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ANALYSIS OF THE VALIDITY OF NOTARIAL DEEDS IN THE CONTEXT OF NOTARY PRACTICE OUTSIDE THE SCOPE OF THEIR OFFICIAL TERRITORY

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Abstrak

The Republic of Indonesia, as a rule of law state, is committed to ensuring certainty, order, and legal protection for its citizens through regulations governing the notarial office. Notaries, as public officials, have the authority to create authentic deeds, which are important evidence in various legal actions. With a clear legal basis, including Law Number 30 of 2004 and the Civil Code, notaries are required to adhere to applicable regulations and perform their duties with integrity. The creation of authentic deeds must be conducted within the notary's jurisdiction, aimed at protecting public interests. Although this profession has a long history, modern challenges arise when notaries violate regulations, such as operating outside their jurisdiction. Such violations can impact the evidentiary strength of the deeds created. Therefore, it is essential to understand the role of notaries in the context of civil law and to encourage compliance with existing regulations to maintain public trust in legal institutions. This research aims to explore the responsibilities and authorities of notaries as well as the legal implications of violations occurring in practice.

Keywords: deed; jurisdiction; notary

1. INTRODUCTION

In the legal context of Indonesia, the presence of notaries as public officials is crucial for ensuring legal certainty through the creation of authentic deeds. Notaries have the authority to create deeds that serve as authentic written evidence, as regulated in Article 1 of Law Number 30 of 2004 concerning the Notarial Office. These authentic deeds are important in executing legal actions, agreements, determinations, and other legal events, as they provide certainty and legal protection for the public.

The history of the notarial profession in Indonesia shows significant development. The first notary, Melchior Kerchen, began serving in 1620, and since then, the role of notaries has evolved from employees bound to the colonial system to independent and professional public officials. Today, notaries not only function as providers of legal services but also as

intermediaries in civil, banking, and business transactions, all of which require authentic deeds to ensure legal certainty. In carrying out their duties, notaries are required to comply with the applicable laws and regulations. Strict supervision of notaries is necessary to ensure that they act in the public interest. The responsibility of notaries lies not only in the creation of deeds but also in having a deep understanding of the law and professional ethics. The special expertise possessed by notaries is an important prerequisite, considering that they play a role in resolving complex legal issues. (Harris, Fairus. 2021)

The authentic deeds created by notaries have perfect evidentiary strength because they fulfill all the elements stipulated by law. Articles 1867 and 1868 of the Civil Code state that these deeds must be made by or in the presence of authorized public officials and must follow the prescribed

procedures. In this regard, notaries act as guardians of the legal interests of the public, ensuring that all information contained in the authentic deeds is accurate and in accordance with the intentions of the parties involved. However, challenges arise when notaries violate existing regulations, such as operating outside their designated jurisdiction. Article 17 paragraph (1) letter a of the Notary Office Law (UUJN) explicitly prohibits notaries from practicing outside the determined area. Violations of this provision not only risk harming the parties involved but can also result in sanctions for the notary themselves, as well as legal implications for the evidentiary strength of the deeds produced. (Cahyawati, Giovani Dinda, 2022)

This research aims to further explore the responsibilities and authorities of notaries, as well as the legal implications arising from violations that occur in practice. It is important to understand how notaries can contribute to legal certainty and public trust, as well as how the existing supervisory system can be improved to prevent future violations. Through this understanding, it is hoped that a better and more conducive legal environment can be created for the public.

2. METHOD

This research adopts a normative legal method utilizing legislative and conceptual approaches. The legal sources used include primary legal materials, such as relevant regulations, as well as secondary legal materials like books and journal articles, and tertiary legal materials such as legal dictionaries. The collection of legal materials is conducted through library research and literature review. For analysis, a descriptive qualitative method is employed, interpreted systematically. (Amiruddin, Zainal Asikin, 2018)

3. RESULT AND DISCUSSION

Guarantee of Legal Certainty Of Certificates As Proof Of Land Rights

Authentic deeds are regulated in Article 1868 of the Civil Code, which states that an authentic deed is a deed made in accordance with legal provisions by a public official at the place where the deed is made. Notaries, as public officials, have jurisdictional limits set by the Notary Office Law (UUJN). According to Article 18, notaries must have a place of business in a district or city, with their jurisdiction

covering the entire province where they are located.

The UUJN stipulates that notaries may only have one office and are not authorized to perform duties outside their designated location. This is to ensure compliance with ethical codes and legal regulations. Notaries are expected to act in accordance with ethics and provide legal advice to clients. The authority of notaries is divided into general, specific, and subsequently determined authorities. (Andi.A.A.Prajitno, 2010)

The prohibition against performing duties outside of jurisdiction is aimed at preventing unhealthy competition and providing legal certainty to the public. Violations of this provision can result in sanctions for notaries and may harm the parties involved. It is important to understand that the competence of notaries is divided into absolute and relative competence. Absolute competence relates to the authority to adjudicate in different courts, while relative competence pertains to authority within a specific type of court based on a particular jurisdiction. Notaries are required to have one office in the area of their residence and are prohibited from regularly performing duties outside that area.

Notarial deeds hold significant evidentiary power. There are three aspects of proof: external, formal, and material. External power proves the validity of the deed as an authentic deed. Formal power includes information regarding the day, date, and identities of the parties. Material power ensures that the content of the deed is valid proof. If the deed does not meet the requirements set forth by the UUJN, it can be considered legally defective. A deed is deemed authentic if made in the presence of an authorized public official, in the form prescribed by law, and by an official who has the authority. Violations of these provisions can result in the deed losing its authenticity and becoming a private deed. (Adjie. Habib, 2004)

Notaries who operate outside their jurisdiction without valid reasons can render the deeds they create invalid. This is in accordance with the provisions of the Notary Office Law (UUJN), which emphasizes the prohibition for notaries to practice outside the province of their residence. In carrying out their duties, notaries must prioritize the principle of caution. Several steps can be taken to prevent legal issues, including verifying the

identity of the parties involved, checking the data of the subjects and objects, allowing time for the creation of the deed, and ensuring that all technical requirements are met. Notaries must also report to the authorities if there are indications of money laundering in the transactions taking place.

These principles not only protect notaries but also provide legal certainty for the public. Noncompliance with these principles can result in serious legal consequences for notaries and the parties involved. Notaries must adhere to the principle of caution in the creation of deeds. This includes:(Ghofur Abdul Ansori, 2009)

Identity Verification: Notaries must check the identities of the parties involved using official documents.

Data Verification: Ensure that the parties are authorized and capable of performing legal acts.

Grace Period: Allow sufficient time in the process of creating the deed.

Caution and Diligence: Ensure that the wording in the deed is clear and does not lead to misinterpretation.

Meeting Technical Requirements: Follow the formal and material requirements established by the UUJN.

Reporting to Authorities: Report any indications of money laundering in transactions.

Legal certainty is important in the creation of authentic deeds, especially in the digital context. Notaries need clear regulations to avoid legal issues. According to the Notary Office Law (UUJN), notaries have the authority to create authentic deeds, authenticate signatures, and provide legal counseling. Notaries must ensure that all their actions comply with applicable regulations, whether in the creation of conventional or electronic deeds, to maintain public trust in the notary profession.

The responsibility of notaries in creating deeds outside their jurisdiction is crucial and carries significant legal urgency. The role of notaries as public officials, with authority and public trust, brings a great responsibility in creating legal certainty. Article 15 paragraph (2) of the UUJN-P outlines several powers of notaries, including creating authentic deeds, authenticating signatures, drafting auction minutes, and certifying the conformity of photocopies with the original documents.

Notarial deeds are not just documents; they are legal products that serve several important functions, including as proof of agreements, assurance of the truth of the contents of agreements, and evidence that can be recognized by third parties.(Ar Suhariyono , 2004)

One important provision in relevant law is Article 1869 of the Civil Code (KUH Perdata), which states that a deed cannot be considered authentic if the official who created it is not authorized. This raises questions about the validity of deeds created by notaries outside their jurisdiction. In practice, violations often occur that can lead to legal issues for both notaries and the parties involved. Notaries have broad legal responsibilities, including civil, criminal, and regulatory responsibilities. In carrying out their duties, notaries are expected to meet several important criteria. First, the deed created must reflect the legal will and requests of the interested parties. Second, the quality of the deed must comply with applicable legal provisions. Third, the resulting deed must be legally recognized as valid evidence.(Cahyawati, Giovani Dinda, 2022)

However, violations of existing provisions can have serious consequences. The UUJN explicitly prohibits notaries from performing duties outside their jurisdiction. Such violations can result in sanctions, ranging from written warnings to dismissal from office. Deeds created outside the jurisdiction are considered invalid and lose their evidentiary power. This has the potential to cause legal uncertainty and disputes among the parties involved.

Legal protection for notaries differs when viewed from the aspects of criminal law and the Notary Office Law (UUJN). In the realm of criminal law, legal protection is external, where notaries have special rights inherent to their position. These rights affect how notaries are treated in terms of summons, investigations, and inquiry processes. Meanwhile, legal protection within the framework of the UUJN is internal or administrative. Here, violations of the UUJN regulations serve as a measure of professionalism that notaries must adhere to. Protection for notaries in this context aims to provide assurance for self-defense and to uphold their rights while performing their duties. Although the UUJN does not specifically regulate legal protection for notaries, Article 66 implies such protection through oversight of notaries in carrying out their

responsibilities.

As public officials, notaries require legal protection to uphold the dignity and integrity of their office, including when providing testimony and during investigations. Furthermore, notaries must maintain the confidentiality of deeds and safeguard related documents. These three aspects are foundational in Article 66 of the UUJN, which states that a notary's summons for judicial processes requires the approval of the Supervisory Council. Without such approval, the summons cannot be executed.

The Regulation of the Minister of Law and Human Rights of the Republic of Indonesia outlines the mechanism for supervising notaries. Article 20 paragraph (1) states that the Chairperson of the Notary Supervisory Council forms an inspection team to conduct examinations of notaries. This council has the authority to investigate reports submitted by parties who feel aggrieved, based on accountable evidence. The examination encompasses not only the notary in question but also third parties as the reporters, to produce balanced results. This supervision is both preventive and curative, aimed at ensuring that the rights, powers, and obligations of notaries are carried out in accordance with applicable regulations. Thus, supervision involves not only legal aspects but also moral and ethical considerations of the profession, to guarantee legal protection and legal certainty for the public.

4. CONCLUSION

It is important to highlight the significance of authentic deeds as regulated in Article 1868 of the Civil Code (KUHPerdara), which states that such deeds must be created by public officials in accordance with legal provisions and within the designated jurisdiction. Notaries, as public officials, have jurisdictional limits established by the UUJN and are prohibited from performing duties outside this area to ensure compliance with ethical codes and provide legal certainty. Violations of this provision can result in sanctions and harm the parties involved. Notarial deeds hold significant evidentiary power, encompassing formal, material, and external aspects. If a deed does not meet the established requirements, it may be deemed legally defective. Notaries are expected to perform their duties with a principle of caution, which includes verifying identities and data, as well as

reporting indications of money laundering.

Legal protection for notaries is differentiated between external criminal aspects and administrative aspects under the UUJN. In this context, supervision of notaries becomes crucial to ensure that they perform their duties in accordance with applicable regulations, thereby protecting the dignity and integrity of the notary's office. This supervision is both preventive and curative, ensuring that notaries fulfill their obligations properly, thus providing legal certainty for the public. Consequently, the integrity and professionalism of notaries are essential to maintaining public trust in notarial institutions and the legal system as a whole.

REFERENCES

- Abdulkadir, M. (2001). *Etika Profesi Hukum*. Jakarta: CV Citra Aditya Bakti.
- Adjie, H. (2004). *Hukum Notaris Indonesia (Tafsir Tematik Terhadap UU No.30 Tahun 2004 Tentang Jabatan Notaris)*. Bandung: PT. Refika Aditama.
- Amiruddin., & Asikin, H. Z. (2018). *Pengantar Metode Penelitian Hukum, Edisi ke-1 Cet IV*. Jakarta: Raja Grafindo Persada
- Ansori, A. G. (2009). *Lembaga Kenotariatan Indonesia: Perspektif Hukum dan Etika*. Yogyakarta: UII Press.
- Busyra, A. (2011). *Corporate Social Responsibility dari Voluntary menjadi Mandatary*. Jakarta: Raja Grafindo Perss.
- Cahyawati, G. D. (2022). *Tanggung Jawab Etika Notaris Terkait Penandatanganan Akta Diluar Kantor Dengan Mengirim Minuta Akta*. Tesis Universitas Airlangga.
- Gadjong, A. A. (2007). *Pemerintahan Daerah Kajian Politik Hukum*. Bogor: Ghalia Indonesia
- Harris, F. (2021). *Kekuatan Pembuktian Akta Notaris Yang Dibuat Di Luar Wilayah Jabatan Notaris*. Bplawyers. Retrieved From <https://bplawyers.co.id/2017/03/03/kekuatan-pembuktian-akta-notaris-yang-dibuat-di-luar-wilayah-jabatan-notaris/>
- Khasanah, C. A., Satoto, A. Y., & Anwar, M. H. (2023). Akibat Hukum Notaris Yang Melakukan Penandatangiannya Akta Di Luar Wilayah Jabatan Notaris. *Jurnal Education and Development*, 11(2), 378-383. <https://doi.org/10.37081/ed.v11i2.4921>
- Prajitno, A. A. A. (2010). *Apa dan Siapa Notaris di Indonesia?, Cetakan Pertama*. Surabaya: Putra Media Nusantara
- Sjaifurrachman., & Adjie, H. (2011). *Aspek Pertanggungjawaban Notaris dalam Pembuatan Akta*. Bandung: Mandar Maju.
- Suhariyono. (2004). *Implementasi Undang-undang Nomor 30 Tahun 2004 tentang Jabatan Notaris*. Jakarta: Makalah.