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Juridic Review on Authentic Dedies as a Tool of Evidence in Civil Cases at the State Court of Samarinda

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Abstract

Notary Public is a public official who is appointed by law in making an authentic deed and at the same time a notary is an extension of the Government. authentic deed is a guarantee of certainty and legal protection as a concrete form of actions, events, and legal relations that occur in society. the purpose of this research is to find out the authentic deed proof in court and to know the legal consequences of the authentic deed containing false information. The benefits or uses of this research are in the form of theoretical and practical benefits.This research uses empirical legal research that examines the applicable legal provisions and what happens in reality in the community. Empirical juridical research is legal research on the application or implementation of normative legal provisions in action on any particular legal event that occurs in the community. Or in other words that is a study conducted on the actual situation or real conditions that occur in the community with a view to knowing and finding the facts and data needed, after the required data is collected then leads to the identification of problems that ultimately lead to problem solving. The results of the study explained that the legal power of a notary deed in the process of proof in a court is perfect and binding, so that it does not need to be made or supplemented with other evidence, the deed still exists which is canceled is the contents of the deed (the legal relationship). As well as the legal consequences of an authentic deed containing false information is that the authentic deed has caused a dispute and is brought to court, therefore the injured party can file a civil suit in court so that the judge can decide and grant the cancellation of the deed.

Keywords
legal consequences; authentic deed; proof

I. Introduction

Civil Procedure Law is also called formal civil law, because it regulates the process of resolving cases through the courts, in resolving a case before the judge determines the law first. he must determine the event or the position of the case, because the events presented by the parties or the Plaintiff and the defendant are not necessarily all important to the law. So that these events still have to be separated which is relevant to the law? In this case Mrs. Retnowulan Sutantio, SH and Iskandar Oeripkartowinoto, SH argue that "One of the duties of the law is to investigate whether a legal relationship or legal event that forms the basis of the lawsuit actually exists or not". It is these relevant events that are needed by the judge, he must obtain certainty that the events that are the basis of the lawsuit actually occurred and can be proven true.

According to the descriptions above, the author can underline that it turns out that the matter of proof is a very important action in resolving a case in court, even in the Civil Procedure Code to win a case someone does not need belief, which What is important is the existence of valid evidence. Based on the evidence, the judge will decide who will win and who will lose.

The evidence referred to in Article 1866 BW, namely:

1. Documentary evidence
2. Witness evidence
3. Proof of suspicion
4. Proof of confession
5. Proof of oath.

In addition to the evidence referred to in Article 1866 BW, there are other evidences, namely local examinations and expert statements. In practice, the judge's knowledge is also a means of evidence, although in a disputed event the evidence has been submitted by the litigants, but the evidence still has to be assessed by the judge.

"That a letter is written evidence that contains writing to state one's thoughts as evidence, according to the form of written evidence it is divided into two types, namely deed letters and non-deed letters. The deed itself is from an authentic deed and a deed under the hand. The definition of a letter according to Sudikno Mertokusumo, SH "A letter is anything that contains reading signs intended to pour out one's heart or to convey someone's thoughts and be used as evidence, while the definition of a deed is one that is signed which contains the events that form the basis of rather than a right or an agreement that was made from the beginning as evidence, what is meant by an authentic deed is a deed made by or in the presence of an authorized official according to the provisions that have been set.

According to the provisions of Article 1870 BW, an authentic deed is “a deed made by or before an official who is authorized to do so. It is complete evidence for parties and their inheritance experts as well as the person who has rights from him regarding all the matters mentioned in the letter and notification only, but the latter is only to the extent that the notification is directly related to the subject in the deed.

Officials who are authorized by law to make authentic deeds are for example notaries, civil registry employees, judges, clerks, bailiffs, and so on. In carrying out their work, these officials are bound by the terms and conditions in the law so that it is a guarantee to trust the official and the results of his work.

In the authentic deed, the official explains: what is done, seen, experienced, so that it happens in front of him according to the actual reality. Because the authentic deed contains official official statements according to the law, everyone acknowledges and believes the contents of the authentic deed as true. The truth of its contents is sufficient to be proven by the form of the deed itself until it can be proven otherwise. From these provisions, it can be seen that an authentic deed is:

1. Perfect/complete evidence for the parties, their heirs and those who get rights from them, but can still be disabled.
2. The evidence is free for third parties, meaning that the assessment is left to the discretion of the judge.

In addition, the authentic deed has three kinds of evidentiary powers, that is :

1. The power of proof is binding, proving between the parties and a third party that on that date the deed concerned has appeared before a public employee and explained what was written in the deed.
2. The power of formal evidence proves between the parties that they have explained what is written in the deed.

3. "The strength of the material evidence, the proof of the parties that the events in the deed really happened".

Authentic deeds can be classified into two types, namely: ambtelijkand party deed. Amtelijk deed is a deed made by an official who is authorized to do so, by which the official explains what he saw and did, for example, a protest deed on a bill of exchange, a civil registration deed, a party deed, which is a deed made before an official, in which the official explains what seen and carried out and the interested parties acknowledge the information in the deed by affixing their signatures, for example the deed of sale and purchase of land in front of the Land Deed Making Officer (PPAT), marriage certificate, deed of establishment of a Limited Liability Company and etc.

In the party deed there is always the strength of material evidence and is a perfect evidence because in the party deed the truth of the contents of the deed is determined by the parties and the official explains what he sees, he knows from the parties. However, the ambtelijk deed does not always have the strength of material evidence, meaning that everyone can deny the truth of the contents of the authentic deed, as long as they can prove it. Because what the official sees and does is only based on what the interested parties want.

Underhand deeds generally do not have the strength of external evidence, because signatures can be denied. While the strength of the formal and material evidencesame as authentic deed. There is also a letter that is not a deed. It is said not to be a deed because there is no signature. Not a deed are notes or letters made by mistake to be used as evidence of an event. The strength of proof of a letter that is not a deed is left to the discretion of the judge who examines it, meaning that it is up to the judge whether to consider it as the beginning of written evidence, if such a letter is presented in court. Examples of motorcycle storage tickets, telegrams, notes and others.

However, there are several records or letters stipulated by law as binding evidence that must be trusted by the judge that are :

1. A letter that explicitly mentions a payment that has been received.
2. Letters that expressly state that the record has been made is to correct a deficiency in a title for a person for whose benefit the letter mentions an engagement.
3. Notes that a person who owes debts (creditors) are affixed to on a basis of rights that he will forever hold if what is written is an exemption from the debtor (debtor).
4. "The notes that the debtor affixed to a copy of a title for a payment receipt are in the hands of the debtor".

Based on the above, the author is interested and pours in thesis research with the title Jurisdictional Review of Authentic Deeds as a Tool of Evidence in Civil Cases in the State Court of Samarinda

II. Review of Literature

2.1. Definition of Notary

The juridical history of notaries in Indonesia can be traced from several laws and regulations governing the position of a notary, both the laws and regulations that have been in force and the laws and regulations currently in force in Indonesia. In chronological order of enforcement, the laws and regulations governing Notaries are:

a. Reglement op Het Notary Ambt in Indonesia (Stb, 1860:3);
b. Ordonantie dated 16 September 1931, regarding the Notary Honorarium;
c. Law Number 33 of 1954 concerning Deputy Notaries and Temporary Deputy Notaries (State Gazette of 1954 Number 101, Supplement to State Gazette Number 700);

d. Article 54 of Law Number 8 of 2004 concerning Amendments to Law Number 3 of 1986 concerning General Courts (State Gazette of the Republic of Indonesia of 2004 Number 34, Supplement to the State Gazette of the Republic of Indonesia Number 4379)
e. Government Regulation Number 11 of 1949 concerning the Oath/Promise of Notary Position;
f. Law Number 30 Year 2004, Regarding the Position of Notary
g. Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of a Notary (State Gazette of the Republic of Indonesia of 2014 Number 3).

All of the above-mentioned laws and regulations, You will find different understandings and definitions of the notary itself. In comparison, the notary definition contained in the Reglement op Het Notary Ambt in Indonesia (Stb, 1860:3) with the notary definition contained in the 2014 UUJN has a different meaning.

According to the Notary Position Regulation (PJN), a Notary is: "A public official who is only authorized to make an authentic deed regarding all actions, agreements and stipulations required by a general regulation or by interested parties are required to be stated in an authentic deed, guaranteeing certainty the date, keep the deed and provide grosse, copies and quotations, all as long as the making of the deed by a general regulation is not assigned or excluded to officials or other people.

According to Article 1 of the Law on Notary Positions (UUN) 2014 what is meant by a notary is: "A public official who is authorized to make authentic deeds and has other authorities as referred to in this Law or based on other laws."

Article 1868 Burgelijk Wetboek (BW) states: An authentic deed is a deed in the form determined by law, made by or before public officials in power for that at the place where the deed was made. Article 1 number (1) of the Law on Notary Positions states: Notary is a Public Official authorized to make authentic deeds and other authorities as referred to in this Law.

One of the meanings of Ambtenarenis an official. Thus, Openbare Ambtenaren is an official who has duties related to the public interest, so it is appropriate if Openbare Ambtenaren is defined as a Public Official. Specifically with regard to Openbare Ambtenaren which is translated as Public Official, it is defined as an official who is entrusted with the task of making an authentic deed that serves the public interest and such qualifications are given to a Notary. The legal rules as mentioned above that regulate the existence of Notaries do not provide limitations or definitions regarding General Officials, because currently those who are qualified as General Officials are not only notaries, Land Deed Making Officials (PPAT) is also qualified as General Officials.

2.2. Notary Authority

Notary is a public official who is authorized to make deeds regarding all actions, agreements, and decisions which are required by general law, or the parties concerned to be stated in an authentic deed, determine the date, keep the deed and provide a valid copy. (grosse), copies and quotations thereof, as long as the making of the deeds is also not obliged by the official or is a special obligation. (Hulu, F. 2020)

The terms or meanings of positions or officials are related to authority, so that the term or understanding of a Notary as a Public Official is related to his authority. A notary is a public official whoonly authorized to make authentic deeds regarding all actions, agreements and stipulations required by laws and regulations and/or desired by the interested parties to be stated in the Authentic Deed, guarantee the certainty of the date of making the deed, keep the deed, provide grosse, copy and the quotation of the Deed, all of which are as long as the making of the Deed is not assigned or excluded to other officials or other people.

Article 15 of Law Number 2 of 2014, authority notaries are:

1. Notaries are authorized to make Authentic Deeds regarding all actions, agreements, and stipulations required by laws and regulations and/or desired by interested parties to be stated in Authentic Deeds, guarantee the certainty of the date of making the Deed, save the Deed, provide grosse, copies and quotations of the Deed , all of this as long as the making of the Deed is not assigned or excluded to other officials or other people stipulated by law.
2. In addition to the authority as referred to in paragraph (1), a Notary is also authorized to:

a. Validate the signature and determine the certainty of the date of the letter under the hand by registering it in a special book;
b. Book letters under the hand by registering in a special book;
c. Make a copy of the original underhand letter in the form of a copy containing the description as written and described in the letter concerned;
d. Validating the compatibility of the photocopy with the original letter;
e. provide legal counseling in connection with the making of the deed;
f. Make a deed related to land; or
g. Make Minutes of Auction Deed.

3. In addition to the authority as referred to in paragraph (1) and paragraph (2), a Notary has other powers as regulated in the laws and regulations.

The authority of a notary includes 4 (four) things, namely: a notary must be authorized as far as the deed he must make. The authority of a Notary in making an authentic deed as long as it is not excluded from other parties or officials, or a Notary is also authorized to make it besides being made by another party or official, implies that the Notary's authority in making an authentic deed has general authority, while other parties have limited authority. Article 15 UUJN has determined the authority of a Notary. This authority is a limitation, that the Notary may not take an action outside the authority.

2.3. Definition of Authentic Deed

In our society which is very thick with customs, important events are generally proven by the testimony of several witnesses. Usually, the living witnesses to these events are neighbors, village friends or village officials. Starting from events in the family environment, such as naming a newborn child, adoption, marriage, inheritance distribution to legal events, such as buying and selling land, houses and so on. If there is a dispute and the truth must be proven, it is the living witnesses who will strengthen the truth by giving testimony. However, the existence of living witnesses actually has a weakness. As long as they are alive, it is likely that there will be no difficulty in giving a testimony.

Deed is writing that is intentionally made to be used as evidence. In the Civil Procedure Code Article 1868 of the Civil Code, valid evidence or recognized by law consists of:

a. Written evidence;
b. Evidence with witnesses;
c. conjectures;
d. Confession;
e. Oath.

The term or word deed in Dutch is called . "act"or "deed" and in English is called "act" or "deed". According to general opinion, it has two meanings, namely:

1. Actions (handling) or legal actions (rechtshandeling).
2. A writing that is made to be used or to be used as a certain legal act, namely in the form of writing that is shown to certain evidence.

Article 165 of the Staatsblad of 1941 Number 84 explains the notion of a deed, namely that a deed is a letter made so by or before an authorized employee to make it sufficient evidence for both parties and their heirs as well as relating to other parties as evidence legal relationship, regarding all matters referred to in the letter as notification of a direct relationship with the subject in the deed. Sudikno Mertokusumo also gave an understanding of the deed, namely: "a letter as evidence that is signed, which contains events that form the basis of a right or an engagement, which was made from the beginning intentionally for proof". According to Subekti, what is meant by a deed is "a writing that is intentionally made to be used as evidence about an event and signed"

III. Result and Discussion

3.1. The Power of Authentic Deed Proof in Practice in Court

In Article 1870 BW Authentic Deed is a deed in such a way made in the form stipulated in the legislation by or before public officials who are authorized at the place where the letter was made, resulting in complete evidence of everything contained therein and even about everything contained in the document. It is clearly explained in it for the parties and the heirs and those who have rights from it, as long as what is described has a direct relationship with the main problem regulated in the deed.

In Latin it is stated that acta publica probant seseipsa, namely a deed that appears to be an authentic deed, meaning that it signifies itself from the outside, from its words as coming from a public official, then the deed is considered to everyone as an authentic deed, until it can be proven that the deed is not authentic.

An authentic deed has the power of proof, both outwardly, formally, and materially with the following explanations:

1. The power of proof of birth (uitwenduge bewijskracht)
2. The power of formal proof (Formele bewijskreacht)
3. The power of material proof (materialelle bewijskreacht)

3.2. Legal Consequences on Authentic Deeds Containing False Information

Based on the results of the study that the legal consequences of an authentic deed containing false information are as follows: Basically, the judge cannot cancel a notarial deed if the cancellation of the deed is not requested to him, because the judge cannot decide what is not requested. Regarding the cancellation of the deed, it is the authority of the civil judge, namely by filing a civil lawsuit in the court. If the cancellation of the deed is requested by the injured party (the victim), the notarial deed can be canceled by the judge if there is opposing evidence. As it is known that a notary deed is an authentic deed which is a written evidence that has binding and perfect proof power. This means that it is still possible to be paralyzed by opposing evidence, namely the filing of a lawsuit to demand the cancellation of the deed to the court so that the deed is cancelled.

Cancellation creates uncertain conditions, therefore the law gives a limited time to sue based on cancellation, and the law provides cancellation if you want to protect someone against himself. Thus the cancellation is required a decision by the judge. Because as long as cancellation is not requested, the legal action/agreement stated in the deed will remain valid or valid.

After the judge's decision has permanent legal force on the lawsuit for the cancellation of the deed, the deed no longer has legal force as authentic evidence because it contains a juridical/legal defect, then in the judge's decision, the judge will declare that the deed is null

and void. And the validity of the cancellation of the deed is retroactive, namely since the legal act/agreement was made.

The cancellation of an authentic deed can also be carried out by a notary if the parties/appearers realize that there is an error or mistake that has been stated in the deed, so that doubts arise about the material of the deed, then based on the agreement of the parties/appearances, the deed can be canceled by Notary Public.

IV. Conclusion

1. The legal force of a Notary Deed in the process of proving in court is perfect and binding, so it does not need to be made or added with other evidence, the deed still exists, what is canceled is the contents of the deed (the legal relationship). The authentic deed is the implementation of Article 1368 of the Civil Code, Article 38 of the Law on Notary Positions Number 2 of 2014 concerning amendments to Law Number 30 of 2004 concerning Notary Positions
2. The legal consequence of an authentic deed containing false information is that the authentic deed has caused a dispute and is being sued in court, therefore the aggrieved party can file a civil lawsuit to the court so that the judge can decide and grant the cancellation of the deed. Thus, the deed no longer has legal force because it is legally flawed and in its decision the judge declares that the deed is null and void. And since the decision to cancel the deed by the judge, the validity of the cancellation is retroactive, that is, since the legal act/agreement was made.

Suggestion

a. In carrying out their duties and positions, a notary should always adhere strictly to the provisions of the applicable law. Be careful and vigilant in researching and examining letters/warkahs and documents provided by the appearers. Besides that, one must really pay attention to the attitudes and words of the presenter by asking as many questions as possible and asking him to talk about the letter/deed that will be made by a notary. In addition, it is necessary to use the notary's own feelings to sharpen confidence.
b. Every appearer who comes to the notary to ask for a deed should be made, preferably in providing letters and documents as well as information related to the deed to be made are letters, documents and statements that are actually true. For those who have violated the law in making a notarial deed for their own sake, they deserve to compensate for the losses they have caused and must also be given a prison sentence so that they become a deterrent. Because his actions not only cause harm to the rights of others but also harm the notary.

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