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AUTHENTICITY OF DECLARED NOTARY ACTIVITIES BY USING THE PHOTO DOCUMENT MINUTA SIGNING OF ASSET

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Abstract

Influence arising from technological developments has an impact on changes in society in the field of law, especially in terms of evidence using electronic devices as an extension of evidence in the law in Indonesia. This study aims to determine the responsibility of a Notary to an authentic deed made by and/or before a Notary Public based on the provisions of UUJN jo UUJN-P and to find out the legal impact arising related to the use of photo documents as an expansion of new evidence towards the authenticity of an authentic deed. The method used in this study is a normative perspective with a statutory approach and conceptual approach that aims to conduct a juridical study of the legality of electronic evidence. The results showed that the responsibility of the Notary in providing services in the field of civil law, in particular, made an authentic deed as stipulated in UUJN jo UUJN-P to provide a sense of justice for the parties, third parties with an interest in the deed he made and his heirs, were responsible for the authenticity of the deed he made it as perfect proof. In the context of the authenticity of a Notary Deed as an authentic deed, the Notary Deed does not require any other evidence to guarantee the legal certainty of its authenticity, so that the use of photo documents used as evidence in procedural law, both criminal and civil, cannot be applied or used against the Notary Deed even as evidence supporters.

Keywords: Authentic Deed; Notary; Photo Document

1. INTRODUCTION

Indonesia is a legal country based on the Constitution or Basic Laws. The Indonesian State Constitution is the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution) which in the statutory regulatory structure of the state occupies the highest position under Pancasila as the grundnorm, with the aim of providing certainty and legal protection for each Indonesian citizens for any legal actions or events that they do or experience in order to achieve legal order in society. One form of the embodiment of the functions and objectives of the rule of law above, by the government, a Notary Institution was held, whose existence is a legacy from the Dutch colonial. The Notary Institution is given assignments and authority by the state attributively which obtains authority directly from a statutory regulation which

came into force on October 6, 2004, namely Law Number 30 of 2004 concerning Notary Position promulgated based on the State Gazette of the Republic of Indonesia Number 2004 117, Supplement to the State Gazette of the Republic of Indonesia Number 4432 and (hereinafter referred to as UUJN), as amended by Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Position which has been promulgated in State Gazette Number 5491 (for hereinafter referred to as UUJN-P). On that basis the Notary has the authority in terms of providing legal certainty and protection in the civil field, especially in the field of proof law through the making of a Notary Deed as an authentic deed.

In connection with this, the important thing in this study is the existence of a Notary Deed as an authentic deed,

especially in the process of making a notarial deed whether made by a Notary Public Deed (official deed) or made before the Notary Public as a party deed, relating to the enactment of Law Number 11 Year 2008 which took effect on April 21, 2008 (hereinafter referred to as the ITE Law) which determines the expansion of evidence in the form of electronic information and electronic documents. The use of photo documents taken at the time of signing of the Authentic Deed is not required to be used and there is no regulation or elaboration in UUJN jo UUJN-P as a necessity, therefore not all Notaries apply the use of photo documentation at the time of signing the authentic deed. This has created a disharmony between the implementation of the ITE Law and UUJN-P.

Some related studies with this present study have been conducted previously. They examined the responsibility of notary. (Iskhak & Witasari, 2019) conducted the roles and responsibilities in the making notary deed of sale and purchase agreement in the event of disputes for the parties and the notary solution in preparation of deed sale and purchase agreement in order to avoid disputes of the parties. Based the data analyzed, it was found that the responsibility of the notary deed merely on early part deed / deed chief, section final / concluding notarial deed and have full accountability of the contents either formal and material. Furthermore, in the duty of notary shall apply precautionary principle and do legal education in order to avoid disputes in the future. (Putra, Sudini, & Puspadma, 2020) also conducted the similar study with this present study which examine the responsibility of a notary for the drafting of a double number and the legal consequences if a double number occurs in a notarial deed. The results of this study indicated that the notary's responsibility for making a notarial deed with a double number must be accounted for administratively. The existence of a double number on the notary deed indicates that the notary has been inadvertently applied in making an authentic deed. In every legal action that implies the use of authority, it implies an obligation of accountability. Thus, a notary who makes a notarial deed with a double number requires the notary to be administratively responsible, remembering that the negligence made by a notary is an administrative error. Furthermore, the legal consequences in the event of a

double number in a notary deed do not cause any consequences if no party feels disadvantaged by the existence of this double number. All that is left is for the notary to publish the minutes of changing the deed number and notify parties such as the parties, the Ministry of Law and Human Rights and the local Land Office if the double-numbered deed is related to land rights. However, if the double numbered deed brings harm to another party, then the party who feels disadvantaged can sue the notary.

Based on the explanation above, this study aims to determine the responsibility of a Notary to an authentic deed made by and/or before a Notary Public based on the provisions of UUJN jo UUJN-P, and find out the legal impact arising related to the use of photo documents as an expansion of new evidence towards the authenticity of an authentic deed. Theoretically, this research is expected to provide clear information about the authenticity of a notary deed as a legal product from the position of a notary, so that practically it can provide benefits and input regarding the use of photo documents whose position and function cannot shift the authenticity of a deed.

2. METHOD

Normative research is the method used in this study. Furthermore, this study applied the conceptual method, wherein gathering legal material is carried out by conducting a literature study to examine all laws and regulations relating to the problems in this thesis. Moving on from the views and legislation related to the problem by studying the consistency and/or compatibility of one law with other laws, so as to find the notions, concepts and principles that are relevant to the research theme as a backrest in answering the legal issues created.

3. RESULT AND DISCUSSION

General Authority

The general authority of the Notary can be clearly seen in the provisions of Article 15 (1) which confirms that one of the Notary's authorities is to make a deed in general with limitations as long as it is not exempt from other officials stipulated by the law, which in this article is determined:

"The notary has the authority to make an authentic deed regarding all deeds, agreements, and stipulations required by legislation and / or that is desired by the

interested parties to be stated in an authentic deed, guarantee the certainty of the date of making the deed, keep the deed, give a gross, copy and quote deeds, all of them as long as the making of the deeds are not also assigned or excluded to other officials or other people determined by law. "

Special Authority

Special Notary authority can be seen in the provisions of Article 15 paragraph (2) which regulates the special authority of the Notary to take certain legal actions, where the provisions are as follows:

- a. ratify the signature and determine the certainty of the date of the letter under the hand by registering in a special book;
- b. book a letter under the hand by registering in a special book;
- c. make a copy of the original letter under the form of a copy containing the description as written and described in the letter concerned;
- d. approve photocopying with the original letter;
- e. provide legal counseling in connection with the making of the deed;
- f. make a deed relating to land; and
- g. make an auction treatise deed.

Additional Authority

The provisions of Article 15 (3) confirm that the Notary also has other authorities as specified:

"In addition to the authorities as referred to in paragraph (1) and paragraph (2), the Notary Public shall have other authorities regulated in the legislation."

This additional notary authority still refers to the general authority of making an authentic deed based on other laws and regulations which states or determines an act or Legal actions must be made in the form of a notarial deed.

To be valued as an authentic deed, in making it must fulfill the form and procedure for making it based on the provisions in UUJN jo UUJN-P. If one of the conditions that has been determined as a form and procedure is not fulfilled, then the authentic deed made by a Notary Public can be degraded into a deed under the hand whose strength of proof is imperfect. These provisions include the following:

- a. Deed must be made by (door) or

before (ten overstaan) a Public Official.

- Deed made "by (door)" Notary. This deed is in the form of an "official deed" (ambtelijke akten) at the request of the parties by a Notary made a description of his actions to be witnessed in person (relaas deed).

- Deed made "before (Ten Overstaan)" Notary. This deed is usually called a party deed (partij akten) which contains a description or statement, statements of the parties given or told before a notary.

b. The deed must be made in the form determined by law.

Since the notary institution was born in Indonesia and with the legal unification of the notary sector, the existence of the notary deed was inaugurated because its form was determined by law. In the provisions of article 38 of the UUJN-P as mentioned above, it is an outward provision regarding the form of a Notarial Deed.

c. Public officials by and or in front of whom the deed was made, must have the authority to make the deed.

The authority possessed by a Notary Public includes 4 (four) matters, namely:

1. The notary must be authorized as long as it concerns the deed that must be made;
2. The notary must be authorized to the extent that the person is in the interest of whom the deed was made;
3. The notary must be authorized as long as it concerns the place, where the deed was made;
4. The notary must be authorized as long as the time of making the deed is made.

An evaluation of a Notary Deed as a product of a general official must be carried out with the Principles of Legitimate Sah (Vermoeden Van Rechtmatigheid), that is, a Notarial Deed must be considered valid until a party declares the deed to be invalid. Therefore, the Notary in carrying out his duties, must be able to provide "justice" for the parties in the deed, third parties who are interested in the deed and their heirs. The notary is "fully responsible" for the deed made since the parties deal with the notary and does not stop even if the notary has not carried out his position and the deed has been submitted to the notary protocol.

To declare or assess the deed is invalid

must be filed with a general court. As long as and as long as the lawsuit runs until there is a court decision that has permanent legal force, the notary deed remains valid and binds the parties or anyone with an interest in the deed. In a lawsuit to declare a notarial deed invalid, one must pay attention to the three evidentiary powers possessed by a notary deed, namely: (Lotulung, 1993)

a. The power of proof is outward (Uitwendige Bewijskracht)

It is the strength of the deed which is shown from the outside (its birth) has shown that the deed is an authentic deed (acta publica probant sese ipsa) as well as from the form as determined in UUJN-P from the initial signing of the minutes to the end of the deed and issued a copy of the document.

b. Strength of Formal Evidence (Formale Bewijskracht)

The formal proof of an authentic deed must provide certainty that what is written in the deed is really based on the statement of the parties facing which the Notary is not obliged to investigate the truth of what was conveyed by the registrants to the Notary and the procedure for making it is in accordance with that specified in UUJN-P .

c. Material Strength (Meteriele bewijskracht)

It is certainty about the material of a deed, that what is stated in the deed is a valid proof of the parties making the deed or those who get the rights and apply to the public, unless there is evidence to the contrary.

When a Notary performs his duties in the field of notary, the position of the Notary is as a legal implementer, whereas when the Notary is responsible, the position of the Notary is faced with the application of sanctions as imposed by law. Sanctions addressed to Notaries are also a form of awareness that Notaries in carrying out their duties violate the provisions regarding the implementation of the tasks of the Notary Office as stated in the provisions of UUJN-P. Accountability of the Notary as his personal self (Fautes Personelles) cannot be separated from the responsibilities in his position (fautes de services), (Ridwan, 2006).

The responsibility is fully borne by the Notary Public with the consequences of imposing sanctions as a form of coercion to provide awareness to the Notary Public

whose actions violate or are not in accordance with applicable law, so that sanctions can return the Notary action to an orderly manner in accordance with UUJN-P and for protect the public from harmful acts of notary public. Sanctions as a form of notary responsibility in carrying out their office duties can be in the form of civil, administrative, or criminal responsibility.

Civil sanctions are sanctions imposed on errors that occur due to default, or unlawful acts (onrechtmatige daad). Civil witnesses received by the Notary from a lawsuit which resulted in the degradation of the authentic deed to a deed under the hand or null and void by law can be in the form of reimbursement, compensation and interest. Based on UUJN-P, the notary deed is degraded as evidenced by underhanded deed where if the Notary Public commits an act that violates the provisions of article 16 paragraph (1) letter m jo article 16 paragraph (7), article 41 (jo article 38, article 39, article 40), article 44, article 48, article 49, article 50, article 51 or article 52.

Administrative sanctions are notary internal sanctions that are fixing (reparatoir). Within the scope of the Notary's position, there are 4 (four) levels of administrative sanctions that can be imposed on Notary officials who violate the provisions in UUJN-P as a series of orderly actions in carrying out the duties and work of a Notary that is carried out by an institution within the Notary organization for the benefit of the Notary. Administrative sanctions can be in the form of written warnings, temporary dismissals, respectful dismissals and disrespectful dismissals.

Criminal sanctions are not regulated in UUJN-P, therefore if a criminal violation against a Notary Public can be subject to criminal sanctions based on the Criminal Law and the Criminal Procedure Law provided that the penalties against the Notary are carried out with restrictions, namely: (Sjaifurrachman, 2011)

1. There is a legal action from the Notary to the outward, formal and material aspects of the deed that are intentional, full of awareness and conviction, and it is planned that the deed to be made by or before the Notary together (agreed) the parties is used as the basis for committing a criminal act .

2. There is a legal action from a Notary in making a deed by or in front of a Notary Public if the measurement is not

appropriate based on UUJN-P.

3. Notary Actions are also not appropriate according to the authorized institution to assess the actions of a Notary in this case the Notary Supervisory Board.

The Legal Impact Arising Related to the Use of Photo Documents as an Expansion of New Evidence towards the Authenticity of an Authentic Deed

The rapid development of information technology has changed human lives to be easier because of the sophistication and effective and efficient work power, so that the birth of new rules in Indonesia in the form of ITE Law as one of the laws that regulate substantially about electronic information and electronic transactions. Legal evidence in Indonesia legally is not yet legally formal to accommodate electronic documents or electronic information as evidence in dispute resolution, after the enactment of the ITE Law there are additional types of evidence. The ITE Law provides a legal basis regarding the legal strength of electronic evidence as an extension of evidence so that it can be accepted at court. The ITE Law has placed new legal norms, especially in the evidentiary law in the form of new types or forms of evidence that can be used and their validity recognized in the evidentiary and trial process, one of which is in the form of photo documentation.

To create legal certainty from the enactment of the ITE Law, there must be certainty of the regulation itself based on formal evidence, meaning that a new act can be categorized as an offense only if it violates the ITE Law. The use of photo documents as demonstrative evidence must be relevant to the facts that will be proven, so that everyone can predict what will be experienced if they take certain legal actions.

In proof of civil procedural law applies "positive proof system" (positief wettelijk bewijsleer) where what is sought by the judge is formal truth so that proof is a procedure to prove the truth of an event or the existence of a right where an act is proven only based on the evidence specified in just legal proceedings. To be able to recognize an electronic document as electronic evidence, the document must meet several basic criteria and conditions for consideration, including the following:

1. Legal treatment of electronic data.

In this case it is determined that anyone, including the court, must not reject the legal effects, legal validity, and enforcement of the law solely because it is electronic data. In addition, the court may not also reject the legal effect of the document if the parties are indeed not possible to obtain the original text of the document.

2. Presumption of authenticity.

The principle of presumption of authenticity (presumption of authenticity) is a provision that is often used to prove the authenticity of a document / digital data. In this case the law of proof assumes that an electronic document is authentic, unless it can be proven otherwise.

Even though the ITE Law has determined that electronic documents and / or printouts constitute a valid proof and are an expansion of legal evidence in accordance with the applicable procedural law in Indonesia, so that it can be used as evidence before a trial, photo documents as incorrect one type of electronic document cannot simply be applied as evidence because photographs are merely items or objects for convincing (demonstrative evidence) that do not directly prove the existence of a particular fact.

Photo documents are used as demonstrative evidence in court based on the belief that people are more impressed by seeing than just hearing. In order to be accepted as demonstrative evidence, the law requires the following matters: (Fuady, 2012)

a. There must be other evidence

A photo document is a demonstration or picture of something so the exhibited evidence must also be presented in court. For example, the photo document shows the signing of a notarial deed, then the deed must also be shown at the hearing.

b. Representative accuracy

Photo documents shown in court must be accurate with the evidence they represent. Accurate means to be the same size or accurate scale, same dimensions and same shape. Enlargement of images that can cause the impression of exaggeration can be rejected as demonstrative evidence.

c. Authentication

The photo document represented must show or illustrate the actual thing presented. A photo of something that has

been digitally altered so that the photo looks better, uglier, or bigger than the object so it looks smaller than the original, so it is no longer considered authentic.

d. Identification

What is displayed in court must be exactly the same as the actual presentation. For example, if what is depicted is an isosceles triangle, whereas what is meant by a right triangle then between the two is no longer identical (no longer matching).

e. Admisability

Photo documents as demonstrative evidence must prove something relevant, significant and competent in accordance with the functions of the court, such as polite, not violating ethics, and others.

f. Balance (Balancing)

Demonstrative evidence has positive effects besides negative effects. The most important positive effects certainly make things clear. While the negative effects will be more emotional than rational, wasting time, and others. Therefore we need a balance between positive effects and negative effects even if possible positive effects must exceed the negative effects.

Article 1866 The Civil law determines the primary evidence in a civil case is written evidence which in the provisions of article 1867 of the Civil law is confirmed by the provisions of an authentic deed as written evidence in the civil procedural law which is included in the Positive or formal proof system. Authentic deeds are used as perfect evidence because they meet the following requirements:

1. Permitted by law to be used as evidence;
2. Reability, that is, the evidence can be trusted to be valid (for example not fake);
3. Necessity, that is, the evidence is indeed needed to prove a fact;
4. Relevance, that is, the evidence has relevance to the facts that will be proven.

Having not formally accommodated electronic evidence in the provisions of civil proceedings, it will be difficult for the judge to resolve and decide disputes so that the truth of the photo document is hung on a third party called a digital forensic expert, thus impacting on the invalidity of an authentic deed without proving its invalidation, in terms of physical, formal and material aspects of the notarial deed.

If seen from the norm hierarchy prevailing in Indonesia, the position of the

UUJN and the ITE Law is ownership-invitation that is appropriate at the same level. The application of laws and regulations that are carried out while bringing disharmony dishes to the law because of overlapping authority. In the ITE Law, new regulations regarding the expansion of evidence in which electronic documents are used as evidence in the process of dispute resolution in the courts are not regulated in the Civil law and the Criminal law. While the authentic deed as referred to in the UUJN is in line with the Civil law and the Criminal law as the only written evidence that has perfect proof value.

The validity of the photo document as an extension of the evidence has a philosophical legal impact that creates a stigma of distrust of the position of a Notary as an official authorized to guarantee perfect evidence of an act and event as outlined in the form of an authentic notary deed as the attributive authority obtained from the State based on the provisions of the UUJN -P. The expansion of the evidence juridically has an impact on the taking of photographs by the Notary at the time the signing of the deed either by or in front of the Notary Public is also followed by those that are only used as supporting evidence if in the future there is a claim against the deed made by a Notary, especially there is a denial by one party. The photo document can be used as additional evidence to support that at the time of signing it was indeed the person concerned in accordance with the picture in the photo that signed, but that does not change the authenticity of the notary deed.

This gives a sociological legal impact whereby the use of photo documents as an expansion of new evidence raises the understanding of a deed and the authenticity of a document will be recognized if there is a photo document which by a third party is equalized with an authentic deed or even exceeds the truth of a notarial deed so that it impacts the invalidity of a authentic deed without proving its invalidity in terms of physical, formal and material aspects of the notarial deed.

The authenticity of the notary deed is not the value of the photo document taken at the time of signing, but it is based on the form and procedure for making it based on the provisions in UUJN-P and it is not an obligation for a notary to do so. This is because UUJN-P is a law that

specifically regulates the duties of the Notary Public Office based on the Lex Specialis Derogat Legi Generali principle. The position of the photo document as an expansion of evidence based on the ITE Law cannot rule out the authenticity of the authentic notary deed and even the truth cannot exceed that of the notarial deed.

4. CONCLUSION

Based on the discussion described above, it can be concluded that the position of the Deed prepared by the Notary Public General (openbaar ambtenaar) which has been made in accordance with the provisions of Article 1868 of the Civil Code and UUJN in conjunction with UUJN-P is an authentic deed. The deed is made by a notary who obtains an attributive authority that functions as perfect evidence and can provide a sense of justice for the parties along with their heirs and third parties with an interest in the deed. Furthermore, the photo documents as an extension of evidence in the law of law in Indonesia cannot rule out authentic deeds as perfect evidence. In such case there is no need for documentation of the photo of the signing of the deed of minutes in the framework of the authenticity of a Notary Deed as an authentic deed. Based on the conclusion, it can be suggested that notary Deed as an authentic deed must be made in accordance with the forms and procedures determined in the legislation. So that the value of the authenticity of a notary deed is not degraded, the notary must apply the precautionary principle, be more thorough and have good faith in making authentic deeds and comply with applicable legal provisions and are based on morals and ethics. In addition, with the enactment of the ITE Law which determines the validity of the use of photo documents as evidence in legal proceedings in Indonesia, the impact is on the use of photo documents by the Notary Public when signing the minutes of the deed. This is a preventive effort for a Notary in the event of a dispute over an authentic deed he makes. To be able to fully authorize the use of photo documentation as an effort to protect the Notary in carrying out his / her office duties, then legally formal regulations need to be changed, especially in UUJN jo UUJN-P to implement the use of photo documents as supporting evidence in the process of making an authentic deed by a Notary Public .

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