

Position of the Premises in the Authentic Deed Made by the Notary Surya SUGIANA¹, Putu Ayu Sriasih WESNA², Anak Agung Istri AGUNG³

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Abstract:

Purpose:

This research aims to analyze and examine the premises' position in an authentic deed made by a notary. It is motivated by the absence of explicit regulations regarding the premise in the Notary Position Law, even though the premise plays a vital role in explaining the background and intention of doing the deed. Legal uncertainty related to the premise can cause legal uncertainty in the practice of notary, especially in proving in court in the event of a dispute.

Methodology:

This research uses normative research methods with legislative approaches and conceptual approaches. The data used consisted of primary legal materials in the form of laws and regulations and secondary legal materials in the form of literature and scientific journals. The data collection technique was carried out through a literature study and analyzed qualitatively using the legal interpretation method with deductive reasoning.

Findings:

The results of the study show that although the position of the premise is not expressly regulated in Article 38 of the Law on the Position of Substitute Notary regarding the anatomy of the deed, in practice, notary, the premise is still used and considered necessary. The premise is generally laid after the comparison and before the content of the deed, serving as an explanation of the background, facts, and reasons for the parties to do the deed. The premise also helps notaries explore the material truth so that the deed can provide maximum legal protection.

Implication:

This research implies a need for a regulatory update in the Notary Office Law to explicitly regulate the position of the premise in the anatomy of an authentic deed. This arrangement will provide legal certainty for notaries and interested parties and strengthen the function of authentic deeds as valid and perfect evidence before the law.

INTRODUCTION

Notaries as public officials who are given the task and responsibility to do authentic deeds and produce authentic deeds that are the strongest and fullest for the fulfillment of perfect evidence needed in the law enforcement process must, of course, have legal certainty and be able to provide justice to the parties (ZM & Sudiro, 2023). The position of Notary is so important and strategic that its role is to make an authentic deed whose existence is desired by the community (the parties) to assist it in preparing evidence for legal acts carried out and has perfect evidentiary power in the event of a dispute or dispute between them (M. Khafit Prasetyo et al., 2024). To carry out and carry out the duties of this position, there must be people who have integrity, honesty and trust in serving the community (the parties) (Anita Sinaga, 2020; Satya Wibowo et al., 2022).

The services of a Notary have become a need for the community, not only in doing deeds but also as a witness or mediator of transactions carried out (Alhamidy & Lukman, 2023; Anggraeni & Mahmudah, 2023; Makarim, 2020; Tektona & Wahjuni, 2022). The function, position and authority of Notaries in preparing, creating and providing legal certainty and protection to the public (parties) in the form of authentic deeds are considered very important (Fatriansyah, 2023; Yasrawan et al., 2023; Korliston Sijabat & Syaiful Khoiri Harahap, 2023). This will happen if the provisions of laws and regulations make the deed in question, the code of ethics, and the oath

of office. A Notary Deed prevents legal consequences and becomes evidence in the event of legal problems. An authentic deed made by a Notary is a frame of legal acts in civil Law carried out by the community in the future. The deed can be used as perfect evidence in court (Sudjarot, 2022).

The form of the deed and the anatomy of the Notary deed must be by the applicable procedures, referring to Article 38 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Notary Position (hereinafter referred to as the Law on the Position of Notary Substitute). In practice, the body of the deed made by the Notary is listed as the deed's comparison, premise, and content. Condense the premise of the deed, which is a summary of the entire content of the deed, so that anyone who reads the deed can estimate the contents in general by reading the premise. Regarding the premise of the deed, in practice, it is always used in authentic deeds. Still, in Article 38 of the Law on the Position of Notary Substitute, there is no specific regulation regarding the premise of the deed or the existence of a vacancy in the Law on the Position of a Substitute Notary.

The definition of the premise of the deed as a complete interpretation is the initial statement or statement of the parties before entering the content of the authentic deed. The position of the premises in the deed has a facultative nature where not all notary deeds are listed as the premises of the deed. Still, in general, the premises are listed in the complicated deed. In the premise of the deed, it must be noted that it is in the form of a statement of facts, not in the form of an assumption, but must be a fact that is currently happening and measurable from the parties (Habib Adjie, 2021).

The reason why an authentic deed is made is that the notary deed must contain information, including the identity of the witness. The position of the premise in an authentic deed has a central role, as it contains important information before entering the body or content of the deed (Apriana, 2023). The premise is also interpreted as the background explaining the purpose of the authentic deed made by the witnesses. In the systematics of the deed, the premise of the deed lies before the description of the contents of the deed and after the comparison, the premise of the deed is also distinguished into two properties, namely the one-way premise and the bidirectional premise or the parties (Moechthar, 2017).

In writing this research, we will focus more on the position of the premise in the authentic deed, where the author sees that no rule explicitly regulates the premise of the deed. According to the author, this does not provide legal certainty for the authentic deed made because Indonesia is a country of Law (Rechtstaat the role of Law), where everything is regulated according to Law, Likewise with the premise of an authentic deed, according to the author, it must be stated in the form of a written regulation, because the premise of the deed is part of the responsibility of a notary in making an authentic deed.

METHODS

This research method uses a normative research method (ABDULLAH et al., 2024; IRIANTORO & UTAMA, 2024) because there is a gap in Norms related to the regulation of the provisions of the premise of doing an authentic deed made by the Notary. The approach in this study uses the Legislation approach, which is used to examine all laws and regulations related to legal issues related to the position of the premises in an authentic deed made by the Notary and the Conceptual approach, used to examine legal principles, the views of scholars who have high qualifications related to the legal issues raised (Soekanto, 2007). The legal materials used in this study are primary legal materials in the form of laws and regulations and secondary legal materials in the form of books or journals. The method used to obtain legal materials in this study is collecting them through literature studies and then analyzing them by legal interpretation, concluding the analysis using deductive thinking.

RESULTS AND DISCUSSION

A deed minute is the original document of a deed made by a notary that includes the signatures of the witnesses, witnesses, and notaries, which is kept as part of the notary protocol (Marbun & Aminah, 2023; Rachmadyta & Wardhana, 2024; Theixar & Dharmawan, 2021). The minutes of the deed made by the Notary must be based on the procedures and procedures that have been determined in the Law (Andriana & Irawan, 2022), which is based on Article 38 of the Law on the Substitute Notary Position which regulates the anatomy of the deed to the making of an authentic deed (Evangelistas & Erny, 2021), it is stated that the anatomy of the deed generally consists of (Riza Rahmani & Fatmawati Octarina, 2020; Putra et al., 2025; Setiadewi & Hendra Wijaya, 2020; Yustika Barito, 2023):

- a. The beginning of the deed or the head of the deed contains the title of the deed; deed number; hours, days, dates, months, and years; and the full name and place of residence of the Notary;
- b. The body of the deed contains the full name, place and date of birth, nationality, occupation, position, the residence of the deeds, and/or the person they represent; a description of the acting position of the face; the content of the deed which is the will and desire of the interested party; and the full name, place and date of birth, as well as the occupation, position, position, and residence of each identifying witness;
- c. The end or closing of the deed contains a description of the reading of the deed; a description of the signing and the place of signing or translation of the deed, if any; the full name, place and date of birth, occupation, position, position, and place of residence, of each witness to the deed; and a description of the absence of changes that occurred in the making of the deed or a description of the changes that can be in the form of additions, strikeouts, or replacements and the number of changes.

Based on this description of the anatomy of the deed, it is not mentioned, explained or explained about the existence of the premise in the anatomy of the deed; however, in the practice of making deeds, the position of the premise is recognized by notaries. Comparison is the action or position of the parties (legal subjects, persons or legal entities) in/to make/sign agreements/contracts/deeds made before a notary. The body of the deed described above consists of the comparison, premise and content of the deed. The premise is used as a prelude to a deed that shows the primary purpose of the parties and states the reason why the deed of agreement was made, the premise is also a statement that is a consideration, the background of why a binding is born (Krisharyanto, 2005). The premises provide facts related to the deed to be made. The content of the deed reflects the will and wishes of the interested parties, which is usually explained in several clauses prepared in the form of article by article. In the structure of the deed, the premise of the deed is located before the description of the contents of the deed and after the comparison (Adha et al., 2023). The premise of the deed is also divided into two types, namely one-way premise and two-way premise or the parties (Moechtar, 2017). The one-way premise contains information from only one match, while the two-way premise includes a background involving both parties. Preliminary information or statements that are the basis or core of the problem will be regulated in the deed, and the premise describes the reasons for the agreement desired by the parties. It is intended to facilitate understanding of the cause and purpose of the deed and generally uses descriptive language due to the nature of the explanation, which usually begins with the phrase "that" (Herlina, 2014).

The position of the premise Although the explanation of the body of the deed is not mentioned or explains the position of the premise of the deed, in practice and various scientific works, the premise of the deed is generally placed between the comparison and the content of the deed. This premise is important in explaining the events related to the deed to be drafted. The information provided by the witness to the Notary is very helpful in the preparation of the deed because information about the wishes and needs of the witness is the basis for making the deed. In providing this information, the Notary has the authority in accordance with Article 16 paragraph (1) letter a of the Law on the Position of a Substitute Notary, which requires the Notary to act with trust, honesty, thoroughness, independence, impartiality, and to protect the interests of the parties involved in legal transactions. Safeguarding the interests of these parties means that the Notary must dig up the material truth so that the deed prepared can benefit all parties involved. This material truth is then stated in the deed in the premise section.

The Notary's authority in drafting an authentic deed includes all legal acts, agreements, and stipulations regulated by Law and desired by interested parties to be recorded in the authentic deed. Deeds drawn up by a notary are always related to legal actions, such as agreements or contracts, which must meet the legal requirements according to Article 1320 of the Civil Code. Therefore, both the Notary and the parties to the contract must ensure that all elements of the legal conditions of the agreement are met. Otherwise, the deed can be null and void or legally invalid.

In an agreement, three important elements must be included in the deed, namely essential, natural, and accidental, which are as follows:

1. Essentialia is an element that must be present in a certain agreement. For example, in a sale and purchase agreement, the essential elements include the parties' agreement, the object of sale and purchase, and the sale and purchase price.
2. Naturalia is a part of the agreement that is considered to exist based on the nature of the agreement and does not need to be explicitly agreed upon by the parties. The provisions of the Law govern this section, but the parties may deviate from it as long as it does not conflict with Law, public order, and decency.
3. Accidental is a provision specifically agreed upon by the parties, such as payment methods or domicile ownership.

The elements or parts of the agreement will be stated in the deed, which is written with clauses in the form of articles by articles in the body of the deed. In addition to the anatomical structure of the deed, several other elements are the basis for the preparation of a notary deed, including (Adjie & Hafidh, 2017):

1. The background to be agreed;
2. Identification of the parties (legal subjects);
3. Identification of the object to be agreed upon;
4. Make a framework for the deed;
5. Formulate the substance of the act;
6. Arrange the position of the parties;
7. Determine the limits that are allowed or not according to the rule of law;
8. Matters that are restricted in its implementation;
9. Legal options and court options;
10. Dispute resolution clauses;
11. Relationship with other acts, if any.

The content of the deed itself contains the rights and obligations of the parties involved. Matters related to the act that need to be included in the deed to ensure that all parties understand and know the agreement reached are facts relevant to the deed. In this case, the Notary will write the information in the premise section. The premise intends to explain the reasons, policies, and considerations of the parties involved in entering into the agreement, which will be outlined in the deed. The premise is arranged concisely and logically to explain the sequence of events leading to the agreement's subject. For example, in a deed of binding sale and purchase, the premise includes information from the audience about the reason behind the making of the agreement, including the acknowledgment or information provided by the audience to the Notary. The premise has a very important role in the deed, as it provides context and background that explains the intent of the deed. This premise serves as an opening part that leads to the content of the deed (body of the deed). Several things are often listed in the premise section, namely:

1. Facts that occurred before the deed was made;
2. Preliminary information that provides context before entering into the content of the deed;
3. Description of the position and actions of the witness;
4. An explanation of the establishment of an association before the deed of establishment is made;
5. Legal relationship between the witnesses;

6. Information about the agreement of the parties that ultimately led them to agree;

The above can be included in the premise, and other relevant information related to the deed can also be included as long as it is associated with the deed being made. A notary has a position full of trust from the public, especially as a law enforcer in Civil Law. Therefore, notaries need to dig into the material truth underlying the deed to be made. Thus, the deed can benefit all parties and meet the desired legal objectives. Overall, the premise of an authentic deed is crucial to guaranteeing that the deed is not only formally valid but also substantial and legally accountable.

The position of the premise in the practice of making an authentic deed, both in the making of the deed and the deed party is in the position after the premise of the deed and before the content of the deed, but based on the anatomy of the deed regulated in the provisions of Article 38 of the Law on the Position of Substitute Notary is not specifically stated regarding the position of the premise of the deed, even though the premise is one of the responsibilities of the Notary towards the authentic deed that he makes, so that in the provisions of the prevailing laws and regulations related to the position and authority of the Notary in making an authentic deed, it should be clearly described regarding the position of the premises of this deed, so that the position of the premise in the making of an authentic deed made by the Notary as a public official has legal certainty, whether it is necessary or not to blinding the premises, so that the Notary can be protected in carrying out his position and authority for provide legal protection and certainty for the party or parties who appear before him in making an authentic deed. When referring to the Notary Position Law's provisions, the premise's position is not so important because no article regulates the premise in the Law. Still, in the practice of a notary, the absence of a premise is very important because if the purpose and purpose of doing the authentic deed are not described, then there will be problems and even disputes. Because it does not explain the purpose and purpose of making the authentic deed, especially in the case of proof in the Court in the event of a dispute, the perfect evidentiary power in the authentic deed can be degraded into a deed under hand.

CONCLUSION

The existence of a premise in practice and systematically in an authentic deed can increase legal certainty for the parties involved. A good premise can prevent legal disputes by providing a more detailed explanation of the background of the agreement or legal action taken. However, the position of the premise is not precisely regulated in the anatomy of the deed as stipulated in the provisions of Article 38 of the Law on the Position of Notary Substitute, although, in practice, the position of the premise is after the comparison and before the content of the deed. When referring to the Notary Position Law's provisions, the premise's position is not so important because it is not regulated. Still, nevertheless, in practice, the absence of a premise is significant because if a deed does not describe the purpose of doing the authentic deed, then there will be problems and even disputes. After all, it does not explain the intention and purpose of doing the authentic deed, especially in terms of proving in Court if there is a dispute.

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