



## Implementation of the Notary's Obligation to Read the Authentic Deed in Front of the Parties (A Research in Banda Aceh Municipality)

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### **Abstract**

Notaries in carrying out their duties and authority make authentic deeds between the parties entering into an agreement that are legally bound by and limited by UUJN. The main authority of a notary as mentioned above is to make authentic deeds regarding all agreements desired by those who have an interest to be stated in an authentic deed. Apart from that, Notaries are also charged with a number of obligations to comply with and follow, this is intended as a form of Notary's responsibility in carrying out their duties. Among these obligations is that the notary is obliged to read the contents of the deed to the parties. The reading of a deed by a notary is a condition for the authenticity of the deed and is an obligation of the notary as regulated in Article 16 paragraph (1) letter m UUJN, that in carrying out his office the notary is obliged to "read the deed in front of an audience. These provisions indicate that reading the deed by a notary is a must in every authentic deed. However, in reality there are also notaries who deliberately do not read the deed they have made, but in the editorial of the deed it is written that the notary has read it himself. The notary also said in the editorial of his deed that the parties had appeared before him even though the parties had only appeared before the notary's staff.

**Keywords:** *Notary Obligations; Reading the Deed; Authentic Deed*

### **Introduction**

An authentic deed in an agreement is made by and before an authorized official, namely a notary. Legally, an agreement can be carried out without a notary or not in the presence of a notary or in the presence of a notary. Agreements made without involving a notary have legal force as private deeds, while agreements made with the involvement of a notary have legal force as authentic deeds.

The implementation of agreements involving notary officials is regulated in Law No. 2 of 2014 concerning Amendments to Law No.30 of 2004 concerning the Position of Notary (hereinafter abbreviated as UUJN). Article 1 point 1 of the UUJN states that "A notary is a public official who has the authority to make authentic deeds and has other authorities as intended in the UUJN or based on other

laws." The public officials referred to in the UUJN are not Civil Servant (PNS)<sup>1</sup> officials or government officials.

The notary official who acts to carry out the making of an authentic deed regarding an agreement between the parties who have agreed to enter into the agreement is legally bound by and limited by the norms contained in the UUJN. Article 15 paragraph (1) UUJN states that: "Notaries have the authority to make authentic deeds relating to all agreements, actions and stipulations that are required by statutory regulations and/or that are desired by interested parties to be included in the deed authentic. In this case, the notary, because of his position, guarantees the certainty of the date the authentic deed was made, then keeps the deed, provides grosse deeds, copies and quotations of the deed, all this as long as the making of the deed is not assigned or under the authority of another official or other person as determined by law. "

In essence, the notary's authority as mentioned above is to make deeds (authentic deeds) for all agreements that are desired or desired by those who have interests (parties) to express their wishes in authentic deeds.<sup>2</sup> Therefore, the Notary must understand or comprehend his duties and authority,<sup>3</sup> especially those related to the issue of making deeds. Apart from that, Notaries are also charged with a number of obligations to comply with and follow, this is intended as a form of Notary's responsibility in carrying out their duties.<sup>4</sup> Among these obligations is the notary's obligation to read the contents of the deed to the parties (appearers). The reading of a deed by a notary is a condition for the authenticity of the deed and is an obligation of the notary as regulated in Article 16 paragraph (1) letter m UUJN, that in carrying out his office the notary is obliged to "read the deed in front of an audience attended by at least 2 (two) witnesses, or 4 (four) special witnesses for making a testamentary deed under their own hands, and signed at that time by the presenter, witness and notary." This provision shows that reading the contents of the deed by a notary is a must in every authentic deed.

The above provisions are reaffirmed in Article 44 paragraph (1) UUJN that "as soon as the deed is read, the deed is signed by each presenter, witness and notary, unless in certain cases there is a presenter who cannot sign, however must state the reasons." Violation of this provision results in a deed only having evidentiary power as a private deed, where the level of the deed has dropped from an authentic deed to a private deed. This is sometimes when parties experience losses, this can be used as a reason for the party who suffered the loss to sue the notary for compensation for losses, costs and interest.<sup>5</sup>

In practice, notaries in carrying out their positions are often hampered by technical problems. For example, in a credit agreement package in sharia banking, there are several types of deeds that must be read and signed simultaneously, which are many in number, so that this becomes an obstacle or one of the contributing factors in carrying out the notary's obligations in reading the deed to the parties entering into the engagement agreement.<sup>6</sup>

Apart from the technical problems above, in reality there are also notaries who deliberately do not read the deed they have made, but in the editorial of the deed it is written that the notary has read it himself. The notary also said in the editorial of his deed that the parties had appeared before him even

<sup>1</sup> Mariana, Darmawan, Suhaimi, Pengawasan Terhadap Notaris Yang Tidak Membuka Kantor, *Kanun Jurnal Ilmu Hukum*, Vol. 21, No.3 (Desember, 2019), pp., 473-486.

<sup>2</sup> Bachrudin, *Relasi Bahasa Indonesia dan Bahasa Hukum Indonesia di dalam Penyusunan Perjanjian dan Pembuatan Akta Notaris*, Edisi Pertama, Jakarta: Kencana Prenada Media Group, 2023, hlm. 351.

<sup>3</sup> Irma Mulia Fitri, Ilyas Ismail, Suhaimi. 2019. Pengawasan dan Pembinaan Majelis Pengawas Daerah Terhadap Notaris Yang Melakukan Pelanggaran di Kabupaten Aceh Timur. *Syah Kuala Law Journal*; 3(1): 53-62.

<sup>4</sup> Suhaimi, Nurdin MH, Enzus Tinianus, Pengaruh Kevakuman Jabatan Majelis Pengawas Wilayah Notaris Terhadap Efektivitas Pembinaan dan Pengawasan Notaris di Aceh, *Jurnal Ius Civile (Refleksi Penegakan Hukum dan Keadilan)*, Volume 7, Nomor 2, 2023, pp. 27-45.

<sup>5</sup> Salim Haji Said, *Peraturan Jabatan Notaris*, Cet. 2, Edisi Pertama, Jakarta: Sinar Grafika, 2018, hlm. 237.

<sup>6</sup> Data Diperoleh dari Akta Perjanjian Kredit di Perbankan Syariah, Bank Syariah Indonesia KCP Lampriet.

though the parties had only appeared before the notary's staff. Actually there is no face to face, but it is written facing him directly. Such a deed is only read by the notary's staff, even though the deed says it is read by the notary himself.<sup>7</sup>

The presenter is said to sign the deed in the presence of a notary if in practice the notary has actually met with the presenter along with the witnesses. The ideal practice according to law like this is not carried out. The parties did not sign the deed in front of a notary even though the deed stated that the deed had been read and signed directly in front of a notary. Such behavior by a notary is clearly an unlawful act, because not only has he violated his oath, but he has deliberately made a deed that does not comply with existing legal provisions.

In this regard, the Supreme Court in its decision has also decided that there is a legal violation for the actions of a notary who does not fulfill the obligation to read the contents of the deed to the audience, as in the Supreme Court Decision at Cassation level No.560 K/Pdt/2016, which has been decided again at the Review stage Return (PK), namely No.351PK/Pdt/2018. This decision emphasizes that notaries who do not read the deed in front of the parties are contrary to the law. The result is that the deed can be challenged. The notary did not read the deed, causing a lot of information in the deed to be inappropriate and not approved by several parties.<sup>8</sup>

The above information is strengthened by the explanation from the informant, HS, one of the notaries in Banda Aceh City, that in making authentic deeds, such as purchasing land, and various buying and selling practices and other muamalah related to notaries, ideally the notary should read the deed in front of the presenters and signed by the parties and sanctions, in accordance with UUJN provisions. However, these provisions, especially the notary's obligation to read the deed in front of the presenter as stated in Article 16 paragraph (1) letter m, are often not carried out, because the notary has the opinion that it is not that important, whether it is read or not, the presenter is deemed to have understood and comprehended the contents. deed. This of course can be detrimental to the parties.<sup>9</sup>

Based on the problems above, it is interesting to study further the implementation of the notary's obligation to read the deed in front of the parties.

## Research Methods

In general, legal research can be divided into 2 (two) types, namely normative legal research (also called normative juridical research) and sociological legal research (also called empirical juridical).<sup>10</sup> The type of research used in this research is empirical legal research or sociological legal research. Empirical legal research is legal research carried out by examining primary materials obtained from interviews, observations, documentation studies.<sup>11</sup>

Furthermore, this research uses 4 approaches, namely the statutory approach, case approach, conceptual approach, and qualitative approach. Data sources in research are divided into two forms, namely primary data sources extracted from the field, and secondary data sources extracted from library materials.<sup>12</sup> Considering that the data for this research comes entirely from basic materials obtained

<sup>7</sup> Wawancara dengan Syahminan, Praktisi Hukum dan Advokad, tanggal 15 Mei 2023.

<sup>8</sup> Adela Destaliya & Mohamad Fajri Mekka P., "Tinjauan Yuridis atas Kewajiban Notaris dalam Membacakan Akta Notaris dan Implikasi Hukumnya: Studi Putusan Mahkamah Agung No. 351 PK/Pdt/2018", *Jurnal Ilmu Hukum The Juris*, Vol. VI, No. 1, Juni 2022, hlm. 77-78.

<sup>9</sup> Wawancara dengan HS, salah seorang Notaris di Kota Banda Aceh, tanggal 15 Mei 2023.

<sup>10</sup> Jonaedi Efendi, dan Johnny Ibrahim, *Metode Penelitian Hukum Normatif dan Empiris*, Jakarta: Kencana Prenada Media Group, 2018, hlm. 33.

<sup>11</sup> *Ibid.*, hlm. 129.

<sup>12</sup> Jonaedi Efendi dan Johnny Ibrahim, *Op.cit.*, hlm. 149.

directly from informants, the data sources are primary data sources, which consist of interviews, observation and documentation sources. Lastly, this research data was analyzed using a certain pattern which is descriptive-analysis, because the research does not include normative studies whose analysis is prescriptive-analysis.

### **Result and Discussion**

Article 16 paragraph (1) UUJN as previously mentioned above requires that the notary read the deed that has been made in the presence of the audience, namely interested people, those who want an agreement or stipulation to be stated authentically in a notarial deed. When a deed is read in front of an audience, there must be a minimum of two witnesses who witness the reading being carried out, however specifically when making a will under the hand requires 4 witnesses, and immediately when the reading is done it is mandatory to sign it. The purpose of reading the deed is so that all the contents contained in the deed that have been made can be understood and are in accordance with the wishes of the parties.

Thus, the parties can decide freely to agree or disagree, correct or not correct the contents of the Notarial Deed that they will sign. In certain cases, the reading of the deed is relatively likely to be violated by the notary. This is due to several reasons, including that the deed was deliberately made with the cooperation of one of the interested parties with the notary to be misused, or other reasons. This sub-discussion specifically analyzes the implementation of the notary's obligation to read authentic deeds in front of the parties in the Municipality of Banda Aceh.

The article above requires that the notary read the deed that has been made in front of the audience, namely interested people, those who want an agreement or stipulation to be stated authentically in a notarial deed. When a deed is read in front of an audience, there must be a minimum of two witnesses who witness the reading being carried out, however specifically when making a will under the hand requires 4 witnesses, and immediately when the reading is done it is mandatory to sign it. The purpose of reading the deed is so that all the contents contained in the deed that have been made can be understood and are in accordance with the wishes of the parties.

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According to Bukhari, as Chair of the Regional Supervisory Council (MPD) of Banda Aceh Municipal Notaries, said that in the presence of the parties making the agreement, the notary reads or writes a statement that the deed has been read in front of the parties. This is an obligation carried out by a Notary in the process of making a notarial deed. In his statement it was stated as follows: "Based on Article 16 paragraph (1) letter m UUJN states that in the presence of an audience attended by at least two witnesses (four special witnesses for making a will) the notary is obliged to read the deed and sign it at that time. by the presenter, witnesses and also the notary. Reading a notarial deed is a condition for the authenticity of a deed and is an obligation of a notary as regulated in Article 16 paragraph (1) letter m UUJN which states that reading the deed in front of the audience by a notary is a necessity that must not be done at any time. making authentic deed. This provision is reaffirmed in Article 44 UUJN which states that before the deed is signed by the parties or each presenter, witness and notary, the deed must be read first. In certain cases, if a person present is unable to sign, the reason must be stated clearly.<sup>13</sup> One example is that the presenter cannot sign, for example because the presenter suffers from a mental

<sup>13</sup> Hasil Wawancara dengan Bukhari, Ketua Majelis Pengawas Daerah Notaris, Kota Banda Aceh, Tanggal 8 Januari 2024.

disorder. So it is impossible to present the person concerned to sign the deed. Therefore, it must be clearly stated why the applicant cannot sign the deed.

Similar information was also expressed by Muhammad Isa as Head of the General Legal Administration Services Sub-Sector at the (MPD) in Municipality of Banda Aceh. Carrying out the reading of an authentic deed in the presence of the parties is a notary's obligation. The notary is obliged to read all the contents of the deed that has been made to the presenter as regulated in the provisions of the UUJN, except if the presenter does not wish for it to be read because for example he has already read and understood all the contents of the deed, the provisions are that if the deed is no longer read due to the presenter's wishes then the statement If it is not read, it must also be attached or stated at the conclusion of the deed. Muhammad Isa stated that if the party present wants it not to be read because they have already read and also understand the deed that has been written, then the Notary does not need to read it again.<sup>14</sup>

According to Ria Fitri, a legal expert at Syiah Kuala University who is also a member of the MPD of Banda Aceh Municipal Notaries, a notarial deed must be read in its entirety from the beginning of the head of the deed to the closing part of the deed: "It must be read from the beginning to the end, therefore everything in the deed These are all forms of agreements that bind both parties. So everything, never mind the content, the date, when, where it is located, everything must be read and the notary has no freedom in choosing what to read and what not to read. "However, there are legal cases where the notary does not read the deed in accordance with the provisions of the laws and regulations."<sup>15</sup>

The above information is in accordance with the provisions of Article 16 paragraph (7) and paragraph (8) which have previously been quoted, which essentially means that an authentic deed made by a notary must be read in the presence of the parties as presenters, but this obligation does not apply if:

1. The applicant has read the contents of the deed.
2. Know the contents of the deed.
3. Understand the contents of the deed.

The obligation to read an authentic deed by a notary must be bound by and limited by the provisions of Article 16 UUJN. However, this provision no longer applies if the person appearing does not wish to read the deed, such as because he has read the deed, knows and understands the contents of the deed. This is excluded in 4 (four) aspects, namely:

1. Head of Deed. The head of the deed is the initial part of the deed which contains the title of the deed, deed number, time, day, date, month and year, as well as the full name and place of residence of the notary. This section must be read by the notary even if the applicant does not wish to read the entire contents of the deed. This section is a mandatory section that must still be read by the notary even if the person who is presenting the deed does not want the contents of the deed to be read. This is in accordance with the contents of Article 16 paragraph (8) of the previous UUJN.
2. Comparison. A deed comparison is the part of the deed that states the identity of the parties entering into the agreement, the contents of which include full name, place and date of birth, nationality, occupation, title and status, place of residence of the parties, information regarding position and position of action. This section is also a mandatory section which must still be read by the notary even if the presenter wishes that the contents of the deed not be read.
3. Brief and clear explanation of the main points of the deed. The subject matter of the deed is the material or contents of the deed regarding the legal aspects contained in the deed. This section is

<sup>14</sup> Hasil Wawancara dengan Muhammad Isa, Kepala Sub Bidang Pelayanan Administrasi Hukum Umum pada Majelis Pengawas Daerah Notaris Kota Banda Aceh Aceh, Tanggal 8 Januari 2024.

<sup>15</sup> Hasil Wawancara Ria Fitri, Ahli Hukum dari Universitas Syiah Kuala dan Anggota Majelis Pengawas Daerah Notaris Kota Banda Aceh, Tanggal 10 Januari 2024.

called the body of the deed. If the presenter does not wish for the contents or body of the deed to be read, the notary is only obliged to read the main points briefly.

4. Closing of the Deed. The closing of the deed or also known as the final part of the deed, contains explanations regarding the description that the deed has been read by the notary in front of the parties as presenters. Next, sign the deed and state the place where the deed was signed, along with the name and place, date of birth, occupation, nationality, position and position, residence of each witness who signed the deed. This section is also something that must be read.

According to Muhammad Isa, the obligation to read the deed is a binding obligation on the notary because the law requires that this reading be carried out. Therefore, a notary who does not read the deed is considered to be in conflict with statutory provisions. However, so far there have been no cases received by the Banda Aceh Notary Regional Supervisory Council regarding notaries who did not read authentic deeds in front of audiences. This is in line with Bukhari's statement, that so far there have been no cases of notaries not reading the contents of the deed, because the entire contents of the deed that has been made will be explained at the end regarding the reading of the deed in the presence of the audience. The deed reading scheme can be described as follows:

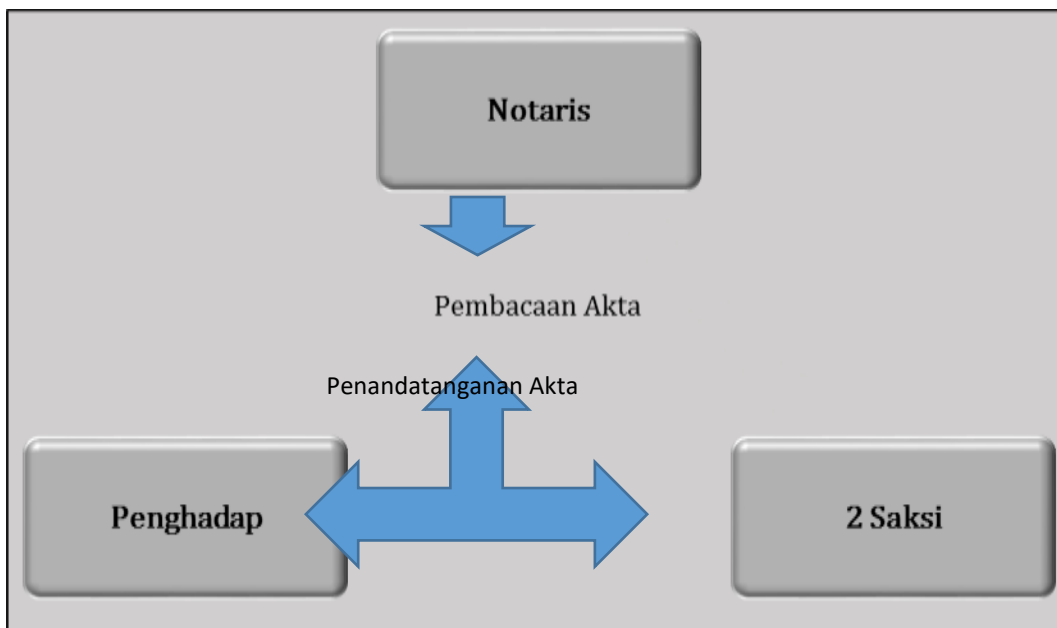


Figure 1: Deed Reading and Signing Process

Figure 1 shows that the reading of the notarial deed is only carried out by one party, namely by the notary himself, then the next process is the signing which is carried out by three parties, namely the notary, the witness and the appearing party. Thus, it can be seen that the reading of deeds by notaries in Banda Aceh is basically the same as the practice of reading deeds in other jurisdictions in Indonesia. The processes and procedures along with the mechanisms have been regulated in detail (clearly) in the UUJN. This means that the implementation of notary obligations in reading authentic deeds in the Banda Aceh is normatively mandatory.

## Conclusion

Carrying out the obligations of a notary in reading an authentic deed in Banda Aceh is by reading the deed in front of the presenters accompanied by 2 witnesses and writing a statement that the deed has been read in the presence of the presenters. Carrying out the reading of an authentic deed in the presence

of the parties is a notary's obligation as regulated in Article 16 paragraph (1) letter m UUJN. The notary is obliged to read all the contents of the deed that has been made to the presenter unless the presenter does not wish for it to be read because he has read and understands the entire contents of the deed, then the statement that the deed is not read is stated at the close of the deed.

### **Suggestion**

Notaries must carry out all the obligations stipulated in the UUJN, and carry out all notary codes of ethics in carrying out their functions and duties in making authentic deeds. For the MPD, it is necessary to carry out regular and continuous supervision of notaries, carry out supervision and guidance, and follow up on all reports made by the presenters.

The government, especially the Ministry of Law and Human Rights, needs to form a legal policy regarding supervision schemes and mechanisms and action schemes for notaries who violate the code of ethics and legal obligations stipulated in the UUJN. This is done to provide legal certainty, both to notaries, presenters, and to MPDs in the regions.

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