



Liability of Parties to Attach the Fingerprint on the Minuta Deed of Notary

Josi Hestika Sari; Ismansyah; Azmi Fendri

Faculty of Law, Andalas University, Padang, Indonesia

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Abstract

This study examine and to analyze article 16 paragraph (1) letter C UUJN, namely of obligation to attact fingerprints to the Minuta Notary deed. As for the problem is the reason the parties mush attach their fingerprints to the Notary deed minutes. This research is a kind of normatif juridical research. The research approach used in descriptive sociological legal research. Type of data used are primary, secondary and tertieri data. Sources of data in this study are primary, secondary, and tertiary data sources. Data completion technique used in literature study and study. Based on the results of the study, it is known that the sticking of the fingerprints does not effect the authenticity of an authentic deed. There is an obligation to attact a special sheet of fingerprints that aim to protect the Notary public from the act of denial of signature that is done by the eater. When at one point the signatory was denied by the taper and was sued in court. Although the deed without a fingerprints is not accepted, the Notarial deed remains an authentuc deed and is not degraded into a ded under the hand. Based on the deskription, the Notary must carry out his obligation to attacct the fingerprint of the addressee, because it is a form of legal protection for the Notary against the denial of signature by the tappers.

Keywords: Fingerprint; Minute deed; Notary Public

Background of Research

According to Article 1 number 1 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Position (hereinafter referred to as Notary Position Law) it is stated that:

"Notary is a public official authorized to make an Authentic Deed and has other authorities as referred to in this Act or based on other laws ".¹

¹ Law No. 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Position

In Law Notary has been regulated in detail about the public office held by a Notary, Resulting an Authentic deed "made by" or "made before a" Notary able to guarantee the rule of law, public order and the protection of the law so that the presence of a Notary expected to answer community needs for neutral legal assistance and protecting the legal interests of the community.

According to Komar Andasaswita

"so that each Notary has sufficient broad and in-depth knowledge and good skills in designing, compiling, making various authentic deeds, the composition of language, technical juridical neat, good and right because in addition to these skills also requires honesty, sincerity and has the nature or views that fit the actual situation."²

The notary whose existence is the executor of the evidentiary law is contained in Article 1866 of the Civil Code, stating that the evidentiary instrument includes written evidence, witness evidence, suspicion, confession and oath. Proof by writing can be done by authentic writing and underhanded writing based on Article 1867 of the Civil Code.

The existence of a Notary among public officials (*openbaar ambtenaar*) is to accommodate all matters relating to civil law. Position of Notary, that "In carrying out his position, the Notary is obliged to attach letters and documents and fingerprints to the Minutes of Deed".³ According to Article 1 number 8 of the Law on Notary Position, definition of "Minuta Deed" is the original deed which includes the signatures of the parties, witnesses and Notaries, which are kept as part of the Notary Protocol ". From this understanding contained the will of the Law of Notary Position that in the Minutes of Deed that is listed is the signature of the parties not the fingerprints of the parties that have been considered as a substitute for signatures.⁴

The provisions regarding the obligation of sticking fingerprinting of the parties / parties / parties to the Minutes of the deed were not explicitly regulated in PJN Staatsblad Number 3 of 1860 which states that:

"Immediately after that, the deed must be signed by all parties, unless it is determined that they cannot sign or are unable to do so, in this case their statement and the reasons for the obstacle must be explicitly stated in the deed".

then in Article 44 paragraph (1) and (2) UUJN Number 30 of 2004 states that:

- 1) Immediately after the deed is read, the deed is signed by every eater, witness and notary, unless there is a eater who cannot sign the name stating the reason.
- 2) The reasons referred to in paragraph (1) are stated expressly in the deed.

Then the fingerprints of the all parties in PJN staatsblad Number 3 of 1860 and UUJN Number 30 of 2004 are as a substitute for signatures if the parties are unable to sign their names, it can be equated with a signature the parties and shows that the person is considered to have known, understood, understood and agreed on the contents of the deed and bound themselves to the deed. In PJN staatsblad

² Komar Andasasmita, "Notary with History, Role, Duty Obligations, Secret Position" Sumur, Bandung, Bandung, 1981, Page.14

³ Indonesian Notary Association Central Board, Indonesian Notary Identity, Past, Present and Future, gramedia, Jakarta, 2008, Page 8

⁴ Law No. 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Position

Number 3 Know 1860, UUJN Number 30 Year 2004 and the Civil Code namely that the fingerprint of the parties is not an obligation but only as a substitute for the signatures of the parties signatures if unable to sign when signing on a deed.

After the issuance of Law Number 2 of 2014, the fingerprints of the become an obligation which explains that the parties have actually faced the Notary and signed the deed. But in reality, sticking fingerprints of the parties on the Minutes of the deed raises various polemics, because the mechanism for implementing fingerprinting of the parties is not yet available while in the explanation of Article 16 paragraph (1) letter c of Law The Notary Position Act is only written "quite clearly".

At the National Seminar on "Building Notary Law in Indonesia" held in Yogyakarta, the Indonesian Notary Association (PP.INI) Executive Board explained about the notary's obligation to attach a fingerprint on the Minutes of Deed. Regarding the above problem, apparently there has not been an agreement among the Notaries, even though the Law has explicitly set it. According to the Chairman of PP INI, Adrian Djuaini, believes that the fingerprints must be attached to the Minutes of Notary Deed for all parties, both those who can sign, or those who cannot.

The required Notary to attach the fingerprints of the parties to the Minutes of Deed is to provide legal certainty to the parties in the Notary Deed, where the existence of fingerprints on the attachment of the Minutes of Deed is intended as a sign of acknowledgment that the tappers actually faced the Notary at the time of making an Authentic Deed so that It is expected that there is no denial from each party in the Notarial Deed regarding the situation of dealing with a Notary Public in the Authentic Deed⁵

For the Notary himself with the existence of the fingerprinting of the aforementioned attorney can provide legal force if a dispute arises in the future regarding the circumstances of dealing in a Notary Deed, where the fingerprint was important as evidence which states that the Notary has carried out his / her function in accordance with the provisions of the legislation applicable. Therefore, I am interested to do research with the title "**Liability Of Parties To Attach The Fingerprint On The Minuta Of Due To Notary**".

Research Results and Discussion

I. Notary Obligation Based on Article 16 paragraph (1) letter c of the UUJN

After the issuance of UUJN Number 2 of 2014 concerning Amendments to UUJN Number 30 of 2004, the provisions stipulated therein have been applicable and binding for the Notary Public and Amendments to the Law cause many interpretations. In the Indonesian Notary Law Rule states that:

"Notary Deed as Authentic Deed has a perfect proof of strength, so that if there are people / parties who judge or declare that the deed is not true, then the person / party who assesses or states it is obliged to prove its assessment or statement according to the rule of law ".⁶

⁵ Pieter Latumenten ,, "Understanding Changes to the Law of Notary Position through the Legal Knowledge Approach (Law Number 2 of 2014 concerning Amendment to Law Noor 30/2004 concerning Notary Position)" Regional Board of Indonesian Notary Association Bandung Regency, Bandung, 2014 , p.35.

⁶ Habib Adjie, "Thematic Interpretation of Indonesian Notary Law" Based on Law Number 2 of 2014 concerning Amendment to Law Number 30 of 2004 concerning Notary Position, PT. Reflika Aditama, Bandung, p.18.

Notary has authority to carry out his duties during that authority attached to him, BUT the authority expires, if the notary in paid leave, retire or quit as a notary. And the limit of the responsibility of Notary for as long as the Notary has authority. The notary who is on leave, retired or cannot be held responsible again, because there is no more authority attached to him.

It is different if the Notary does not carry out his duties and responsibilities as stated in Article 16 paragraph (1) letter c. This Article is an Article of Notary obligation in carrying out his position which is :

"attaching letters and documents and fingerprints to the Minute Deed".

But basically if the Deed is made by a Notary even without attaching documents and fingerprint sheets, it still becomes an Authentic Deed or Notary Deed without sticking the fingerprint sheet will not be degraded to a deed under the hand, only the Notary in this case is not responsible for carrying out his obligations so that the Notary Public these can be penalized.

As affirmed in Article 16 Paragraph (11) of the UUJN, which states:

"Notaries who violate the provisions referred to in paragraphs (1) letter a through letter l may be subject to sanctions".

This means that the addition of fingerprinting sticking is not a matter of liking or disliking but an obligation as a Notary according to what is stated in Article 16 paragraph (1) letter c of the UUJN.

Affixing the fingerprints of the parties in the minutes of the Notary deed important to show the identity of the parties besides the parties signature. Thus, the function of fingerprints embedded in the minutes of Notary Deed referred to in Article 16 paragraph (1) letter c is not a legal action in determining the validity or authenticity of the deed but only serves to guarantee the truth of the identity of the parties.⁷

II. Principle of Legal Responsibility, Legal Certainty and Proof of Obligations of Notaries Attaching the Fingerprints of the parties to the Minutes of Deed.

- Principle of Legal Responsibility

Responsibility is "the condition of being obliged to bear everything, if there is anything, may be prosecuted, blamed, allowed and so on". Likewise, the responsibility of a Notary in carrying out his authority and obligations. In connection with his authority, the Notary is obliged to take responsibility for his actions / work in making the deed because the community entrusts the Notary as someone who is an expert in the field of notarization.

The amount of responsibility in their profession requires Notary Notary to always be careful and cautious in every action. Notary as a public official who carries out part of the authority of the State in the field of civil law, especially to make authentic evidence (notary deed). In making a notarial deed both in

⁷ Endra Falrido, Notary in Solok Regency, Interview, April 10, 2019.

the form of partij and relaas deed, the notary is responsible so that each deed he makes is authentic as referred to in Article 1868 of the Civil Code. A notary public can only be said to be free from legal liability if the authentic deed he has made and / or made before him has fulfilled formal requirements.

- **Principle of Legal Certainty**

According to Peter Makmud Marzuki, the theory of Legal Certainty contains 2 (two) meanings, namely: firstly, there are general rules that make individuals know what actions may or may not be done, and secondly in the form of legal security for individuals from government arbitrariness due to the existence of legal rules general nature that individuals can know what may be charged or done by the State to individuals.⁸ Legal certainty is not only in the form of Articles in the Act but there is also consistency in the Judge's Decision between the decisions of one judge and the decisions of other judges.

- **Principle of Proof of Obligations**

Sticking a fingerprint by a Notary Public in the Minutes of Deed is mandatory. But the basic question is what is the background of the obligation to stick fingerprints in the deed. According to tradition, thumb-sticking is only done for deeds that cannot be signed by the parties, perhaps because of physical conditions or because the parties cannot state their signatures. If the finger scales are indeed to prove that the person actually faces the Notary and approves the contents of the deed, then the question is why should it be written separately, isn't it more authentic on the deed sheet itself and how the power of proof is.

In assessing a notarial deed must be based on 3 (three) evidentiary values, namely:

1) The Power of Outward Proof.

The physical ability of a deed is the ability of the deed itself to prove its validity as an authentic deed (*acta publica probant sese ipsa*). If viewed from the outside (birth) as an Authentic Deed and in accordance with the rules of law that have been determined regarding the terms of the Authentic Deed, then the deed acts as an Authentic Deed until proven otherwise, meaning that until someone proves that the Deed is not an authentic Deed. In this case the burden of proof is that there are those who deny the authenticity of the Notarial Deed. The parameter to determine the Notary Deed as Authentic Deed is the signature of the concerned Notary both in Minutes and Copies and the beginning of the deed (starting from the title) until the end of the deed.

2) Strength of formal Evidence.

Notarial Deed must provide certainty that an event and facts mentioned in the deed are actually carried out by the Notary or explained by the parties facing at the time stated in the deed in accordance with the procedures specified in the making of the deed. Formally to prove the truth and certainty about

⁸ Peter Mahmud Marzuki, Introduction to Legal Studies, Kencana Pranada Media Group, Jakarta, 2008, Page 158

the day, date, month, year, time (time) facing and the parties facing, initials and signatures of the parties / parties, witnesses and Notaries and prove what was seen, witnessed, heard by the Notary (on the official deed / official report), and record the statement or statement of the parties or the parties (on the party deed).

3) Strength of Material Proof.

It is certainty about the material of a deed, that what is stated in the deed is a valid proof of the parties making the deed or those who get the rights and apply to the public unless there is evidence to the contrary. If it turns out that the statements or statements of the parties are not true said, then it is the responsibility of the parties themselves. If you are going to prove the material aspects of the deed, then the person concerned must be able to prove that the Notary has not explained or stated the truth in the deed (official deed) or the parties that have correctly said (before the Notary) have become incorrectly said, and must be verified in reverse to deny material aspects of the notarial deed.⁹

The three aspects of proof above are the perfection of the deed as an authentic deed and whoever is bound by it. If it can be proven in a court hearing, that there is one aspect that is not true, then the deed concerned only has the power of proof as a deed under the hand or the deed is degraded in the strength of the proof as a deed that has the power of proof as a deed under the hand.¹⁰

III. Urgency of Applying Fingerprints to the Minutes of Deed.

Indonesia is a State of Law that is explicitly stated in Article 1 paragraph (1) of the Constitution of the Republic of Indonesia has a logical consequence that the State guarantees legal certainty and legal protection with core truth and justice manifested in society. Guaranteed certainty and legal protection of authentic community evidence as a concrete form of actions, events and legal relations that occur within the community. Authentic evidence has the strongest and most compliant proof power, for example the Notary Deed.

Based on the results of an interview with Notary Endra Falrido, SH.M.Kn, the regulation regarding the obligation to stick fingerprints on the Minutes of Deed is considered very important, because if it only relies on someone's signature, the signature can change over time and age so that it is inconsistent. The reason for the inconsistency of the signature could have also happened because someone has experienced an illness or stroke which ultimately results in the form of the signature no longer the same. Whereas with fingerprints, it will not change at any time unless there is a separate event that results in temporary or permanent disability resulting in damage or even loss of a person's limbs, especially on the hands and / or fingers.

He further said that there is a need for implementing regulations regarding the regulations on the obligation to stick fingerprints because in the explanation of Article 16 paragraph (1) letter c of UUJN Number 2 of 2014 only written 'clear enough' so that there are no further specifications in giving rise to multiple interpretations.¹¹

According to Notary Pasnelyza Karani, SH.M.Kn as a Notary in Solok Regency as MPD, according to him the authenticity of a deed does not depend on the fingerprints of the parties on the Minutes of Deed or on a separate sheet attached to the Duta Minutes, there is no direct effect on the validity of the deed. However, this fingerprint is considered important when a dispute occurs in the future as evidence that someone has indeed signed the minutes of the document. If it's just a signature, it can be

⁹ Harahap M.Yahya, "Civil Procedure Law", Sinar Grafika, Jakarta, 2015, page.655

¹⁰ *ibid*

¹¹ Endra Falrido, Notary in Solok Regency, Interview, April 10, 2019.

denied. So to strengthen a proof of the signature made regulations regarding the obligation of sticking fingerprints.

According to him, the existence of obligation regulations to attach the fingerprints of the parties was also considered to be very helpful for the verification process so that more legal certainty was obtained against the parties concerned. Then he also argues that the function of the fingerprint now is not only as a substitute for the signature when the user is unable or unable due to a certain reason in affixing the signature, but the fingerprint is now an obligation that must be contained in the Minutes of Deed.

IV. Sanctions for Notaries Not Attaching the Fingerprints of the Parties

Sanctions for Notaries who do not attach fingerprints to the Minutes of Deed, based on Article 16 Paragraph (11) it states that: "Notaries who violate the provisions referred to in paragraph (1) letters a through letter l may be subject to sanctions in the form:

- Written warning.

Sanctions like this constitute a warning sanction to a notary who if not fulfilled or violated is followed up with a written warning. If sanctions like this are not also obeyed by the concerned Notary, then the next sanction can be imposed in stages. The purpose of the written warning is to test the accuracy and accuracy of the written warning with violations committed based on the applicable law. In the implementation of written warning gives the rights of those who are given written warning to defend themselves in an administrative effort in the form of administrative objections or appeals.

- Temporary discharge

Sanctions Temporary dismissal is given to a notary with the following reasons:

- 1) In the process of bankruptcy or postponement of debt payments, the Notary concerned can be restored after the situation has been completed.
- 2) Under the control, the Notary concerned can be restored his rights after the situation has been completed.
- 3) Committing a despicable act. The notary concerned can be restored after the temporary termination period ends (the period of the temporary dismissal is a maximum of 6 months).
- 4) Committing a serious violation of the obligations and prohibition of Notaries

Temporary suspension of a Notary Public means that the Notary concerned has temporarily lost his authority and the Notary concerned can not make any deed or the Notary cannot carry out his / her office duties. This needs to be limited by reason of waiting for the results of the inspection of the Notary Supervisory Board. In providing certainty, the termination of a Notary must be determined for a period of time, so that the fate of the Notary is not hung (status quo) by the decision of the dismissal.

- Honorable discharge

Notary resigns from his position respectfully because:

- 1) passed away.
- 2) Aged 65 years which means entering retirement, unless extended to 67 years if healthy.
- 3) Own request.
- 4) Being unable spiritually and physically, evidenced by poor performance for 3 years in a row.
- 5) Double position.

- Dishonorable discharge

The Minister Dishonorable discharge the Notary from his position under the reason:

- 1) It is declared bankrupt based on a court decision that has obtained permanent legal force.

In the case of a notary who has been declared bankrupt, an administrative sanction shall be imposed, namely dismissal with disrespect, a civil sanction according to Article 1365 BW which states:

"Every act that violates the law, which brings harm to another person, obliges the person who because of his mistake to issue the loss, replaces the loss."

This means that if the Notary in question is in a condition of being unable to pay all his debts to the creditor, then the Notary can be filed for a bankrupt statement to the Commercial Court. The obligation to pay compensation is a form of civil sanction contained in Article 84 of the UUJN which can cause bankruptcy for the Notary.

- 2) Being continuously under control for more than 3 (three) years.
- 3) Perform actions that demean the honor, dignity, and position of the Notary.
- 4) Committing a serious violation of the obligations and prohibition of Notaries.

Conclusion

The reason the parties must attach fingerprints to the Notary Public Deed Minutes because it is a Notary's obligation to carry out the provisions of the legislation, namely UUJN Article 16 paragraph (1) letter c which reads "attaching letters and documents and fingerprints against the Minutes of Deed". Notarial fingerprinting on the minutes of the deed is important to be done by a Notary to show the identity of the parties other than the signatures of the parties. Therefore, the function of Fingerprint attached to the Notary Deed Minutes referred to in Article 16 paragraph (1) letter c is not a legal action in determining the validity or authenticity of the said deed but only serves to guarantee the truth that the parties are actually present before the Notary Public.

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Interview

Ms. Notary Pasnelyza Karani, SH. M.Kn Notary in Solok Regency.

Mr. Notary Endra Falrido, SH. M.Kn Notary in Solok Regency.

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