



JURIDICAL ANALYSIS OF THE VALIDITY OF DEEDS READ WITHOUT THE PRESENCE OF A NOTARY IN NOTARIAL PRACTICE IN BATAM CITY

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Abstract

A notarial deed is an authentic deed that possesses full evidentiary power and serves to provide legal certainty for parties in a variety of civil legal relationships. The authenticity of a notarial deed is determined not only by the authority of the notary as a public official, but also by the fulfillment of formal and material requirements as regulated in the Civil Code and the Law on the Office of Notary. In notarial practice, indications still arise of deed readings conducted without the presence of the notary or delegated to notary office staff. Such conditions have the potential to give rise to issues concerning the validity of the deed, its evidentiary strength, and the legal responsibility of the notary. This study aims to analyze the legal provisions regarding the validity of deeds read aloud without the presence of a notary, examine their impact on notarial practice in Batam City, and identify the legal risks arising for the deed, the parties involved, and the notary. This study employs a normative-empirical legal research method with statutory, conceptual, and empirical approaches. Data were obtained through literature review, document study, and interviews with notaries, the Notary Supervisory Council, and relevant parties in Batam City. The data obtained were analyzed using qualitative juridical analysis. The research results show that the obligation of the notary to read out the deed directly in the presence of the appearing parties is a formal requirement that must be fulfilled in the creation of an authentic deed. Reading the deed without the notary's presence may cause the deed to lose its authenticity, weaken its evidentiary strength, and create legal uncertainty for the parties. In addition, such practice poses risks of civil, administrative, ethical, and even criminal liability for the notary if it is proven to cause loss or is done intentionally. Therefore, enhanced supervision, notary compliance with the provisions of the Notary Position Law, and legal education for the public are needed to ensure legal certainty and safeguard the integrity of the notarial profession.

Keywords: Authentic Deed, Notary, Deed Reading, Deed Validity, Legal Liability.

INTRODUCTION

Indonesia is a country based on law as stated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. The consequence of this principle is that every legal relationship in the life of society must be guaranteed legal certainty and protection. In civil legal relations, this certainty is realized through the existence of written evidence, especially authentic deeds which have an important position in proving events and legal actions of the parties. This research thesis places authentic deeds as an important instrument in providing certainty regarding the identity of the parties, time, will, and substance of legal actions.

The strategic position of the notarial deed means that the process of its formation must meet the requirements stipulated by law. The authenticity of a deed is not only related to the substance contained therein, but also to the authorized official and the procedure for its creation. In this context, the notary's obligation to read the deed in front of the parties and witnesses before signing is an important part of the deed formation procedure. The thesis shows that this obligation is regulated in Article 16 paragraph (1) letter m of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary.

Problems arise when, in practice, the reading of deeds is carried out without the presence of a notary, or when this stage is assisted or performed by notary office staff. Based on field research in Batam City, most notaries interviewed stated that they were still present and read the deeds in person. However, the research also found certain practices where staff first explained the contents of the deed to the parties, particularly when the volume of work increased. The notaries who provided this information nevertheless acknowledged that, as a normative matter, the reading of the deed is an obligation that must be carried out by the notary themselves.

This situation demonstrates a gap between normative demands and the reality of notarial services. Factors identified in the research include work volume, demands for service efficiency, practice habits, and suboptimal oversight. While these factors may explain the emergence of this practice, the research confirms that efficiency cannot be used as a basis for overriding the obligations stipulated in the Notary Law .

This issue becomes increasingly important because violations of deed formation procedures can affect its legal status and evidentiary value. The study found that reading a deed without the presence of a notary has the potential to raise doubts about its authenticity and can open up opportunities for interested parties to challenge its validity. However, the thesis also emphasizes that not every procedural violation automatically renders a deed null and void; the legal consequences depend on the nature of the violation and the overall assessment of the deed formation process.

This research also has relevance to legal protection for the public. Interview results indicate that most notary service users do not fully understand the deed-making procedures, including the obligation to have the notary read them. Some service users assume that as long as the deed has been signed and stamped with the notary's signature and stamp, it is fully valid. These findings demonstrate the need for public understanding of the deed-making procedures and the rights of service users in obtaining notarial services.

Based on these issues, this research aims to address three main issues: the legal regulations regarding the validity of deeds read without a notary, their impact on the validity of deeds in notarial practice in Batam City, and the legal risks they pose. This research is expected to contribute to strengthening legal certainty, protecting the parties, and the professionalism of notaries in exercising their official authority.

LITERATURE REVIEW

Theory of the Rule of Law

The theory of the rule of law is used as a grand theory in this research. This theory provides the basis that the implementation of public officials' authority must be based on law and implemented in accordance with the limits of authority granted by statutory regulations. In the context of notaries, notaries, as public officials, exercise the authority granted by law, so all stages of deed creation must be carried out in accordance with legal provisions.

The principle of the rule of law becomes relevant when linked to the obligation to read deeds. If a notary fails to fulfill this obligation, there is a question of compliance with the legal norms governing the notary's office. Therefore, reading deeds cannot be viewed merely as a formality of service, but rather as part of the exercise of official authority that must be subject to law. This thesis uses this theory to examine the compliance of the practice of reading deeds with the principles of the supremacy of law, legality, and legal certainty.

Theory of Legal Certainty

Radbruch's Theory of Legal Certainty is used as a middle ground Legal certainty in this study is used to analyze whether the implementation of the deed formation procedure can provide clarity regarding legal status, evidentiary power, and protection for the parties. Notarial deeds are essentially expected to provide certainty regarding the legal relationships outlined therein.

Reading a deed without a notary present can create uncertainty , raising questions about whether the deed's formation procedures have been met. Research shows that this situation can reduce legal protection for the parties and open up the possibility of disputes if the deed's status is questioned. Therefore, compliance with the reading procedures is a crucial aspect in realizing the deed's function as an instrument of legal certainty.

Theory of Public Office Authority

The Theory of Public Office Authority is used as an applied This theory defines authority as power granted and limited by law. In the context of notaries, the authority granted by law must be exercised by the official who has obtained that authority.

This research uses this theory to analyze the role of reading a deed as an act related to the authority of a notary. Based on the research results, members of the Notary Supervisory Board view reading a deed as an obligation

inherent to notaries and cannot be delegated to staff. Therefore, reading by another party could potentially constitute a deviation from the authority of a notary.

METHOD

a **normative-empirical** legal research method . The normative approach is used to examine laws and regulations, legal principles, and doctrines related to the obligation to read deeds and the validity of notarial deeds. While the empirical approach is used to determine the application of these norms in notarial practice in Batam City. The approaches used include a statutory approach, a conceptual approach, and an empirical approach.

The research location was Batam City, specifically for notaries and related institutions. The research data consisted of primary, secondary, and tertiary data. Primary data was obtained through interviews with notaries, members of the Notary Supervisory Board, and related parties, while secondary data was obtained through literature review of laws and regulations, official documents, legal books, journals, and previous research.

Informants were selected using purposive sampling . Informants included notaries actively serving in Batam City and members of the Notary Supervisory Board as key informants. Data collection was conducted through in-depth interviews, document review, and literature review. The data were then analyzed using qualitative legal analysis through the stages of data reduction, data classification, legal interpretation, and deductive conclusion drawing.

RESULTS AND DISCUSSION

Legal Regulations on the Validity of Deeds Read Without the Presence of a Notary

The regulation regarding the validity of notarial deeds is based on the position of authentic deeds as evidence in civil law. Article 1868 of the Civil Code is one of the normative bases regarding authentic deeds , while the Notary Law determines various requirements and procedures that must be met by notaries in carrying out their duties. In the context of this research, the most relevant provision is Article 16 paragraph (1) letter m of Law Number 2 of 2014 which requires notaries to read the deed in front of the person appearing and witnesses before signing.

These provisions demonstrate that the reading of a deed is part of the deed-making process, not simply an administrative activity. The reading provides the parties with the opportunity to learn and understand the contents of the deed and to make corrections if any discrepancies align with their wishes. Interviews with notaries indicate that the reading is also viewed as a mechanism to avoid misunderstandings regarding the deed's contents.

From the perspective of official authority, the reading of deeds is directly related to the notary's authority as a public official. The Notary Supervisory Board, which served as a research informant, emphasized that the reading of deeds is an obligation that cannot be delegated to staff or other parties. Therefore, the reading of deeds by staff not only raises administrative issues but also has the potential to affect the validity of the deed.

Thus, the reading of a deed without the presence of a notary constitutes a violation of the procedures stipulated in the Notary Law . However, the legal consequences of the deed must be analyzed based on the nature of the violation and the applicable legal provisions. This study does not conclude that every procedural violation automatically renders the deed null and void. Rather, such violations may open the possibility of the deed being defaced and affect its evidentiary force.

Impact on the Validity of Deeds in Notarial Practice in Batam City

Field research results indicate that most notaries interviewed stated they read the deed in person. However, the study also found a practice where staff helped explain the contents of the deed to the parties before the notary arrived to carry out the next steps. This phenomenon demonstrates a discrepancy between the ideal procedure prescribed by law and the service practice in certain circumstances.

Research has found that high levels of economic activity, investment, trade, and services in Batam City have led to a high demand for notarial services. This situation can increase the volume of notary work and drive demands for fast and efficient service. However, this pressure should not be used as an excuse to neglect legal obligations.

From a legal perspective, a reading without a notary's presence can potentially cause the deed to lose its authenticity . Research shows that violating formal requirements can lead to the deed being degraded to a private deed if the legally stipulated requirements are not met.

The next impact relates to the strength of the evidence. If the authenticity of the deed is questioned, the deed's position as evidence with perfect probative force can be weakened. In court proceedings, this situation may lead the parties to require additional evidence to support the truth of the deed's contents.

This practice also impacts the legal certainty of the parties. When the status of a deed is unclear, the rights and obligations based on that deed are potentially subject to uncertainty. In business transactions, this situation can hinder the implementation of legal relationships and increase the likelihood of disputes.

Research findings also show that users of notary services generally do not fully understand the procedures for creating deeds. Some people believe that a notary's signature and stamp are sufficient to guarantee the validity of a deed. After receiving an explanation of the function of deed reading, service users stated that the presence of a notary is essential to ensure the deed's contents align with their wishes.

Legal Risks to Deeds, Parties, and Notaries

Legal risks to deeds include the possibility of an authentic deed being degraded into a private deed, the loss of complete evidentiary force, and the possibility of the deed being challenged through the courts. Research into court decisions shows that judges may consider the formal aspects of deed formation when assessing its legal force.

The Batam District Court Decision Number 347/ Pdt.G /2020/PN Btm was used in this research as one of the materials to demonstrate the importance of compliance with formal procedures. In this case, the validity of the deed was upheld because its formation process was carried out according to procedures, including the presence of the parties, the reading of the deed, and the voluntary signing without pressure.

Conversely, the research also examines Batam District Court Decision Number 51/ Pdt.G /2021/PN Btm, which addresses issues regarding free consent in establishing legal relationships. Based on the thesis analysis, the decision demonstrates that issues in the legal act formation process can affect the validity of the deed. In the context of this research, a reading without a notary's presence can also provide grounds for interested parties to challenge the validity of the deed if there is evidence of a violation of required procedures.

For the parties, the risks that arise include civil losses, potential disputes, and uncertainty regarding rights and obligations stemming from the deed. When a deed loses its evidentiary force or its validity is questioned, the parties no longer obtain the level of certainty initially expected from using a notarial deed. This condition can reduce the deed's preventive function in preventing disputes.

For notaries, research identifies potential liability across several dimensions. These risks include civil, administrative, and ethical liability, and in certain circumstances, potential criminal liability if elements meet criminal provisions. All of these risks are a consequence of failing to comply with official obligations and deed formation procedures.

From the perspective of the Theory of Public Office Authority, the implementation of the reading by staff presents a problem because such authority is inherent in the notary's position. From the perspective of the Theory of Legal Certainty, this practice creates uncertainty regarding the status and validity of the deed. Meanwhile, from the perspective of the Theory of the Rule of Law, deviations from procedures demonstrate the importance of public officials' compliance with the authority and obligations derived from the law.

Thus, the research results indicate that the issue of reading deeds without a notary's presence cannot be viewed as merely a technical issue. This issue relates to the validity of the deed, its evidentiary value, the protection of the parties, the notary's responsibilities, and public trust in the notarial profession. Therefore, the in-person reading of deeds by a notary is an essential part of the notarial profession and must be adhered to.

CONCLUSION

The legal provisions regarding the validity of deeds read without the presence of a notary are based on the legal provisions regarding authentic deeds and the obligations of notaries in the Notary Law. Article 16 paragraph (1) letter m of Law Number 2 of 2014 requires notaries to read the deed in the presence of the parties and witnesses before signing. This obligation is part of the deed formation procedure and cannot be treated as a formality that can be transferred to staff.

In notarial practice in Batam City, most notaries have performed deed readings in person, but research still finds certain practices involving staff to provide explanations of the deed's contents. This practice is influenced by, among other factors, work volume, demands for service efficiency, practice habits, and limited supervision. Legally, these factors cannot justify ignoring the obligation for notaries to read the deed.

Reading a deed without a notary's presence has the potential to compromise its authenticity and evidentiary value. The deed is at risk of being degraded to a private deed if the formal requirements stipulated by law are not met. For the parties, this situation can lead to legal uncertainty, civil losses, and potential disputes. For the notary, there is a risk of civil, administrative, ethical, and, in certain circumstances, criminal liability.

Therefore, increased supervision and guidance are needed regarding the implementation of notarial obligations, particularly the reading of deeds. Notaries in Batam City need to improve compliance with all deed formation procedures, while the public needs to be educated about the rights and procedures involved in notarial services. These efforts are necessary to maintain the authenticity of deeds, provide legal certainty, and safeguard the integrity of the notarial profession.

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