

The Strength of Notarial Deed Proof as Evidence in the Civil Court Process

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Abstract. *The judiciary has a very important position and role in accepting, adjudicating and deciding every case submitted to it. When deciding a civil case, the court must pay attention to the evidence presented by the parties. An authentic notary deed is perfect evidence and can be used as evidence in court. The aim of this research is to determine and analyze the evidentiary strength of notarial deeds canceled by the Court in the civil justice process, as well as to determine and analyze the responsibilities of notaries as public officials due to the cancellation of deeds by the Court. The method used by researchers is normative juridical with a statutory approach. The specifications of this research are prescriptive. Based on the results of the research, 1) a Notarial Deed is an authentic deed, where as written evidence it has a high position in evidence, that is, it has perfect evidentiary power and is binding like a judge's decision. So there is no need to create or supplement other evidence. If a party denies it, that party must prove their statement in accordance with applicable legal regulations. If it can be proven in a court that one or all of the evidence is external, formal or material, the evidentiary strength of the notarial deed is degraded as a private deed. 2) The notary as an official who has the authority to make authentic deeds is fully responsible if the deed he makes is detrimental to clients/people using notary services. In the event that a Notary's decision is annulled by a judge's decision in court, then if it causes losses to interested parties, the Notary may be required to provide compensation, as long as this occurs due to the Notary's fault. The Law on Notary Positions (UUJN) has determined that only notarial deeds that are proven to have degraded in evidentiary value as private deeds can be subject to civil sanctions. For notarial deeds that are cancelled, notarial deeds that can be cancelled, notarial deeds that are null and void by law, notarial deeds that do not have binding legal force and invalid notarial deeds, there are no objections whatsoever against the Notary.*

Keyword: Civil; Notarial; Power;

1. Introduction

Based on the provisions of Article 1 number 1 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary (UUJN), a Notary is a public official who is authorized to make authentic deeds and has other authorities as referred to in this Law or based on other laws. A Notarial Deed hereinafter referred to as a Deed based on Article 1 number 7 of the UUJN is an authentic deed made by or before a Notary according to the form and procedures stipulated in this Law.

The main authority of a Notary is to make authentic deeds regarding all acts, agreements and determinations that are required by statutory regulations or desired by the interested party to be stated in an authentic deed, guarantee the certainty of the date of making the deed, store the deed, provide grosse, copies and extracts of the deed, all of which as long as the making of the deeds is not also stated or excluded to other officials or other people determined by law.¹

Written evidence can basically be done either with authentic writings (such as: Authentic Deeds) or with private writings. Authentic writings in the form of authentic deeds, made in a form that has been determined by law, made before an authorized public official (civil servant) and at the place where the deed was made. Private writings or also called private deeds are made in a form that is not determined by law, without regulations or not before an authorized Public Official. Both authentic deeds and private deeds are made with the aim of being used as evidence.²

In reality, there are also writings that are not made to be used as evidence, but the writing can be used as evidence if supported by other evidence. The important difference between an authentic deed and a private writing/deed is in the evidentiary value, that an authentic deed has perfect evidentiary value. The perfection of a Notary deed as evidence, then the deed must be seen as it is, there is no need to assess or interpret it otherwise, other than what is written in the deed. A Notary Deed as an authentic deed has the power of evidentiary value *Outwardly (uitwendige bewijskracht)*, *Formally (formele bewijskracht)*, *Materially (materiele bewijskracht)*.³

Both private deed evidence and authentic deed must fulfill the formulation regarding the validity of an agreement based on Article 1320 of the Civil Code or BW, and materially bind the parties who made it (Article 1338 BW) as an agreement that must be fulfilled by the parties (*pacta sunt servanda*). That it is called a Notarial deed, because the deed is made before or by a Notary who

¹ Herlien Budiono, 2014, Basic Techniques for Making Notarial Deeds (Second Printing), Citra Aditia Bakti, Bandung, p. 1.

² M.Holidi, 2018, The Proving Power of Authentic Deeds in Civil Court Processes at the Yogyakarta District Court, Thesis, Master of Notary, FH UII, p. 8.

³ Habib Adjie, 2015, Cancellation and Revocation of Notarial Deeds (Third Printing), Rafika Aditama, Bandung, p. 18

meets the requirements that have been determined in the Notary Law (UUJN).⁴

Notaries are often parties in civil litigation, especially in relation to defects in a deed that result in cancellation by the judge. Notaries are often made parties involved in the litigation, either as "Defendant or Co-Defendant". This can be considered as a coercive measure carried out against public officials, by placing the Notary in a position of siding with one of the disputing parties. Notaries are bound by the provisions of the Law and the Notary Code of Ethics which regulate the limitations of a Notary's authority, one of whose obligations is to be impartial.⁵

The involvement of the Notary is limited to formulating the legal actions of the parties into his deed and then formalizing the deed. The forced positioning of the Notary as a "Defendant or Co-Defendant" is an attempt to force the Notary to speak about his deed which is now evidence in the trial process.⁶In fact, a Notary has an obligation to keep confidential everything regarding the Deed he has made and all information obtained for the purpose of making the Deed in accordance with the oath/promise of office.⁷

Notaries as public officials are fully responsible for every deed they make, including if the deed is later disputed in court or is indicated to contain legal defects. However, it must also be known whether the defects in the deed are purely the fault of the Notary, or the fault of the parties who provide information and supporting documents. If it is the fault of the parties, then it is not right and fair to then position the Notary as the "Defendant or Co-Defendant" because in the future the Notary can potentially be subject to sanctions in the form of compensation or criminal sanctions.

2. Research Methods

Method The method used by the researcher is normative juridical with a statutory approach. The specifications of this study are prescriptive. The type of data used is secondary data sourced from materials obtained from literature studies.

Based on the results of the research that:

- 1) Notarial Deed is an authentic deed, where as written evidence it has a high position in proof, namely having perfect and binding evidentiary power like a judge's decision. So there is no need to make or add other evidence. If there is a party who denies it, then the party must prove their statement according to applicable legal regulations. If it can be proven in a court that one or all of the evidence either externally, formally or materially, the evidentiary power of the notarial deed is degraded as a deed under hand.

⁴ *Ibid.*, Pp. 5-8.

⁵ See Article 16 paragraph (1) letter a of Law Number 2 of 2014

⁶ Djoko Sukisno, 2008, Taking Photocopies of Minutes of Deeds and Summoning Notaries, Jurnal Mimbar Hukum Volume 20 Number 1 of 2008, P.53

⁷ See Article 16 paragraph (1) letter f Law Number 2 of 2014

- 2) A notary as an official who has the authority to make authentic deeds is fully responsible if the deeds he makes are detrimental to clients/the public who use notary services.

In the event that a Notarial deed is cancelled by a judge's decision in court, then if it causes losses to the interested parties, the Notary can be sued to provide compensation, as long as it occurs due to the Notary's error. The Notary Law (UUJN) has determined that only Notarial deeds that are proven to have degraded evidentiary value as private deeds can be used as civil sanctions. For Notarial deeds that are cancelled, Notarial deeds that can be cancelled, Notarial deeds that are null and void by law, Notarial deeds that do not have binding legal force and invalid notarial deeds, there are no sanctions whatsoever against the Notary.

3. Results and Discussion

3.1. The Evidential Power of Notarial Deeds Canceled by the Court in Civil Court Proceedings

A notarial deed is an authentic deed, namely a deed made by or before a notary as a public official according to the provisions and procedures stipulated in the law.⁸ The deed that is made is a form of proof through writing that is deliberately made to explain the occurrence of a legal event. So that if at a later date a dispute occurs between the parties, the deed made can be used as evidence to strengthen the position of the parties.

In civil law, written evidence is the most important evidence. An authentic deed as written evidence has a high position in proof, namely having perfect and binding evidentiary power like a judge's decision. So there is no need to make or add other evidence. If there is a party who denies it, then the party must prove their statement according to applicable legal regulations.

An authentic deed is said to have perfect evidentiary power, because it has evidentiary power both externally, formally and materially, namely as follows:

1. The power of external proof (outward evidence)

The power of external evidence is the power of evidence based on the external condition of the deed, meaning that a letter that looks like a deed must be accepted, considered, and treated as a deed, until proven otherwise. This external evidence emphasizes that an authentic deed physically has the power to prove its own validity as authentic.⁹

This evidentiary force, as far as it relates to external evidence, is binding evidence for both types of deeds, namely Party Deeds (Partij Acten) and Official Deeds (Relaas Acten). A deed that appears from the outside as an authentic deed, applies as an authentic deed that has perfect evidentiary force.

2. The power of formal proof (formele bewijskracht)

⁸Article 1 number 7 UUJN

⁹M.Holij, Op.Cit., p. 109.

The notary guarantees the truth and certainty regarding the day, date, month, year, time (hour) of the appearance and the parties appearing, the initials and signatures of the persons appearing, witnesses and notary, and proves what was seen, witnessed, heard by the notary (in the official deed/minutes), and records the statements or statements of the persons appearing (in the party deed) as authorized by the Notary in the UUJN.¹⁰

If formally the authenticity of the deed made is questioned by the parties, then it must be proven from the formality of the deed, namely it must be able to prove the untruth of the day, date, month, year and time of appearance, prove the untruth of what they saw, witnessed and heard by the Notary, also must be able to prove the untruth of the statements or information of the parties given/delivered before the Notary, and the authenticity of the signatures of the parties, witnesses and the Notary or there is a procedure for making the deed that was not carried out. That the party who questions the deed must carry out reverse proof to deny the formal aspects of the Notary's deed.

3. Strength of material evidence (materiele bewijskracht)

The information or statement stated in the official deed (deed of minutes) or the statement of the parties submitted before the Notary (deed of parties) and the parties must be considered true as the actual event desired and then stated in the deed. If anyone denies it, then in material terms it is not the Notary's responsibility but becomes the responsibility of the parties themselves.

The fulfillment of these three conditions both externally, formally and materially, an authentic deed has certainty as an actual fact, becomes valid evidence (has perfect evidentiary power) between the parties and their heirs and recipients of their rights.¹¹

Basically, a notarial deed which is an authentic deed has perfect evidentiary power, but the three proofs above are the requirements for the perfection of an authentic deed, if it can be proven in a court that one or all of the proofs have the evidentiary power as a private deed only. But what needs to be emphasized is that a notarial deed in relation to evidence in a trial, has perfect evidentiary power, so it does not need to be proven or added with other evidence. If there is a party who states that the deed is not true, then the party who states it is not true is obliged to prove his assessment in accordance with applicable legal regulations. The evidentiary power of this notarial deed is related to the public nature of the Notary's position as stipulated in Article 1868 of the Civil Code.¹²

Notarial Deeds that are null and void due to material requirements not being met or not meeting the objective requirements for the validity of the agreement as stated in Article 1320 of the Civil Code, namely: 3. a certain subject matter; 4. A reason that is not prohibited, regarding this notarial deed being null and void,

¹⁰See Article 15 UUJN

¹¹Freddy Harris, Op.Cit., Pg. 69.

¹²See Article 1868 of the Civil Code.

whether from the date the deed was made (from the beginning) or since it was known to have violated the objective requirements. If the notarial deed has been null and void from the beginning, then there needs to be a regulation regarding legal actions that have been/have been carried out based on the deed.

The objective requirement of an agreement is about a cause that is prohibited by law. It has become a general rule in the Law of Agreements that an agreement that violates one of the objective requirements, then the agreement is "null and void" or at least has no binding legal force or is called null and void; *nietig*. Article 1337 of the Civil Code emphasizes that a cause is prohibited if it is prohibited by law, or if it is contrary to good morality or public order.¹³

If the notarial deed has met the formal, material and physical requirements then there is no reason to declare the notarial deed has no binding legal force. To declare the notarial deed has no binding legal force, the district court has the right to determine based on the lawsuit filed by the parties themselves. Based on the lawsuit, the court will determine in its legal considerations to conclude as such.¹⁴

If there is no court decision declaring a deed invalid, then the deed remains valid. This is based on the principle of presumption of validity in assessing notarial deeds, namely: a notarial deed must be considered valid until a party declares the deed invalid. To declare or assess the deed invalid, a lawsuit must be filed with a general court. During and as long as the lawsuit is ongoing until there is a court decision that has permanent legal force, the notarial deed remains valid and binds the parties or anyone interested in the deed.

3.2. Notary's Responsibilities as a Public Official Due to Cancellation of a Deed by the Court

Responsibility according to the Dictionary of the Department of National Education is defined as a state of being obliged to bear everything, if there is something that can be sued, questioned, sued and so on. According to OP Simorangkir, responsibility is the obligation to bear or shoulder everything that is a task, with everything seen from good and bad actions. Good actions or deeds, then responsibility means carrying out obligations or those actions well, while in the case of bad actions or deeds, then responsibility means bearing the consequences of bad actions or deeds. While Purwahid Patrik, responsibility means that a person must bear to answer for all his actions or everything that is an obligation and under his supervision along with all the consequences.¹⁵

The responsibility put forward by Roscoe Pound is that one of them is an

¹³M. Holidi, *Op.Cit.*, p. 122.

¹⁴Habib Adjie, 2016, *Compilation of Legal Issues in Notary and PPAT Practices: Selected Chapters on Notaries and PPAT*, Indonesia Notary Community, Surabaya, pp. 195- 197.

¹⁵Risma Marpaung, 2018, *Notary's Accountability for Deeds Declared Void by Law by the Court (Analysis of Medan District Court Decision Number 656/Pdt.G/2015/Pn.Mdn)*, Thesis, Muhammadiyah University of North Sumatra, p. 90.

unlawful act that will impose the responsibility on someone who is legally required to be responsible. This is also emphasized in one form of civil liability, namely absolute liability, where a responsibility will be imposed on someone who does not necessarily directly make a mistake that harms a third party. In this case, the notary did not make a direct mistake, but because in the Law of the Republic of Indonesia Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary, the notary is the one who has the obligation to maintain the confidentiality of the contents of a deed.¹⁶

When viewed from the accountability of officials in carrying out their positions, Kranenburg and Vegtig's opinion states that there are two bases for the accountability of officials in carrying out their positions, namely:

- a. *Personality*, that responsibility will be imposed on the official himself if, due to carrying out his position, the official causes harm to a third party, in other words, this burden of responsibility will be imposed on humans as individuals.
- b. *Service Fees*, in this theory explains that a responsibility for losses to third parties will be charged to the agency where the official carries out his position. In the application of the burden of responsibility will be in accordance with the size of a mistake made by the official.¹⁷

The two fundamental differences in the accountability of the above positions are, where in *Fautes Personalies* there has been a personal error in carrying out his position as part of the government but not related to public service, in other words the error originates from a person who functions as a state official in terms of carelessness or negligence. While in *Fautes De Service* it can be charged because of abuse of authority related to public service.¹⁸

Regarding the form of responsibility of a Notary in making deeds, Abdul Kadir said that the forms of responsibility of a Notary can be defined as follows:¹⁹

- a. Notaries are required to make deeds properly and correctly, meaning that the deeds they make fulfill the legal requirements and requests of the interested parties because of their position;
- b. Notaries are required to produce quality deeds, meaning that the deeds they make are in accordance with the rules of law and the wishes of the interested parties in the true sense, not made up. Notaries must explain to the interested parties the truth of the contents and procedures of the deeds they make.
- c. Having a positive impact means that anyone will acknowledge that a notary's deed has perfect evidential force.

¹⁶Ibid, p. 95.

¹⁷Muhkam Arief Widodo, 2015, Civil Liability of Notaries Due to Misuse of Confidentiality of Minutes of Deeds by Their Employees, Brawijaya Law Student Journal, p. 20.

¹⁸Ibid.

¹⁹Risma Marpaung, Op.Cit., p. 97.

In carrying out his duties as a public official, it is not uncommon for a Notary to deal with legal processes, both at the investigation, inquiry and examination stages in court. In this legal process, the Notary must provide information and testimony regarding the contents of the deed he made. At first glance, this is contrary to the notary's oath of office, that a notary is obliged to keep the contents of the deed he makes confidential.

In a Jurisprudence in the Supreme Court, it is emphasized that "A Notary in carrying out his/her position is only formal, a Notary only functions to record/write down what is desired and stated by the parties who appear before the Notary. A Notary is not required to materially investigate matters stated by those appearing before the Notary."²⁰ So it is reasonable if the Supervisory Board must first assess whether the error or violation is truly the Notary's fault. Considering that the Notary is only a party who witnesses and formulates the wishes of the (parties) appearing.

The position of Notary is a noble position but at the same time prone to problems. Noble means noble, high, honorable and dignified. The nobility of the position of Notary is based on the mandate and authority given directly by the state through UUJN to represent the state in some civil matters related to the making of authentic deeds, namely Notarial Deeds, as evidence for legal acts carried out by individual citizens or business entities or legal entities through agreements made between the parties.²¹

Notarial Deeds have perfect evidentiary power in civil lawsuits in court, but if they violate certain provisions, their evidentiary value will be degraded to having evidentiary power as a private deed. A notary who is proven to have made a mistake resulting in the deed he made only having evidentiary power as a private deed or the deed being null and void by law, will cause losses to the client or other parties.

Violation committed by a Notary causes a deed to only have the power of proof as a private deed or the deed becomes null and void by law, then the party who is harmed can demand reimbursement of costs, damages and interest from the Notary. In the event that a Notarial deed is cancelled by a judge's decision in court, then if it causes losses to the interested parties, the Notary can be sued to provide compensation, as long as it occurs due to the Notary's error, but in the event that the cancellation of the Notarial deed by the court does not harm the interested parties, the Notary cannot be sued to provide compensation even though he loses his good name.

Apart from the deed whose evidentiary value has been degraded as a private deed, there are no other civil sanctions, meaning that the Notary Law (UUJN) itself has determined that only Notary deeds that have been proven to have degraded evidentiary value as a private deed can be subject to civil sanctions. For

²⁰Supreme Court Jurisprudence No. 702K/Sip/1973

²¹Bachrudin, Op.Cit., p. 82.

Notary deeds that are canceled, Notary deeds that can be canceled, Notary deeds that are null and void by law, Notary deeds that do not have binding legal force and invalid Notary deeds, there are no sanctions whatsoever against the Notary.

A notary as an official who has the authority to make authentic deeds is certainly fully responsible if the deed he makes is detrimental to the client/community using the notary's services. However, the position of a notary itself must be viewed differently, especially in the realm of law enforcement. In addition to the right to refuse, or special rules contained in the UUJN, as someone who holds a public office, the profession of a notary must be viewed differently, specifically or even specially.

For example, in law enforcement, there are still law enforcement officers who are not yet perfect in viewing Notaries as a position. In which case, Notaries are still often equated with individual citizens in general who must be treated the same ("really the same" or "exactly the same") before the law, including in terms of requesting information, summoning or requesting evidence, without considering the mandate and authority of attribution carried out by the Notary Position according to the UUJN. This has the potential to violate the basic rights of Notaries as regulated in the UUJN and actually makes Notaries not obtain fair legal protection.²²

4. Conclusion

The absence of a specific legal procedure created or established to protect Notaries in order to fulfill the obligation to disclose official secrets, places Notaries in a legally weak and dilemmatic position, because it has the potential for violations of the basic rights of Notaries as public officials, in which these basic rights are actually protected in the UUJN. In such circumstances, Notaries are faced with a contradictory situation, which has the potential to not receive fair legal protection.

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²²Ibid., p. 103.

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