NOTARIES AS PARTIES IN CIVIL CASES BEFORE THE COURT

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Abstract: The role of a notary today is crucial for the parties who wish to make variety of agreements, due to authentic notarial deed is considered to be more secure for the society than the legal power of the deed under the hand. Nevertheless, in practice it is frequently discovered the presence of a notarial deed being sued to be requested for cancellation before the court due to the fault of the parties who disagree and dishonest in his statement to the notary, or the fault of the notary him/herself, either for negligence or willful misconduct. This article / paper is an analytical descriptive study, in order to see the position of the notary in the process of examination of dispute in court either as a person in his/her capacity as a state official or from the positions of the authentic deed made are often the source of disputes and sanctions and responsibility of the notary who is deemed to have made mistakes during undertaking further work that is considered detrimental to the third party. In terms of any problems that might arise in the future on the publication of an authentic deed made by the notary, the notary may not necessarily be drawn as the guilty party which caused the disputes, yet to be seen how far the offense has been committed by a notary, whether there is an error / not, a violation of the code of ethics and or the Law Number 2 of 2014 on the Position of Notary ( hereinafter referred to as UUJN ). In the dispute resolution in court on civil disputes, notaries can hold the position as the other party such as Defendant, if deemed to have committed an unlawful act to the detriment of others, as a co-defendant, or witness.

Keywords: Notary; Civil Disput; Responsibility

INTRODUCTION
Humans, as legal subjects who has legal rights and obligations both to themselves and to others based on the values of customs and norms that grow along with the development of society. The existence of this nature will cause distinctive problems, for the rights and obligations of the individual in society prone to collide due to differences in interests that led to the conflict.

The conflict will lead to disputes,
which can be solved in various ways either simple or by using dispute resolution institutions both non-litigation and litigation (court). Conflicts or disputes can be avoided if in a legal action based on the completeness of letters or documents which have the legal power as evidence. Evidence can be made with the agreement of the parties which is equipped with the signatures without legality from the competent authority (the deed under the hand) or in the form of an authentic deed, for example as an authentic deed is certificate as a strong and perfect evidence is not closed for proven otherwise.

Authentic deed is the strongest legal evidence, the fullest and has an important role in any legal relations in the society as the need of written evidence on the legal events, both in the economic and social sector. The institutions which are made and created by the state in the arrangement of the legal order including the Notary Institution by placing the notary as public official that is based on the expertise to create an authentic deed and other authorities granted by the government as long as the making of the deed is not assigned or excluded to other officials.

Article 1 paragraph 1 of Law No. 2 of 2014 (UUJN) on the Position of Notary (UUJN) mentions "the notary is a public official who is authorized to make an authentic deed and other authorities referred to in UUJN. " Notaries are appointed and dismissed by the Minister whose duties and responsibilities including notarial field, the Minister of Justice and Human Rights, but the Notary is not subordinated to the government so that it is independent. Notaries cannot be intervened by the government in carrying out their duties.

A notary as public official, is different from the Administrative Officer. The difference lies in the product resulted. The final product from a notary official is the authentic deed that bound by the civil law provisions, especially in the verification. Deed is a formulation of desire or will of the parties set forth in the deed made before or by a Notary. Civil disputes are being examined in the General Court, whereas the disputes within the State Administrative Law examined in the State Administrative Court.

Notaries are government representatives who help and serve the people who need the services for the making of an authentic deed as far as it is still within their authority. The authority of a notary is specified in Article 15 UUJN.

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2 A Kohar,(1983), Notaris Dalam Praktik Hukum, Bandung: Alumni, p 64-66
about one of the authority of a notary, namely:

"A notary is authorized to make an authentic deed of deeds, agreements, and provisions required by legislation or desired by the parties to be declared in an authentic deed, guarantee the certainty of the date of manufacture, store certificates, giving grosse, copy and quotation of deed".

The making of authentic document is given to the Notary as far as it is not assigned to another person or excluded by the law. Notaries may have other authorities stipulated in the different legislation, such as a notary authority specified in the Law No. 40 of 2007 on Limited Liability Company (Company Law), which is in the process of the General Meeting of Limited Liability Company (hereinafter referred to as RUPS), and also attended by a notary in order to record all activities of the RUPS in order to comply with the law so that all that was decided in RUPS are binding for the Limited Liability Company. The minutes of the meeting or the minutes of RUPS or deed of the minutes of the meeting on the results of RUPS will then be made. Notaries are also authorized to make the minutes of auction, marriage agreement that the parties subject to the provisions of BW and the Law No. 1 of 1974 About Marriage, and the authority to make other arrangements. The above description shows that the crucial role of the notary nowadays is used by the parties who wish to make a variety of agreements, for reason that the legal power of an authentic notarial deed is considered to be more secure by the society than of the deed under the hand. This is reasonable considering the Notarial Deed is included into the authentic deed that has a perfect strength of verification.

Notarial deed must be based on the order of legislation and the wishes of the parties. A notary who made the deed does not serve as a party together with the appear before (penghadap) named in the deed. The deed made by Notary called Relaas Deed, which contains a description of the Notary of the things seen and witnessed by a Notary him/herself at the request of the parties, so that the actions of the parties is poured into the form of a notarial deed.

Essentially, the authentic deed contains of formal truth in accordance with what the parties notified to the notary, and the notary pour that what is contained in an authentic deed has been understood and in accordance with the will of the parties, so that the contents of the notarial deed are clear along with providing access to information and legislation related to the
parties who made it. Therefore, the parties may freely determine to agree or disagree about the content of the deed to be signed.\(^3\)

In carrying out his duties as a public official, notary is an institution that should not be separated from the signs which must be complied. One of which is the regulation of the requirements to be appointed as a notary, which includes knowledge of the law and other knowledge, particularly the expertise in notarial knowledge which need to be mastered intergratedly by a notary, so that able to smoothly design, prepare, and make a variety of authentic deeds. Thus the structure of language and juridical technique are neat, true and correct.

The requirements specified in UUJN and other common legislation regulates the obligations of the notary to be met, so that the deed produced has authenticity, because the function of the notary is not only recording and making evidence regarding legal actions of parties listed in deed, but also to strive for the affairs entrusted to him/her so that can be functioned in accordance with applicable law.\(^4\)

It is still found in practice, the presence of a notary deed which is being sued for cancellation, to be requested before the court due to the fault of the parties who disagree and are not honest in their statements to the notary, or the fault of the notary him / herself either through negligence or willful misconduct.

Notarial deed that has perfect legal power to prove the existence of a legal act, often becomes a source of conflict and even disputes in practice. We often find for example there are two (2) different certificates that describe the same act. In the context of civil law relating to the rights and material, the situation often leads to the resolution of disputes in court, because the existence of the authentic deed considered to be detrimental to the rights of either party.

Speaking about the resolution of disputes in court, what is used as the source of the Civil Procedure is a provision that HIR that applies for Java and Madura and RBg for outside Java and Madura, and various provisions of other legislations.

As a formal law which is used to resolve disputes in court, there are stages that are used in the proceedings which are coercive, starting from filing a lawsuit, charge-answer process, verification, conclusions, until the decision. Verification is the most important stage before the judges give a verdict, because it is compulsory for each party to prove the


argument which are expressed in memory submitted to the court, which convinced the judge about the truth of the proposition or propositions of the arguments raised in the trial.\textsuperscript{5}

The function of verification is to try to provide certainty about the truth of the legal fact, which is the subject of the dispute of the judge\textsuperscript{6}, the judge will therefore always be guided by the outcome of verification in making decisions. Therefore, presenting the evidence, occupies the most important position in the proceedings in court. However, A Pitlo said that evidence in law will never reach the absolute truth, but will only reach the relative truth.\textsuperscript{7}

Related to the verification, authentic deed, one of which is a product of a notary, serves as written evidence in civil dispute resolution, as well as the position of the notary who made the deed also often set to be a party (defendant or co-defendant) or a witness in civil proceedings by the judge in court.

Through this article, it will be reviewed how the actual position of the notary in the dispute in court either as a person in his capacity as a state official or from the position of the authentic act resulted, often becomes a source of dispute. Similarly, it will also be seen how the sanctions and responsibility of the notary who is considered to make mistakes in some cases in undertaking further work is considered to be detrimental to a third party.

This article / paper is an analytical descriptive study by describing the notary position as a party to the resolution on civil disputes in court by elaborating theories that are relevant together with the legislation and also considering rampant cases in practice. With normative juridical method, this article will only elaborate from the side of the theories, principles, and rule of law related to the written theme.

**Position of Notary in the Process of the Resolution on Civil Disputes in Court**

A notary is one of the state officials whose role is crucial in the present time. Nowadays, people are no longer know only the agreement that is based on trust in each other. Any agreement made by community will inevitably lead to the notary as an instrument of validity of the agreement that they made. Therefore, the position of notary is becoming increasingly important today.

Notaries also have their own authority who are not owned by other state officials. The notaries also have

obligations and prohibitions which they shall obey in the execution of their duties. Based on the UUJN, the notaries in Indonesia are required to understand what their authority and obligations are, also restrictions that should not be done in the execution of their duties and position. Notaries must know their limits, as well as the obligations and restrictions that should not be done.

The substance of the notarial deed is the formulation of statements on the desires expressed by the appear before (penghadap) before a notary. Notary cannot impose his/her will or opinion so that will be followed by the appear before (penghadap) then poured into the deed. The task of a notary prior to signing a deed, must first consider the appear before (penghadap) personal self, especially with regard to the appear before (penghadap) legal capacity to conduct legal action, which is a common requirement to perform a legitimate legal action. This is because the person who made the agreement will be bound by the agreements that he/she made, therefore all responsibilities that will be carried are the result of his/her actions. In the making of deed, the notary must also consider the personal circumstances of the appear before (penghadap) in the juridical sense as stipulated in Article 39 paragraph (2) UUJN which confirms that the appear before (penghadap) should be known by the notary or being introduced to him/her by 2 (two) witnesses identifiers.

In performing her/his duties, the notary is obliged to explain that what is contained in the notarial deed truly has to be understood and in accordance with the will of the parties, which is by reading it to them so that the contents of the deed it clear to the parties. This action must be performed by a notary in exercise his/her authority in making all kinds of deeds. Therefore, the parties may freely determine to accept or not to the contents of the deed to be signed. The signing of the deed indicates the binding or absence of the agreement.

According to Article 3 of the Notary Code of Ethics, it is said that the notary has duties, one of which is to run the position of a notary, especially in the making, reading, and signing the deed. Notary is required to make a deed that is true and correct, that is to say that the deed should be made based on the applicable legislation in order to fulfill the demand of the interested parties. So with this, the notary can provide assurance to their clients that the deed he/she made has no defects that might cause problems in the future inasmuch as the notary has been performing his/her duties in accordance with the applicable legislation. In practice many
cases occur due to the negligence or deliberate of a notary such as a notary who makes a deed of acta amendments to the limited company's limited. The amendment of the articles of association must comply with the requirements prescribed by law because the mistake made by a notary must be accountable. Based on data obtained from the Notary Superintendent in Bandung also obtained the information that lot of violations committed notary with respect to the code of ethics.

As the product which is produced by the notary, notarial deed is an authentic deed made by or before a notary in the form and manner established under the legislation. Authentic document as the strongest and fullest legal evidence has an important role in any legal relations in society. Thus through an authentic deed, rights and obligations can be clearly defined, so as to ensure legal certainty and avoid disputes. In the event of any dispute arise, authentic deed is the strongest and fullest evidence for the resolution on civil disputes in general.

Authentic deed has an important role in legal relations in the society, as the parties are able to use it as evidence of legal events that have been done, both in court of civil and criminal procedure. Legal evidence in the civil procedure is determined in a limited manner prescribed in Article 164 HIR. The types of limited legal evidence in civil procedure make the parties bound by the kinds of legal evidence that has been determined and the judges only judge based on legal evidence presented by the parties, and make a decision based only on the demands submitted by parties.

Authentic deed is included in the types of written evidence, but not all writings can be used as legal evidence in the trial. Sudikno Mertokusumo concluded that "writing that can be used as legal evidence is anything that contains punctuation intended to confide or to express one's ideas and used as verification. Deed is a letter as legal evidence that is signed, which contains the events that form the basis of right or engagement, which is made deliberately from the beginning for verification."

A notary should always be careful not to make mistakes in making authentic deed, but it is possible that there are mistakes made by the Notary. The aggrieved party due to an error in the making of the deed can ask for the responsibility of the notary by filing a lawsuit to the court.

Related to the position of a notary in the resolution of civil disputes, it can be seen from the context whether the notary is

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making a mistake that could be qualified as an unlawful act, so in this case the notary shall serve as the Defendant for wrongdoing beyond their code of ethics and it is harmful to others. Beyond that, the notary may also serves as co-defendant or witness in the trial. But in fact, the parties contesting the material truth of the notarial deed cannot sue, due to a notarial deed contains only formal truth.

**Responsibility and Sanction to Notaries of Civil Cases in Court**

Notaries may err or the content of the deed for the wrong information from the parties, but such errors cannot be accountable to the notary since the contents of the deed have been confirmed to the parties. Minutes of the deed must be made by the notary and in which there is a signature of the appear before (penghadap) as an approval of the content of the notarial deed.

Article 84 UUJN mentions about the forms of violation that if it is done by a notary, notarial deed becomes null and void or simply has the power of a deed under the hand. The deed that is declared null and void by District Court Judge for the violations made by the notary on the provisions contained in UUJN can cause notary to be sanctioned as stipulated in UUJN. Sanctions is essentially a juridical instrument that is usually given when the obligations or prohibitions contained in the provisions of the law has been violated.9

Sanctions to a notary is an awareness that the notary in performing his/her duties has violated the provisions concerning the implementation of the duties of a notary as stated in UUJN, and to restore the notarial action in carrying out his/her duties in an orderly manner in accordance with UUJN. Article 84 and Article 85 UUJN set of two (2) kinds of sanctions against the notary, i.e civil penalties and administrative sanctions.

Notary is drawn to be defendant if deemed to have committed an error which should not be done as a state official and violates the code of ethics of notary and UUJN. Article 1365 of the Civil Code regulates on unlawful acts, that is: "any unlawful act, which brings harm to another person, require the person who is due to his/her fault had caused losses, replace the loss ". Causal relationship between the perpetrator and the consequences is a requirement in an unlawful act.

Article 84 UUJN states that the aggrieved party, with the changing of the verification power of the notarial deed can sue a notary. Civil sanctions in the form of

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9 Tatiek Sri Djatmiati, (2004), Prinsip Izin Industri di Indonesia, Dissertation, Surabuya: Program Pascasarjana Universitas Airlangga, p 82, as quoted by Habib Adjie, (2009), Sanksi Perdata dan Administratif terhadap Notaris sebagai Pejabat Publik, Bandung: Refika Aditama, p 90
reimbursement, compensation, and interest can be imposed to notary if the notarial deed which is made has only the verification power as a deed under the hand or become null and void. The party who is due to his/her fault had caused losses to other parties must be responsible and indemnify the losses arising from such actions, including the notary.

If the notary serves as Defendant, it actually has a crucial role to the decision, which among other things that the judge's decision is also the authentic deed will also bind the co-defendant to comply with the decision. Meanwhile, when the notary serves as a witness then he/she has an obligation to give testimony before the judge on what he/she saw, heard, and witnessed.

CONCLUSION

Notary as state official has the authority to make authentic act on the orders of legislation and the wishes of the parties. Therefore, what is actually stated by notary in the deed is based on wishes of the parties as the appear before (penghadap). In terms of any problems that might arise in the future on the publication of an authentic deed made by the notary, the notary may not necessarily be drawn as the guilty party who has caused the disputes, yet to be seen how far the offense has been committed by the notary, whether there is an error / not, a violation of the code of ethics and or UUJN. In the resolution on civil disputes in court, a notary can be served as the other party such as Defendant if he/she is considered to have committed an unlawful act to the detriment of others, as co-defendant, or witness.

Notaries may error the content of the deed for the wrong information from the parties, but such errors cannot be accountable to the notary since the contents of the deed have been confirmed to the parties. Sanctions to a notary is an awareness that the notary in performing his/her duties has violated the provisions concerning the implementation of the duties of a notary as stated in UUJN, and to restore the notarial action in carrying out his/her duties in an orderly manner in accordance with UUJN.

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