

## The Concept of Acting in Notarial Deed

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**Abstract:** *The notary in carrying out its obligations makes the authentic deed obliged to act carefully. Authentic deed made by notary has an important role in creating legal certainty in every act and legal event, because notarial deed is the strongest and most complete evidence in every case related to notarial deed. The Article 16 paragraph (1) letter a UUJN which mentions the notary should act carefully in making the authentic deed is still unclear and need to be reaffirmed using grammatical interpretation method, which is to interpret the words in the accordance with the laws and regulations of the grammar law. The type approach of empirical approach method is to emphasize the legislation and regulations and legal norms relevant to this problem. The results of this study showed that the limitations of the legal norm in acting in Banda Aceh and Pidie can be explained that, notary must be careful and thorough in making notarial deed, should not check the evidence of the letter relating to Desires of the parties outside his will and must not compel his will to act. The application of legal norms to act closely in the making of notarial deed in the areas of Banda Aceh and Pidie can be viewed on an enforceability directly to the reality in the community, the application of this carefully acting hukhum norm is still the meaning Many of its use are both in terms of a capable person, about and mutually agreed to act on the creation of notarial deed.*

**Keywords:** *Draft, Act Carefully, Making Notarial Deed.*

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### I. INTRODUCTION

When viewed from the notary Legal department (UUJN), in article 16 paragraph (1) letter A is mentioned about the obligation of the notary in the event of Office, Notary shall act in trust, honest, thorough, independent, not party, and maintain Interest of the relevant parties in the act of law. Judging from the prevailing UUJN now has not clearly stipulated the principles or concepts of notary to be more act-fair as regulated in the Banking Act.

In banking world known as Prudence Principle, which is a principle that says that the bank in carrying out its functions and business activities must apply the prudence principle in order to protect the funds of the community entrusted Him. This is in accordance with article 2 of the Law Number 10 year 1998 on the amendment to Law No. 7 of 1992 on banking mentions that Indonesian banking in conducting its business must conduct its business based on democracy Economics using prudence principles (Hermansyah, 2013: 7).

Explanation of notarial obligations mentioned that, notary in carrying out its obligation to make the authentic deed obliged to act carefully, but in the explanation of article 16 paragraph (1) letter A UUJN not described understanding and example A notary obligation must act carefully of the article. In the dictionary great Bahasa Indonesia (KBBI) 'thorough' has a meticulous, thorough and complete sense.

The condition of the norm is thus referred to as the blurring of the norm or "vague van normen". Aarnio says that "interpretation in turn has been understood as a linguistic matter" or interpretation due to language factors. Therefore, in the science of law is known adagium that reads "in Claris Non fit interpretation" which means if the law is obviously not necessary interpretation. If it thinks Acontrario, then this adagium is actually a fundamental foundation for the relevance of interpretation if the law is not clear (Diantha, 2015: 118).

As stated that if in the language or the words in a statutory regulation is not clear then used method of grammatical interpretation. According to Pitlo, grammatical interpretation means capturing the meaning or language text of the law (Rifai, 2010: 64). Therefore, if the sound of article 16 paragraph (1) letter a UUJN that mentions notary should act carefully in making the authentic deed is still unclear and need to be reaffirmed using grammatical interpretation method, namely Interpreting the words of the law in accordance with the rules of language and the rules of the grammar law. In the explanation of the notary obligation to act carefully, it must be set again clearly and explicitly about the notary obligation should act carefully, so as not to cause a condition

of a vague norm and the multitapator of Explanation of Article 16 paragraph (1) letter a UUJN about notary obligation must act carefully.

According to Habib Adjie the concept of prudence that should be applied in UUJN so as to prevent notary to implicate into legal issues, such as:

1. Introduction to the complainers based on the identity shown to the notary.
2. Check carefully and carefully the documents of both the subject and the object which will be included in the authentic deed made by the notary.
3. The notary is entitled to report in case of suspicious transaction from the parties if the funds will be transacted from the crime of corruption.
4. Act cautiously, carefully and conscientiously in the process of the work of authentic deed made notary so as not to give interpretation to the words that are poured in authentic deed.
5. Provide a period of time in the making of deed so that in the process of making the deed does not hurry to work carefully in the process of making authentic deeds.
6. Comply with all administrative techniques of making notarial deed, such as deed readings, signing, thumbprint and giving copies of deeds.

As stipulated in article 15 paragraph (1) of Law No. 2 of 2014 concerning the amendment to Law No. 30 of 2004 on the notary Department (UUJN) mentioned that the notary authorized:

1. Make a deed;
2. Regarding all the deeds, agreements, and statutes required by the laws and/or regulations required by the interested to be expressed in an authentic deed;
3. Ensure the certainty of deed creation;
4. Save the deed;
5. Provide grosse, copy and quotation deed.

Authentic deed made by notary has an important role in creating legal certainty in every act and legal event, because notarial deed is the strongest and most complete evidence in every case related to notarial deed. The definition of authentic deed is the authentic act is a deed made by the officer authorized for it by the ruler, according to the provisions established, whether with or without the assistance of the concerned, which records what is requested to be loaded Interest. The Authentic Act contains a description of an official, which explains what it does and is seen in its presence (Mertokusomo, 1977: 119).

In the authentic deed of the HIR is governed in article 165 which reads: "The Authentic act is a deed made by or before the officer authorized for it, is a complete evidence between the parties and its heirs and those who have the right to him about those listed in and even Listed therein as a mere notice but the latter is only as long as it is known to be closely associated with the subject of the deed ".

The notary in the execution of the duties, shall not be out of the signs that have been regulated by the applicable legal device. The notary is required to always carry out its duties and positions in accordance with the rules of law. Then the notary should be guided by the notary code of Ethics, the notary code of conduct is the entire moral rule that is a guideline in carrying out the notary office. The scope of notary code pursuant to article 2 of the Notary code of conduct shall apply to all members of the Indonesian Notary Association (INI) and others who held the office of notary in both the position and in the life of Daily.

Notary in carrying out his duties and positions in making the deed not escaped from errors or mistakes, as a general official authorized to create an authentic deed of all actions, agreements, it is proper that notary public in order not to cause legal problems, both in the realm of criminal law and civil law. For example, there is a case of a counterfeit letter regarding sale and purchase, a certificate of custom property and a dispute-free letter conducted by a party in a land sale and purchase transaction involving notary/PPAT in the Pidie district whose actors are declared void and have no legal force based on the Supreme Court decision of the Republic of Indonesia number 82/PDT/2017/PT BNA The next case is the forgery of the beneficiary (SKW) in Kabupeten Pidie, so that the notary made the act of Sale and purchase against a plot area of 300 m. While there are heirs that are not included because the party facing the notary hides one of his heirs.

According to the information from notary in Pidie District in practice often crimes by the parties such as identity counterfeiting, false signatures, false receipts or false serotybands that resulted in a legal defect in the deed made by the notary . Counterfeit letters and false remarks by these parties may harm a notary who has already exercised his duty in good faith instead of being deemed to have participated because the parties give false information to the deed he made. Even in practice, a notary is often called as a witness even as a suspect because of his problematic actors.

The article that often enlisted notary in the legal issues is governed in article 263, 264 and article 266 of the Criminal Code (hereinafter referred to as PENAL code), namely: Article 263 criminal CODE on counterfeit letter:

1. whosoever makes a false letter or falsify a letter that may result in a right, alliance or debt exemption, or is intended as proof of any of the pages with the intention to use or to send someone else to use the letter As if the content is true and not fake, threatened with such use can incur losses, due to counterfeit letters, with imprisonment of maximum six years.
2. Be threatened with the same criminal, Whosoever deliberately wears a false letter or that is forged as if it were true, if the use of the letter could incur a loss.

From the explanation above notary as General officer of deed authentic in carrying out its duties often get legal problems, the problem is caused because in article 16 paragraph (1) letter a UUJN that mentions notary in the conduct of the His position is obliged to act closely in the process of making the deed is still unclear and raises the multitasking in the article, so that in practice often arise issues with the process of making authentic deeds that data and information Forged by the parties.

In the creation of the deed and to safeguard and protect the office of notary so that the notary will be able to act more thoroughly in making the deed, in order to provide input that it is necessary to be redefined about notary obligation to do The principles of acting closely in the process of making the deed so that the deed is made not pose a legal problem. Hence the author is interested to compile the thesis titled "The concept of acting closely in the making of notarial deeds."

## **II. LITERATURE REVIEW**

Notary's obligation is mandatory by the notary, which if not done or violated, the breach will be sanctioned against the notary. Notarial obligations set forth in article 16 paragraph (1) letter A to the law of the notary department which if violated will be sanctioned as mentioned in article 84 (Adjie, 2008: 86).

Pursuant to article 16 paragraph (1) of letter a notary Department of law outlined notarial obligations: "In the exercise of his office, notary obliged, Act honestly, thoroughly, independently, immoral, and safeguard the interests of the relevant party in the Act of law;

In the general principles of Good governance (AUPB) are known to the following principles:

1. Principle of equality;
2. Principle of belief;
3. Principle of legal certainty;
4. Principles of accuracy;
5. Principle of giving reason;
6. The principle of prohibition of misuse of authority;
7. Basic prohibition of acting arbitrarily.

These principles were adopted as the principles made by the notary in the conduct of his duties and positions. Similarly, it has been explained by Habib Adjie that, "For the sake of performing the duties of notary office, coupled with the principle of proportionality and basic professionalism. These principles can be adopted as principles that must be used as guidelines in carrying out the duties of notary Office, namely as the principles of the implementation of the duties of the notary office which is good with the substance and understanding for the purpose of notary (Adjie, Meneropong Khazanah Notaris dan PPAT Indonesia, 2009: 179). "

The obligation of notary in article 16 paragraph (1) A is very important in regulating the behavior of notary public in carrying out their duties and positions. Therefore, the notion that the notary public should act honestly, thoroughly, independently, and not that party should clearly mean. The first element that undertook article 16 paragraph (1) of letter A is honesty. Tan Thong Kie in his book Notariate Studies: The nature of Notariate quotes the writings made by Ulrik Huber about the qualities that a notary should have, "an honest man, who is good at making all writings and appointed By a public official for it (Kie, 2007: 459). "

When based on the meaning of the words that are raw and literal above then if a person says not in accordance with the truth and the reality or does not acknowledge a true thing, the person can already be deemed or judged dishonest, deceptive, or lying. Honesty is a good faith. Therefore honesty according to the author is a trait that we must have and can be said to be absolutely must have. Honesty in civil law, especially the law of the object asserted by Subekti, "in the law the matter of good faith means honesty or cleanliness (Subekti, 1963: 49).

According to Wirjono Prodjodikoro honesty lies in the state of the human psyche, the point of honesty is lies in the actions committed by the parties in the event of carrying out the promise. In carrying out this action, honesty must walk in the heart of a human being always remember, that man as a member of society must be far from the nature of the other party by using blindly The words used at the time of both parties form an agreement (Prodjodikoro, 2011: 104).

Honesty is important because if a notary act with dishonesty there will be a lot of events that harm society. Not only that, dishonesty will lower the level of community confidence. The notary must act carefully

in the task of his office. This element is a very important thing that undertook article 16 paragraph (1) of this letter A. According to the English Great Dictionary, thoroughly means thorough or careful. A notary must be thorough and careful to uphold the principle of prudence in carrying out the position. This is the practice of the general principles of good governance mentioned above, namely the basic of accuracy. Notary is obliged to examine all evidence disclosed to the notary and to provide information or statements of the parties as a basic material to be poured out in the deed.

Notary has a role to determine an action can be set in the form of deed or not. Before arriving at this decision, the notary must consider and view all documents disclosed to the notary, researching all evidence shown to him, listening to the information or statements of the parties. Such decisions must be based on legal reasons that must be explained to the parties. These considerations should take into account all aspects of the law including legal issues that will arise later in the day (Adjie, Meneropong Khazanah Notaris dan PPAT Indonesia, 2009).

Similarly expressed by Habib Adjie who said that the principle of caution is an application of article 16 sentence (1) letter A, among other things in the deed of Office is obliged to act carefully. The basic implementation of the accuracy must be done in deed by:

1. Introduction to the Roadblock based on his identity shown to the notary.
2. Inquire, then listen to and observe the wishes or desires of those parties.
3. Check the evidence of the letter relating to the wishes or the will of the parties.
4. Advise and create a framework of deed to fulfill the wishes or will of the parties.
5. Comply with all administrative techniques of making notarial deed, such as reading, signing, providing copies and filing for Minuta.
6. Perform other obligations relating to the execution of the duties of notary office.

As general officers, notary and PPAT must be independent. This is the next element in article 16 paragraph (1) letter A. In colloquial terms this independent term is often interpreted independently. In the management concept that the implementation of the term independent means that the institution in question is managerial can stand alone without relying on the superiors. However, institutionally, the institution in question remains dependent on its superiors. While independent, both managerial and institutional are not dependent on superiors or to other parties.

Notary in the task of his authority as a general officer has a main characteristic, namely in his position (positions) that are impartial and self-reliant (independent), even firmly said "not as one party". Notary as general officer in carrying out its function to provide service to the concern among others in the making of authentic deed is not at all parties from the interested. Even if it is a legal officer is not a "law enforcement", the notary is very neutral and impartial to any of those interested.

The equation requires equal treatment, which in the same situation should be treated equally, and with debate, in which different situations are treated differently. Fairness and equality have a very close relationship, so strong that in case of treatment is not the same, it is an injustice. Therefore, notary is not allowed to refuse certain parties who wish to use the notary service.

Notary in providing services to the public should not be discriminate one with the other based on socio-economic circumstances or other reasons. This element according to the author is a practice from Sila to Lima from Pancasila, namely Sila "social justice for all the people of Indonesia". Even notary is obliged to provide legal services in the field of notary free of charge to the person who is incapacitated, which is governed by article 37 of the Notarial Law of the department. This is what is called immutability that a notary should do. Fair means no siding, so the notary who in carrying out his duties and positions to party certain parties or do not give proper service then the notary can be said to behave unfairly and Violate the principle of equality. According to Habib Adjie the equation is in the practice of notary in Indonesia can not be fully implemented.

### **III. LIMITATION OF LEGAL NORMS ACT IN THE MAKING OF NOTARIAL DEED**

The establishment of a notary institution because of the needs of society both in ancient and present day. The notary language is derived from Notarius ' word for singular and Notarii for the plural. Notarius was a term used by the Roman society to name those who did the work of writing, but the function of Notarius in these times differed from the function of notary at this time.

Notary is a general official authorized to make an authentic deed so far as the creation of certain authentic deed is not devoted to other general officers. The creation of authentic deed is required by the legislation in order to create certainty, order, and legal protection. In addition to the authentic deed made by or before the notary, not only because it is required by the laws and regulations, but also because it is required by the interested parties to ensure the rights and obligations of the parties for the sake of certainty, and legal protection for stakeholders as well as for the society as a whole.

The notary is sometimes involved further in getting around evidence or a tool of evidence with what targets are handled to be won or as truth. Consequently, the principle that is firmly held and shown to the client is simply the word "definite" bias, with the client's record being able to pay at the agreed or desired price (Rizal, 2019).

If that is the case, then the footing used to evaluate it is the legal norm and a notary public code of ethics. It is necessary forward to evaluate the implementation of the developers of this legal profession so that later on what is done by the notary can be better than before, at least the notary is not falling in the same deed that Defame his profession.

If the method of legislation describes the content of the legal norm of a statutory regulation then the technique of legislation has a relation with the text of the norm, including the use of the raw systematics For the establishment of provisions, there is a definition or limitation of understanding to avoid misinterpretation or multitasking, avoid the use of meaningful words (ambiguous) and so on.

According to the results of the interview limitation of the norm Act carefully not explained clearly in the laws and regulations in the notary code, but in this context notary in the service of his client should give explanation Related to the creation of notary deed. The limitations of norms in fair action can be categorized as follows (Rizal, 2019):

1. Notaries must not provide any explanation that is not permitted by law in the making of deed,
2. The notary shall not compel the will to act something,
3. Not providing information that will cause conflicts to the parties,
4. Should not check the evidence of a letter relating to the wishes of the parties outside his will,
5. Complementing the blessing of both correspondence and Penandatangann.

The above limitation shall be deemed to guarantee the legal certainty that will be obtained by the parties until the notary as the creation of the deed can not act like or act arbitrarily to the parties. This limitation can also be a benchmark for a notary in a thorough act so that the foundation of a notary public can perform the task properly.

Notary who does not read the deed before the roadblock, does not read the deed before the witnesses, and does not do the signing of the deed before the notary by the witnesses and the complainers, and does not include the provisions of article 16 paragraph (7) Law Notary Public at the end of the deed, it is not a violation, but the deed only has the power of proof to be under the deed of hands (article 16 paragraph (8) of the notary law.

The interview, the role of a notary in providing legal counseling is done in order to improve the devotion to the community while providing explanations to the parties that in making the authentic deed a notary person must In accordance with the legal corridor so that the deed will not cause problems. The advice given by notary should be based on the belief in the areas of science that it is mastered. Legal expertise in the field must comply with the prevailing laws and regulations. Legal granting by a notary may affect the client in determining the option to determine its legal action. In reality many notaries that do not execute its function to do legal counseling to its clients so as to influence the deed he made that affects the legal problems (Rizal, 2019).

The essence of a notary duty as a general officer is to organize in writing and authentically the legal relationship between the parties that benefit the notary service which is essentially the same as the assignment of judges who provide justice among the parties Dispute. The task of notary in the office is as an independent party and not as a party to make the deed. That is why in carrying out his duties and office as a notary public office must treat his clients alike in the process of making a deed without any of the parties being denied.

Furthermore, it is further explained that in article 1 of the notary general regulation, S. 1860 No. 3 Notary Duty is not just making a deed, but also storing it and issuing Grosse, making copies and summaries. The notary is only in the case of what is happening and what is seen, therein and records it in the deed.

In relation to the authority that must be owned by the notary is only allowed to run his position in the designated area and stipulated in the UUJN and within the jurisdiction of the notary authorized. If the provision is not heeded, the deed made by the notary shall be invalid. The authority owned by the notary includes four (4) things as follows:

1. The notary shall be authorized as long as the deed is made;
2. The notary shall be competent throughout the people, for the benefit of whom the deed was made;
3. Notary shall be authorized throughout the venue, where the deed was made;
4. notary shall be competent in all about the time of making the deed.

Legal acts contained in a notarial deed are not legal acts of the notary, but the act of law which contains the deeds, agreements and determination of the parties requesting or requiring their legal actions to be poured into a deed Authentic. So the parties in that deed are tied to the contents of an authentic deed. Notarial Notary is

not making the deed or the person who has the work of making a deed, but the notary in the task of his office is based on or equipped with a variety of science law and other sciences that must be mastered in an integrated Notary and deed made before or by notary has a position as a means of evidence.

#### IV. CONCLUSIONS

The limitation of the legal norm in fair action can be explained that, the notary must be careful and thorough in making notarial deed, must not provide any explanation that is not allowed by law in the making of the deed, notary shall not compel His or her will to act something, does not provide information that will result in conflict to the parties, should not check the evidence of the letter relating to the wishes of the parties outside his will. The creation of a deed, a notary must understand and apply the required principles in the regulations that apply both the law and the notary Code of Ethics in order to the implementation of a legal harmony so that can be the legal norm ACT carefully.

The application of legal norms to act closely in the making of notarial deed in the areas of Banda Aceh and Pidie can be viewed on an enforceability directly to the reality in the community, this implementation can be felt directly by the community in real. Acting in a Sakama is an act of working together and accompanying the word in the making of this authentic deed. The application of Huhkum the norm Act is still a meaning that many of its use in terms of people capable, about and mutual agreement in acting notarial deed.

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