feared that distrust will arise in the authentic deed made before a notary and the credibility of a notary in the jurisdiction Merauke Regency is also in doubt. This study aims to find out and analyze the legal standing of deeds that have been issued by a Notary when a lawsuit is filed by the parties and to find out and analyze the legal protection for a notary against civil proceedings for authentic deeds that have been issued in Merauke Regency (case study no. 80/ pdt. bth/2021/pn/mrk). The approach method in this research is a sociological juridical approach. Based on the research, it was concluded that legal protection for Notaries in case decisions Number 80/PDT.Bth/2021/PN/MRK The Panel of Judges is of the opinion that a credit agreement is an agreement between the debtor and the creditor to bind himself in the provision of debts and receivables which can be done by the debtor providing guarantees or without guarantees for repayment of debts to creditors. If there is collateral in the credit agreement, it is an additional agreement with the credit agreement as the main agreement, with these agreements applying as a law for the makers according to the provisions of Article 1338 of the Civil Code if it has been legally made by fulfilling the legal requirements of the agreement as stipulated in Article 1320 Civil Code.*

Keywords: Civil; Efforts; Notary; Protection.

1. Introduction

Private law is a field of law that has the scope of legal subject matters that are currently in conflict with other legal subjects.¹ Or in other²⁾ words, private law is a

¹Zainuddin Ali, 2006, Legal Philosophy, First Printing, Sina Graphic, Jakarta.

field of law with the scope of legal regulations governing inter-individual affairs in exercising their rights and obligations. The types of law included in the realm of private law are the Civil Code and the Notary Office Act (UUJN) which regulate the duties and powers of a Notary. This is where the importance of the role of a Notary in public service for society, the state and the nation in general. In particular, authentic evidence is needed in the economic field, including trade, banking, companies and so on.²

Provisions regarding the authority of a Notary to make authentic deeds are regulated in Law Number 30 of 2004 concerning the Office of a Notary as amended by Law Number 2 of 2014 (hereinafter referred to as UUJN). The definition of a Notary as referred to in Article 1 point 1 UUJN is a public official authorized to make authentic deeds and has other authorities as referred to in this law or based on other laws. Notary is a public official who is the only authorized to make authentic deeds regarding all actions, agreements and stipulations that are required by a general regulation or by interested parties to be stated in an authentic deed, guarantee the certainty of the date, save the deed and provide grosse, copy and the quote.³ In carrying out his position, a notary must be able to behave professionally based on a noble personality by always carrying out his duties in accordance with applicable laws and regulations while at the same time upholding the code of ethics of the notary profession as a sign that must be obeyed. Article 16 letter a Law Number 2 of 2014 concerning the Office of a Notary (UUJN) stipulates that a notary must act honestly, thoroughly, independently, impartially and protect the interests of the parties involved in legal actions. In addition, notaries as public officials must be sensitive, responsive, have sharp thinking and be able to provide an appropriate analysis of every legal phenomenon and social phenomena that arise so that in doing so it will foster an attitude of courage in taking appropriate action.

The notary as a public official is required to be responsible for the deed he made. If the deed he made later turns out to contain legal defects, then this needs to be questioned, whether this deed was a Notary's mistake or the fault of the parties who did not provide the actual documents or information in making the deed. All activities carried out by a Notary, especially in making deeds, will always be held accountable. If due to the negligence or mistake of the Notary in making the deed it can be proven, then the Notary concerned can be held liable in a civil

²Sugeng Budiman and Widhi Handoko, 2020, Legal Policy Against Notaries as Witnesses and Evidence of Authentic Deeds Based on Values of Justice, Unissula Press, Semarang, p. 130.

³GHS Lumban Tobing, SH, 2000, Notary Office Regulations, Jakarta: Erlangga. p.31

manner. Therefore, in order to protect himself, vigilance and caution are required of a Notary.⁴

The notary draws up a deed based on the will of the appearer, so that the contents of the deed in the form of a legal act or a statement on the existence of a pure legal event are the will of the appearer as outlined in legal language in the form of an authentic deed.⁵The notary is only responsible for the beginning and end of the deed, namely guaranteeing the truth of the legal actions of the parties on the date and time, as well as the place stated in the deed, the implementation of the legal actions contained in the authentic deed is the responsibility of the appearer.

The authentic deed in question is an authentic deed in accordance with the formulation of Article 1868 of the Civil Code (hereinafter referred to as the Civil Code), namely: "An authentic deed is a deed in the form determined by law, made by or before a public official in power for that at the place where the deed was drawn up." The power attached to an authentic deed is perfect (volledig bewijskracht) and binding (bindende bewijskracht), which means that if the authentic deed evidence is submitted it meets the formal and material requirements and the opponent's evidence put forward by the defendant does not reduce its existence, at the same time it has perfect evidentiary power attached to it and binding (volledig en bindende bewijskracht), thus the truth of the contents and statements contained therein will be perfect and binding on the parties regarding what is referred to in the deed. Perfect and binding on the judge so that the judge must make it a perfect and sufficient factual basis to make a decision on the settlement of the disputed case.⁶

The provisions in Article 38 UUJN are conditions that must be fulfilled as a Notary deed (authentic deed). When connected with the provisions of Article 1868 of the Civil Code Jo Article 1869 of the Civil Code which is the source of the authenticity of notarial deeds and also as the legality of the existence of notary deeds. Authentic deed as the strongest and most complete evidence has an important role in every legal relationship in people's lives. In various business relationships, activities in the fields of banking, land, social activities, and others. The need for written evidence in the form of authentic deeds is increasing in line with the growing demand for legal certainty in various economic and social

⁴Muhammad Hudallah, Anis Mashdurohatun, Widhi Handoko, "Responsibilities of Notaries/PPAT in Credit Agreements & Deed on Granting and Liability Rights (APHT) When Debtors Default", Sultan Agung Notary Law Review, Vol. 4, No. 1, 2022.

⁵Muhammad Ajib Fadlulah, "The Notary's Answer to the Making of the Sale and Purchase Agreement Deed (PPJB) When a Dispute Occurs for the Parties", TABELLIUS Journal of Law, Vol. 1, No. 1, 2023.

⁶Agung Iriantoro, "The Notary Law Politics in the Notary Position Act", AKTA Journal, Vol. 9, No. 3, 2022.

relations, both at the national, regional and global levels. Through an authentic deed that clearly defines rights and obligations, guarantees legal certainty, and at the same time it is also hoped that disputes can be avoided. Even though these disputes can be avoided, in the process of resolving these disputes, authentic deeds which are written and complete evidence make a real contribution to solving cases cheaply and quickly. The position of Notary is held or his presence is desired by the rule of law with the intention of helping and serving the public who need authentic written evidence regarding circumstances, events or legal actions.⁷ On this basis, those who are appointed as Notaries must have the enthusiasm to serve the community, and for this service, people who feel served by a Notary in accordance with their duties, can provide an honorarium to the Notary. Therefore a Notary means nothing if the community does not need it. The statement states that public relations with Notaries are legal product services. For the deeds made, the Notary is obliged to keep in a collection of documents bound by the number of the deed called the minutes of the deed, while what is issued to the parties to the deed is in the form of a copy of the deed that reads exactly the same as the minutes of the deed kept at the Notary's office. The difference between the minutes of the deed and the copy of the deed is at the end of the deed, in the minutes of the deed there are the signatures of the witnesses and the Notary, while in the copy of the deed at the end of the deed there is only the Notary's signature. The notary deed stored in the minutes of the deed or notary protocol, is one of the documents in the state archives that must be kept for a long time and kept confidential. Storage of deeds or/documents is regulated in UUJN Article 1 number 13 which reads: "Notary Protocol is a collection of documents which are State archives that must be kept and maintained by a Notary in accordance with statutory provisions."

The responsibilities of a notary as a public official include the responsibilities of the notary's own profession related to the deed. In connection with this authority, a Notary may be burdened with responsibility for his actions/work in making authentic deeds. Notary's civil responsibility for the deed he made, in this case is the responsibility for the material truth of the deed, in the construction of an unlawful act. Acts against the law here are active or passive. Active, in the sense of carrying out actions that cause harm to other parties. While passive, in the sense of not doing an act that is a must, so that the other party suffers a loss. So the elements of unlawful acts here are unlawful acts, mistakes and losses incurred. An authentic deed made by or before a Notary can be used as evidence in a legal dispute which is used as evidence to recall events that have occurred, so that it can be used for evidentiary purposes. Article 1866 of the Civil Code states that written evidence is one of the means of written evidence. Likewise in Article 1867 of the Civil Code which stipulates that: "Evidence in writing is carried

⁷Habib Adjie, Indonesian Notary Law; Thematic Interpretation of Law Number 30 of 2004 Concerning the Position of Notary Public, Fourth Edition, Refika Aditama, Bandung, 2014, p. 14

out with authentic writings or with private writings." The notary deed has perfect evidentiary power in civil lawsuits, but if it violates certain provisions, its evidentiary value will be degraded to have the strength of proof as an underhanded deed, A notary who is proven to have made a mistake so that the deed he made only has the power of proof as a private deed or the deed becomes null and void by law, it will cause losses to the client or other parties. Therefore, the Notary can be held responsible for his mistakes and is required to provide compensation, fees and interest to the parties who suffer losses.⁸

Facts in practice in the jurisdiction of Merauke Regency, even though a Notary uses the precautionary principle in carrying out his position, there are still unscrupulous persons who appear to defend their assets, who have entered into credit agreements at banking financial institutions by using civil legal remedies to abort/cancel the deed of agreement that has been made before a Notary with the aim that the collateralized assets are free from confiscation or auction and can be re-possessed. One of the ways taken by the appearer is by suing civilly the parties considered involved in the credit agreement, one of which is the Notary as the maker of the deed.

Case No.80/PDT.Bth/2021/PN/MRK at the Merauke District Court submitted by Muhammad Erfarofi as the objector is an example of a case experienced by a notary in the jurisdiction of Merauke Regency, namely Notary/PPAT Rini Widayanti, SH., M .Kn as Disputed IV. The objection case filed by Muhammad Erfarofi was a civil effort taken to postpone and/or cancel the confiscation/execution decision by the confiscation objector, namely Irham as the winning bidder from the results of the auction by PT. Bank Rakyat Indonesia (Persero) Tbk, Merauke Branch. Actually this is humanly reasonable and the state provides space and civil rights for every citizen to file a lawsuit to fulfill a sense of justice, but this certainly makes notaries nervous in the jurisdiction of Merauke Regency, which opens the opportunity for other elements to follow these steps. Thus enabling Notaries in Merauke Regency to deal with liability in civil law and will often face legal problems as described above. The occurrence of legal problems in the practice of carrying out the duties of the authority of the Notary's position, creates social impacts, namely public distrust of Notary deeds as authentic evidence and legal impacts, namely weakening the power of law on proving authentic deeds as perfect evidence, as well as personal impacts on Notaries, namely causing fear in carrying out the duties of the position, not confident and feeling pressured and causing disharmony and unrest for the Notary as a public official in Merauke Regency.

⁸Agus Fitri Hariyanti and Amin Purnawan, "Roles and Responsibilities of a Notary in Drawing up a Deed of Amendment to the Articles of Association of a Limited Liability Company, *Konstatering Journal*, Vol. 1, No. 4, 2022.

The study of these civil legal remedies is very important, bearing in mind that the Notary has carried out his responsibilities in accordance with applicable regulations by using the principles of vigilance and caution, but he still has to deal with legal issues because according to the provisions it is also permissible, and it is feared that later distrust will arise against the authentic deed made before a notary and the credibility of a notary in the jurisdiction of the Merauke Regency is also in doubt.

2. Research Methods

The approach method used in this study is a sociological juridical approach. The specifications for this research are descriptive analysis. The method of collecting data is by means of literature/documentation studies and interviews. All data obtained in this study, both primary data and secondary data, were analyzed using qualitative analysis methods. After that it is described, by examining the existing problems, describing, describing, and explaining the problems related to this research.

3. Results and Discussion

3.1 Legal Protection for Notaries against Civil Efforts for Authentic Deeds that Have Fulfilled the Formal and Material Requirements in Merauke Regency

Law according to Sudikno Mertokusumo is the whole set of rules or rules in a life together, the entire behavior that applies in a life together which can be enforced with a sanction.⁹ Thus, if it is associated with legal protection, it can be interpreted as a guarantee or certainty that someone will get what is his rights and obligations or protection of his interests so that the person concerned is safe in accordance with the rules or norms that apply in society.

Indonesia is a constitutional state that has a distinctive style that distinguishes it from other countries. As a rule of law country, Indonesia has a unique character in protecting human rights, namely prioritizing harmonious relations between the government and the people. In this context, Philipus M. Hadjon stated that the characteristic of Indonesia as a rule of law is to protect human rights by prioritizing the principle of harmony in the relationship between the government and the people.

Based on this principle, other elements of the concept of a rule of law based on Pancasila will develop, namely the establishment of a functional and proportional relationship between state powers, the settlement of disputes by

⁹Sudikno Mertokusumo, 2016, Indonesian Civil Procedure Code, Fourth Edition, Liberty Publisher, Yogyakarta.

deliberation while the judiciary is the last resort and regarding human rights does not only emphasize rights or obligations, but establishes a balance between rights and obligations. This is different from the concept of the rule of law in protecting human rights which prioritizes the principle of equality before the law while the concept of *rechtstaat* in protecting human rights puts forward the *wetmatigheid* principle, namely the government bases its actions on laws.¹⁰

The concept of a rule of law as mentioned above, is rooted in the Basic State of Indonesia, namely Pancasila. The principle of legal protection as stated above is a basis and provides an explanation that legal protection provided by the state rests on guaranteeing human rights and prioritizing the *wetmatigheid* principle or the government basing its actions on law. Thus, to achieve legal protection, legal products are the main thing as protection. In addition, it also requires enthusiasm from law enforcement officials to really carry out their duties in accordance with the applicable legal rules without selective logging.

The Notary Office Law is a legal product intended to provide legal certainty and protection for Notaries in carrying out their profession as authentic deed-making officials. Therefore, the UUJN contains legal rules, one of which is a form of legal protection for Notaries. The forms of legal protection for Notaries, especially in the process of civil cases/disputes according to UUJN are:

1. Notary's Obligation to Keep Confidentiality of Contents and Information Relating to the Deed

The provisions of Article 4 paragraph (2) UUJN, one of the fragments of which reads: "that I will keep the contents of the deed and the information obtained in the exercise of my position confidential." In the contents of the oath/pledge, a notary is required to carry out his/her position in a trustworthy, honest, thorough, independent and impartial manner. Including maintaining attitudes, behavior, and will carry out their obligations in accordance with the professional code of ethics, honor, dignity, and responsibilities as a Notary. Notaries are also required to keep the contents of the deed and information obtained during the exercise of their position confidential that I, in order to be appointed to this position, either directly or indirectly, under any name or pretext, have never and will not give or promise anything to anyone. These provisions are further emphasized in Article 16 paragraph (1) letter a UUJN which requires a notary to be honest, thorough, independent, impartial, and protect the interests of the parties involved in legal actions. As well as Article 16 paragraph (1) letter f UUJN, it is emphasized regarding the secret of the notary for everything regarding the deed he made unless the law determines otherwise. This is also related to the

¹⁰Philipus M. Hadjon, 2007, Legal Protection for the People in Indonesia, Special Edition, Civilization, Yogyakarta.

provisions of Article 54 UUJN, because as a trustee, a notary is obliged to keep secret everything that is notified to him in his position as a notary, even though some are not included in the deed, and have been considered to represent the notary himself in a trial so that the deed made by or before a notary is a piece of evidence that has perfect evidentiary power.

2. Oversight of the Notary Supervisory Board Against Notaries

Approval of the Notary Honorary Council The provisions of Article 66 paragraph (1) of the Amended UUJN state that for the benefit of the judicial process, investigators, public prosecutors or judges with the approval of the Notary Honorary Council. The article clearly determines the institution that gives approval to be able to summon and/or retrieve the minutes of the deed and/or the letters attached to the minutes of the deed or the notary protocol in the notary's safekeeping. However, in Article 66A paragraph 3 it is stated that regarding the Notary Honorary Council (MKN) this will be regulated by a Ministerial Regulation but until now such regulation has not existed. Based on the provisions of Article 66A, in the process of giving MKN approval, an examination must be carried out first. The examination was carried out in accordance with the provisions in Article 70 letter a of the Amended UUJN, namely by holding a trial beforehand to examine an alleged violation of the hearing on the implementation of the position of a Notary Public against a Notary. After the inspection, the final results of the MKN examination are set forth in the form of a Decree, the contents of which give approval or refuserequest of the Investigator, Public Prosecutor or Judge.

3. Supervision of Notaries by the Honorary Council of the Indonesian Notary Association (INI)

Provisions regarding notary organizations are regulated in Article 82 paragraph (2) of the Amended UUJN which states "The Notary Organization as referred to in paragraph (1) is the Indonesian Notary Association. The provision of legal protection to members is placed within the framework of a commitment to the value of togetherness among colleagues in the profession and a commitment to the nobility of the dignity of a Notary as a Public Official. As the core purpose of establishing an association, INI provides guarantees of protection for Notaries in relation to their profession and position as public officials. Therefore to provide legal protection for its members. Law enforcement must be carried out with a monitoring system for legal practices so that there are no irregularities by legal practitioners. The revocation of the phrase with approval in Article 66 UUJN can be one of the incentives for Notary organizations (Ikatan Notairs Indonesia/INI) and the Notary Supervisory Council to carry out more intensive supervision of Notaries under their auspices in a better manner towards the practice of the Notary profession so that small Notaries the possibility of being affected by legal

problems if they have carried out their duties and obligations in accordance with applicable rules and laws. Supervision of Notaries based on Article 67 paragraph (5) Amendment to UUJN which includes: supervision of Notary behavior and implementation of Notary positions. Supervision of Notary behavior in Amending UUJN can be seen in Article 9 paragraph (1) letter c and Article 12 letter c,

Legal protection given to Notaries as part of the Indonesian nation. Legal protection for a Notary in the process of law enforcement at trial can be carried out through a process, namely: the use of the rights or obligations of a Notary's denial or summons by a Notary by investigators, public prosecutors and judges must be carried out with the approval of the MKN. This is as stipulated in Article 66 paragraph (1) UUJN. Another form of legal protection is in the form of supervision, attaching fingerprints to the minutes of the deed and legal protection from the main notary organization (INI).

Several matters related to the existence of the Notary's position, especially those related to the issue of protection of the position. Here, according to Rini Widayanti, SH., M.Kn, a notary is a public official who has the power of attorney from the government to ratify and witness various agreements, wills, deeds, and others. The position of a notary is regulated in Law Number 2 of 2014 concerning amendments to Law Number 30 of 2004 concerning the Position of a Notary.¹¹

The Notary profession is protected by the Notary Honorary Council (MKN), but MKN only has a role to protect the Notary profession, not the Notary person. Thus, when a Notary commits or is suspected of committing a crime that has nothing to do with the duties of a Notary's position, the Investigator does not need to seek MKN approval to examine it. On the other hand, if the Regional MKN (MKNW) receives an application for approval for a Notary's examination of an alleged criminal act outside of carrying out the duties of a Notary's position, then MKNW must refuse it on the grounds that "it is not authorized" to give approval or refuse an examination of the case.

Therefore, according to Rini Widayanti, SH., M.Kn Notaries must have good moral integrity, thoroughness and good skills in making authentic deeds according to notary regulations. If the authentic deed complies with the provisions of the Notary Law, the Notary does not need to be afraid of being summoned by the police for questioning. This can actually help the police in enforcing the law in Indonesia.¹²

According to Dinar Pakpahan, SH., MH as referred to in UUJNP. Authentic deed essentially contains formal truths in accordance with what the parties notify the

¹¹Interview with Rini Widayanti, SH, M.Kn Notary and PPAT in Merauke Regency, July 24 2023.

¹²Interview with Rini Widayanti, SH, M.Kn Notary and PPAT in Merauke Regency, July 24 2023.

Notary. The notary has the obligation to apply what is contained in the notarial deed to truly understand and in accordance with the wishes of the parties, namely by reading it, so that the contents of the notary deed become clear. So, thus the parties can determine freely to agree or disagree with the contents of the Notary Deed to be signed.¹³

An authentic deed made by a Notary is not infrequently questioned by one party or by another party because it is deemed detrimental to their interests, whether it is the form of the deed that is not in conformity, denial of the contents of the deed, signature or presence of the party before the Notary, even the existence of allegations in the authentic deed found false information. In connection with the notary's legal protection of the deeds he made related to the notary's civil liability, with the carelessness and seriousness of the notary, in fact the notary has led himself to an act that must be accounted for by law. If an error committed by a Notary can be proven, the Notary may be subject to sanctions in the form of threats as determined by law.

Dr. H. Ahmad Ali Muddin, SH., M.Kn said that the importance of legal protection for Notaries is to:¹⁴

- a. Maintaining the nobility and dignity of his position, including when giving testimony and proceeding in examinations and trials;
- b. Keep the details of the deed confidential in order to protect the interests of the parties involved in the deed;
- c. Maintain the minutes or letters attached to the minutes of the deed, as well as the Notary's protocol in their storage.

The legal protection given to the Notary (Occupation) is regulated in Article 66 UUUJNP. Article 66 of this UUUJNP regulates the formation of a Notary Honorary Council (hereinafter referred to as MKN) which consists of representatives of Notaries, government and academics, which functions as a legal protection institution for the Position of Notary in relation to deeds drawn up by or before him.

The existence of this MKN is expected to provide optimal legal contributions for Notary institutions in carrying out their duties as legal protection institutions. Regarding the regulation regarding the position and form of legal protection

¹³Interview with Dinar Pakpahan, SH, MH, Head of the Merauke District Court, on May 24, 2023.

¹⁴Dr. Interview H. Ahmad Ali Muddin, SH, M.Kn Notary and PPAT in Merauke Regency, on July 20, 2023.

from MKN, in fact it has not been explicitly regulated in UUJN or in the form of other laws and regulations.¹⁵

The position of MKN in providing legal protection for Notaries is an independent institution, because in this case the existence of MKN is not a sub-section of the government that appointed it. MKN in carrying out its authority to issue a decision is not influenced by other parties or institutions, so in this case the decision made by MKN cannot be contested.

Dinar Pakpahan SH., MH said that, if the deed made before/by a Notary has problems with the parties themselves, then this is a matter for the parties themselves, the Notary does not need to be involved, and the Notary is not a party to the deed. The notary can be sued for civil liability if the parties commit denial: (1). Day, date, month, year facing; (2). Time, o'clock facing; (3). The signatures listed in the minutes; (4). Feeling never facing; (5). The deed is not signed in front of a Notary; (6). The deed is not read out; and (7). Another reason is based on the formality of the deed.¹⁶

Based on the things mentioned above, the parties should be obliged to prove it. UUJNP states that if there is a Notary who is suspected of being involved in legal issues related to a deed drawn up by or before him, the investigator, public prosecutor, or judge when summoning the Notary, must obtain prior approval from the MKN. As contained in Article 66 paragraph (1) UUJNP, namely: For the benefit of the judicial process, investigators, public prosecutors, or judges with the approval of the Notary Honor Council are authorized to: a) take photocopies of Minutes of Deeds and/or letters attached to Minutes of Deeds or Protocols Notary in Notary storage; and b) summon the Notary to attend the examination relating to the Deed or Notary Protocol which is in the Notary's custody.

Based on the provisions contained in Article 66 paragraph (1) of the Amended UUJN, it can be seen that investigators, public prosecutors and judges are only allowed to take: 1. Photocopy of minuta deed and/or letters attached to minuta deed or Notary protocol in storage Notary Public; 2. Investigators, public prosecutors and judges are not allowed or not allowed to take the minutes of the deed and/or the original documents that are attached to the minutes of the deed or the Notary's protocol in the Notary's safekeeping. Inviting a Notary by investigators, public prosecutors, or judges to be present at the examination of a civil case must require approval from the MKN, because currently the MKN is a

¹⁵Irene Dwi Enggarwati, 2015, Criminal Responsibility and Legal Protection for Notaries Examined by Investigators in Criminal Acts of False Statements on Authentic Deeds, Thesis, Magister of Notary, Faculty of Law, University of Brawijaya, Malang, p. 17.

¹⁶Interview with Dinar Pakpahan, SH, MH, Head of the Merauke District Court, on May 24, 2023.

legal protection institution for Notaries, if later a Notary is suspected of committing an error or violation in the making of a deed.

Thus it will be more guaranteed if all actions of summons, examination and detention are carried out after obtaining permission from the professional organization that examines them first, so that in the end there will be legal certainty for the community in accordance with the principle of trust that underlies the authority of a Notary.

The position of MKN in providing legal protection for Notaries for the deeds they made related to Notary's civil liability is an independent institution, because in this case the existence of MKN is not a sub-section of the government that appointed him. MKN in carrying out its authority to issue a decision is not influenced by other parties or institutions, so in this case the decision made by MKN cannot be contested.

Based on all the provisions that have been mentioned, the case that is appointed as a study in this writing is the case that occurred in Merauke Case No.80/PDT.Bth/2021/PN/MRK at the Merauke District Court filed by Muhammad Erfarofi as the objector against a notary in the jurisdiction of Merauke Regency, namely notary/PPAT Rini Widayanti, SH., M.Kn as the objector IV. The objection case filed by Muhammad Erfarofi was a civil effort taken to postpone and/or cancel the confiscation/execution decision by the confiscation objector, namely Irham as the winning bidder from the results of the auction by PT. Bank Rakyat Indonesia (Persero) Tbk, Merauke Branch.

This case began with the debt of Mrs. Muntafiah, the wife of Muhammad Erfarofi, to PT. Bank Rakyat Indonesia (Persero) Tbk, Merauke Branch in the amount of IDR 600,000,000,- (six hundred million rupiah) based on credit agreement No. 18 dated 22 December 2015 made by and before Rini Widayanti, SH.M.Kn Notary/PPAT Merauke Regency as well as the Addendum to Changes to the time period and supplement made by and before Rini Widayanti, SH.M.Kn Notary/PPAT Merauke Regency Number 35 dated 22 December 2016, which stated that to guarantee the debts, Mrs. Muntafiah provided collateral in the form of a plot of land and buildings with proof of ownership in the form of Certificate of Ownership No. 8079 measuring letter number 832/KR/2016 dated March 11 2016, area 680 M², registered and recorded in the name of Muhammad Erfarofi which is located on Jln Mochammad Hatta, Kurik Village, Kurik District, Merauke Regency, Papua Province. To provide a sense of legal certainty to PT. Bank Rakyat Indonesia (Persero) Tbk, Merauke Branch, then for the object of the collateral a Deed of Granting Mortgage Rights (APHT) was drawn up Number: 37/2017 dated 16 February 2017 made by and before Defendant IV/ Mrs. Rini Widayanti, SH.M .Kn as Notary and PPAT with the working area of Merauke Regency.

As time went on, at the end of 2019, according to his confession, Muhammad Erfarofi and his family tried to learn how to find peace of mind and wanted to get the blessing of Allah through the blessings of wealth and learning about muamalah (debt and credit), from there Muhammad Erfarofi just learned the principles of Islamic sharia regarding debt and credit which is regulated in the Qur'an Surah Al Baqarah verses 188, 275, 276, 279 and 282 and Surah An Nisa verses 29-30, which in essence as a believer must leave usury, because it is a very big sin. So that Muhammad Erfarofi has conveyed to PT. Bank Rakyat Indonesia (Persero) Tbk, Merauke Branch that wants to pay off debts without disobeying Allah SWT.

PT. Bank Rakyat Indonesia (Persero) Tbk, Merauke Branch has coordinated and passed the procedures that should be in accordance with banking regulations and the provisions of the Financial Services Authority so that Sugeng Priyanto as the Head of PT Bank Rakyat Indonesia (Persero) Tbk Merauke Branch Office submitted a Request/request Number: B.1688 /KC-XVIII/ADK/11/2020 November 9, 2020, to the Jayapura State Property and Auction Service (KPKNL), then the KPKNL determined the auction schedule based on the stipulation of Auction Number: S-794/WKN.17/KNL.02/2020 date November 16, 2020, which is based on article 6 of Law Number 4 of 1996 concerning Mortgage Rights over Land and objects related to Land. Subsequently, a copy of the Minutes of Auction Number: 420/81/2020 was issued on December 6, 2020, Movable property at auction as is in the form of 1 (one) plot of land with an area of 680 M2 and the building on it according to the Certificate of Ownership Number 8079 dated 16 March 2016 in the name of MUHAMMAD ERVA ROVI supported by a measuring letter Number: 832/KR/2016 11th March 2016 is located in Kurik village, Kurik District, Merauke Regency, which is also based on SKT/SKPT Number 72/2020 dated December 11 2020 which was issued by the Agrarian and Spatial Planning Office/National Land Agency for Merauke Regency with information being guaranteed to PT. Bank Rakyat Indonesia (Persero) Tbk Merauke Branch Office. 832/KR/2016 March 11 2016 located in Kurik village, Merauke District, which is also based on SKT/SKPT Number 72/2020 December 11 2020 which was issued by the Agrarian and Spatial Planning Office/National Land Agency of Merauke Regency with the information is being guaranteed to PT. Bank Rakyat Indonesia (Persero) Tbk Merauke Branch Office. 832/KR/2016 March 11 2016 located in Kurik village, Kurik District, Merauke Regency, which is also based on SKT/SKPT Number 72/2020 dated December 11 2020 which was issued by the Agrarian and Spatial Planning Office/National Land Agency of Merauke Regency with the information is being guaranteed to PT. Bank Rakyat Indonesia (Persero) Tbk Merauke Branch Office.

Muhammad Erfarofi did not accept the minutes of the auction and considered that the auction procedure was legally flawed and would then remain in control

and would not burn the auction object. Muhammad Erfarofi's resistance made Irham, as the winner of the auction, dissatisfied, so he submitted an application for execution on November 25, 2021 and a letter of vacating land assets on August 27, 2021 based on the minutes of the auction that Irham had won. Then the confiscation was placed based on the Decree of the Chairperson of the Merauke District Court Number: 3/Pdt.Eks/2021/PN.Mrk dated December 2, 2021. Based on the decision to confiscate the execution, Muhammad Erfarofi used his civil rights, namely by taking civil action in the form of objection case No.80/PDT .Bth/2021/PN/MRK, which contains the contents of the objection. The objector feels that he has never appeared before and signed the deed or other deeds related to the APHT, so the Deed of Granting Mortgage Rights (APHT) Number: 37/2017 dated 16 February 2017 does not have binding legal force/cancel for the sake of By law, therefore the Mortgage Right (HT) Number: 32/HT/2017 dated 16 February 2017 does not have binding legal force/Cancel By Law, so the Minutes of Auction Number: 420/81/2020 December 6 2020, Does not have binding force/Cancel By Law. Therefore asking the panel of judges to order the re-seizure of the collateral as determined by the Chairman of the Merauke District Court Number: 3/Pdt.Eks/2021/PN.Mrk December 2, 2021. so that the Deed of Granting Mortgage Rights (APHT) Number: 37/2017 dated 16 February 2017 does not have binding legal force/null and void by law, therefore the Mortgage Right (HT) Number: 32/HT/2017 dated 16 February 2017 does not have binding legal force/ Null By Law, so that the Minutes of Auction Number: 420/81/2020 Dated December 6 2020, does not have binding force/Cancel By Law. Therefore asking the panel of judges to order the re-seizure of the collateral as determined by the Chairman of the Merauke District Court Number: 3/Pdt.Eks/2021/PN.Mrk December 2, 2021. 32/HT/2017 dated February 16 2017 does not have binding legal force/null and void, so the Minutes of Auction Number: 420/81/2020 December 6 2020, does not have binding force/null and void. Therefore asking the panel of judges to order the re-seizure of the collateral as determined by the Chairman of the Merauke District Court Number: 3/Pdt.Eks/2021/PN.Mrk December 2, 2021.

Muhammad Erfarofi in his rebuttal stated that the Deed of Granting Mortgage Rights (APHT) Number: 37/2017 dated 16 February 2017 made by and before Defendant IV/ Mrs. Rini Widayanti, SH.M.Kn Notary/Land Deed Making Officer/PPAT with the working area of Merauke Regency, Papua Province was born from an incorrect/false statement. Then Muhammad Erfarofi also denied that he had never appeared before Defendant IV / Rini Widayanti, SH.M.Kn Notary / PPAT Merauke Regency to sign the Power of Attorney for imposing Mortgage Rights (SKMHT) and the Deed of Granting Mortgage Rights (APHT) Number: 37/2017 dated 16 February 2017, even according to Rini Widayanti, SH.M.

Muhammad Erfarofi stated in his rebuttal that the determination of the chairman of the Merauke District Court Number: 3/Pdt.-Eks/2021/Merauke PN which was determined on December 2, 2021 was based on the request for execution. Based on the Minutes of Auction: 420/81/2020 December 6 2020 was born based on Mortgage (HT) Number: 32/HT/2017 dated February 16 2017 while Mortgage (HT) Number: 32/HT/2017 February 16 2017 was born based on The Deed of Granting Mortgage Rights (APHT) Number: 37/2017 dated 16 February 2017 is powerless because it is based on incorrect information (false authentic deed) because the Minutes of Auction is based on something fake, namely the Deed of Granting Mortgage Rights (APHT) Number:

Whereas in his resistance Muhammad Erfarofi linked his case with the interpretation of the Indonesian Supreme Court Jurisprudence No. 08 K/Sip/1957, dated May 20, 1958: "The plaintiff argued that the land the defendant owned was justified/acknowledged by the defendant". Therefore, with this reason alone, Pelawan requests that the confiscation of collateral for the Pelawan's property be lifted. Then it is also associated with the interpretation of the Indonesian Supreme Court Jurisprudence No. 476 K/Sip/1974, November 14, 1974: "Seizures of guarantees cannot be made on the belongings of third parties". Therefore, with this reason alone, the Defendant requests that the confiscation of collateral be lifted for goods other than the objector's property. Apart from that, it is also related to the Supreme Court Jurisprudence Number: 697 K/Sip/1974 Dated 31 August 1977,

Muhammad Erfarofi's Last Resistance in his denial was closed with the legal provisions that confiscation cannot be carried out on third party property as stipulated in Article 195 paragraph (6) HIR jo. Article 207 HIR jo. Article 208 HIR. Based on Book II of the Supreme Court on page 145, it is stated that: "A third party's resistance to collateral and execution seizures can be filed based on the provisions of Article 195 paragraph (6) HIR jo. Article 206 paragraph (6) RBg". Then Muhammad Erfarofi asked the Panel of Judges to Suspend the Execution of a Plot of Land and Buildings with proof of ownership in the form of Certificate of Ownership No. 8079 Measurement letter Number 832/KR/2016 dated March 11, 2016, area 680 M2, registered and registered in the name of a. n Muhammad Erfarofi, located on Jln Mochammad Hatta, Kurik Village, Kurik District, Merauke Regency, Papua Province, until the objection/opposition in this case has binding legal force. In addition, he also asked the Panel of Judges to state that the Deed of Granting Mortgage Rights (APHT) Number: 37/2017 dated 16 February 2017 does not have binding legal force / null and void.

The legal basis for the judge's consideration of decision No.80/PDT.Bth/2021/PN/MRK is that the Panel of Judges Considers the exception of the Defendant Conficiary who argues that in civil law regarding the

filing of a lawsuit it has been determined that the authority to file a lawsuit in court is the Plaintiff's right regarding who -Who will be sued, including in the rebuttal case as in the a quo case, this is in accordance with the Supreme Court Decision which has become permanent Jurisprudence, namely No. 305 K/Sip/1971 dated 16-6-1971 whose rule of law is: the High Court does not authorized without a re-examination to place a person who is not being sued as one of the defendants, because this action is contrary to the principle of civil procedural law which authorizes the plaintiff to determine whom to sue.

The Panel of Judges also considers that in a civil objection in the form of content there is the involvement of two parties, one party acts and has the position of the objector and the other party is withdrawn and has the position of the defendant. Considering that the party acting as the objector must be a person who really has the right position and capacity according to law as well as the party withdrawn as the objector must be a person who has the right position and capacity. Mistakenly and wrongly acting as a disclaimer resulted in a claim/rebuttal containing a formal flaw. Likewise, if the person withdrawn as the Defendant is wrong and wrongly results in the claim/rebuttal containing a formal defect.

The Panel of Judges considers that formal defects arising from mistakes or errors acting as objectors or withdrawn as objectors are qualified to contain errors in persona. Errors in persona that may arise from these mistakes and oversights can be qualified as:

- 1) *In person disqualification*, if the person acting as objector is a person who does not meet the requirements, it can be caused by the claimant being in a condition where he does not have the right to sue the disputed case or is incapable of taking legal action;
- 2) One of the targets of the party being sued is the person who was withdrawn as falsely denied (*gemis aanhoeda nigheid*)
- 3) Lawsuit of less parties (*plurium litis consortium*), if there are still people who must act as objectors or withdrawn as objectors;

The panel of judges will then look at the position and capacity of the parties who, according to the objectionable confiscation, need to be included in the a quo case, namely Mrs. Muntafiah or Muhammad Ervarofi's wife. The Panel of Judges Considering that in his rebuttal Muhammad Ervarofi argued that the Defendant and Defendant I had a legal relationship with Mrs. Muntafiah's debt to Defendant I in the amount of IDR 600,000,000 (six hundred million rupiah) based on the credit agreement Number 18 dated 22 December 2015 made by and before Rini Widayanti, SH.M.Kn Notary/PPAT Merauke Regency as well as

Addendum to Changes to the term and supplement made by and before Rini Widayanti, SH.M.Kn Notary/PPAT Merauke Regency Number 35 dated 22 December 2016, in which that in order to guarantee the debts and receivables are also challenged I provide guarantees in the form of: a) A plot of land and buildings with proof of ownership in the form of Certificate of Ownership No. 8079 Measurement letter No. 832/KR/2016 dated 11 March 2016, area 680 M2, registered and registered in the name of Muhammad Ervarofi located on Jln Mochammad Hatta Kurik Village, Kurik District, Merauke Regency, Papua Province, with land boundaries, to the north bordering with Hi Yasin's land, to the south by Hikmatul Badriyah, to the west by Jln Raya, and to the east by Irham.

The consideration of the Panel of Judges also stated that until this objection was submitted, the confiscation of the collateral object had been placed based on the Decree of the Chairperson of the Merauke District Court Number: 3/Pdt.Eks/2021/PN Mrk December 2, 2021 with what was considered in the Minutes of Auction Number: 420 /81/2020 December 6, 2020, quotation of the Minutes of auction Number: 420/81/2020 April 6, 2021, Certificate of Property Rights Number 8079 which on the date of the Determination has changed the name to a Denied Conficiary / Petitioner for Execution / Irham. Whereas the Minutes of Auction Number: 420/81/2020 December 6 2020 was born based on Mortgage (HT) Number: 32/HT/2017 dated February 16 2017 while Mortgage (HT) Number: 32/HT/2017 February 16 2017 was born based on Deed of Granting Mortgage Rights (APHT) Number: 37/2017 February 16 2017 made by and before Defendant IV/ Mrs. Rini Widayanti, SH.M.Kn Notary/Land Deed Making Officer/PPAT with the working area of Merauke Regency, Papua Province was born from an incorrect/false statement because until now the Defendant has never faced Defendant IV to sign the Power of Attorney to impose Mortgage Rights (SKMHT) or the Deed of Granting Mortgage Rights (APHT) Number: 37/2017 dated 16 February 2017; - Whereas because the Minutes of Auction was based on something fake, namely Deed of Granting Mortgage Rights (APHT) Number: 37/2017 dated 16 February 2017 made by and before Defendant IV/ Mrs. Rini Widayanti, SH.M.Kn Notary/Making Officer Land Deed / PPAT with the working area of Merauke Regency, Papua Province,

The Panel of Judges' consideration of this matter is that a credit agreement is an agreement between the debtor and the creditor to bind himself in granting debts and receivables which can be done with the debtor providing guarantees or without guarantees for repayment of his debts to creditors. If there is a guarantee in the credit agreement, it is an additional agreement with the credit agreement as the main agreement, with the agreement being valid as a law for the makers according to the provisions of Article 1338 of the Civil Code if it has

been legally made by fulfilling the legal requirements of the agreement as provided for in Article 1320 of the Civil Code. Civil.

The panel of judges also considered that in the arguments of the Defendant/Muhammad Ervarofi it was argued that the Defendant and Defendant I had a legal relationship related to Mrs. 2015 made by and before Rini Widayanti, SH.M.Kn Notary/PPAT Merauke Regency and the Addendum to Changes to the time period and supplement made by and before Rini Widayanti, SH.M.Kn Notary/PPAT Merauke Regency Number 35 December 22, 2016, with collateral in the form of a plot of land and buildings with proof of ownership in the form of certificate of ownership no. 8079 registered and recorded in the name of an Muhammad Ervarofi is regarding the existence of a legal relationship of accounts payable between the complainant,

then the Panel of Judges is of the opinion that the resolution of the problem of the guarantee agreement in the a quo case has direct legal consequences with the credit agreement argued by the Arbitrator regarding Mrs. Muntafiah's debt to Defendant I so that Mrs. Muntafiah has significant position and capacity in the a quo case and must be included as a party to a quo matter. Because the Defendant did not withdraw Mrs. Muntafiah as a party to the a quo case, there were still parties related to the disputed issues but were not included as parties in the Defendant's Rebuttal, thus the Defendant's Rebuttal contained a formal defect regarding the lack of parties and the panel of judges accepted the exception Argued by the confiscating about the objection of the less party. Weigh,

Judging from the discussion above, the researcher considers that in fact the Notary in Numbering the Deed of Granting Mortgage (APHT) Number: 37/2017 dated 16 February 2017 made a mistake because he did not confirm to the Defendant Muhammad Ervarofi, even though the one who signed the deed was the Creditor or the Management of PT. Bank Rakyat Indonesia (Persero) Tbk Merauke Branch Office is always the First Party or Mortgage Giver based on a Power of Attorney to Charge Mortgage Rights (SKMHT) representing the Collateral Owner or Mortgage Giver. This notification or confirmation needs to be submitted to Muhammad Ervarofi to prevent lawsuits or resistance to the execution of guarantees when the debtor defaults, because the debtor has been notified in advance and there is no room for the debtor to make a resistance.

Another step that can be taken by the Notary/PPAT to close the resistance gap is when signing and Numbering the Power of Attorney Imposing Mortgage Rights on Debtors and Creditors, the Notary/PPAT also makes a statement stating that they agree or allow and consider SAH and not question it legally law related to the numbering of deeds carried out by the Notary/PPAT relating to the Credit Taking. However, the researcher agrees with the opinion of the panel of judges

at the Merauke District Court in accordance with decision No.80/PDT. Bth/2021/PN/MRK which argues that a credit agreement is an agreement between a debtor and a creditor to bind himself in giving debts and receivables which can be done with the debtor providing guarantees or without guarantees for repayment of his debts to creditors. If there is a guarantee in the credit agreement, it is an additional agreement with the credit agreement as the main agreement, with the agreement being valid as a law for the makers according to the provisions of Article 1338 of the Civil Code if it has been legally made by fulfilling the legal requirements of the agreement as provided for in Article 1320 of the Civil Code. Civil.

The case study that the author raised as described in the discussion, broadly speaking, is as a Notary/PPAT who, in carrying out his duties and position in making authentic deeds, lacks in applying the precautionary principle because when signing the Power of Attorney for Imposing Mortgage Rights (SKMHT) it is lacking in providing an explanation so that the debtor does not know what document is being signed, in accordance with the resistance given by Muhammad Ervarofi who did not feel that he had ever signed the Deed. However, the Notary/PPAT has carried out his duties according to the SOP, so that the Mortgage Certificate can be issued and the auction and execution can take place in accordance with the provisions of the laws and regulations.

The Indonesian Notary Association Institute (INI) has a role in providing legal protection to members, namely Notaries in civil lawsuits:

- 1) The notary in carrying out his position is only formal as stated in the Supreme Court Judgment Jurisprudence Number 702K/Sip/1973 dated 05 September 1973. The notary only functions to record/write down what is desired and stated by the parties who appear before the Notary. The Notary is not obliged to investigate materially the matters raised by the Notary's appearers.
- 2) If the deed drawn up before a notary is problematic by the parties themselves, then this matter becomes a matter for the parties themselves, the notary does not need to be involved and the notary is not a party to the deed.
- 3) Notary deed as an authentic deed has perfect evidentiary power, so that if there is a person/party who judges or declares that the deed is not true or wants the person/party to deny the things contained in the deed, then the person/party who evaluates or declares is required to prove his judgment or statement in accordance with the applicable laws and regulations in Indonesia.

The legal construction made by the Indonesian Notary Association (INI) is as follows:

- 1) The notary is not a party to the deed
- 2) The notary only formulates the wishes of the parties so that their actions are set forth in an authentic deed.
- 3) The desire to make a deed by a Party has never come from a Notary.

Legal protection for Notaries has been guaranteed in the applicable laws, as well as the Indonesian Notary Association (INI) and the Notary Honorary Council (MKN) in carrying out their duties as Public Officials. Thus the Notary will feel very protected because all inspection actions are carried out after careful examination and research by the Supervisory Board as regulated in Article 66 UUJN, but for a Notary who is proven guilty in carrying out his duties and position as a notary, any protection cannot be provided by the Supervisory Board. .

Legal protection for a Notary/PPAT in carrying out their duties and positions regarding the right to civil proceedings in the form of civil lawsuits or objections to the execution of guarantees made by appearers in making this deed is based on the theory of legal protection. The theory of legal protection put forward by Philip M. Hadjon is legal protection for the people in the form of preventive and repressive government actions. Preventive in nature means that the government is more careful in making and making decisions because it is still in the form of preventive measures. In this case a Notary must always be careful in order to protect himself in carrying out his duties and position, so as to avoid lawsuits, rebuttals and civil problems in the future.

4. Conclusion

The form of legal protection for a Notary for the deeds he made related to the Notary's civil liability is the existence of an independent Notary Honorary Council, in this case the existence of an MKN is not a sub-section of the government that appointed him. MKN in carrying out its authority to issue a decision is not influenced by other parties or institutions, so in this case the decision made by MKN cannot be contested. The fact that Muhammad Erfarofi also denied having ever met Rini Widayanti, SH.M.Kn Notary/PPAT Merauke Regency to sign the Power of Attorney for imposing Mortgage Rights (SKMHT) and the Deed of Granting Mortgage Rights (APHT) Number: 37/2017 February 16 2017 is due to a lack of detailed explanation of the process that will be carried out next after the Signing and Numbering of the SKMHT by the Notary/PPAT. In accordance with the decision No.80/PDT.Bth/2021/PN/MRK the panel of judges stated that a credit agreement is an agreement between the debtor and the creditor to bind himself in the provision of debts and receivables which can be carried out with the debtor providing guarantees or without guarantees for

repayment of his debts to creditors . If there is a guarantee in the credit agreement, it is an additional agreement with the credit agreement as the main agreement, with the agreement being valid as a law for the makers according to the provisions of Article 1338 of the Civil Code if it has been legally made by fulfilling the legal requirements of the agreement as provided for in Article 1320 of the Civil Code. Civil. So that even though the Deed of Granting Mortgage Rights (APHT) Number: 37/2017 dated February 16 2017 is formally flawed, the credit agreement Number 18 dated December 22 2015 made by and before Rini Widayanti, SH.M.Kn Notary/PPAT Merauke Regency and Addendum Changes to the time period and additions made by and in the presence of Rini Widayanti, SH.M. In terms of legal protection for Notaries/PPATs in carrying out their duties and positions as General Officials, clearer legal provisions regarding legal protection are needed and cooperation between related institutions is required, especially between Notary organizations (INI) and the Association of National Banks (Perbanas). INI and Perbanas need to make a joint activity to further socialize the risks of deeds made by Notaries/PPAT and the consequences for the Agreement or Collateral that are collateralized if they do not comply with statutory provisions, so that banking marketing does not always urge Notaries/PPAT to accelerate credit binding process, so that the notary is more careful in making a deed. The notary himself must be even more careful in examining the files brought before the notary.

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