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The Role of Notaries in Protecting Property Ownership Rights in Indonesia

Abstract

This study aims to examine the role of notaries in protecting property ownership rights in Indonesia, particularly in the context of drafting authentic deeds as legally binding evidence. Notaries play a crucial role in ensuring the legality and legal certainty of property transactions, thus preventing disputes and fraud. The research method used is normative juridical, with a document study approach focusing on laws and regulations related to the notary profession and agrarian law in Indonesia. The results show that notaries have a strategic role in providing legal protection through the preparation of deeds that meet formal and material requirements, as well as providing legal explanations to parties involved in transactions. However, obstacles remain, such as insufficient supervision and limited public understanding of the notary's functions, which weaken the protection of property ownership rights. Therefore, it is necessary to improve notaries' professionalism and legal education for the public to optimize the protection of property ownership rights.

Keywords: Role of Notaries, Legal Protection, Property Ownership

A. Introduction

Property ownership rights are one of the fundamental and essential rights in societal and national life. Legal certainty regarding property ownership not only guarantees individual rights but also drives economic development and investment in Indonesia. However, in practice, disputes and conflicts often arise due to unclear documentation and proof of ownership. Authentic deeds prepared by notaries play a key role in providing legal certainty because they hold stronger evidentiary power than ordinary documents. (Djoko Soegiarto, 2016).

As public officials authorized to draft authentic deeds, notaries bear great responsibility to ensure every property transaction is legally recorded correctly. Through the creation of authentic deeds, notaries protect property ownership rights from harmful acts such as fraud, embezzlement, and false claims. Nevertheless, various challenges remain in practice, both concerning notaries' professionalism and the public's understanding of their functions and roles in protecting ownership rights.

This phenomenon underscores the importance of an in-depth study on the role of notaries in the context of protecting property ownership rights in Indonesia. Thus, this research is expected to provide a comprehensive overview of the functions and contributions of notaries as well as recommendations to enhance legal protection of property ownership through notarial roles. (Republic of Indonesia Law Number 2 of 2014)

Property ownership rights, especially over land and buildings, are one of the fundamental rights that play a very important role in the lives of the community and national development

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in Indonesia. Property ownership not only guarantees an individual's rights over their assets but also serves as a key capital in driving economic growth, investment, and social stability. Therefore, legal protection of property ownership rights is crucial to ensure that these rights are effectively safeguarded and not easily contested.

In practice, various issues related to property ownership in Indonesia frequently arise, such as land disputes, fraud, document forgery, and unclear ownership claims. Many of these problems stem from incomplete or unclear legal evidence possessed by property owners. Hence, a mechanism is needed to provide legal certainty as well as strong protection for ownership rights.

Notaries, as public officials authorized to create authentic deeds, play a very important role in providing legal certainty in property transactions. Authentic deeds made by notaries have perfect evidentiary power in court, thus serving as a legitimate basis to recognize and protect property ownership rights. Besides their administrative functions, notaries also have the duty to provide enlightenment and legal advice to the parties involved in transactions to ensure the process runs transparently, fairly, and in accordance with laws and regulations.

However, in carrying out their duties, notaries also face various obstacles that may affect the effectiveness of their role. These obstacles include insufficient supervision of notarial practices, limited public understanding of the importance of authentic deed creation, and technological limitations in supporting administrative and documentation processes. These conditions potentially weaken the legal protection of property ownership rights and open opportunities for disputes and misuse. (Republic of Indonesia Law Number 5 of 1960)

This phenomenon highlights the importance of an in-depth study regarding the role of notaries in protecting property ownership rights in Indonesia, to understand the extent of their contribution to providing legal protection and how to overcome existing challenges so that such protection can be optimized. This study aims to provide a comprehensive overview of the strategic role of notaries as well as recommendations that can strengthen their function within the context of property law in Indonesia.

B. Theoretical Framework

A notary is a public official authorized by the state to draft authentic deeds concerning all acts, agreements, and stipulations that by law must be made in authentic deed form, as well as to provide legal advice to parties in need (Law No. 2 of 2014 concerning the Position of Notary). Authentic deeds created by notaries have perfect evidentiary power before the law.

- a. Property ownership rights are full rights granted to individuals over an object, especially land and buildings, protected by Indonesian agrarian law (Law No. 5 of 1960 concerning Basic Agrarian Principles). This right authorizes owners to legally use, control, and benefit from the property.
- b. Legal protection of property ownership rights is essential to guarantee certainty and security in property transactions. In a legal context, this protection is realized through valid evidence and clear legal procedures so ownership rights cannot be easily contested or disputed.
- c. Role of Notaries in Protecting Property Ownership Rights. Notaries act as the official who drafts authentic deeds in every property transaction involving ownership rights. Through deed preparation, notaries ensure that transactions comply with legal provisions and avoid practices harmful to any party, such as fraud or document falsification. Notaries also serve as mediators and legal advisors to ensure parties understand the legal consequences of the transaction.
- d. Theory of Legal Certainty. Legal certainty is a fundamental principle in the legal system demanding clarity, orderliness, and consistency in law enforcement so society

can know their rights and obligations with certainty. Notaries, as officials making authentic deeds, greatly contribute to realizing legal certainty, especially in property ownership transactions.

C. Research Methodology

Type of Research This research uses a normative juridical method, focusing on analyzing laws, legal doctrines, and literature related to the role of notaries and legal protection of property ownership.

1. Data Sources

- a. Primary data: Laws and regulations such as Law No. 2/2014 on the Position of Notaries, Law No. 5/1960 on Basic Agrarian Principles, and related regulations.
- b. Secondary data: Books, journals, scientific articles, and legal literature discussing the notary profession and protection of property rights.

2. Data Collection Techniques

Data collection was conducted through library research by reviewing legal documents and relevant literature. To obtain practical insights, interviews or observations with notaries and parties involved in property transactions may also be conducted.

3. Data Analysis

Collected data were analyzed qualitatively using descriptive analytical methods, describing and analyzing the role of notaries based on applicable laws and field practices in protecting property ownership rights.

D. Results and Discussion

1. The Role of Notaries in Drafting Authentic Deeds as Legal Evidence

Notaries play a central role in drafting authentic deeds that serve as strong legal evidence in property transactions. The authentic deeds they prepare provide legal certainty that transactions are legitimate and comply with prevailing laws. This is vital for protecting property ownership rights as such deeds serve as the basis for recognizing land and building rights before legal institutions.

Authentic deeds have formal validity guaranteeing that their contents are considered true unless proven otherwise with stronger evidence. Therefore, notaries' role in preparing deeds for transactions like land sales, grants, or agreements is essential for legal certainty of the parties involved.

Besides drafting deeds, notaries are responsible for ensuring all formal requirements are fulfilled and providing legal explanations so parties understand the contents and consequences. Hence, the role of notaries is not merely administrative but also protective against potential disputes.

2. The Legal Status of Authentic Deeds Drafted by Notaries

Based on the prevailing Indonesian legal framework, particularly **Law No. 2 of 2014 concerning the Position of Notary (UUJN)**, authentic deeds drafted by notaries serve as the

strongest and fullest legal evidence in civil proceedings. According to Article 1 paragraph (1) of the UUJN, an authentic deed is a written document made in the correct form by or before a notary, in accordance with statutory regulations. These deeds carry **absolute evidentiary power** unless declared otherwise by a competent court.

The function of notarial deeds in civil law is grounded in **Article 1868 of the Indonesian Civil Code**, which defines an authentic deed as a document made before a public official who has the authority to do so. The deed proves the facts contained therein, both regarding the statements made and the events that occurred in the presence of the notary.

3. The Role of Notaries in Ensuring Legal Certainty

A notary acts as a neutral and impartial legal professional who ensures that legal transactions—such as contracts, agreements, inheritance declarations, or property transfers—are documented with **legal certainty and compliance** with prevailing laws. By doing so, the notary not only validates the legal standing of a deed but also protects the interests of all parties involved.

In practice, the notary also performs a preventive function, minimizing future legal disputes by ensuring clarity and legitimacy in every clause of the agreement. Their **duty to read the deed aloud before the parties**, verify their identities, and ensure voluntary consent, further strengthens the deed's evidentiary value.

4. Authentic Deeds as Legal Evidence in Court

Authentic deeds have **binding evidentiary force (kracht van gewijsde)**, meaning they are considered valid proof unless the opposing party can demonstrate that the deed was forged or flawed due to procedural errors. In court proceedings, judges often rely on authentic deeds as **prima facie evidence** that does not require further proof, unless rebutted.

For example, in civil disputes involving property ownership, business agreements, or inheritance, the party holding an authentic deed generally holds a stronger legal position. The **burden of proof** shifts to the opposing party to disprove the contents of the deed.

5. Limitations and Challenges

Despite their strong legal standing, authentic deeds are not immune to legal challenges. If a deed is proven to be made based on **false information, coercion, or misrepresentation**, the notary may be held **professionally and legally liable**. This underscores the importance of the notary's ethical responsibility and strict adherence to legal procedures.

Additionally, with the rise of **digital transactions** and **electronic deeds**, questions arise regarding the adaptation of notarial practices to ensure authenticity and evidentiary strength in a digital context. Efforts to regulate **electronic signatures** and **virtual notary services** are ongoing to maintain the legal weight of authentic deeds in a technologically evolving legal landscape.

6. Notaries as Legal Advisors and Supervisors of Property Transactions

Beyond drafting deeds, notaries also provide legal advice and explanations to parties involved in transactions, preventing misuse or fraudulent acts that could harm one party. Notaries supervise the entire transaction process to ensure compliance with regulations, thereby safeguarding property ownership rights.

As legal advisors, notaries explain the deed contents, procedures to be followed, and potential legal risks, acting as mediators to help parties reach fair and transparent agreements. As supervisors, notaries verify document completeness, party identities, and the conformity of agreements with legal provisions. This oversight is crucial in preventing illegal practices like document forgery, fraud, or abuse of authority.

Through these roles, notaries help maintain transaction integrity and provide effective legal protection to involved parties.

7. Challenges in the Implementation of the Notary's Role

Although notaries play an important role, research shows there are still challenges in performing their duties. Some of the challenges found include insufficient supervision by related institutions, which creates potential for irregularities in deed preparation, and limited public understanding of the notary's function, resulting in many property transactions not being conducted with authentic deeds. This impacts the legal protection of property ownership rights.

Explanation of Challenges in the Implementation of the Notary's Role: Despite their strategic role in providing legal protection, especially in property transactions, in practice there are several obstacles affecting the effectiveness of notaries' roles, including:

- a. Lack of Supervision and Enforcement of Professional Ethics Supervision over notaries' duties is still perceived as inadequate, opening opportunities for abuse of authority, preparation of deeds not following proper procedures, or corrupt practices that harm the parties involved.
- b. Limited Public Understanding of Notaries' Functions Many people do not fully understand the importance of involving a notary in property transactions. As a result, some transactions are carried out without adequate authentic deeds, making them vulnerable to future disputes.
- c. Complexity and Cost of Deed Preparation Process The process of drafting notarial deeds is sometimes viewed as complicated and time-consuming, compounded by the perception that notary fees are expensive for some people. This can hinder the optimal use of notarial services.
- d. Slow Adaptation to Technological Developments and Regulations Digitalization and information technology in deed preparation and property recording have not been fully optimized. Regulations have not fully accommodated technological advances, limiting notaries' effectiveness in the modern era.
- e. Potential Conflicts of Interest In certain cases, notaries may face pressure or conflicts of interest that affect their objectivity and professionalism in carrying out their duties. Understanding and addressing these challenges is essential to improving the notary's role in providing maximum legal protection for property ownership.

8. Legal Protection Implications of the Notary's Role

The optimal role of notaries in drafting authentic deeds and providing legal advice can reduce the risk of property disputes. The legal certainty generated gives property owners and other parties involved in transactions a sense of security. Thus, notaries significantly contribute to creating a transparent and trustworthy property law system.

The role of notaries in drafting authentic deeds and supervising property transactions has important legal protection implications for the parties involved, including:

- a. Stronger Legal Certainty Deeds prepared by notaries have perfect evidentiary power in courts, providing legal certainty over property ownership. This reduces risks of disputes and legal conflicts often caused by incomplete or invalid documents.

- b. **Protection from Fraud and Abuse** The involvement of notaries protects property transactions from fraud, document forgery, and abuse of authority. Notaries ensure the validity of parties' identities and clarity of transaction contents, preventing dishonest acts.
- c. **Ensuring Fairness and Transparency of Transactions** As public officials, notaries must remain neutral and independent when preparing deeds and giving legal advice. This ensures transactions proceed fairly and transparently, with all parties treated equally and fully understanding their rights and obligations.
- d. **Promoting Trust in Property Transactions** Legal protection provided by notaries enhances trust among the public and business actors in conducting property transactions. This trust is crucial to encouraging economic growth and investment, especially in the property sector.
- e. **Strengthening the National Legal System** Notaries also contribute to the national legal system by ensuring proper administration and legal documentation. This facilitates supervision and law enforcement and supports legal stability in agrarian and property fields.

Therefore, the notary's role is important not only for individual transactors but also for the national legal and economic interests as a whole.

E. Conclusion and Recommendations

1. Conclusion

Based on the research findings, it can be concluded that notaries hold an important role in protecting property ownership rights in Indonesia through the preparation of authentic deeds with strong legal evidentiary power. Notaries serve not only as deed makers but also as legal advisors and supervisors to ensure property transactions comply with statutory regulations. However, challenges such as insufficient supervision of the notary profession and limited public understanding of the notary's functions still exist, potentially weakening the protection of property ownership rights.

2. Recommendations

- a. **Strengthening Supervision of the Notary Profession** More rigorous and continuous supervision by authorized institutions is needed to minimize potential abuses of authority and maintain the profession's integrity.
- b. **Public Education and Socialization** The government and notary associations should enhance education and outreach regarding the importance of using notarial services in property transactions, so the public understands the benefits and functions of authentic deeds in legal protection.
- c. **Improving Notary Professionalism** Through regular training and certification, notaries should continuously improve their competence and professional integrity to carry out their duties optimally and reliably.
- d. **Development of Digitalization Systems for Deeds** Developing systems for digital preparation and storage of notarial deeds can improve transparency, efficiency, and security of property transaction data.

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