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The Legal Strength of the Deed Made by a Notary Exceeds the Reasonable Amount According to the Provisions of the Notary's Code of Ethics

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Abstract

Article 4 point 16 Amendment to the 2015 Notary Code of Ethics (KEN) "Notaries or other people (as long as they carry out the position of Notary) are prohibited from making deeds that exceed the reasonable limit, the number of which is determined by the Honorary Council (DK)", the Central Honorary Council (DKP) limits 20 deeds per day for Notaries in making deeds which is regulated in PDKP INI No.1 of 2017 concerning Reasonable Limits for the Number

of Deeds Made. However, in practice there are still many notaries who make deeds that exceed reasonable limits. The aim of this research is to explain the legal power of deeds made by notaries that exceed reasonable limits, sanctions against notaries who make deeds that exceed reasonable amounts and supervision from the Notary Supervisory Council (MPN) and the Council Honorary Notary (DKN).

Keywords: Legal Strength, Fair Deed, Notary Code of Ethics (KEN)

Introduction

A deed is a document that is deliberately made and signed as evidence when an event occurs.¹ Based on their form, documents are divided into two categories: Public documents and private documents. Theoretically, a true deed is defined as a letter or document that is deliberately and formally created as evidence if at some point in the future a legal problem arises between the parties or third parties who have an interest in the deed. Doctrinally, according to Article 68 of the Civil Code (KUHPerdata), an original letter is a letter whose form is determined by law and is made by or in the presence of an official authorized to issue the letter. Private documents are agreements between parties.² Documents have two important functions, namely causal formality and causal evidence. Causa formality means that a legal act must be converted into a document for the sake of completeness or perfection (not validity). The function of proof (probationis causa) is that the deed was deliberately made from the start for future purposes, an agreement made in written form, namely in the form of a deed, does not mean that the agreement is legally valid and cannot be denied, but the aim is so that in the future the deed can be used. as proof that the agreement was made and proven by a deed.

To fulfill the authenticity of a deed, the Notaries gathered in the Indonesian Notary Association (INI) association agree that the normal number of deeds made in one working day for Notaries who are guaranteed to fulfill the material and formal requirements of a deed is 20 deeds as also regulated in Article 1 of PDKP INI 1/2017, which follows. stated in the KEN Article 4 number 16 Amendment to the 2015 KEN "Notaries or other people (as long as they carry out the position of Notary) are prohibited from making deeds that exceed reasonable limits, the amount of which is determined by the DK."

Restrictions regarding the creation of documents were not previously regulated by the Law on the Status of Notaries (UUJN), which provides guidelines for notaries in carrying out their work. In order to reduce violations of KEN ethics and remedy the shortcomings of UUJN, the Central Honors Committee of the Association of Notaries of Indonesia (DKP INI) as well as the INI General Assembly came together and subsequently issued an appropriate maximum limit of 20 certificates per day. The aim and purpose of limiting the number of documents created by notaries to 20 documents per day is to protect the public who

¹ R. Subekti, *Hukum Pembuktian*, Jakarta: Pradinya Paramita, 2001, hlm. 48

² Sudikno Mertokusumo, *Hukum Acara Perdata Indonesia*, Yogyakarta: Liberty, 1998, hlm. 150-151.

use notarial services and the notaries themselves, since if the limit was not imposed it would be a violation of the UUJN. The irregularities involved concerned the formal aspects of the genuine documents, most notably in this case the reading of the documents. In order to make the authenticity of the certificate more perfect, the deed must be read and signed by the presenters, 2 witnesses and a Notary.

Reading the document is the notary's responsibility and is also the formal aspect of authenticating the document. This is in accordance with Article 16 (1) of the UUJN, which states that notaries in the performance of their duties are obliged to: Read out in public the deed testamentary document in the presence of at least two witnesses or 4 privately prepared special witnesses, at which time the deed will be read by Signed by the host, witnesses and notary. From the above description of the document reading position, we can see the importance of document reading when the notary notarizes the document, which is related to the authenticity of the document. This is the basis on which PDKP INI 1/2017 was born. Displays more than a reasonable number of certificates to eliminate formal problems when reading the certificates. The most common violation is that the document is not read out, so it is only valid as a private document.

However, in practice there are still many Notaries who make more than 20 deeds, as shown in the following data obtained from several studies on deed restriction regulations. For example, a Notary in Bogor makes 30 to 40 Deeds per day, a Notary in Medan does 200 Deeds per day, a Notary in Kutai Kartanegara does 100 Deeds per day and so on. So it appears that there are still many notaries who make deeds that exceed reasonable limits, this is because in practice the Board of Honorary Boards, both Central and Regional, still seem confused in implementing the DKP Regulations regarding deed restrictions, because this regulation still has many objections among Notaries themselves and is debatable in relation to The exception article is a limitation on the deed itself, so that the sanctions that are possible to apply are warnings in the nature of guidance, not administrative sanctions because the DKP Regulations is only at the appeal stage so it cannot yet be implemented.³ Of the 4 data above, only 1 case resulted in the Honorary Board Management, both Central and Regional, giving a warning letter regarding their actions, the rest were only in the form of coaching warnings.

Previous research has concluded regarding the creation of deed limitation regulations so that Notaries do not exceed the limits of their physical abilities in making deeds per day. Judging from the time used to formulate a deed for the parties, it will take a lot of time, so that it can accommodate the wishes of the parties more optimally. The DKP has the authority to limit the number of notarial deeds made because based on the Article of Association of the INI it is stated that the duties and authority of the DK are to enforce the KEN. However, in its implementation there are still many notary who commit violations, regarding the enforcement of sanctions against notaries it cannot be implemented optimally, this is because there is no further regulation regarding sanctions against notaries who violate deed restrictions clearly and there is also no regulation regarding

legal force or consequences. law for deeds if they are made in excess of the limitations of the deed.

Bearing in mind that an authentic deed is the most perfect piece of evidence and has legal force⁴ with all its consequences before the law. So the procedure for making an authentic deed by a Notary is not merely an administrative matter, but there is juridical legitimacy in the Notary's work procedures which makes a deed can be said to be authentic. This procedure has been regulated in the UUJN which involves a Notary, the presenter or party who made the deed, as well as two witnesses. This procedure also involves reading parts of the deed until signing the deed on the same day and time as stated at the beginning of the deed, where if in one day the Notary reads hundreds of deeds then it can be said that this action is illogical.

So it is necessary to examine how the legal force of the deed made by the Notari exceeds the reasonable number of deeds according to the KEN because this is very related to the deed whether the deed made is in accordance with the deed making procedure regulated in the UUJN because if the deed is made later The day it is proven not to comply with the procedure, then its authenticity will be invalid and only have value as a private deed. And how to impose sanctions for Notaries who violate deed restrictions.

Research Methods

This type of research is normative juridical or normative legal research (doctrinal law). According to Johny Ibrahim, legal research is said to be normative research because the research procedure is intended to find legal truth from a purely normative perspective. In normative legal research, scientific logic is built based on scientific discipline and how legal science works normatively,⁵ without looking at how it is practiced or the law applies in everyday practice.

In line with the normative juridical type of research, the more appropriate research approach used in this research is: Legislative Approach. The approach taken in this case is to examine all statutory regulations that are still in force and are closely related to the legal issue that is the object of research. This approach is used to explain the concept of reasonable limits for making deeds, codes of ethics, and supervision of MPN and DKN. Apart from that, a Conceptual Approach is also carried out by examining the views and doctrines in legal science related to the legal problems being studied, so that ideas can be found related to concepts, principles and legal understandings that are relevant to the legal issue being studied. Which is used to explain the concept of the legal force of deeds and the application of sanctions against notaries who make deeds that exceed reasonable limits.

The basic data in normative (doctrinal) legal research is secondary data, namely: Data obtained indirectly or through statutory regulations, books and other documents. So according to the source of secondary materials. Next, it will be analyzed prescriptively. This perspective analysis is intended to explain qualitatively in the form of arguments the data or research results obtained. This argument is to

³ Milki Usman, "Implementasi Kebijakan Pengaturan Batas Kewajaran Pembuatan Akta Perhari Bagi Notaris Bogor", *Tesis*, Universitas Brawijaya, 2019, hlm.106

⁴ Safrina Y. Y., Azhari., Suhaimi. "Notary's responsibilities for privately made deed signed before and attested". *International Journal of Law*, Volume 10, Issue 2, 2024, Pages 62-65.

⁵ Johny Ibrahim, *Teori dan Metode Penelitian Hukum Normatif*, Malang: Bayumedia, 2006, hlm. 47.

provide a perspective or assessment regarding right or wrong based on the results of the research that has been carried out.

Results and Discussion

When carrying out their official responsibilities, notaries are obligated to adhere to the agreed-upon ethical standards set forth in the code of ethics. This code serves as a boundary that prevents notaries from acting in a capricious manner during the execution of their duties. The mental disposition or character of an individual has an impact on a notary's performance in their role. The KEN, initially implemented in Banten on May 29-30, 2015, has been in effect since its establishment. The KEN, which was adopted during the INI Congress, outlines the responsibilities, restrictions, and exemptions that notaries must adhere to in their professional roles. Notaries may face penalties if they are found to have contravened the regulations outlined in the KEN.

One of the prohibitions or orders regulated in the code of ethics is regarding restrictions on deeds which are mentioned twice in the code of ethics, namely Article 4 number 16 concerning Prohibitions, "Notaries or other people (as long as the person concerned carries out the position of notary) are prohibited from making deeds that exceed the reasonable limits. The amount is determined by the DK" and in Article 3 point 18 concerning Obligations, "Notaries and other people (as long as the person concerned carries out the position of notary) are obliged to make a Deed within a reasonable amount to carry out statutory regulations, especially UUJN and the KEN." The existence of 2 articles explaining deed restrictions shows the importance for notaries to limit the making of deeds so that notarial deeds are made in accordance with statutory regulations and the requirements for authenticity of a deed are fulfilled.

The rules regarding restrictions on making deeds based on Article 4 point 16 are further regulated in the DK regulations. Deed restrictions are regulated in DKP INI regulation No.1 of 2017 concerning the Fair Limit for the Number of Deeds Made Per Day which explains that the number of deeds made cannot exceed 20 deeds per day. This means that 20 deeds is a reasonable limit for a notary in making deeds per day. This is to maintain the quality of the deed where the deed processing must be in accordance with UUJN, but the role of the notary in making deeds is not only in typing the deed, the notary's role starts from the arrival of the client who requests it. making a deed until the deed is signed in the presence of the parties. So, in order to create a quality deed, the notary certainly needs time and precision in processing the deed which is not short.

If you look at the practical working hours of a Notary every day at 08.00 - 16.00, the Notary is not effective in making a large number of deeds, because the working hours of a Notary are divided into the work of the Land Deed Making Officer (PPAT) so that 8 (eight) hours This is an unreasonable time for a Notary in making deeds, who can make more than 20 or even hundreds of fiduciary deeds in a day, using only 5 (five) minutes.⁶ Each deed has an

important sequence and is in accordance with the format, while the Limited Liability Company (PT), Association Deed, grant deed, will deed, land title transfer deed, child recognition deed, it is not possible to make more than 20 deeds in a day because of the sequence of making them. which is long and takes time.

Because the series of activities for making a deed starts from the process of requesting assistance from the parties, the notary must study and briefly examine the documents submitted, prepare the deed, read the deed, provide an explanation to the parties regarding the contents of the deed and sign the deed in accordance with the provisions. The UUJN and other laws and regulations as well as the KEN limit the reasonableness of making deeds is 20 deeds per day.

Making more than 20 deeds per day may indicate that the deed is not read. The obligation to read the deed is explained in Article 16 (1) letter m UUJN, which states, among other things: Notaries are obliged to read the Deed in the presence of the parties or audience. The reading of this deed is not mandatory if it meets the requirements as regulated in Article 16 (7) UUJN which states, among other things, that if the presenter wishes that the Deed does not need to be read because the presenter already knows, has read it themselves, and understands the contents of the deed. However, the notary still gives the person present the opportunity to ask questions if he or she does not understand. Then, in the closing of the deed and on each page of the minutes of the deed, the presenters, witnesses and notary must initial the minutes of the deed. However, this does not mean that the notary just leaves the parties or presenters to understand or interpret the contents of the deed for themselves, the notary still explains to the parties or presenters the parts of the deed because the notary is obliged to explain this to the parties. In this way, there is nothing that the person who does not understand or understand about the contents of the deed, so that there is nothing that must be covered up by the notary or one of the parties who has bad intentions and intends to harm one of the parties.

However, even so, there are still parts of the deed that the Notaries must explain to the parties as stated in Article 16 (8): The provisions as intended in paragraph (7) are exempt from reading the head of the Deed, comparisons, brief and clear explanation of the main points of the Deed, and the conclusion of the Deed.

The reading of this deed is so important that if the reading of the deed is not fulfilled and the words of the deed have been read at the end of the deed, then the deed in questions only has the power of proof as a second hand deed as stated in Article 16 (9) UUJN.

In practice, reading a deed takes relatively longer and not quite a little time, because the notary still has to explain the essence or purpose of the deed to the parties as presenters. The notary has an obligation to the presenter that what is contained in the notarial deed has truly been understood. and understood and in accordance with the wishes of the parties. Therefore, it is appropriate for a notary not to make more than 20 deeds a day, so it is very unnatural if a notary can do more than 20 deeds in a day.

According to the source, Dr. Siti Rahmah, S.H., M.Kn Notary Aceh Besar "We are obliged to read the deed, even if the client refuses to have it read, we are still obliged to read and explain the essence of the deed, because from here the notary and the parties can make changes if there is anything

⁶ Ayu Alwiyandari, Larangan Membuat Akta Melebihi Batas Kewajaran Yang Ditentukan Oleh Dewan Kehormatan Pusat (Studi Pasal 4 Angka 16 Kode Etik Jabatan Notaris). *Tesis*, Universitas Islam Indonesia, 2018, hlm. 127

that needs to be changed and the parties can also "Ask if there is something you don't understand, because if you don't understand the contents of the deed and then it becomes a problem when the deed has been signed then it will be a serious problem for the deed made by the notary as well as for the notary."⁷

The honorary board of notaries issued DKP INI Regulation No.1 of 2017 to discipline notaries because the importance of deed restrictions is related to making deeds in accordance with UUJN. As is known, the requirement for a deed to be authentic is that it is made in accordance with applicable legislation, namely the law. Notary's position so that if these deed restrictions are not respected, it could be indicated that it not only violates the code of ethics but also violates the UUJN.

In addition, when making a notarial deed, there must be a principle, namely prudence, which states that a notary in carrying out his functions and position is obliged to apply the principle of prudence in order to protect the interests of the community entrusted to him. The purpose of implementing the precautionary principle is none other than so that the notary always follows the correct instructions. By implementing the precautionary principle, it is hoped that public trust in notaries will remain high, so that people are willing and do not hesitate to use notary services. An action must be taken and prepared with careful consideration.

The principle of caution in the process of making authentic deeds is important to apply considering that legal problems often occur regarding authentic deeds made by notaries because there are parties who commit crimes such as providing fake letters and false statements in deeds made by notaries. So as to prevent crimes that could involve notaries in legal problems.⁸

Basically there are 3 strengths of deed proof, namely physical, formal and material proof. It is said that external proof is a valid principle of *acta publica probant sese ipsa*, which means that a deed that appears to be an authentic deed and fulfills the specified requirements, then that deed can be valid or can be considered an authentic deed, until proven otherwise. This means that the signature of the official who made the deed is considered to be the original, until there is proof to the contrary. The burden of proof also lies on who questions the authenticity of the deed 138 HIR (Article 164 Rbg, 148 Rv). As evidence, authentic deeds, both official deeds (*aktaambtelijk*) and parties' deeds (*aktapartij*), have their special qualities in the strength of the birth evidence. The parameters for determining a Notarial deed as an authentic deed are the signature of the Notary concerned, both on the minutes and the copy as well as the presence of the beginning of the deed until the end of the deed. The evidentiary value of a notarial deed from the external aspect, the deed must be seen for what it is outwardly.⁹

In the realm of formal documentation, an authentic deed serves as tangible evidence that verifies the accuracy of what an official observed, heard, and accomplished. It acts as a testament to the veracity of the official's account regarding their actions and observations. The Notarial Deed assumes the responsibility of ensuring that the events and

facts mentioned within the deed were genuinely executed by the Notary or elucidated by the individuals present at the specified time, adhering to the prescribed procedures for creating such a document. To establish the truth and certainty of crucial elements like the day, date, month, year, time of appearance, and the identities of the parties involved, the initials and signatures of said parties, witnesses, and the Notary are required. Furthermore, the Notary must provide evidence of what they personally witnessed, heard, or recorded in the form of statements made by the parties involved. If the formal aspects are disputed by the parties, then the formality of the deed must be proven, that is, they must be able to prove the untruth of the day, date, month, year and time facing them, prove the untruth of those facing them, prove the untruth of what was seen, witnessed and heard by the Notary. Apart from that, you must also be able to prove that the statements or statements of the parties given/conveyed before the Notary are not true, and whether the signatures of the parties, witnesses and the Notary are incorrect or that there are procedures for making the deed that have not been carried out.¹⁰

To ensure that the things mentioned previously are fulfilled, it is very important for the notary to read the deed, so that the notary and the parties do not have any misunderstandings regarding the contents of the deed. When reading the deed, the notary can ask the party whether there is anything they want to change or whether the deed is appropriate. For the notary himself, reading the deed is a control over the authentic deed he has made, so that if there are errors and occur in the contents of the deed or it is still not in accordance with the wishes. facing, the notary has the opportunity to correct it. If the notary neglects reading the deed, it does not rule out the possibility that if there is an error in the deed, one day it could be sued by an interested party, so in other words, reading the deed is also very important for the notary so that the deed is not misused.¹¹

Apart from reading the deed, the notary also has the authority as stated in Article 15 paragraph 2 letter e, ensuring that by issuing this deed the parties must agree not to violate applicable legal provisions. This is done by the notary by providing legal counseling so that the parties understand what the governing provisions are and the legal consequences. what will arise regarding the approval of the agreement in the form of a deed.

Based on these things, it is very impossible if you want to maintain the quality of the deed and apply the principle of notary care and accuracy in making many deeds in a working day because of the importance of deed reading and legal counseling which takes time, because if the deed is not read and not explained regarding the reading the deed at the closing of the deed can cause the deed to become under the hands of the deed.

The importance of reading a deed is also related to the legal force of formal evidence which states that a notarial deed must provide certainty regarding what is stated and certainty that everything included and described in the deed is the

⁷ Narasumber Dr. Siti Rahmah, S.H., Mkn, Notaris Aceh besar, wawancara 6 februari 2024

⁸ Supriadi, *Etika & Tanggung Jawab Profesi Hukum di Indonesia*, Jakarta: Sinar grafika, 2008. hlm. 29

⁹ R. Subekti, *Hukum Pembuktian, Op.Cit*, hlm. 46

¹⁰ Habib Adjie, *Kebatalan Dan Pembatalan Akta Notaris*, Surabaya: Refika Aditama, 2010, hlm. 19

¹¹ I wayan Arya Kurniawan, "Tanggung Jawab Notaris Atas Akta yang Tidak Dibacakan Dihadapan Para Penghadap", *Jurnal Hukum Kenotariatan*, 3:3, 2018, hlm 496.

truth and in accordance with the wishes of the parties who appear before the notary.¹²

The theory of validity explains that for a legal rule to be valid, it is seen from the authority of the government in making it, the rule is in accordance with applicable law and there are no legal deficiencies or defects, thirdly it must be in the form of a clear regulation and in accordance with the underlying regulations, lastly the regulations made must be in line with the content and purpose of the underlying regulations. Likewise, with a notarial deed, a notarial deed can be said to be valid and an authentic deed if it is made by an authorized official, namely a notary, secondly, it is made in accordance with the regulations governing it, namely UUJN, and finally at the place where the deed was made. One of the material requirements for the validity of a deed regulated by law is that the deed must be read in front of an audience attended by 2 witnesses as in Article 16 paragraph (1) letter m. To be precise in accordance with statutory regulations, of course the notarial deed can be calculated from Making the head of the deed to completion takes time and logically, if you calculate the making of the deed accompanied by the reading of the deed, it is 20 deeds per day as per the regulations issued by the Central Honorary Council of the Indonesian Notary Association. So it is very important for the notary when making a deed to comply with these rules because it greatly influences the legal strength of the notarial deed, when the deed is made in accordance with the requirements for the validity of an authentic deed then the deed can be said to have perfect evidentiary legal force.

In validity theory, for a law to be valid, it is necessary to form regulations that are clear and in accordance with the underlying regulations so that in terms of deed restrictions, so far there are no clear regulations regarding the legal force and validity of deeds when they are made beyond the reasonable limit, namely 20 deeds per day, so that a law can be valid. Laws need to be made regarding this. If legal rules are created then there will also be legal certainty regarding deeds because legal certainty exists when a regulation is created and promulgated so that it does not give rise to doubts in it, making citizens or government agencies in principle adjust their behavior to these rules.

Notaries provide a guarantee of legal certainty to the community regarding the creation of authentic deeds that are needed in community activities, whether in economic, social or political terms. The services provided by a Notary are authentic deeds that can be accepted by all parties concerned and have legal certainty. Legal certainty is created when there are governing regulations and deeds are made in accordance with these regulations.

The legal strength of notarial deeds made exceeds the reasonable limit of 20 deeds per day:

1. Authentic deed

The purpose of setting the daily limit for notarial deeds is to ensure that the Notary carries out the duties of his office strictly in accordance with the provisions in UUJN, other statutory regulations, The notary code of ethics, the intelligence of the same as a notary, compiled it, When, it gives the artisans of the contents and the contents will be about it.

It was stated by Irawan Soerodjo that there are 3 essential elements for fulfilling the formal requirements for an authentic deed, namely:¹³

- a. In the form determined by law.
- b. Made by and in the presence of public officials.
- c. A deed made by or before a public official who is authorized to do so and at the place where the deed is made.

So a notarial deed made beyond the reasonable limit can be said to be authentic as long as the process of making the deed complies with the procedural provisions or procedures for making the deed determined by the UUJN and meets the legal requirements of the agreement, its authenticity can be proven by the notary, and if the deed is made more of these 20 fulfill the explanation criteria of Article 2 (2) of the Notary Honorary Council Regulation No.1 of 2017 which explains.

"If the Notary will make deeds exceeding 20 (twenty) deeds per day in a series of legal acts that require interrelated deeds, and/or other deeds, as long as they can be accounted for in accordance with the Law on the Position of Notaries (UUJN), procedures for making notarial deeds, Notary Code of Ethics (KEN), propriety and appropriateness",

The deed is also said to be authentic because reasonable deed restrictions have not been regulated in the UUJN, which is the highest regulation governing the form and preparation of notarial deeds.

2. The deed becomes a private deed

Even though deed restrictions are not regulated in the UUJN, if the notary violates the regulations regarding deed restrictions, the notary may be accused of violating the procedures for making authentic deeds that have been stipulated by the UUJN.

A Notarial Deed as evidence has perfect evidentiary power, if all procedural requirements or procedures for making the deed are fulfilled. If there are procedures that are not fulfilled, and the procedures that are not fulfilled can be proven, then the deed can be declared as a deed that has legal force. evidence as a deed under hand. If it is in such a position then the value of the evidence is handed over to the judge.¹⁴

For judges, a private deed is free evidence as stipulated in Article 1881 (2) of the KUHPperdata, meaning that the judge is free to determine whether the evidence can be accepted or not, because a private deed does not have the legal force of proof as in the case of authentic deed. A private deed will have formal and material evidentiary power if both parties to the deed have acknowledged its truth.¹⁵

This can have an impact on the validity of the deed, so it is important to regulate the restrictions on this deed so that the notary in executing the deed can apply the principle of careful accuracy so as to create a deed that meets the requirements for authenticity in accordance with UUJN regulations, thereby creating certainty and perfect legal force of evidence in the deed.

Deed procedures that are not fulfilled if the deed is made beyond reasonable limits are not reading the deed, if when

¹² Ida Ayu Putu Swandewi, Pengesahan Akta Notaris Bagi Penghadap Yang Mengalami Cacat Fisik, 1:1, *Jurnal Acta Comitas*, 2016, hlm. 33

¹³ Irawan Soerodjo, *Kepastian Hukum Hak Atas Tanah Di Indonesia*, Surabaya: Arkola, 2003, hlm. 148.

¹⁴ A. Kohar, *Op.Cit.*, hal. 87

¹⁵ Nawawi Arman, *Akta Notaris Sebagai Alat Bukti Sempurna*, Jakarta: Media ilmu, 2011, hlm. 12.

making the deed it is proven that the deed was not read in accordance with the UUJN, this can cause there to be no legal certainty in a deed and a deed that was originally said to be authentic can only be valid as a deed under the hand in accordance with Article 16 paragraph (9) UUJN.

Stb. 1967-29 in Java and Madura/286 Rbg states that a private deed is a deed signed and made with the intention of being used as evidence of a legal action without the assistance of an official. If a deed is private, the contents and signature of the deed have been acknowledged by the person who made it, then the deed has the same evidentiary power as an authentic deed, that is, it has perfect evidentiary power. A private deed will be considered as initial written evidence, which becomes a problem if the deed is denied or the signature contained in the deed is denied by the parties, then the proof must be supported by other evidence. The party submitting the deed must try to prove it and the judge must check the authenticity of the signature. Private deeds have no evidentiary power to third parties.

However, not all notarial deeds that are under the hand are valid because of the recognition of the parties. Because the deed must be an authentic deed and becomes invalid if it is degraded to a private deed, namely like a PT deed because the PT deed must be made in authentic form, child recognition deed, gift deed, deed relating to the transfer of ownership rights to land, share transfer deed, and the auction minutes deed. If these deeds are made in more than 20 deeds in one day, and it is indicated that the deeds were not read, they will be invalid private deeds because the deeds have conditions that must be made as authentic deeds.

In general, notaries can be required to pay compensation if:¹⁶ (1) There is an error made by the notary; (2) There are losses suffered; (3) There is a causal relationship between the losses suffered and the notary's negligence or violation. If it is proven that not reading the deed was negligence on the part of the notary and caused losses to the parties, then the parties can sue the notary in court.

3. Deeds can be cancelled

In previous regulations, violations committed by a notary by not reading the deed he had made would result in the deed not only having the power of proof as a private deed, the deed could even be null and void and become the basis for the party who suffered a loss to ask the notary for compensation, as specified in Article 84 UUJN.

There are several factors that cause a deed to be annulled by the court, for example because the notary does not read the deed in front of the parties, there is an element of coercion in signing a deed and there are other formal requirements that are not fulfilled.¹⁷

A deed made by a notary exceeds the reasonable limit, indicating that the deed was not read, as from research results there are still notaries who can make as many as 100 deeds a day if they think logically about the procedure for making deeds as regulated in UUJN can be fulfilled if a notary issues 100 deeds in one day. So in this case it was

clear that there was not enough time to read the deed and it could be said that there had been a procedural flaw in making the deed so that the validity of the deed was doubtful. Such a deed can be sued by the court for cancellation.

It is within the authority of the court judge to decide whether the deed can be cancelled. If the deed is canceled because it was not read, it is negligence on the part of the notary so the notary is obliged to take responsibility. Cancellation of a Notary's deed through a court decision is not only a result of the Notary's error or negligence in making the deed. However, the cancellation of a Notarial deed can also be caused by errors or negligence of the parties who bound each other in the deed, so that errors or negligence can result in a lawsuit from one of the parties.

When 100 deeds are made per day, of those 100 deeds 20 are authentic deeds, namely deeds that are expected to be made by a notary in accordance with UUJN and KEN, however, more than 20 of these deeds can be private deeds which are still considered valid as long as they are not reported by the parties. However, if the parties sue, it is possible that through a judge's decision the deed will be invalidated. Apart from that, the deed can also be invalidated if the private deed is a deed which actually must be made in authentic form, such as a PT deed which must be made in authentic form, child recognition deed, gift deed, deeds relating to the transfer of ownership rights to land, share transfer deeds, and auction minutes deeds. These deeds must have the legal force of an authentic deed, otherwise the deed may be void or invalid because it does not meet the requirements for the authenticity of the deed.

Cancellation of a deed in accordance with article 1266 KUHPerdata can be concluded that there are three things that must be considered as conditions for canceling an agreement, namely the agreement must be reciprocal, the cancellation must be carried out before a judge and there must be a default. An agreement can be requested to be annulled from a judge in two ways, namely the active method and the defense method, where the active method is by demanding the cancellation of the agreement in front of a judge and the defense is by waiting until it is challenged in front of a judge to fulfill the agreement and then submitting reasons regarding the shortcomings of the agreement.¹⁸

In relation to the sanctions that can be imposed on notaries who make more than 20 deeds per day, the rules of the notary's honorary council do not clearly state the sanctions given to such notaries. This regulation only states the consequences of making a deed of more than 20 Association Members who violate the provisions mentioned in paragraphs (1) and (2). This article is the object of examination by the Notary Honorary Council (Regional Honorary Council (DKD), Regional Honorary Council (DKW), The Central Honorary Council (DKP) is carried out in stages so it is not known what sanctions can be imposed on a notary if they are proven to have violated the law.

The theory of legal certainty states that legal certainty exists when clear rules are available, consistent and easy to obtain, published and recognized because of state power. So, to carry out and apply appropriate sanctions, clear rules are needed regarding the sanctions that will be given to notaries who make deeds that exceed reasonable limits, but in this

¹⁶ Didi Santoso, "Tanggung Jawab Notaris dalam Pembuatan Akta Yang Memuat Dua Perbuatan Hukum (Analisis Putusan Mhkamah Agung Nomor 1440. K/PDT/1996)", *disertasi*, program Pascasarjana Universitas Diponegoro, 2009.

¹⁷ Suhartati dan Akbar, "Analisis Pengajuan Pembatalan Akta ke Pengadilan oleh Notaris", *jurnal pledoi*, 1:1, 2023, hlm. 14

¹⁸ R. Subekti, *Pokok-Pokok Hukum Perdata*, Jakarta: PT Intermasa, Cetakan Ke dua puluh, 1985, hlm. 23

case the Notary Honorary Council regulations only mention tiered examinations of notaries who violate this without clear sanctions rules. clear. Legal certainty requires efforts to regulate law in legislation made by authorized and authoritative parties, so that these rules have a juridical aspect that can guarantee certainty that the law functions as a regulation that must be obeyed. So if the deed restriction regulations do not create legal regulations regarding sanctions, it will be difficult for the authorities to impose sanctions on notaries who violate them.

This DKP regulation explains the restrictions on making deeds which in this regulation are within the scope of Notary behavior based on KEN, and the number of deed restrictions regulated by DKP regulation No. deed then the sanctions given in this case are sanctions in accordance with the code of ethics Article 6 paragraph (1) KEN. There are 5 sanctions arranged hierarchically based on the lowest level of violation up to the most serious level of violation imposed if a notary violates the code of ethics, namely: Reprimand, Warning (usually done in writing), Temporary suspension from Association membership (in this case INI Membership), and honorable dismissal from Association membership as well as dishonorable dismissal from Association membership. In Article 6 paragraph (2) it is explained that the imposition of sanctions must be in accordance with the seriousness or lightness of the violation committed by the notary as a member of the INI association. Therefore, the imposition of sanctions must be objective, depending on the seriousness or lightness of the violation that the notary has committed, not based on a subjective assessment caused by feelings of like or dislike towards the notary. Because, sometimes there are also reasons why a notary doesn't like a particular notary, which is not based on objective things. It is things like this that must be avoided by DKN members when giving or imposing sanctions on a notary who is examined and found guilty of committing a violation of the KEN.

Thus, determining the severity or severity of an act which constitutes a violation of KEN is clearly the authority of DKN, because DKN was formed to supervise notaries in the implementation of KEN with the aim that notaries as members of INI carry out their duties with full responsibility and can maintain the honor and dignity, morals as well as the honesty of its members (notaries). According to Article 6 point 3 DKP has the authority to determine and decide as well as impose sanctions on notaries who commit violations committed by ordinary members (of active Notaries), for violations of moral norms or behavior that demeans the honor and dignity of notaries, or actions that can reduce trust. society towards notaries. The honorary council is also a representative of the association in terms of guidance, supervision and providing sanctions in enforcing KEN as stated in Article 12 (1) of INI's articles of association.

Examination and imposition of punishment at the Regency/Municipality level by the Regional Management and DKN. At the National level by the Central Management and DKP. The imposition of sanctions referred to above is equated with the quality and quantity of non-compliance carried out by the violating Notary.¹⁹

Notaries who make more than 20 deeds per day have clearly violated the KEN, however, in imposing sanctions, the steps must be taken into account in accordance with the rules of the KEN.

Based on Article 8 of the KEN, the first stage to be examined and investigated is the existence of facts to prove a violation committed by the notary before the DKN imposes sanctions on the notary. DKN must really look for facts regarding alleged violations of the code of ethics on its own initiative or reports from other parties accompanied by convincing evidence that there has been an alleged violation of the KEN as members of the INI Association. When imposing sanctions, there is something that must be taken into account, namely that if a notary has been examined by one DKN, he cannot be examined again by another DKN.

Furthermore, Article 9 KEN states that in the event of the discovery of facts regarding alleged KEN Violations as referred to in Article 8 KEN above, DKN will carry out an examination of the notary concerned no later than within 14 working days. DKN is obliged to summon the member of the notary in writing and carry out examination of him. This is intended to ensure whether or not a KEN violation has occurred by notary members as members of the association. However, in carrying out the examination, the DKN must provide the notary concerned with the opportunity to provide an explanation and defend himself. The summons is sent no later than 14 (fourteen) working days before the inspection date. This means that the notary who is suspected of violating must appear before the supervisory board to be examined as to whether or not he has committed a violation. At this stage, whether the notary is present or not after being summoned 3 times, the honorary board will still hold a hearing to determine sanctions for the notary.

The Honorary Council which examines, no later than 30 (thirty) working days after the date of the last hearing, is required to make a decision on the results of the examination as well as determine sanctions against violators if violations are proven as regulated in the provisions of Article 6 of the Code of Ethics as outlined in Decision Letter, Examination and decision making at the hearing, the Honorary Council which examines it must: A. Continue to respect and uphold the dignity of the members concerned; b. Always maintain a family atmosphere; c. Keep everything he finds a secret. The examination hearing was held behind closed doors, while the reading of the decision was carried out openly. If the examination and imposition of sanctions at the first level has been carried out by the Regional Honorary Council, since at the relevant regional management level a Regional Honorary Council has not yet been established, then the decision of the Regional Honorary Council is an appeal level decision.

Article 10 of the KEN states that in the event of a first-level sanction in the form of a suspension or temporary suspension from Association membership (INI Membership) imposed by the Regional Honorary Council, the matter can be appealed to the DKP. The DKP that receives the appeal is obliged within 14 working days to summon the notary member who submitted the appeal to hear the information concerned and the DKP gives the notary concerned the opportunity to defend himself. This self-defense is of course carried out in the DKP trial. In this case, as explained above, the imposition of sanctions by the DKP must be objective, depending on the seriousness or lightness of the violation that the notary has committed, not based on subjective

¹⁹ Yurist Firdaus (*et al*), "Penerapan sanksi serta pengawasan terhadap Kode etik Notaris oleh Dewan Kehormatan", 16:2, *Jurnal Notarius*, 2023, hlm. 609.

assessments caused by feelings of like or dislike towards the notary. Because, sometimes there are also reasons why a notary doesn't like a particular notary, which is not based on objective things. Things like this are what the DKP must actually avoid when giving or imposing sanctions on a notary who is examined and found guilty of committing a violation of the KEN.

Conclusion

The strength of a deed made by a notary that exceeds the reasonable limit stipulated in the KEN can be said to be authentic as long as the process of making the deed complies with the procedural provisions or procedures for making the deed determined by the UUJN and meets the legal requirements of the agreement, its authenticity can be proven by the notary. The deed must also meet the criteria of Article 2 (2) of the Notary Honorary Council Regulation No.1 of 2017. The deed is still considered authentic because there is no regulation regarding reasonable deed restrictions in the UUJN, which is the highest regulation governing the form and making of notarial deeds. A deed can also be said to be a private deed if there are procedures that are not fulfilled, and the procedures that are not fulfilled can be proven, then the deed can be declared as a deed through the court process which has the power of proof as a deed under hand. Deed procedures that are not fulfilled if the deed is made beyond reasonable limits are not reading the deed, if when making the deed it is proven that the deed was not read in accordance with the UUJN, this can cause there to be no legal certainty in a deed and a deed that was originally said to be authentic can only be valid as a deed under the hand in accordance with Article 16 (9) UUJN. In fact, an Authentic Deed must have legal certainty.²⁰

Suggestions

In making a notary, a notary must follow the rules that have been regulated both in the UUJN and in the notary's code of ethics. This is intended so that the authenticity of the deed made by the notary is not in doubt, and it is hoped that the authorized institution will make rules regarding the legal force of the deed made by the notary. the reasonable limit in the UUJN considering that making a deed that exceeds the reasonable limit greatly influences the legal strength of the deed and eliminates the pros and cons among notaries regarding this rule.

Until now, the implementation of sanctions against notaries who violate the deed limitation rules has not been implemented properly, in fact there are still many notaries who make deeds that exceed reasonable limits but are not followed up, so the sanctions that have been regulated both in the KEN and UUJN must be implemented, this is important. not only for law enforcement but also for parties interested in making notarial deeds. By realizing the appropriate sanctions, it is hoped that notaries will take this deed restriction regulation seriously and importantly. Violations of this regulation can also occur because this deed restriction regulation is only a regulation in the organization which is regulated in a code of ethics, so it is not serious in enforcing it. Therefore, it is very necessary to

establish clear sanctions for violations of these deed restrictions, because the PDKP which regulates deed restrictions does not mention any sanctions.

References

1. Subekti R. Hukum Pembuktian, Jakarta: Pradinya Paramita, 2001, 48.
2. Sudikno Mertokusumo. Hukum Acara Perdata Indonesia, Yogyakarta: Liberty, 1998, 150-151.
3. Milki Usman. Implementasi Kebijakan Pengaturan Batas Kewajaran Pembuatan Akta Perhari Bagi Notaris Bogor. Tesis, Universitas Brawijaya, 2019, 106.
4. Safrina YY, Azhari Suhaimi. Notary's responsibilities for privately made deed signed before and attested. International Journal of Law. 2024; 10(2):62-65.
5. Johny Ibrahim. Teori dan Metode Penelitian Hukum Normatif, Malang: Bayumedia, 2006, 47.
6. Ayu Alwiyandari. Larangan Membuat Akta Melebihi Batas Kewajaran Yang Ditentukan Oleh Dewan Kehormatan Pusat (Studi Pasal 4 Angka 16 Kode Etik Jabatan Notaris). Tesis, Universitas Islam Indonesia, 2018, 127.
7. Narasumber Dr. Siti Rahmah SH. Mkn, Notaris Aceh besar, wawancara, februari 6, 2024.
8. Supriadi Etika. Tanggung Jawab Profesi Hukum di Indonesia, Jakarta: Sinar grafika, 2008, 29.
9. Subekti R. Hukum Pembuktian, Op.Cit, hIm. 46.
10. Habib Adjie. Kebatalan Dan Pembatalan Akta Notaris, Surabaya: Refika Aditama, 2010, 19.
11. I wayan Arya Kurniawan. Tanggung Jawab Notaris Atas Akta yang Tidak Dibacakan Dihadapan Para Penghadap. Jurnal Hukum Kenotariatan. 2018; 3(3):496.
12. Ida Ayu Putu Swandewi. Pengesahan Akta Notaris Bagi Penghadap Yang Mengalami Cacat Fisik, 1:1, Jurnal Acta Comitas, 2016, 33.
13. Irawan Soerodjo. Kepastian Hukum Hak Atas Tanah Di Indonesia, Surabaya: Arkola, 2003, 148.
14. Kohar A, Op.Cit., hal. 87.
15. Nawawi Arman. Akta Notaris Sebagai Alat Bukti Sempurna, Jakarta: Media ilmu, 2011, 12.
16. Didi Santoso. Tanggung Jawab Notaris dalam Pembuatan Akta Yang Memuat Dua Perbu-atan Hukum (Analisis Putusan Mahkamah Agung Nomor 1440. K/PDT/1996). Disertasi, program Pascasarjana Universitas Diponegoro, 2009.
17. Suhartati dan Akbar. Analisis Pengajuan Pembatalan Akta ke Pengadilan oleh Notaris. Jurnal Pledoi. 2023; 1(1):14.
18. Subekti R. Pokok-Pokok Hukum Perdata, Jakarta: PT Intermedia, Cetakan Ke dua puluh, 1985, 23.
19. Yurist Firdaus, *et al.* Penerapan sanksi serta pengawasan terhadap Kode etik Notaris oleh Dewan Kehormatan. 16:2, Jurnal Notarius, 2023, 609.
20. Suhaimi Nurdin MH. Enzus Tinianus, Pengaruh Kevakuman Jabatan Majelis Pengawas Wilayah Notaris Terhadap Efektivitas Pembinaan Dan Pengawasan Notaris Di Aceh, Jurnal Ius Civile. 2023; 7(2):27-45.

²⁰ Suhaimi, Nurdin MH, Enzus Tinianus, Pengaruh Kevakuman Jabatan Majelis Pengawas Wilayah Notaris Terhadap Efektivitas Pembinaan Dan Pengawasan Notaris Di Aceh, *Jurnal Ius Civile*, Volume 7(2), 2023, pp.27-45.