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RESEARCH ARTICLE

AUTHENTICITY OF NOTARY'S DEEDS THAT INCLUDES SELF-PROTECTION CLAUSE PRINCIPLE

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ABSTRACT

In an agreement, self-protection clauses are often found included by the Notary. This research aims to determine the authenticity of a deed if the deed includes a self-protection clause. The writing method used in this writing is a qualitative descriptive method. In this research, even though the inclusion of a self-protection clause has no legal basis in the Law on Notary Positions, otherwise known as UUJN. However, this does not necessarily make a deed inauthentic. When making a deed, a Notary is directed to make a deed by the provisions in the UUJN.

Key words:

Authenticity of Deeds, Notarial Deeds,
Self Protection.

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INTRODUCTION

Indonesia utilized *Civil Law*, acknowledged the principles of contract, as regulated within Article 1338 verse (1) *Burgelijk Wetboek*, which for the next parts classified as BW, keeping the principle of *pacta sunt servanda* which is the agreed agreement applies as law for the parties concerned. An agreement can have 2 forms, namely written and oral agreements. If we look at the forms, both are legally valid, but if we look at the strength of the evidence, agreements made orally will be difficult to prove, therefore in order to guarantee the strength of the evidence of the agreements made, people prefer to make agreements verbally. In writing and to ensure legal certainty, which are made before a Notary.¹ agreement law adhere towards *beginsel der contractsvrijheid*, therefore seemingly shows the allowance to make any type of agreements and that shall be bound according to what is known as "civil disciplinary and morals".² However, despite an agreement already fulfilling civil disciplinary and morals of an agreement, this shall also include that is there shall be agreed words within parties, proficiency within acts, agreed certain things and good faiths, according to Article 1320 BW. Therefore, an agreement that fulfil the requirements are bound by laws and legally acclaimed towards the parties who established it.

An agreement made before and by a Notary gives rise to a notarial deed. As for the deeds, there are two types: *partij* and *relaas*. *Partij* deeds is one of the authentic deeds that are made by a Notary as general official that is given authority by governments to serve civilians. *Partij* deeds can be defined as deeds that are made in front of notary, a deed that is made according to details or legal acts of the parties before a Notary, and details or actions regarding it for the Notary to manage and make the deeds, for example credit agreement (Hably, Rio Utomo, and Gunawan Djajaputra, 2019). Unlike *partij* deeds, *relaas* deeds is a deed that is made by the Notary themselves, acting as an official that includes the details authentically regarding everything that is seen, experienced or otherwise witnessed by Notary, such as RUPS (Pramono Dedy, 2015). The regulations regarding the definition of *partij* deeds and *relaas* deeds have actually been stated explicitly in Article 15 Paragraph (1) of UUJN, describing "Notaries have the authority to make authentic deeds regarding all deeds, agreements and stipulations required by statutory regulations and/or desired by those interested to be stated in an authentic deed, guarantee certainty of the date of making the deed, keep the deed, provide grosse, copy and quote of the deed, all of this as long as the making of the deed is not also assigned or excluded by an official other person or other person as determined by law". Article 38 paragraph (3) letter c of UUJN regulates that the contents of the deed constitute the wishes and wishes of the interested parties who come before the Notary. From the explanation of this article, it can be interpreted that the wishes of the parties are stated in the contents of the deed, not the will of the Notary himself. So Article 38 paragraph (3) letter c is the basis for making *partij* deeds and *relaas* deeds.

¹Gumanti, Retna. "Syarat Sahnya Perjanjian (Ditinjau dari KUH Perdata)." *Jurnal Pelangi Ilmu* 5, no. 01 (2012).

²Asma Wardhani, Dewi. "Analisis Asas Konsensualisme Terkait Dengan Kekuatan Pembuktian Perjanjian Jual-Beli Di Bawah Tangan." *Ganec Swara* 9, no. 1 (2015): 167-176.

However, in practice, to protect themselves, Notaries include a self-protection clause which more or less reads "If there is a dispute between the parties, the notary is not involved in it." This self-protection clause is a concept thought by notaries so that they are free from demands and/or lawsuits. parties who wish to drag themselves to responsibility regarding the contents of the authentic deed. This is because in practice, Notaries often receive summons because the parties are in dispute because it is considered that the notary ratifies the agreement because he knows the contents of the parties' agreement, even though the notary's authority in making a partij deed is limited to the Notary stating the interests of the parties and nothing more than that. In this case, ordinary people who do not understand the UUJN often believe that notaries who include provisions regarding self-protection clauses are seen as indirectly making the notary a party because the notary's interests are accommodated in the deed. Moreover, the application of the self-protection clause has no legal basis. In this case, if we look carefully at the notary office regulations, there is not a single article that formulates a self-protection clause. So questions arise from the public regarding the authenticity of the Notary's deed if it contains a self-protection clause inserted by the Notary. To find out the implications of implementing the notary's self-protection clause, a more comprehensive study is needed because if the implications of implementing the notary's self-protection clause are not known, it is feared that more and more practices will occur in society. This research is expected in having contribution towards knowledge in the field of civil law and legal knowledge in the field of Notary. This research has almost the same discussion with several earlier studies, such as: Research conducted by Muhammad Ruby Khadafi with the title "Tanggung Jawab Notaris Terhadap Penerapan Klausula Eksonerasi Dalam Perjanjian Kredit Pemilikan Rumah." In 2020, Muhammad Ruby Khadafi conducted a study with Formulation of the problem: What is the Notary's responsibility regarding the existence of an exoneration clause (self-protection clause) in the case of Home Ownership Credit? And the second problem formulation is how to use the exoneration clause to understand the restrictions on the principle of freedom of contract contained in contract law? The focus of this research is to look at the role and responsibilities of a Notary in carrying out his authority as a legal advisor in order to maintain justice between the contracting parties. The second research is research conducted by Siti Rohmatul Izzah entitled "Akibat Hukum Adanya Klausul Proteksi Diri Pada Akta Notaris Sebagai Bentuk Pengamanan Diri". This research was conducted in 2022 which has a problem formulation, namely what are the legal consequences and validity of the Notarial Deed contained in it? Has a self-protection clause been included? This research focuses on examining whether the Notarial deed still has perfect evidentiary power or not. From the 2 studies above, this research is different from the first research but has some similarities with the second research, namely that they both examine the validity of Notarial deeds which include self-protection clauses. However, what differentiates this research from the second research is that this research also discusses the urgency of implementing the self-protection clause. This research, otherwise, have the formulation for the state of the arts as below:

- How is the legal implications of a Notary's deed which contains a self-protection clause?
- How is the urgency of implementing self-protection clauses in notarial deeds?

Target of this research mainly aiming to discover and understand the legal implications of Notarial deeds containing self-protection clauses because UUJN did not regulate the use of self-protection clauses by Notaries. The specific aim of this writing is to understand the urgency of including a self-protection clause included by the Notary in the deed of agreement between the parties.

MATERIALS AND METHOD

The research method used in this study is a qualitative descriptive research method with the statue approach method, namely an approach method that uses legislation and a conceptual approach method, namely a method that uses books and teaching materials as

study sources (I Made Pasek Diantha, 2016). This research aims to solve the legal problem being discussed, namely regarding the validity and legal force of Notarial deeds which include a self-protection clause by the Notary. The type of research used is normative juridical which is research based on positive legal norms which are related to this research which is aimed at obtaining absolute truth (Peter Mahmud Marzuki, 2008). The legislative approach is used to examine all legal regulations or norms that discuss legal problems in this research, while the conceptual approach is used to examine legal theory, legal doctrine and existing jurisprudence. The method for collecting legal materials is carried out by analyzing and identifying legal materials and then classifying the legal materials. Then use information from the internet to support legal materials that are related to the legal issues being studied in this research. The legal material analysis technique uses a deductive method, namely the explanation starts from a general statement, then is explained in a more specific discussion, then concluded. The analysis used uses Civil Code guidelines and statutory regulations which are the basis for the discussion in this research.

RESULTS

Authenticity of Notarial Deeds Containing Self-Protection Clauses: According to J.Satrio, the self-protection clause is a clause that takes the form of exempting a notary from certain responsibilities which, from a legal perspective, should be the responsibility of the notary. Meanwhile, according to I. P. M Ranuhandoko B.A. explains that the self-protection clause is the granting of freedom to a person or in this case a Notary in granting freedom to a person to run a business free from all demands and responsibilities (Subari, Misbah Imam, and Justicia Firdaus Kurniawan, 2023). Therefore, should there be a conclusion from responsibility, but in fact this responsibility must be carried out by the Notary concerned. In practice, the self-protection clause is questionable whether the inclusion of a self-protection clause by the Notary will affect the authenticity of the Notarial deed. To be able to find out, it must be carefully understood that a Notary's deed is an authentic deed because it has perfect evidentiary power without having to rely on other evidence such as (a) Written evidence/Evidence by letter (b) Witness evidence (c) Allegation (d) Confession (e) Oath. This is because a Notary, in carrying out the responsibilities of his position in terms of making authentic deeds, has attributive authority, namely the authority inherent in that position and this authority has been granted by law, which in this case is the UUJN. (Mowoka, Valentine Phebe, 2014)

In order for a notarial deed to be declared an authentic deed, the notarial deed must be declared valid because it meets the requirements for an authentic deed. The conditions for this condition are that the Notarial Deed must be made by or before a Notary in the form regulated in the UUJN. However, the regulations regarding the legal requirements for a deed to become an authentic deed are explained in Article 1868 BW which is the formal source and is the basis for the legality of the notarial deed. In Article 1868 it is explained that a deed is declared valid as an authentic deed if, as follows:

- The deed "must be made by (door) or in the presence (ten overstaan) of a Public Official;"
- The deed must be "drawn up in the form prescribed by law;"
- The public official by or before whom the deed is made, "must have the authority to make the deed (Muchammad Ali Marzuki, 2018)

If a deed meets the requirements for the validity of a deed, then the deed directly has inherent evidentiary value because the deed is an authentic deed. The value of this evidence is regulated in Article 1870 BW in conjunction with Article 285 RGB. The characteristics of an authentic deed are perfect (volledigbewijskracht) and binding (bindendbewijskracht), so that an authentic deed does not require assistance or support from other evidence or it can be said that the

deed can stand alone because it has perfect evidentiary power (Christin Sasauw, 2015). This means that if evidence of an Authentic Deed is then submitted as evidence, the authentic deed must meet the formal and material requirements, at the same time the opposing evidence presented by the defendant does not necessarily reduce the existence of the Notarial Deed. Because the notarial deed has perfect evidentiary power, the truth of the contents and statements contained in the deed are completely binding on the parties present, perfectly binding on the judge and the judge should also make the notarial deed the basis of facts in making decisions. towards resolving a case. To achieve this, a deed must first fulfill formal and material requirements. An authentic deed does have perfect evidentiary power, it's just that the deed must fulfill several aspects, namely:

Procedure: A notarial deed must be carried out by going through the stages regulated in the UUJN articles. The following are the stages that must be carried out by a Notary in making a deed. The first is that the Notary must introduce the presenters. The Notary in carrying out this stage must be based on the identity of the presenters which is shown to the notary. In order to guarantee the legal certainty of the deed he is making, the notary must ask the wishes of the parties, listen carefully and then pay attention to what legal actions will be carried out by the parties which will later be stated in the authentic notarial deed. At this stage, the Notary is required to carry out a question and answer process to explore the formal truth and continue to examine documentary evidence related to the wishes of the parties. After the Notary understands what legal act will be agreed, the Notary is obliged to provide legal counseling first and then provide the framework of the deed to the parties. The notary must ensure that all administrative requirements for making the deed are met. If the legal actions of the parties have been expressed in the form of a deed, the Notary is obliged to provide a copy and filing of the minutes of the deed. In carrying out their duties, Notaries must carry out other obligations as regulated in the UUJN. If in making the deed, the Notary does not follow the procedures regulated in the UUJN, then the deed is a private deed and not an authentic deed (Adjie Habib, 2021).

Authority: In carrying out his office, a notary must comply with the authority stipulated in Article 15 UUJN-P. If the Notary does not carry out the provisions stipulated in this article, then the action can be stated that the Notary is acting outside the authority of his position and the Notary must be responsible if one of the parties or parties feels disadvantaged because the Notary is acting outside his authority, then the deed made by the Notary has no binding force.

Substance: UUJN-P has clearly explained that in Article 38 paragraph (3) letter c of the UUJN-P that the contents of the deed constitute the wishes and desires of the parties themselves, in making which the Notary must also pay attention to the provisions of Article 1337 BW. In this case, the Notary can only act within the scope of civil law. The notary does not have the authority to grant the wishes of the applicant if the substance is materially outside civil law (Siti Rohmatul Izzah, 2022). From the explanation above, it can be seen carefully that the legal requirements for a Notary's deed to become an authentic deed are if it meets the requirements and is made through the procedure as above. Including a self-protection clause does not necessarily make the Notarial deed degrade in value and make the Notarial deed inauthentic. A Notary's deed can be said to be inauthentic if it does not fulfill the elements of 1868 of the Criminal Code, acts outside of article 15 UUJN and does not read the deed to the audience as regulated by article 16 paragraph (1) letter m UUJN and several related articles. For example, not implementing Article 40 paragraph (1) which stipulates that "Every deed read by a notary is attended by at least 2 (two) witnesses, unless statutory regulations stipulate otherwise." As well as not implementing Article 44 which regulates as follows: "Immediately after the deed is read, the deed is signed by each presenter, witness and notary, unless there is a presenter who cannot sign and state the reason."

Urgency for Self-Protection Clause Within Notary's Deeds: In fact, the Notary does not need to be afraid if in carrying out his duties the Notary has to be dragged into a dispute between the parties.

This is because if the Notary has carried out his responsibilities according to the authority of his position and has complied with the procedures for making a deed, then the Notary's deed has perfect evidentiary power. Notaries are required to be responsible for the deeds they make if in the future there are intentional errors or violations by the notary concerned. However, if the error or violation is not the Notary's, but the violation is committed by the presenter as long as the Notary has exercised his authority in accordance with the UUJN, then the responsibility is not on the Notary, but on the presenter. This is because in making partij deeds and deeds of the parties, the Notary only records and consolidates the contents of the agreement between the parties and then includes them in the contents of the deed. So if the deed contains false information from a party, it is not the Notary's responsibility, because in this position the Notary is passive. (Kunni Afifah, 2017). Philipus M. Hadjon stated that the law can provide preventive protection as a form of precaution which aims to prevent a conflict occurring in the future. Law can also provide repressive protection, namely to resolve conflicts or disputes (Satyayudha Deva Aresta, 2023). Observing closer, the inclusion of a self-protection clause is included in the legal protection carried out by the Notary in a preventive manner. In the explanation of the part of the deed above, in general the Notary's self-protection clause can be found in the partij of the deed or often called the deed of the parties to the deed. The notary expresses the interests of the parties in the notarial deed, and in practice the self-protection clause is inserted by the notary before the contents of the deed. This self-protection clause can be found in the body of the deed right after the main points of the agreement between the parties have been explained. Examples of phrases from the self-protection clause are as follows:

- The parties have stated that if a dispute occurs inside or outside the court, criminally or civilly, the parties agree not to involve the Notary in any form.
- Everything said or stated by the presenters written in this deed is true, if in the future it becomes untrue then the responsibility lies with the presenters and does not involve the Notary.
- All documents and letters shown by the presenters to the Notary and their contents included in this deed are correct letters or documents, if in the future they are proven to be untrue then it becomes the full responsibility of the presenters and frees the Notary from legal action whether criminal or civil

Some experts are of the opinion that the inclusion of the self-protection clause is an implementation of the urgency of self-protection for Notaries. The urgency referred to is as a form of precautionary action carried out by the Notary, as a form of legal protection that can be carried out by the Notary, as information to other parties so that it is not too easy to stigmatize or judge the Notary from other parties that in all legal actions that have been stated in the deed is the full responsibility of the Notary. And finally, the self-protection clause is considered to be a form of way of educating the facers, and if in the future a lie is discovered then the facers are responsible. However, some experts are of the opposite opinion, that the Notary does not need to include a self-protection clause in a deed, because the inclusion of a self-protection clause means that the Notary is also expressing his interests in the deed which makes him indirectly a party, whereas in article 38 paragraph (3) UUJN has regulated that a Notary is a public official who has the authority to make authentic deeds by expressing the interests of the parties in the deed he makes. This article implicitly emphasizes that the Notary must not be a party in making the deed. Juridically, the inclusion of this self-protection clause creates ambiguity among academics and practitioners, because on a legal basis, UUJN has not regulated in writing regarding the inclusion of this self-protection clause. However, if studied further, the inclusion of self-protection clauses in Notarial deeds should be guided by the provisions of Article 15 paragraph (1), Article 38 paragraph (3) letter c, and Article 53 UUJN. The essence of Article 15 paragraph (1) UUJN emphasizes that the Notary's authority is to make a deed based on the wishes of the parties, Article 38 paragraph (3)

letter c confirms that the body of the deed contains the contents of the deed which contains the wishes of the parties, as well as Article 53 UUJN which reads:

“A Notarial Deed may not contain stipulations or provisions that grant any rights and/or benefits to:

- Notary, wife or husband of Notary
- Witness, wife or husband of witness; or
- "People who have a familial relationship with a Notary or witness, whether blood relationship in a straight line upwards or downwards without limitation of degree or marriage relationship up to the third degree."

A Notary in exercising his authority must be guided by the substance of Article 15 paragraph (1) and Article 38 paragraph (3) letter c UUJN, in this article it is explicitly regulated that the Notary has the authority to consolidate the wishes or interests of the parties which are then stated in the contents of the deed. , so that other legal actions that are not regulated in this article cannot be carried out by a Notary because they do not have a legal basis. When examined further, the application of the self-protection clause is actually ineffective and does not have any urgency. This is because if there is a clause contained in the deed, in fact the clause does not necessarily provide self-protection for the Notary so that the Notary can be immune from the law or free from all demands and accusations. If analyzed more deeply, this clause is included only to provide information to the parties that if the statement or document submitted is a fake document, the responsibility for proving it lies with the parties and not the Notary. Likewise, the inclusion of the self-protection clause does not make the Notary free from demands and accusations if in the process of making the deed the Notary acts beyond his authority, such as falsifying documents or statements or committing other violations as regulated in the UUJN (Claudia Marubuy, 2023). The ineffectiveness of the Notary's inclusion of a self-protection clause can also be seen if in the future the parties to the dispute are still summoned by the authorities to be asked for information with the status of a witness. This is contrary to the purpose of including the self-protection clause, namely to protect the Notary from being dragged into by parties in dispute. Notaries are also not allowed to refuse to attend or are absent if the police summon the Notary as a witness to ask for information because if the Notary is absent and hides behind the reason that the self-protection clause has been included, then the Notary is consciously obstructing the ongoing legal process. So, if you review it based on article 15 paragraph (1) and article 38 paragraph (3), the inclusion of a self-protection clause should not be included in the body of the deed for any reason and because it does not have a clear urgency. Even if the aim is to protect oneself, it is better for the Notary to still influence the UUJN in making a deed because that way the Notary does not act outside his authority and the deed that has been made has perfect evidentiary power. Notarial Deed made through the use of cyber notary at the time of health emergency lack the essence for legality. This is mainly due to lack of legal instruments in cyber notary in the implementation of notary positions, except in the implementation of the General Meeting of Shareholders of Limited Liability Companies and in the administration of registration and ratification of legal entity status. Therefore, it is highly recommended for the reconstruction of law (RezkyAulia Yusuf, 2021)

CONCLUSION

In the application of their authority, a Notary should be guided by the UUJN by theory, although in practice there are things that test the integrity of a Notary, such as the inclusion of a Notary's self-protection clause.

The inclusion of this clause in a Notarial deed does not necessarily reduce the Notarial deed to a private deed. As long as the Notarial deed is made based on Article 1868 of the KUHP, the Notarial Deed remains an authentic deed and has perfect evidentiary power without having to be proven by other evidence. Indeed, the application of the self-protection clause aims to protect Notaries so that they are free from disputes between the parties both criminally and civilly, but even though it aims to provide protection, the inclusion of this clause is not legally regulated in the UUJN and does not have the urgency to be included. So if the Notary does not have the urgency to include it, it would be better not to include this clause.

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