



IMPLEMENTATION OF THE NOTARY'S PRINCIPLE OF PRUDENCE IN THE PREPARATION OF AUTHENTIC DEEDS AS AN EFFORT TO PREVENT DISPUTES: AN EMPIRICAL STUDY IN BATAM CITY

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Abstract

The principle of prudence is an important part of the implementation of the Notary's position in making authentic deeds. Notaries are required to act trustworthy, honest, thorough, independent, impartial, and protect the interests of the parties. The application of this principle is necessary to ensure legal certainty and prevent disputes due to identity errors, incomplete documents, unclear objects or problems in the will of the parties. This study aims to analyze the implementation of the Notary's prudence principle in making authentic deeds as an effort to prevent disputes in Batam City and identify obstacles and solutions in its implementation. The study uses an empirical legal research method with a statutory, conceptual, and sociological approach. Data were obtained through interviews with Notaries and related parties and studies of primary, secondary, and tertiary legal materials. The results of the study indicate that the Notary has implemented the principle of prudence through checking the identity and competence of the person appearing, verifying documents, checking the authority and object of legal acts, ensuring the will of the parties, providing legal counseling, and fulfilling the formal requirements for making deeds. Obstacles encountered include incomplete documents, data discrepancies, limited information from the parties, pressure to expedite the deed-making process, and difficulties verifying certain data. Implementing the precautionary principle has a preventive function in minimizing the risk of disputes and maintaining the evidentiary power of authentic deeds. Optimization efforts are carried out through multi-layered document examinations, improving the competence and professionalism of Notaries, providing legal counseling to the parties, utilizing technology in data verification, and improving coordination with relevant agencies. By consistently applying the precautionary principle, Notaries can provide legal certainty and protection while reducing the potential for disputes that arise after the deed is made.

Keywords: Principle of Prudence, Notary, Authentic Deed, Dispute Prevention, Batam City.

INTRODUCTION

Notaries hold a crucial position in the Indonesian civil law system, serving as public officials authorized to create authentic deeds concerning acts, agreements, and legal determinations as desired by the parties or as required by statutory regulations. The existence of authentic deeds is crucial in providing legal certainty and protection to the parties, as they serve as written evidence of an act or legal relationship. Therefore, the performance of a notary's office is inseparable from the demands of professionalism, accuracy, honesty, independence, impartiality, and the principle of prudence.

The main legal basis for the implementation of the Notary's position is Law Number 30 of 2004 concerning the Notary's Position as amended by Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Notary's Position. This law positions the Notary as a public official who is authorized to make authentic deeds and provide legal certainty for the public. Article 15 paragraph (1) emphasizes that the Notary has the authority to make authentic deeds regarding all actions, agreements, and determinations required by statutory regulations and/or desired by the interested parties to be stated in an authentic deed. This authority must be exercised by paying attention to the obligations of a Notary as stipulated in Article 16 paragraph (1) letter a of the Notary Law, namely acting in a trustworthy, honest, thorough, independent, impartial manner, and safeguarding the interests of the parties involved in legal acts. This provision is substantively an important basis for the application of the principle

of caution in making deeds. Thus, a Notary is not sufficient to only fulfill the formal requirements for making a deed, but must also conduct careful examination and research into the identity of the parties, the authority to act, supporting documents, the object of the legal act, and the wishes of the parties before the deed is signed.

The principle of prudence also relates to provisions regarding the form and procedures for making deeds. If a notary public fails to comply with certain requirements stipulated in the Notary Law, the deed may lose its authentic status and, under certain circumstances, may only have the force of proof as a private deed. Law Number 2 of 2014 itself imposes legal consequences for violations of certain provisions in making deeds, including the possibility of a claim for damages against the notary public.

Conceptually, the principle of prudence is necessary because notaries are in a strategic position and also face significant legal risks. Notaries essentially convey the will of the parties into a deed, while the material truth regarding an event or legal relationship is not entirely within the notary's control. This condition requires notaries to have adequate audit mechanisms to prevent the use of false identities, forged documents, providing information that does not correspond to the actual situation, legal actions without authority, and transactions regarding objects that are in dispute. Failure to conduct a thorough audit can result in the deed being questioned and the notary being drawn into the dispute between the parties.

This problem can be found in judicial practice in Batam City. One example is Civil Case Number 155/Pdt.G/2018/PN Btm which was examined and decided by the Batam District Court on January 16, 2019. In this case, a Notary and PPAT, namely Anly Cenggana, SH, was also a defendant along with the banking party. The case related to a lawsuit for unlawful acts and the Batam District Court granted the plaintiff's lawsuit in part. This decision shows that in practice, Notaries can be dragged into civil disputes related to legal acts and documents created or related to the exercise of their authority.

In addition to the aforementioned case, there is also case Number 83/Pdt.G/2019/PN Btm in the Batam District Court involving a Notary and PPAT as one of the parties in a civil dispute related to a land transaction. In this case, Notary and PPAT Yondri Darto, SH is listed as one of the defendants along with other parties, while the main case relates to unlawful acts in the land transaction. The Batam District Court in its decision granted the lawsuit in part and stated that there was an unlawful act by the defendant. This case shows that transactions outlined or related to a Notary/PPAT deed can give rise to legal issues if there are problems regarding the legal relationship between the parties or the object of the transaction.

This phenomenon demonstrates a conflict between legal norms requiring Notaries to act with integrity, honesty, thoroughness, independence, impartiality, and to safeguard the interests of the parties, and the reality that disputes related to legal acts and deeds can still arise in practice. The existence of a dispute does not necessarily indicate that a Notary has committed an error, as the Notary's accountability must be assessed based on their authority, obligations, deed-making procedures, and the form of error or negligence that can be proven. However, the emergence of a Notary as a party to a dispute demonstrates the importance of examining the extent to which the principle of prudence is truly applied in the deed-making process.

This situation becomes increasingly relevant in the context of Batam City, which has high levels of economic activity, trade, investment, land, and business transactions. Various legal relationships between the public and businesses require notarial deeds as an instrument to provide legal certainty. The more complex legal acts undertaken by the public, the greater the need for notaries to apply the principle of prudence. Verification of identity, document validity, authority to act, object status, and explanation of the legal consequences of an agreement are crucial for preventing future disputes.

The application of the principle of prudence is also closely related to legal protection for the parties and the Notary. For the parties, the Notary's prudence is necessary so that the deeds they create truly provide certainty regarding rights and obligations and reduce the possibility of disputes. For the Notary, the implementation of the principle of prudence can be a form of preventative protection so that the Notary is not easily held accountable for problems that actually arise from the statements or actions of the parties. Therefore, the principle of prudence must be positioned not as an administrative formality, but as an integral part of the implementation of the Notary's office.

A question that requires further study is how this principle of prudence is applied in notarial practice in Batam City. Normatively, the obligation of notaries to act diligently is stipulated in the Notary Law. However, in practice, there are still cases involving notaries in civil disputes. This situation raises questions regarding the inspection mechanisms carried out by notaries before drafting deeds, the form of prudence applied, the obstacles encountered, and the steps taken if there are indications of discrepancies in documents or statements from the parties.

Based on this description, research on the implementation of the principle of prudence by Notaries is important to conduct using an empirical approach in Batam City. This research not only analyzes the legal provisions

governing the obligations and authorities of Notaries, but also examines their application in practice and relates them to the emergence of disputes involving Notaries. Thus, this research is expected to provide an overview of the effectiveness of the application of the principle of prudence, the obstacles faced by Notaries, and steps that can be taken to strengthen dispute prevention and legal protection for both parties and Notaries.

LITERATURE REVIEW

1. Grand Theory: Theory of the Rule of Law (Friedrich Julius Stahl)

The theory of the rule of law provides the basis for the exercise of a notary's authority based on law and regulations. Notaries cannot act based on personal interests but are required to exercise their authority legally and responsibly.

The relationship between theory and research:

Rule of Law → Notary's authority based on law → application of the principle of prudence → valid authentic deeds → prevention of disputes.

2. Middle Theory: The Theory of Legal Certainty (Sudikno Mertokusumo)

The theory of legal certainty explains that an authentic deed must guarantee the rights and obligations of the parties. The principle of notarial prudence is necessary to ensure that the deed meets formal and material requirements and has the force of legal evidence.

Focus of implementation:

- ensure the identity of the parties;
- examine the object of the agreement;
- ascertain the wishes of the parties;
- fulfill the procedures for making a deed;
- prevent legal defects.

3. Middle Theory: Theory of Legal Responsibility (Hans Kelsen)

The theory of legal responsibility is used to analyze the legal consequences if a notary does not carry out his obligations carefully.

Notaries have extensive authority to create authentic deeds and are therefore required to act carefully, honestly, independently, and in accordance with the law. If negligence results in a dispute, the form of error, violation, legal consequences, and the notary's liability can be examined.

4. Applied Theory: Dispute Prevention Theory (Louis Kriesberg)

This theory is used to explain that preventive measures can be taken before a dispute arises. In notarial practice, the precautionary principle is a preventative measure through examination and verification before a deed is drawn up.

Form of application:

- identity check;
- document inspection;
- ensure the authority of the parties;
- examine the object of the deed;
- explain the contents and legal consequences of the deed;
- ensure understanding of the parties;
- fulfill the deed making procedures.

METHOD

A. Type of Research

This study uses empirical legal research, namely research that examines the application of law in societal practice. This study aims to determine the implementation of the principle of prudence by notaries in the preparation of authentic deeds as an effort to prevent disputes in Batam City.

The research was conducted by comparing legal provisions regarding the authority and obligations of Notaries with field practices through interviews, in order to obtain information regarding procedures, obstacles, and efforts of Notaries in implementing the principle of prudence.

B. Research Approach

This research uses three approaches:

1. Statute Approach

Used to study legal regulations relating to the position of Notary and authentic deeds, such as:

- Law Number 30 of 2004 concerning the Position of Notary;
- Law Number 2 of 2014 concerning Amendments to the Law on the Position of Notary;
- Civil Code;
- Notary Code of Ethics;
- other related regulations.

2. Conceptual Approach

Used to understand the main concepts of the research, namely the principle of prudence, notaries, authentic deeds, legal certainty, legal responsibility, and dispute prevention.

3. Sociological/Empirical Approach

Used to see the application of the principle of prudence of Notaries in practice through interviews regarding the examination of identity, documents, the competence of the parties, the object of the deed, and obstacles in preventing disputes.

C. Research Location and Data Sources

1. Research Location

The research was conducted in Batam City, Riau Islands Province . Batam City was chosen because of its high economic activity, investment, and legal transactions, making the role of notaries in providing legal certainty crucial.

2. Data Sources

Data sources consist of:

a. Primary Data

Data obtained directly through interviews with:

- Notary in Batam City;
- Regional Notary Supervisory Board (if required);
- Notary service users;
- other related parties.

Primary data is used to determine the application of the precautionary principle, obstacles, and solutions of Notaries.

b. Secondary Data

Includes:

- primary legal materials in the form of statutory regulations and court decisions;
- secondary legal materials in the form of books, journals, theses, dissertations and expert opinions;
- tertiary legal materials in the form of legal dictionaries and encyclopedias.

D. Data Collection Techniques

Data collection techniques are carried out through:

1. Interview

Semi-structured interviews were conducted with notaries and related parties to obtain information regarding the application of the principle of prudence in making deeds.

Aspects studied include:

- identity check;
- document verification;
- the competence of the parties;
- examination of the object of the deed;
- providing legal explanations;
- procedures for reading and signing the deed;
- dispute prevention efforts.

2. Literature Study

This is done by reviewing regulations, books, journals, previous research, and related legal literature.

3. Documentation

Used to complete data in the form of documents and supporting research materials while maintaining the confidentiality of the Notary's position.

E. Data Analysis

The data was analyzed using qualitative methods , namely by connecting field data with relevant legal provisions, theories and legal concepts.

The analysis stages include:

1. Data Reduction
Select and group data based on research focus.
2. Data Presentation
Systematically compile data to see the relationship between legal regulations and Notary practices.
3. Conclusion Drawing
4. Drawing conclusions based on the results of normative and empirical data analysis to answer the research problem formulation.

Through this method, the research is expected to be able to describe the application of the principle of prudence by Notaries, the obstacles faced, and solutions to prevent disputes related to authentic deeds in Batam City.

RESULTS AND DISCUSSION

A. Legal Regulations on the Notary's Principle of Prudence

The principle of prudence is a crucial obligation for notaries when drafting authentic deeds. Although not explicitly stated as a separate principle in the Notary Law (UUJN), this principle is reflected in the authority, obligations, and procedures for drafting deeds.

The basis for its application is contained in Article 15 of the UUJN concerning the authority of Notaries to make authentic deeds and Article 16 paragraph (1) letter a of the UUJN which requires Notaries to act in a trustworthy, honest, thorough, independent and impartial manner.

The application of the precautionary principle includes:

- checking the identity and competence of the parties;
- document verification;
- examination of legal authority and objects;
- ascertain the wishes of the parties;
- meet the formal requirements of the deed;
- provide legal counseling;
- maintain Notary Protocol.

This principle functions as a preventive measure to prevent disputes due to errors in identity, documents, authority, objects, or procedures for making deeds.

B. Implementation of the Notary's Prudential Principle in Batam City

The research results show that the principle of prudence has become part of the Notary's work procedures in creating authentic deeds. This is implemented from the time the parties meet with the Notary until the deed is completed and stored as a Notary Protocol.

The forms of implementation include:

1. Identity Check of the Parties
The notary ensures the identity, capacity and legal standing of the parties to prevent the use of false identities or unauthorized parties.
2. Document Verification
The notary checks the suitability, validity and relevance of the document to the legal act being performed.
3. Competency and Authority Examination
The notary ensures that the parties have the authority to act, including when acting under power of attorney or representing a legal entity.
4. Ensure the Will of the Parties
The notary explains the contents and legal consequences of the deed so that the parties understand their rights and obligations.
5. Examination of Deed Objects
Notaries ensure that legal objects have a clear basis and status to avoid problems in the future.
6. Fulfillment of Deed Formalities
Notaries are required to fulfill the provisions regarding reading, witnesses, time, place and signing of the deed so that its evidentiary power is maintained.

C. Obstacles and Solutions to Implementing the Precautionary Principle

Obstacles to implementing the precautionary principle in Batam City include:

- incomplete or inappropriate documents;
- limited information from the parties;
- difficulty verifying data;
- pressure to expedite the creation of deeds;
- lack of understanding of the parties regarding the legal consequences of the deed.

The solutions that can be done are:

- multi-layered document inspection;
- improve clarification to the parties;
- improve the competence and professionalism of Notaries;
- utilize technology for data verification;
- strengthening coordination with related agencies;
- provide legal counseling;
- maintaining the independence of Notaries.

CONCLUSION

1. The legal regulation regarding the principle of prudence for Notaries in the preparation of authentic deeds as an effort to prevent disputes in Batam City basically has a strong legal basis in the legislation, specifically Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notaries, which regulates the authority, obligations, prohibitions, and responsibilities of Notaries in carrying out their duties. Although the principle of prudence is not formulated explicitly in a separate provision, this principle is reflected in the obligation of Notaries to act trustworthy, honest, thorough, independent, impartial, protect the interests of the parties, check the identity and documents of the appearing parties, and ensure that the requirements for preparing authentic deeds are met. This regulation is reinforced by civil law provisions regarding the legal requirements for agreements and the evidentiary power of authentic deeds. Thus, the legal regulation of the principle of prudence is an important instrument for Notaries in ensuring legal certainty and protection for the parties and minimizing the risk of legal defects and disputes regarding the authentic deeds they make.
2. The implementation of the Notary's principle of prudence in the preparation of authentic deeds as an effort to prevent disputes in Batam City has basically been carried out through checking the identity and competence of the parties, verifying the completeness and validity of documents, checking the conformity of data and objects of legal acts, providing legal counseling, and reading and signing deeds in accordance with the provisions of laws and regulations. The application of this principle is an important part of the implementation of the Notary's authority and responsibility to ensure that the deeds made meet formal and material requirements and provide legal certainty and protection to the parties. In practice, the application of the principle of prudence is very necessary considering the risks of incomplete documents, information that does not correspond to the actual situation, identities that need further verification, and potential legal problems regarding the objects of the deed. By carrying out careful examinations and verifications, providing legal counseling, and increasing the professionalism of Notaries, the principle of prudence can play an effective role in minimizing the risk of legal defects in deeds and preventing disputes from arising in the future.
3. Obstacles and solutions in the implementation of the principle of prudence by Notaries in the preparation of authentic deeds as an effort to prevent disputes in Batam City indicate that the application of the principle of prudence still faces various obstacles, including time constraints in examining documents and the identities of the parties, incomplete or inconsistencies in documents, limited information regarding the legal status of the object of the agreement, and the presence of parties who provide incorrect or incomplete information. In addition, the development of increasingly complex transactions and community needs also increase the risk of errors and disputes after the deed is made. Therefore, the necessary solution is to increase the accuracy and professionalism of Notaries through more in-depth examination of identities and documents, verifying the validity and legal status of the object of the deed, providing legal counseling to the parties, implementing systematic administrative and documentation procedures, and utilizing digital technology appropriately to support the verification process. By consistently implementing these steps, the principle of prudence can be implemented optimally so that

authentic deeds made by Notaries have legal certainty, provide protection for the parties, and can function effectively as an instrument for preventing disputes.

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