

THE ROLE OF THE NOTARY IN MAKING AUTHENTIC DEED ON THE CHANGE OF NAME IDENTITY

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THE ROLE OF THE NOTARY IN MAKING AUTHENTIC DEED ON THE CHANGE OF NAME IDENTITY

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ABSTRACT

Notaries, in carrying out their functions, are required to recognize the person presence in order to prevent falsification of identity, so the principle of caution is needed. The issue of name changes, identity, and the role of the Notary in making authentic deeds need to be studied from a legal perspective. The research method used is normative. Meanwhile, data collection tools were carried out using data collection tools, namely: 1) literature study, and 2) documentary study. Collecting secondary data related to the problems raised, by studying books, legal journals, research results and statutory regulatory documents. The research results show that there is a role for the Notary in making authentic deeds regarding name identity changes. In this way, it can provide legal certainty for someone who applies for a change in name identity for some reasons. Notary should be more caution in ensuring the validity of identity in making a deed.

Keywords: Change, Identity, Name, Role, Notary.

INTRODUCTION

In everyday life we recognize someone both within the scope of family, society, through a form of vocation which is a name and signature which is an abstraction of one's identity. The problem is that when the person interacts, for example making a sale and purchase transaction, renting, correspondence, etc., then the person will put a signature as a symbol of the person's actions, what is the meaning of a signature in this paper, the author will try to explain to provide a legal

understanding of the meaning of affixing a signature in signing a deed. Since birth or even before birth, parents have thought about what name is right for their children later because the name has an important meaning for their children as the successor of their offspring. Not infrequently a person's name is taken from the language of a region or even the language of another country that has a good meaning.

The signed letter is called a "deed". People will generally argue that a deed should be signed. This signature causes the person who signed it to know the contents of the deed he signed. Person means a supporter of rights and obligations which are also called legal subjects in the legal world. Similarly, what is meant by a person in the Civil Code Book 1 Chapter I. Thus, it can be said that every human being, both citizens and foreigners, is a bearer of rights (legal subjects) who have the right and obligation to perform legal acts. Although every legal subject has the right and obligation to perform legal acts, these actions must be supported by legal competence and authority commonly referred to as *rechtsbekwaamheid* (legal capacity) and *rechtsbevoegdheid* (legal authority). Every person/subject of law has *rechtsbekwaamheid*, which is the legal ability to perform legal acts such as making agreements, marrying and so on as long as they are not considered legally competent by law.

The legal system meant here is that there is a state determining children born in any country and immediately become citizens of their country of birth (*ius soli*) and legal systems adopted by other countries that adopt the system of children of ethnic and national descent and immediately become citizens of their ethnic origin (*ius sanguinis*). The civil law system regulates children born from native Indonesians to become Indonesian citizens in article 5a of the Civil Code which states "legitimate children, such as illegitimate children but have been recognized by their father, using the name of the father's descendants. Illegitimate children who are not recognized by the father, bear the names of their mother's descendants". To prove the existence of kinship which is instrumental to enjoying rights with the name of the descendant in the father or the name of the descendant of the mother, especially the name based on other ethnic groups, it should be

changed to a name based on the name of the original Indonesian ethnic group. One of the civil rights with the original name of Indonesia for self-identity towards one's civil rights such as determining the heirs of the deceased property

RESEARCH METHOD

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The research method used is normative juridical or qualitative research with a statutory and regulatory approach (Eka NAM Sihombing, 2022). This research was conducted using data collection tools, namely: 1) literature study and 2) documentary study). Meanwhile, secondary data is related to the problems raised, by studying books, legal journals, research results and statutory regulatory documents such as: The Criminal Code (KUHP), the Criminal Procedure Code (KUHP). KUHAP), the Civil Code (KUH Perdata) and ²⁰ Law Number 30 of 2004 concerning the Position of Notaries in relation to legal protection for Notaries after the end of their term of office. (Bambang Sunggono, 2003).

RESEARCH OUTCOME AND DISCUSSION

1) The Role of Notaries and Authentic Deeds

Legal services and consultations to communities in need. Initially, the regulation regarding Notaries was regulated in the Notary Office Regulation *staatsblad* 1860-3 (hereinafter referred to as PJN). Article 1 of PJN contains the definition of Notary, which is as follows:

The notary public is the general officer who is the sole authority to make authentic deeds concerning all deeds, agreements and statutes required by a general ordinance or desired by the interested person to be stated in an authentic deed, guarantee the certainty of the date, keep the deed and thereof give grosse, copies and quotations all of it so far as the making of the deed by a general ordinance is not assigned or exempted to the official or someone else (Komar Andasasmita, 1983).

R. Tresna stated, "in general the deed is a signed letter, containing

information about events or things that are the basis of a right or a covenant, it can be said that the deed is a writing by which a legal act is declared” (R. Tresna, 1993). Through the deed he made, the Notary ³must be able to provide legal certainty to the public who use Notary services (H. Salim HS. and H. Abdullah, 2007). A notary deed is an authentic deed that has legal force with a guarantee of legal certainty as perfect written evidence (*Volledig bewijs*), no need AddendumTools other proofs, and the judge is bound by it (A.A. Andi Prajitno, 2010). A deed made by a Notary Public has perfect evidentiary power unlike a deed under hand. An underhand deed is a deed made by the interested parties themselves without the help of a general official (Taufik Makarao, 2004). Authentic deeds are Notary products that are needed by the community in order to create legal certainty. Authentic deeds as the strongest and fullest evidence have an important role in every legal relationship in society, both business / cooperation relations, activities in the field of land, banking, social activities and in other necessities of life. ⁸Based on Article ³1870 of the Civil Code (hereinafter referred to as the Civil Code) and Article 1871 of the Civil Code, “the authentic deed is the perfect means of proof for both parties and their heirs and all persons entitled from him about what is contained in the deed”.

An authentic deed that is complete (binding) evidence means that the truth of the things written in the deed is considered to be true, as long as the truth is that no other party can prove otherwise. (Teguh Samudera, 2004). The making of a deed by the parties bound by an agreement is intended for future proof. ⁶*The word contract is used in different senses in American Law. Sometimes it is used, as it is used in commo speech, simply to refer to a writing containing terms on which the parties have agreed* (E. Allan Farnsworth, 1999). (The word covenant is used in a different sense in American law. Sometimes ⁶used in public speech, simply to refer to terms on which the parties have agreed). In Indonesia, agreements are regulated in Article 1313 of the Civil Code.

Rahmad Hendra's research results, (2012) concluded that notaries are responsible for what is witnessed, namely what is seen, heard and also done by the

notary himself as a public official in carrying out his office. The notary is not responsible if there are incorrect statements and documents from the person appearing.

The Notary Deed was born because of the direct involvement of the party facing the Notary, the parties who became the main actors in making a deed so that an authentic deed was created. A Notary Deed is an authentic deed made by or before a Notary Public according to the forms and procedures stipulated in the law. The Deed made by a Notary Public describes authentically all deeds, covenants and determinations witnessed by the confronters and witnesses. (Wawan Tunggal Alam, 2001). In an authentic deed contains an agreement between the parties before the Notary.

An agreement can be said to be valid according to law if it has fulfilled the conditions stated in Article 1320 of the Civil Code. A deed can be said to be null and void if the deed does not meet the objective requirements, namely the absence of a certain thing and there is no *halal causa* from the agreement. In other words, the agreement contained in the deed is considered to have never existed and cannot bind the parties. A problem arises when one party raises an objection by suing the other party.

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¹⁰ A notary is a general official authorized to make an authentic deed insofar as the making of an authentic deed is not specified to other public officials. The making of authentic deeds is required by laws and regulations in order to create certainty, order and legal protection. An authentic deed made by or before a Notary Public is not only required by laws and regulations but also desired by interested parties. This is to ensure the rights and obligations of the parties for certainty, order and legal protection for interested parties as well as for society as a whole.

The deed made by the Notary (*door*) in Notary practice is called a *relaas* deed or minutes deed which contains a description of the Notary that the Notary sees and witnesses himself at the request of the parties, so that the actions or deeds of the parties carried out are poured into the form of a Notary Deed. A deed made before (*ten overstaan*) Notary, in Notary practice is called a party deed, which

contains a description or statement, statements of the parties given or told before a Notary. The parties desire that the description or statement be poured into the form of a Notary Deed (Habib Adjie, 2008).

Based on Article 38 paragraph (1) of UUJN, each deed consists of the beginning of the deed or the head of the deed, the body of the deed and the end or closing of the deed. The making of a deed is the interest of the parties. The content of the deed (body of the deed) is the will and responsibility of the parties while the Notary is only responsible for the head of the deed and the end of the deed. To find out the responsibility of a Notary Public for the deed he made, it must first be proven whether the fault lies in the body of the deed or at the beginning and end of the deed.

There is the fact that when a man works, there is a time when he has to stop because he has entered retirement age, and a Notary is no exception. In general, in retirement, a person no longer works and has ended his rights and obligations to the field of profession he pursues. The definition of retirement in relation to Notaries here is that a Notary Public has ended his term of office as an authorized general official.

The UUJN does not regulate changes to Article 8 ⁵ paragraph (1) and Article 8 paragraph (2) of Law Number 30 of 2004 concerning Notary Positions. The expiration of the term of office for Notaries is still regulated and applies Article 8 ⁵ paragraph (1) and Article 8 paragraph (2) of Law Number 30 of 2004 concerning Notary Positions. This article regulates the expiration of the Notary's term of office when the Notary is 65 (sixty-five) years old and can be extended until the age of 67 (sixty-seven) years. This does not rule out the possibility that the authentic deed will only have a null and void nature after the expiration of the Notary's term of office.

2) Notary and Change of Identity of a Person's Name

In the Indonesian Legal system, Notary is one of the organs and/or equipment of the state that has the obligation to provide services to the community. In other words, Notary is a state organ equipped with legal authority to provide

general services to the general public, specifically in making authentic deeds. Authentic deeds as perfect evidence regarding legal acts in the civil field only (Adie Marthin Stefin, 2012).

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The Republic of Indonesia is a state of law. The principle of the rule of law is to ensure certainty, order and legal protection that is based on truth and justice in society. Notaries are public officials who are given partial authority by the state and every action must be based on the law. Notary Office is the position of a state official or general official, based on the provisions in the UUJN a general official is a person who carries out some public and state functions, especially in the field of civil law (Yudha Pandu, 2009). This can be seen in the notary understanding that ⁸ stipulated in Article 1 number 1 of UUJN which states that a Notary Public is a general official.

A position is a field of work or task that is deliberately made by legal rules for certain purposes and functions and is continuous as a permanent work environment. Position is a subject of law, namely a supporter of rights and obligations. A position can run well if the position is held by another legal subject, namely a person. The person appointed to exercise the office is called an official. An office without its officials, it cannot run" (Habib Adjie I, 2018).

Authentic deeds as the strongest and full evidence tool have an important role in every legal relationship in public life. Authentic deeds are important for those who need proof tools for personal interests as well as for business interests such as deeds establishing civil associations and othersn.

In making authentic deeds carried out by Notaries as general officials, there are 3 (three) groups of legal subjects, namely the faces or interested parties, witnesses and Notaries. In this case, the Notary Public is not a party to the deed. Notary is only an official who because of his authority to make an authentic deed according to the wishes of the parties / facers. The position of the faces or parties in a Notary Deed can be distinguished in 3 (three) things:

1. The confronters or the parties act for themselves.
2. The parties act on behalf of others under a power of attorney or law.

3. The claimants or parties act in their positions and/or positions under the provisions of the Law.

Article 15 of Law Number 2 of 2014 concerning Notary Position regulates the authority of Notaries to make authentic deeds. (G.H.S Lumbun Tobing, 1996). The authority in question is to make authentic deeds containing deeds, agreements, and provisions made in accordance with laws and regulations, and which are in accordance with the wishes of the interested parties to be poured into authentic deeds. The making of an authentic deed can be made by a Notary Public as long as the making of the deed is not the duty of other officials and/or other persons excluded by the stipulation of law.

Notaries in carrying out their professional duties as Notaries are supervised and fostered by the Notary Organization. The Notary Organization is incorporated in a forum called the Indonesian Notary Association (INI). Notaries in carrying out their duties as general officials must be in accordance with the legal rules contained in the Notary Position Law and the Code of Ethics contained in the Notary Organization. If you look at the duties and responsibilities of Notary Public as a profession of general official, making authentic deeds. It is possible that in carrying out their duties and positions as a Notary, Notaries may be summoned at any time by law enforcement or criminal law violations are committed by Notaries when carrying out their duties as Notaries. This is because notaries can abuse their authority.

The research results of Bunga Mentari Paskadwi, (2022) show that the making and signing of authentic notary deeds does not apply the principle of caution and the principle of properly recognizing service users because in this case the notary still carries out the signing of the deeds for the person who uses a fake identity and deliberately does not give a number to the deed, for his actions the notary can be asked for administrative responsibility and the Notary's Code of Ethics. The legal consequence of an authentic deed containing a false identity is that the evidentiary power of the authentic deed is degraded to a private deed due to the failure to fulfill the requirements for an authentic deed based on Article

1868 of the Civil Code. A notary can be held civilly liable by the party to the deed or a third party who is harmed on the basis of Article 1365 of the Civil Code if the notary is proven to have committed an unlawful act.

The violation of criminal law referred to when carrying out his duties and position as a Notary is making a fake letter or forging a letter in an authentic deed made by a Notary. In addition, it also inserts false information into an authentic deed made by a Notary. Meanwhile, Notaries can be summoned at any time by law enforcement, Notaries are witnesses to every legal problem related to the deed they make.

An authentic certificate is a certificate written and recorded on a piece of paper that must have appropriate data ranging from A to Z, which is appropriate starting from the initial data of birth to the death of a person in it, so that there are no doubts and problems that will arise in the future. An authentic deed is a deed made by an official authorized to do so by the ruler according to the stipulated provisions, either with or without the assistance of the interested parties, which records what the interested parties are asked to contain therein. The authentic deed contains the description of an official who explains what was done or seen in front of him.

An authentic deed is a deed made and prepared by a notary or other official (e.g. the sub-district head as the Land Deed Making Officer) for the benefit of the parties to the contract. In the laws and regulations, several types of contracts are mentioned that must be carried out through authentic deeds and which are simply carried out through underhand deeds. By definition, the first condition that must be fulfilled is that an authentic deed must be made in the form prescribed by law. The form word here is a translation of the Dutch word *vorm* and does not mean round, oval, long, and so on. However, its manufacture must meet the provisions of the law. The second condition of an authentic deed is the necessity of making it before or by a general official. What is meant by inheritance law is a set of legal rules that regulate the transfer of rights to inheritance owned by a deceased person (heir) to a living person left by the heir called the heir.

As parents, they must give the best to their children. In this case, the parents before his death learn the situation after he is no longer in the world. Parents give everything, provide prevention and convenience to their children in the future. Because of the awareness of the mistake of writing the name used daily with the name written on the letters of completeness of identity from the child and himself, he must apply for the wrong name so as not to get into trouble in the days to come. If there is one word or one letter that is different, the party who distributes the inheritance will be confused and will worry that the person who receives the inheritance is not that person.

CONCLUSION

The legal aspects of name change are: a) Name as signature b) Name of a person in entering into an agreement with the engagement. By being the basis of all signs in legal activities, it should be noted that the application for name change must carry out procedural ways and be recorded at the civil registration office, so that the state knows in writing that the name in the identity of a person requesting a name change has been changed, for reasons that are not unlawful. Be careful in writing names on self-identity, because the wrong name on self-identity will create legal consequences that can make it difficult. Using names according to existing norms and give names to our children by using expression that do not violate the norms of the place where we are.

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