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## **Validity of notary deed based on incorrect documentation data**

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**Abstract.** This type of research is normative legal research. Notary deed made based on incorrect document data, doesn't cause the deed to be degraded in its validity. This means that the deed is still considered valid. However, the validity depends on the authenticity of the deed in question, namely whether the deed was made in accordance with the law, in this case the 2014 Notary Law carried out in accordance with the correct procedure, and there are no elements of substance defects in its manufacture for other purposes. Contradiction of the validity of the deed which was made based on incorrect document data, of course, is not necessarily justified.

**Keywords.** notary, data

### **Introduction**

Notary deeds are very much needed by the community in activities in the civil field, especially in today's business world. Philosophically, the community's need for a Notary Deed is based on the reason that a Notary Deed has legal force as evidence of a legal act, which is carried out by a legal subject. It is the need for written evidence that requires the importance of a notarial institution" (Notodisoerjo 1993), whose authority is to make deeds. The Notary Deed is authentic or original, and is made by a Notary as an authorized public official, according to the procedures specified in the law, in this case is Law Number 30 of 2004 concerning Notary Positions (Notary Law 2004) jo. Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of a Notary (2014 Notary Law).

The notary only checks the wishes of the parties without influencing or imposing his will on the parties. The presence of a Notary actually aims to provide legal protection in the private sector to citizens who have delegated some of their authority to a Notary. (Anshori 2009) However, the Notary has the obligation to provide an explanation to the parties related to the contents of the Notary Deed. If the appellant agrees or accepts the Notary's suggestion, then the request of the appellant is then stated in a deed, hereinafter referred to as the Notary Deed. The contents of the deed are the embodiment of the wishes of the presenter himself and not the wishes or wishes of the Notary.

The notary's authority, which only controls the wishes of the parties as the appearers, in practice is often used to make the deed desired by the appearers with bad intentions. Bad faith is done by providing information or document data that is not true, false or falsified, or does not match the actual facts. For example, regarding the identity of the appearer, such as marital

status, home address, age of the appearer, and other documents related to the wishes of the appearer. The 2014 Notary Law doesn't regulate juridical issues related to incorrect document data given to a Notary as the basis for making a deed. The 2014 Notary Law also doesn't regulate the legal consequences related to the authority of a Notary and also the validity of the Notary Deed he made.

Sociologically, the unregulated legal consequences in the 2014 Notary Law often cause problems in society, especially interested third parties. These problems generally question the legal validity of the Notary Deed made based on incorrect document data. In fact, it is not uncommon when the Deed is associated with a criminal act of forgery, which is carried out by the appearer or the appearers, the Notary is often involved as a party participating in the alleged falsification of document data from the appearers. Even Notaries are often involved in the judicial process by law enforcers, not only being presented in the judicial process, but also being accused and suspected of participating in the crime of falsifying the Notary Deed he made.

### **Research methods**

This type of research is normative legal research.(Michael et al. 2021)

### **Analysis of Research Results**

#### **Notary Deed as Written Evidence with Perfect Legal Force**

A legally made Notary Deed has an authentic nature which can be used as the strongest legal evidence among other written evidence. Abdul Kohar said, that: "A deed is a writing that is intentionally made to be used as evidence. If the deed is made before a notary, then the deed is said to be a notarial deed, or an authentic deed, or a notarial deed. A deed is said to be authentic if it's made before an authorized official. The purpose is so that the deed can be used as strong evidence if one day there is a dispute between the parties or there is a lawsuit from another party.(Ningsih, A.Rani, and Adwani 2019)

The power of a Notary deed as legal evidence is confirmed in the provisions of Article 1870 of the Civil Code and Article 165 of the Herziene Indonesische Reglement (Rbg 285), that Authentic Deeds (including Notary Deeds) have absolute and binding evidentiary power. Notary deed is perfect evidence, so no other evidence is needed as long as the truth is not proven otherwise by interested parties. The strength of the Notary Deed as a strong evidence is also stated in Article 1866 of the Civil Code that the Notary Deed is a perfect written evidence or letter of proof, so that this document is evidence of a trial that has a very important position.

Notary deed is written evidence made by a Notary as a state official based on the law. According to Sudikno Mertokusumo, written evidence is anything that contains punctuation marks intended to pour out one's heart or to convey one's thoughts and is used as evidence.(Mertokusumo 2005) Meanwhile, according to Teguh Samodra, a letter is a statement of the thoughts or contents of the heart which is manifested by reading signs and contained in an object. (Khasanah 2021) In line with this opinion, Riduan Syahrani, stated that written evidence is anything that contains readable signs that can be understood and contain certain thoughts.(Syahrani 2000)

#### **Validity of Notary Deed Made Based on Incorrect Document Data**

The authenticity of the Notary Deed, as legal evidence used to protect the interests of the appearers, must normatively be made in accordance with the provisions of the legislation. However, in practice, the making of a Notary Deed is not always based on correct facts and information, in the sense that it's not in accordance with the actual data and facts. In practice, it's found that the making of a deed is based on incorrect document data, or false or falsified

data, so that even though the deed is made before a notary, it's considered invalid. Because the data and or information based on the document data is not valid, or is not original which is made as if it were the original.

Debates related to the validity of Notary Deeds made based on incorrect data documents are often equated with deeds made based on fake or falsified data documents raises different debates, some argue that the Notary Deed is considered invalid. While the other opinion states that the deed is still valid, with the arguen stated. While others said that a distinction must be made between a deed based on incorrect data and data based on fake document data or falsified document data.

If the document data is falsified by a Notary, as long as it can be proven that forgery has occurred, then the Notary Deed can be relegated to an inauthentic deed. Meanwhile, a Notary Deed made based on incorrect document data, of course, cannot be equated with a deed made on the basis of falsified or falsified document data. This difference, of course, must be appreciated, because the arguments and reasons used are different.

The making of a Notary deed based on incorrect document data is generally due to the Notary's ignorance of incorrect, fake or falsified document data. Because the Notary in making the deed must have good prejudice, must not be suspicious, and must be sure that the information on the document data or any information submitted by the appearer is true. Meanwhile, the appearer who wants to make a deed, intentionally doesn't have good faith, and is submitted to a Notary as the basis for making a deed in accordance with his wishes.

#### **Notary Not Verifier of Document Data Authenticity**

The principle of prudence in carrying out the profession, including the Notary profession is a demand.(Paramaningrat Manuaba, Parsa, and Ketut Ariawan 2018) In making a notary deed, of course, before making a deed, one must know the appearers, especially the identity and data of the documents submitted to the notary. The notary must first examine carefully, and examine the documents, both the subject and the content of the documents to be included in the deed made by the notary. However, the accuracy and correctness of the document data is not at all the responsibility of the Notary. Because the Notary is not a data verifier of the appearing documents.(Rachmayani and Suwandono 2017)

Verification is the process of determining the truth of a statement by using an empirical method (based on experience) and scientific testing for a statement or proposition to ensure a truth owned by the plaintiff. Notaries don't have the authority and it is not the authority of the Notary to check whether or not the data of the documents appear in the court.(Hadiana 2018)

One thing that must be known is that the authority of the Notary is only to make sure what is desired by the appearers, the issue of the validity of the document data is not the responsibility of the Notary. The editor of the deed which reads: "The notary has appeared before me....etc.", the sentence indicates that the Notary is passive, and the presenter himself has the initiative to come before and submit the document data submitted to the Notary, then the deed is made according to his wishes.(Ardiyanto, Raissa, and Michael 2020)

Argumentatively, the approval of the Notary Honorary Council can indirectly be interpreted as an effort to protect the Notary as a state official from the possibility of arbitrary actions by law enforcement officials to be presented in the trial process. Approval is actually a natural thing considering the Notary has an obligation not to divulge the client's secret. If a Notary comes to attend the trial, and if he is a witness directly or indirectly submits information at the trial, it can be considered as leaking his client's secret.(Permatasari and Suyatna 2021)

The other side that must be considered from the inclusion of Article 66 paragraph (1) of the 2014 Notary Law doesn't always have to be interpreted as a shield for Notaries, because it is possible that the Article can actually be used as a means for members of the Notary Honorary

Council to make the Notary present in the trial process. This can happen when the Notary Honorary Council has personal sentiments with the Notary who is involved in a criminal case related to the deed he made.

Article 66 paragraph (1) of the 2014 Notary Law actually shows the government's intention to protect Notaries, if there are allegations of involvement in criminal acts. This is of course in accordance with the theory of preventive legal protection, namely by including it in laws and regulations, as an effort to protect Notaries, in this case to prevent arbitrary actions from law enforcement officials. Considering that a Notary is a public official, not unlike a State Civil Apparatus, because he is appointed by the government, given the task of public office, there is a pension, and also leave. It's just that Notaries are not paid by the state, but are given the right to seek their own honorarium with the provision of seal paper with the symbol of the eagle.

### **Conclusion**

Notary deed made based on incorrect document data, doesn't cause the deed to be degraded in its validity. This means that the deed is still considered valid. However, the validity depends on the authenticity of the deed in question, namely whether the deed was made in accordance with the law, in this case the 2014 Notary Law carried out in accordance with the correct procedure, and there are no elements of substance defects in its manufacture for other purposes. Contradiction of the validity of the deed which was made based on incorrect document data, of course, is not necessarily justified.

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