



Analysis of Notary Deed as a Basic Reference to Evidence in Civil Law

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Abstract

The law has regulated the making of a civil deed where in the process the authority of a notary in formulating the making of an authentic deed has obtained a legal position in the eyes of the law. This study uses a descriptive method with a qualitative approach and data triangulation analysis, the results of the study explain that the function of a notary in the role of making an authentic deed can be accounted for based on the Civil Law Act regulated in Article 1868 which states that an authentic deed is a deed made in a form determined by law by or before a public official authorized for that at the place where the deed was made. In addition, authentic deed evidence in civil law is said to have perfect and binding evidentiary power which cannot be denied by the judge's proving power in the trial process in court.

Keywords: Deed, Notary, Civil Law

1. Introduction

As a legal state that is obedient and obedient to the rules and regulations, Indonesia has a very firm legal system and guarantees every legal certainty for all its people, the principle of the rule of law itself is to provide protection and truth in accordance with the law as the basis of the state and demands the existence of valid, clear evidence, for the sake of legal certainty as a subject that applies in society, because basically as a country that adheres to a republican system, Indonesia must always uphold democratic values that can guarantee legal protection, for anyone without exception.

In the process of carrying out every fair legal protection and can fulfill the rights of everyone, the system is regulated in civil law. Civil law as its material law and civil court procedural law as its formal law, to settle a civil case law in a trial, One form of written evidence is an authentic deed, where an authentic deed is defined in Article 1868 of the Civil Code which states that a deed made in the form determined by law by or before a public official authorized for that at the place where the deed was made, the authentic deed is further divided into official deed (*acte ambtelijk*) and deed of the parties (*partiaacte*).

Basically a proof has a very important role in a trial process, because with the althe right evidence will make it easier for a judge to decide and pass a judgment on justice, proof will be a very central and valid figure in order to find a judicial process

with the arguments of the examining parties through various stages as the first step in resolving criminal cases. In civil procedural law, there are several evidences as specified in Article 1866 of the Civil Code which includes written evidence, evidence with witnesses, suspicions, confessions, and oaths. Another function of civil law is to regulate and guarantee every judicial process with various evidences that are in the trial through the intermediary of a judge as a person who has the right to make decisions and has authority to act fairly and wisely.

On the proof stage using writing is carried out with an authentic deed or with a deed under the hand, while written evidence or letters are everything that contains reading signs intended to pour out one's heart or convey one's thoughts and are used as evidence, the deed is also contains all events relating to the judicial process that is being carried out. An authentic deed is a deed made directly before an official (notary), while an underhand deed is an agreement made between the parties involved in a collective agreement, the deed has two important functions in the trial method, the first function as a formal function (formal) *i bag causa*) and the second as a function of evidence (*probat ioni s causa*) (Achmad W, 2021).

One of the authorities to make this authentic deed lies with a notary official, as stated in Article 1 UUJN No. 2 of 2014 concerning amendments to UUJN No. 30 of 2004, namely a notary is a public official who is authorized to make an authentic deed regarding all actions, agreements and stipulations that are required by a general regulation and stated in a desired deed, besides that it contains the certainty of the date of manufacture, saves the deed. copies and quotations, as well as not assigned or excluded to officials or other people, as intended in the Act, which is further explained in Article 15 UUJN No. 2 of 2014 concerning amendments to UUJN No. 30 of 2004, then based on the explanation of the article above that the authority of a notary is very broad and complex,

After knowing the war and the function of a notary in making a deed, it cannot be denied that the authority of a notary is very broad as has been explained in the 1945 Constitution, but a notary must also be professional and willing to listen to every request from the appearer, in addition to that Also, notaries are required to always take sides fairly and impartially to one of the parties, always asking for clear information to be further processed into a deed. After all processes are carried out based on the information that has been conveyed, the next step is to read the deed in front of the audience, and finish with the procession of signing the deed. The process is carried out absolutely and in the presence of a notary and each of the two parties concerned. But to be able to guarantee every process of making the deed, but in this article will be explained about the authority of the law which regulates the notary as a public official and the form of a notary deed. Notary Public according to UUJN is a public official authorized to make authentic deeds and other authorities.

The definition of a notary implicitly refers to the function and authority of a notary which explains that a notary is an extension of the government, in this case the state has provided discretion. the feeling and trust in a notary to be able to resolve every civil case law by going through constitutional stages and procedures, of course actions and violations that are contrary to the government's demands will be fatal for a notary where in principle these actions will weaken the deed that has been made, so that the authentic deed will be reduced in power through a deed under the hand, for

the sake of the legal process that applies to the trial process, a notary is also prohibited and is not authorized to make a deed for the benefit of everyone. For example, Article 52 of the UUJN stipulates that a Notary is not allowed to make a deed for himself, his wife/husband, other people who have a family relationship with a Notary, either because of marriage or blood relations in a straight line of descent and/or upward without any limitation of degree, as well as in a sideways line up to the third degree, as well as being a party to oneself, or in a position or by means of power. Violation of these provisions causes the Notary deed to no longer be domiciled as an authentic deed, but only as a private deed (GHS Lumban Tobing).

The aims and objectives of this study are to find out how the role of a notary deed (authentic deed), as evidence in civil law events. Some of the references and previous studies that the researcher used in the preparation of this study were, the Position of the Notary Authentic Deed as Evidence According to Article 1886 of the Civil Code, this research was compiled by Mohd. Afnizar, Devinsyah Nasution, and Muksin Putra Haspy, using a descriptive analytical method, with a qualitative approach and the results of this previous study explain that, the strength of proof of a notary deed as evidence is the perfect strength of proof, because the specialty of an authentic deed lies in its strength. the proof is in accordance with Article 1886 of the Civil Code.

The next research entitled The Position of Authentic Deeds Made Before a Notary in the Law of Proof of Civil Procedure, this research was compiled by Rosdinar Sembiring, using a descriptive method with a normative approach and the results of this previous study explained that a Notary has the authority to make an authentic deed regarding all acts, agreements, and stipulations required by laws and regulations and/or desired by the interested parties to be stated in an authentic deed, guaranteeing the certainty of the date of making the deed, keeping the deed, providing grosse, copies and quotations of the deed, all of which as long as the making of the deed is not assigned or excluded to other officials or other persons stipulated by law.

The third research entitled The Strength of Authentic Deed Evidence Made by Notaries in Proving Civil Cases at the Sleman District Court, this research was compiled by, Asri Diamitri Lestari using normative research methods and the results of this previous study explained that, An authentic deed made by a Notary official based on the juridical provisions of the authentic deed does not have perfect and binding evidentiary power for judges at trial and the parties. It is said to have no perfect and binding evidentiary power because the legal action in the form of an engagement which is poured into the form of an authentic deed in writing is not in accordance with the applicable regulations. regulated in the law concerning engagement as regulated in the Civil Code, In civil cases No. 125/Pdt/2010/PN.SLEMAN. An authentic deed made by a notary is declared invalid, as a consequence the authentic deed can be canceled or null and void by law.

The last research entitled The Strength of Authentic Deed Evidence in Proving Civil Cases, This research was compiled by, Komang Ayuk Septianingsih, I Nyoman Putu Budiarta and Anak Agung Sagung Laksmi Dewi using a normative legal research method with a conceptual approach and the results of this previous study explained that the Civil Code authentic deed is a deed which the form determined by

law, made by or before public officials in power for that at the place where the deed was made, and as for the public official authorized to make an authentic deed, namely a Notary or PPAT. The value of the strength of external evidence, the value of the power of formal evidence and the value of the strength of material evidence are those covered by an authentic deed.

2. Approach Method

In this study, the researcher wants to examine a phenomenon that discusses the role of a notary deed (authentic deed), as evidence in civil law events. In this study, the researcher uses a qualitative descriptive approach by reviewing several journals or articles related to the topic, the notary deed as a tool. evidence in civil law events, the type of research used is development research or what is often known as Research and development the model is used because it is easy to apply, systematic with a clear framework (Burhanuddin, 2016).

There are two sources of data used in research where the data includes primary data and also secondary data, what is meant by secondary data is the main data related to the topic and also the research being studied, where the researcher gets these sources from journals and also references related to the revitalization of character development through civic education management. Qualitative research methods, the main purpose of carrying out data analysis techniques is to alleviate data and facts that have been encountered in the field in a form that is easier to understand or the data is summarized and concluded more easily for interpretation. At the next stage in the qualitative research method, the main purpose of carrying out data analysis techniques is to alleviate the data and facts that have been encountered in the field in a form that is easier to understand or the data is summarized and concluded more easily for interpretation. At the next stage in the qualitative research method, the main purpose of carrying out data analysis techniques is to alleviate the data and facts that have been encountered in the field in a form that is easier to understand or the data is summarized and concluded more easily for interpretation.

3. Result and Discussion

Based on the results of the research that has been done, by using the observation method on several articles related to the topic of discussion, how is the role of a notary deed (authentic deed), as evidence in civil law events and by evaluating and also analyzing the existing data findings. In the field it can be concluded several results and also a careful discussion found, namely:

3.1 The Importance of Notary Deeds as Evidence in Civil Law Relations

Regarding the duties and responsibilities of a notary as a public official who is authorized to make an authentic deed that has fulfilled the requirements and is guaranteed by law, which is contained in the law. Article 1 of Law Number 2 of 2014, public officials here explain that the process of making a deed by a notary, has an authentic nature because it is strengthened by law and is directly appointed by the government, then the making of the deed is attended and witnessed by officials In general, this is of course in line with the sound of Article 1868 of the Law which states

that a deed will be ratified and said to be authentic if the process of making it is carried out legally and made before public officials in power, while according to Prof. Subekti is of the opinion that an authentic deed is a deed in the form determined by law made by or before a public official who is authorized to make it at the place where the deed was made.

Another explanation regarding public officials or employees referred to in the sound of the Act is that a notary has the same position as a judge, court bailiff, a civil registry employee, therefore a deed made by a notary is the same as a judge's decision, as well as a verbal process letter made by a court bailiff, thus a notary deed is an authentic deed and can be legalized before applicable law, other conditions that must be fulfilled in the process of making an authentic deed must be in accordance with the rules which applies to article 38 UUJN which explains that every deed consists of the beginning of the deed or the head, the second is the body of the deed and the last part is the end or closing of the deed.

Or as the basis of rights with provisions from the beginning this deed was deliberately issued to be evidence (Ali & Heriani, 2012). Talking about evidence that will strengthen someone in a trial process according to article 164 Herzein Indonesia Sch Reglement (HIR) in conjunction with Article 1866 of the Civil Code (KUH Perdata) states what is called evidence, namely letter evidence, witness evidence, evidence of suspicion, evidence of confession and the last is evidence of oath.

This means having such strength of evidence because it is considered attached to the deed itself so that it does not need to be proven again and for the judge it is "obligatory evidence" (Verplicht Bewijs). Looking at what is the basis of evidence in a trial, through a judge who holds the authority to make a decision, of course it is an evidentiary system that can emphasize each of the defendants concerned, as a state of law with integrity and capable of resolving various criminal acts, Indonesia have a judicial system that will apply firmly and take refuge in the provisions of the 1945 Constitution, The legal system of evidence adopted in Indonesia is a closed and limited system in which the parties are not free to submit types or forms of evidence in the case settlement process. The law has clearly determined what is legal and valuable as evidence. Restrictions on freedom also apply to judges where judges are not free and are free to accept whatever the parties put forward as evidence. If the litigating party submits evidence outside the provisions contained in the law that regulates, the judge must reject and override it in the settlement of cases

3.2 The Important Role of Notary Positions in Making Civil Law Deeds

According to various laws that apply in the civil law judicial process, an authentic deed is a deed made directly before a public official where the authority is given on the basis of applicable provisions, all processes of making the deed are recorded and formulated by hearing. some input and information from a public official regarding the series of events he saw and witnessed during the process of making the deed. As for what is meant by an authentic deed contained in Article 1808 of the Civil Code, it explains that, the evidence is made in the form determined by the civil law. Provisions regarding the law of proof in the Civil Code are regulated in the fourth book, Articles 1865 to with Article 1945 of the Civil Code. The evidentiary law regulated in the Civil Code is regarding the law of material evidence, namely regarding certain evidence and the strength of its evidence, while the evidentiary law

regulated in the RIB, in addition to regulating the law of material evidence, is also regulated regarding the law of formal evidence, namely the procedure how to provide evidence in court. then the evidence is made and attended directly by a public official.

The notary deed itself has various powers that can be tried in a trial process, among these powers include, external strength, formal strength and the last notary deed has material strength, this shows that the position of the notary deed as one of the evidence perfect in the eyes of a law, especially in civil procedural law, another position that is an advantage of a notary is that as a public official has the authority to make authentic deeds, it is different from other professions, for example a civil servant even though they are officials who have duties to serve various public interests but they do not have a legal standard listed in a civil law Act, The notary position is actually an important part of the Indonesian state which adheres to the principle of the rule of law (Article 1 paragraph (3) of the 1945 Constitution). With this principle, the state guarantees the existence of legal certainty, order and legal protection, through evidence that clearly determines a person's rights and obligations as a legal subject, Notary is a public official authorized to make an authentic deed and other authorities, as referred to in Law no. 30 of 2004 concerning the position of a notary.

A notary has a very important role and function in the formulation of civil law, through a legal deed from a legal point of view, a notary can provide a guarantee and also protection for those who are taking a legal route in court, the notary profession is a job which is mandated directly by the state, especially in handling civil law, behind that all a notary can carry out his duties freely because in addition to being given the authority to make a deed, a notary is also protected by the Indonesian state law, thanks to the existence of a law. Law that gives a high policy to a notary, then the position and trust of a notary is very much needed in an effort to enforce the law in a judicial process through making a reliable deed and can resolve all forms of irregularities that can damage all the bad image of the law that is currently running in Indonesia, The role of a notary is valuable in helping to provide legal certainty or legal protection to the community having a preventive nature, namely the nature of preventing it by giving birth to an authentic deed made by him which is related to legal status, rights and obligations in law as perfect evidence at trial, if there is a dispute. (Sjaifurrachman&Adjie, 2011).

So to describe the important positions held by a notary in formulating a civil deed in a trial, that a notary is required to provide a service for those who are facing a legal process, in practice the work system of a notary is protected and legalized by law. State laws and also the government, but a notary is required to have high state knowledge and insight, this is because the notary profession is a liaison between the two parties or a group that is in dispute, the notary must act fairly and impartially to anyone. Always adhere to the values of Pancasila and the laws of the Republic of Indonesia, and do not violate the code of ethics for the position of a notary. Related to the notary carrying out an action that is against the law based on Article 1365 of the Civil Code, it reads "Every act that violates the law, which brings harm to another person, obliges the person who because of his fault published the loss, compensates the loss."

4. Conclusion

Includes outward evidence, the value of the strength of formal evidence, and finally the value of material evidence is all listed and has been recorded in an authentic deed. Based on the decision of the Ministry of Law and Human Rights, the notary profession is appointed as a public official who is very authorized in making authentic deeds, notaries in carrying out their functions must be based on the values of the Notary Position Act (UUJN), which in the Act formulates how does the notary work system, to the responsibility that will be carried out by a notary, if there is an omission and error in the content and mechanism of the authentic deed before the trial judge, if an authentic deed is declared null and void, the value of the strength of evidence will decrease to the strength of the proof under hand. This happens because the deed does not meet the appropriate requirements according to applicable law. At the level of proof, a notary deed as evidence that has various strengths which is considered very perfect because the value of the privilege lies in the strength of its proof when the trial process is carried out, because an authentic deed is evidence that has been tested, both legally and legally. role and function, authentic deeds are also binding, because what is written on the deed is a justification that can be trusted and can be legally proven through a civil law court judge.

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