

A Notary's Authority In Issuing Copies of Acts From Minutes of Deeds of Other Notaries' Protocol Parts

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ABSTRAK

Everyone needs evidence to prove the existence of a right or event, especially written evidence in the form of an authentic deed. Authentic deed is a deed in the form determined by law, made by or in front of the general employee in charge where the deed is made. One of the General Officers who makes authentic deeds is a Notary who has the obligation to make a deed in the form of a deed and keep it as part of the Notary Protocol. In the interests of proof for the parties, the Notary is obliged to issue a copy of the deed of the Minuta deed of the Notary Protocol. The deposit obligation does not only apply to the Minuta deed made by and / or in the presence of the notary concerned, but also to other Notary Protocols that he receives either because the other notary dies, has expired, or other causes.

Keywords: Authentic Deed, Notary, Notary Protocol, Copy of Deed.

1. Introduction

Everyone who claims to have something right or an event is obliged to prove it as stated in Article 1865 Burgerlijk Wetboek (hereinafter referred to as BW). A person cannot claim the right to something if he is unable to prove it. In Article 1866 BW there are several evidences, namely written evidence, witness evidence, suspicion, confession, and oath. Proof in writing can be authentic writing or underhanded writing. The existence of written evidence in the form of authentic deeds can explain the existence of one's rights and obligations and guarantee legal certainty. Authentic written evidence is needed to be utilized by the makers themselves and third parties, the interests of proof or profit from the State for law enforcement in terms of facilitating the settlement of civil cases easily and in a short time through guaranteeing the truth of the contents of the deed and legal certainty¹. According to Article 1868 BW, an authentic deed is a deed determined by law, made by or in front of a general employee in charge where the deed is made.

In accordance with the provisions in article 1 number 1 of Act Number 2 of 2014 on Amendments to Law Number 30 of 2004 on Notary Position (hereinafter referred to as UUJN),

¹ A.A.Andi Prajitno, *Pengetahuan Praktis Tentang Apa dan Siapa Notaris di Indonesia*, Perwira Media Nusantara, Surabaya, 2015 (furthermore abbreviated as A.A.Andi Prajitno I), p 63.

Notaries are authorized officials to make authentic deeds and have other authorities as referred to in This law or under other laws. Furthermore Article 15 paragraph (1) of UUJN affirms that the Notary has the authority to make authentic deeds regarding all acts, agreements, and stipulations required by laws and/or those required by those concerned to be stated in authentic Deed, guarantee the date of making Deed, keep Deed, provide grosse, copy and quotation of Deed, all of which as long as the making of the Deed is not assigned or excluded to other officials or other people as stipulated by law (Susilo & Roesli, 2018). One of the General Officials (*openbaar ambtenaar*) in the legal system of the Republic of Indonesia is a person who serves as a Notary. A notary is a public official who is given the authority to carry out part of the state's duties in providing services to the community, especially in the field of Civil Law.

The task of the Notary is to translate the wishes of the parties into authentic deeds. In order to formulate the will of the parties, the parties entrust or put their trust in the Notary so that his will is constant and the statements that the parties give can be poured into an authentic deed. Notary carry out by way of pouring in writing (sunning) into the deed, with provisions in the form and procedure that has been adjusted to the provisions of legislation (constricting).² Notary is a strategic position with trust from the government and society and thus, he/she must be neutral, impartial, independent (free from being influenced by anyone) and have a large responsibility³. Even, in the community it is believed that a legal act is not perfect if it has not been made in the form of an authentic deed.

Everything written and determined (constituency) is true. A notary is a strong document maker in the legal process⁴. Authentic deeds have a very special position because their existence can be trusted as a perfect proof. Therefore, a deed made by a notary is said to have perfect evidentiary power if the deed has birth, formal and stamp strength, and fulfills the authenticity requirements as required by the Notary Position Act, so that the deed that has fulfilled all the requirements has proof power perfect and must be judged to be true, before it can be proven to be untrue before the Court⁵.

Therefore a Notary as a public official carries out part of the duties and obligations of the government in making evidence to create legal certainty, order and legal protection for its people. In carrying out its duties, one of the obligations of a Notary is to store and maintain all documents

² A.A.Andi Prajitno I, p.41-42.

³ Oemar Moechthar, *Dasar-dasar Teknik Pembuatan Akta*, 1st edition, Airlangga University Press, Surabaya, 2017, p. 37.

⁴ Tan Thong Kie, *Studi Notariat Beberapa Mata Pelajaran dan Serba-serbi Praktek Notaris*, Buku I Edisi Baru, PT Ichtiar Baru Van Hoeve, Jakarta, 2000, p.157.

⁵ Ghansham Anand, *Karakteristik Jabatan Notaris*, Zifatama Publisher, Sidoarjo, 2014, p. 39.

relating to the making of authentic deeds. One of the obligations of the Notary is to make a deed in the form of a deed and save it as part of the Notary Protocol as it turns out in Article 16 paragraph (1) letter b UUJN. The Notary Protocol according to the provisions of Article 1 point 13 of the UUJN is: a collection of documents which are state archives that must be stored and maintained by a Notary in accordance with the provisions of legislation ". Explanation of Article 62 UUJN, states that the Notary Protocol consists of:

1. Original master of the Deed;
2. book of Deed list or repertorium;
3. book of private Deed whose signing is performed before a Notary or deed under the registered hand;
4. book list of names of viewers or klapper;
5. protest list book;
6. list of wills; and
7. Other list books that must be kept by a Notary based on statutory provisions.

As evidence for the parties, a Notary is obliged to issue a copy of the original master of the Deeds which is kept as a Notary Protocol. This is stored in the Notary Protocol where the deed is made, the parties written in the deed or interested persons (*onmiddelijk belanghebbende*) have the right and will obtain a copy of the deed which is stamped by the Notary and signed only by a Notary only⁶. The definition of a copy of the Deed according to Article 1 number 9 UUJN is "A copy of the Deed is a word-for-word copy of all Deeds and at the bottom of the Copy of the Deed stated in the phrase" given as COPY with the same statement."

The obligation to retain not only applies to original master of the deeds made by and/or before the notary but also applies to other Notary Protocols he receives either because the other notary dies, has expired, or other causes (Roesli, Heri, & Rahayu, 2017). According to Andi Prajitno, the storage of the Notary Protocol by the protocol notary holder is an attempt to maintain the juridical age of the notary deed as a perfect evidence for the parties or their heirs about all the things contained in the deed⁷.

The 1945 Constitution of the Republic of Indonesia clearly stipulates that the state of the Republic of Indonesia is a state of law. The principle of the rule of law is to ensure certainty, order and legal protection with the core truth and justice⁸. Certainty of order, legal protection requires,

⁶ A.A.Andi Prajitno I, *Op.Cit.*, p.77

⁷ Oemar Moechthar, *Op.Cit.*, p.1.

⁸ *Ibid*

among other things, that legal traffic in people's lives really requires evidence to clearly determine the rights and obligations of a person as a subject of law and society.⁹

One proof of the certainty of a person's legal rights and obligations in people's lives is carried out by a Notary¹⁰. A copy of the Deed is given by a Notary to the parties written in the deed or interested person (onmiddelijk belanghebbende) who can function as a benchmark or guide to carrying out the agreed content.

A notary deed in the form of a copy will always exist if it is kept by the party concerned. The deed in the form of a Minuta will also be forever and kept by the notary himself or by a notary who is the protocol or by the Regional Supervisory Board¹¹. The importance of the role of the Notary in helping create legal certainty and protection for the community is more preventive, or prevention of the occurrence of legal problems, by issuing authentic deeds made before him related to legal status, rights and obligations of someone in law, etc. the most perfect evidence in the Court if there is a dispute over the rights and obligations associated¹².

2. FORMULATION OF THE PROBLEM

To what extent is the authority of the Notary as the recipient of the protocol in issuing a copy of the deed of the Minuta deed which is part of the other notary protocol he has received?

3. DISCUSSION

3.1. Notary Recipient of the Protocol

Notary positions have a continuous nature. In the event that the Notary has retired, changed his position, temporarily taken leave, stopped or terminated as stipulated in 62 UUJN, the Notary must submit the protocol to another Notary appointed by the Regional Supervisory Board as the Notary Holder of the other Notary Protocol. The Protocol Recipient Notary is a legitimate Notary Holder of the Protocol and authorized by the Regional Oversight Board or Minister to keep other Notary Protocols he receives. Before being appointed as a Notary Holder of the Protocol from the previous Notary, the Notary who will be appointed as the Protocol Recipient Notary makes a statement stating that the Notary is willing to accept the Notary protocol to be submitted to him. After the appointment of notary holders of other notary protocols, the Regional Supervisory Board gave an announcement to all Notaries in the area that the notary protocol of the notary

⁹ Sjaifurrachman dan Habib Adjie, *Aspek Pertanggungjawaban Notaris dalam Pembuatan Akta*, Mandar Maju, Bandung, 2011, p.7.

¹⁰ Ghansham Anand, *Op.Cit.*, p.76.

¹¹ H.Salim HS, *Op.Cit.*, p.197.

¹² Ghansham Anand, *Op.Cit.*, p.74.

concerned had been submitted and stored by a Notary appointed as the Notary Holder of the Protocol. The purpose of the announcement was to make it easier for the public or parties who had made a deed to the previous notary to issue a copy of the deed if needed.

2. 2. Notary Protocol and Submission

1. Notary Protocol as State Archives

The affirmation of Article 16 paragraph (1) letter b of UUJN clearly obliges every Notary to store Original Master of the Deeds as part of the Notary Protocol and requires each Notary to issue a Copy of Deed based on the Minuta deed at the request of the parties or interested parties therein.

The definition of Notary Protocol as defined according to Article 1 number 13 UUJN is "Collection of documents which are state archives that must be stored and maintained by a Notary in accordance with the provisions of legislation". Thus in accordance with Article 1 number 13 of the UUJN, the elements listed in the Notary Protocol according to H. Salim HS, which include: the existence of a collection of documents, State archives, some of which save and maintain them; and in accordance with the provisions of the legislation¹³.

Ghansham Anand believes that:

"Acknowledgment of the Notary Protocol as a state document due to the Notary Protocol is a document or archive containing the legal status, rights and obligations of parties / communities which are certainly required to be stored and maintained properly, for legal certainty, order and legal protection for those who need¹⁴".

According to H. Salim HS, a protocol is defined as a document that is stored and held by a notary, such as:

1. Minuta deed;
2. Notary statement;
3. Records;
4. Transcript (copy);
5. Directories; and
6. Card¹⁵.

The Notary Protocol as a state archive has laws and regulations governing the storage and maintenance of state archives, namely regulated in Law No. 43 of 2009 concerning Archives (hereinafter referred to as the Archives Act) which is a special rule governing filing. Archives,

¹³ H.Salim HS, *Op.Cit.*, p.196.

¹⁴ *Ibid.*, p.199-200.

¹⁵

according to Article 1 number 2 Archival Law is a recording of activities or events in various forms and media in accordance with the development of information and communication technology made and accepted by state institutions, regional government, educational institutions, companies, political organizations, social organizations, and individuals in the implementation of community, national and state life.

Article 62 UUJN explains that Notary Protocol that is required to be stored and maintained by each Notary are Original Master of Deed and Book Listing Deed or repertorium. According to Article 1 number 8 of the UUJN " Original Master of Deed is the original deed that includes the signatures of the viewers, witnesses, and Notaries, which are stored as part of the Notary Protocol", while the list of deeds or repertorium is a book that contains records of a number of deeds made by a Notary¹⁶. One function of the book listing deed or repertorium is to facilitate the Notary in knowing what kind of notary deed he has made while carrying out his position.

2. Submission of Notary Protocol

Further in Article 62 of the UUJN it is stated that the submission of the Notary Protocol is carried out in the case of a Notary:

- a. die;
- b. has expired his term of office;
- c. ask for resign;
- d. not able to be spiritually and/or physically carrying out office duties as a Notary continuously for more than 3 (three) years;
- e. appointed as state official;
- f. moved to the position of office;
- g. temporarily dismissed; or
- h. dishonorably discharged.

Article 63 of the UUJN states that:

1. Submission of the Protocol as referred to in Article 62 shall be carried out no later than 30 (thirty) days with the making of minutes of submission of the Notary Protocol signed by those who submit and who receive the Notary Protocol;
2. In the event that it occurs as referred to in Article 62 letter a, the submission of the Notary Protocol shall be carried out by the heir of the Notary to another Notary appointed by the Regional Supervisory Board;

¹⁶ H.Salim HS, *Op.Cit.*, p.151.

3. In the event that it occurs as referred to in Article 62 letter g, the submission of the Notary Protocol shall be carried out by a Notary to another Notary appointed by the Regional Supervisory Board if the temporary dismissal is more than 3 (three) months;
4. In the event that it occurs as referred to in Article 62 letter b, letter c, letter d, letter f, or ancestry h, the Notary Protocol shall be submitted by a Notary to another Notary appointed by the Minister at the suggestion of the Regional Supervisory Board;
5. Notary Protocol from other Notaries which at the time of delivery is 25 (twenty five) years or more submitted by the Notary who receives the Notary Protocol to the Regional Supervisory Board;
6. In the event that the Notary Protocol is not submitted within 30 (thirty) days as referred to in paragraph (1), the Regional Supervisory Board shall be authorized to take the Notary Protocol.

3. Original Master of Deed and Copy of Deed as Evidence

The function of the deed is an evidence. An authentic deed is a verification tool for both parties, heirs and persons who get the rights contained in the deed. According to Article 1888 BW, the strength of proof of an article lies in the original deed. If the original deed still exists, then the copy or quote can only be trusted as long as the contents are in accordance with the original which can always be ordered to be shown as the original.

The power copy of deed is as strong as the the master, the difference is the master is the original deed which is a State Archive and must be kept by a Notary and there are signatures of the parties, witnesses and Notaries while the copy of the deed is the original deed issued by a Notary containing a copy from the original deed and there is only a Notary signature in the copy.

4. The Party Obtaining a Copy of the Deed

A copy of the deed is only for the parties who make the deed, because the parties concerned in the deed are not allowed to be given the original deed because it is a State archive that must be kept by the Notary. In order to prove before the court or as a benchmark for an agreement, the parties have the right to have a copy of the deed. Copies of deeds here can only be shown and given to interested parties, among others, according to Article 54 paragraph (1) UUJN are: "Notaries can only provide, show, or notify the contents of Deed, Grosse Deed, Copy of Deed or Quotation, to people having an interest directly in the Deed, heirs, or people who obtain the rights, unless otherwise stipulated by legislation.

H. Salim HS argues that while the three groups are determined, the law provides an exception. This means that people who are not the three groups can also be given, seen or notified of a copy of the

deed, with conditions determined by law. For example, a copy of the deed used in the trial process, the court institution can see a copy of the deed.¹⁷"

5. Notary Authority

According to Habib Adjie, the authority is:

"Authority (or often written with the term authority) is a legal action that is regulated and given to a position based on the applicable laws and regulations governing the relevant office. Thus each authority has its limits as stated in the laws and regulations that govern it¹⁸."

There are three types of authority from the way they are obtained, namely authority in attribution, delegation, and mandate. Authority by Attribution is the granting of new authority to a position based on legislation or legal rules, delegation authority is the transfer or transfer of existing authority based on a legislative regulation or legal rule, however, authority in mandate is actually not a transfer or transfer authority but, who is competent is absent¹⁹. In this case the Notary has the authority in attribution, because the authority of the Notary here is created from legislation, namely the Act of Notary Position.

The authority of the Notary has been regulated in Article 15 of the UUJN. These changes are:

(1) Notary is authorized to make authentic Deed regarding all acts, agreements, and stipulations required by legislation and / or desired by those concerned to be stated in authentic Deed, guarantee the date of Deed, keep Deed, give grosse, copy and the quotation of Deed, all of which as long as the making of the Deed is not also assigned or excluded to other officials or other people as stipulated by the law ".

(2) In addition to the authority as referred to in paragraph (1), the Notary is also authorized:

- a. ratify signatures and determine the certainty of the date of the letter under the hand by registering in a special book;
- b. book letters under the hand by registering in a special book;
- c. make copies of the original letter under the hand in the form of a copy containing the description as written and illustrated in the letter concerned;
- d. validating the photocopying suit with the original letter;
- e. provide legal counseling in connection with the making of Deed;
- f. make Deed related to land; or

¹⁷ Habib Adjie, *Hukum Notaris Indonesia Tafsir Terhadap UU No. 30 Tahun 2004 tentang Jabatan Notaris*, Cetakan Keempat, Refika Aditama, Bandung, 2014, p.77.

¹⁸ *Ibid.*, p.77-78.

¹⁹

g. make Deed of auction minutes.

(3) In addition to the authority as referred to in paragraph (1) and paragraph (2), the Notary has other authorities stipulated in the laws and regulations.

6. Authority of Notary Recipient of Protocols in Issuing Copies of Deed.

One of the other authorities granted by the legislation as Article 15 paragraph (3) of the UUJN the recipient of another Notary Protocol as the legal holder of the Notary Protocol in the submission appointed by the Regional Supervisory Board or The Minister of Law and Human Rights at the suggestion of the Regional Supervisory Board. The Notary Recipient of the Protocol has the authority to issue a copy of the Deed of Amendments which is part of the Notary Protocol he has received.

Another Notary Recipient Notary is authorized by the UUJN to issue a copy of the Deed as in Article 64 paragraph (2) of the UUJN stated that "Notary holders of the Notary Protocol as referred to in paragraph (1) are authorized to issue Grosse Deed, Copy of Deed, or Quotation". The authority granted by the UUJN here is that the Notary Recipient of the Protocol is authorized to issue a copy of the original deed which is part of the Notary Protocol that has been submitted to him after the first copy issued by a Notary who made it. In practice, if there is a original deed that has never been issued a copy of the deed, the obligation to issue a copy of the Deed is the Notary who makes a statement.

4. CONCLUSION

As evidence for the parties, including those with an interest directly in the deed, heirs, or persons who obtain rights, the Notary is obliged to issue a copy of the deed of the Minuta deed which is kept as part of the Notary Protocol. One of the Notary authorities granted by legislation as Article 15 paragraph (3) of the UUJN is as recipients of other Notary Protocols as legal holders of Notary Protocols that have been handed over to them and in their submissions designated by the Regional Supervisory Board and the Minister of Law and Human Rights. proposal of the Regional Supervisory Board. The Notary Recipient of the Protocol is authorized to issue a copy of the Deed of Minuta deed which is part of the Notary Protocol he received as in Article 64 paragraph (2) of the UUJN that "Notary holders of the Notary Protocol as referred to in paragraph (1) are authorized to issue Grosse Deed, Copy of Deed, or Excerpt of Deed".

According to the author, the authority granted by UUJN here is that the Notary Recipient of Protocol is authorized to issue a copy of the Deed of Minuta deed which is part of the Notary Protocol that has been submitted to him after the first copy issued by a Notary who made the

Minuta deed whereas. If a minuta deed does not yet have a copy of the deed, then according to the author who is given the obligation to issue a copy of the Deed is the Notary who makes the deed. He also has the obligation to issue a copy of the Deed of Minuta deed for the first time.

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