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THE FUNCTION OF THE APPEARING PARTIES' FINGERPRINTS AFFIXED TO THE NOTARIAL DEED MINUTA (A CASE SIMULATION OF NON-IDENTICAL SIGNATURES, SURROGATE SIGNATURES, AND THE ABSENCE OF SIGNATURES IN OFFICIAL NOTARIAL DEEDS)

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Abstract

This study aims to examine the obligation to affix the fingerprints of the appearing parties as stipulated in Article 16 paragraph (1) letter c of the Law on the Office of Notary. This paper employs normative legal research that analyzes the application of existing norms in positive law, namely Law Number 2 of 2014 concerning the Office of Notary. As a public official, a notary is authorized to draw up authentic deeds that possess perfect evidentiary value. In the making of an authentic deed, the deed must be signed by the appearing parties as valid proof of their presence and consent. However, the Law on the Office of Notary also regulates the obligation to affix the fingerprints of the appearing parties to the minuta of the deed, even though the deed has been signed. This raises questions to be addressed in this paper regarding the function of affixing the fingerprints of the appearing parties and the regulation of sanctions for notaries who fail to affix such fingerprints to the minuta of the deed.

I. Introduction

A notary is a public official vested with attributive authority to carry out a specific duty, namely assisting the public in matters of civil law by drawing up authentic deeds (Selenggang, 2023). A notary derives such attributive authority from statutory provisions; therefore, the trust conferred by the state upon a notary is likewise extended by the public. The authority of a notary as a public official is regulated in Article 1 paragraph (1) of the Law on the Office of Notary (UUJN), which stipulates:

> "A notary is a public official authorized to draw up authentic deeds and to exercise other authorities as referred to in this Law or under other laws."

As a public official, a notary is vested with the authority to state all acts and agreements in an authentic deed (The Law on the Office of Notary (UUJN). rom a legal perspective, the definition of an agreement is provided in Article 1313 of the Indonesian Civil Code (KUHPerdata), which stipulates: *"An agreement is an act by which one or more persons bind themselves to one or more other persons."* Based on this definition, an agreement may be understood as a legal instrument by which two or more parties bind themselves with respect to a legal act that has been mutually agreed upon. Accordingly, the existence of an agreement binding two or more parties gives rise to a legal relationship between those parties, including the corresponding rights and obligations of each party (Ratnaningsih and Dewi, 2024).

The requirements for an agreement to be considered legally valid can be examined based on Article 1320 of the Indonesian Civil Code (KUHPerdata), which stipulates the following conditions:

1. The consent of the parties who bind themselves;
2. The legal capacity of the parties entering into the agreement;
3. A specific subject matter; and
4. A lawful cause, meaning that the agreement must not violate statutory provisions and must not be contrary to morality or public order.

From these four elements, it can be observed that the first requirement for the validity of an agreement is that the parties are aware of and mutually agree to all matters stipulated in the agreement. The second requirement provides that the parties must possess legal capacity, meaning that they must have reached adulthood as regulated in Article 330 of the Indonesian Civil Code, which considers an individual to be an adult upon reaching the age of 21 years. Legal capacity also encompasses the ability to perform legal acts, implying that the parties must not be underage and must have the mental capacity to reason and act consciously.

With regard to the third requirement for the validity of an agreement, it provides that an agreement must have a specific object or subject matter determined as the basis of the agreement. For example, within the scope of notarial practice, such an object may be a house to be leased, in which case the notary draws up a lease agreement in the form of a notarial deed (Ratnaningsih and Dewi, 2024). The final requirement stipulates that all actions undertaken in an agreement must not be contrary to the law and must comply with all statutory requirements, so that the agreement may be deemed legally valid.

An authentic deed drawn up by a notary constitutes perfect evidence of the circumstances, events, or legal acts forming the basis of an agreement (Selenggang, 2023). The definition of an authentic deed is regulated in Article 1868 of the Indonesian Civil Code, which provides:

> "An authentic deed is a deed drawn up in the form prescribed by law or before a public official authorized for that purpose, at the place where the deed is drawn up."

There are two types of notarial deeds, namely *akta relaas* and *akta partij* (Article

1868 of the Indonesian Civil Code). An *akta relaas* is a deed drawn up by a notary containing a description of a condition or event personally witnessed by the notary, based on a request from the parties, and recorded in an authentic deed. An example of an *akta relaas* is the Minutes of a General Meeting of Shareholders (Article 1868 of the Indonesian Civil Code). An example of an *akta relaas* is the Minutes of a General Meeting of Shareholders. In contrast, an *akta partij* is a deed drawn up based on the statements or declarations of the parties, also referred to as the appearing parties (Article 1868 of the Indonesian Civil Code). A notarial deed must fulfill the requirements of *verlijden*, meaning that it must be drafted, read aloud, and signed (Article 1868 of the Indonesian Civil Code). The notary is responsible for the correctness of all matters declared by the appearing parties to the notary; however, matters not disclosed to the notary do not fall within the notary's responsibility (Article 1868 of the Indonesian Civil Code).

One of the obligations of a notary in the preparation of an authentic deed is to affix the fingerprints of the appearing parties to the minuta of the deed, as stipulated in Article 16 paragraph (1) letter c of Law Number 2 of 2014 on the Amendment to Law Number 30 of 2004 concerning the Office of Notary (Law on the Office of Notary). The provision states that *"in carrying out his or her duties, a notary is obliged to attach letters and documents as well as the fingerprints of the appearing parties to the Minuta of the Deed."* The affixing of fingerprints serves to enable the identification of the appearing parties in the authentic deed. Fingerprints are unique to each individual from birth and are permanent in nature (Nagita, 2017). From a historical perspective, the use of fingerprints in documents has in fact been practiced since 1858, when Sir William Herschel worked in Hooghly, Bengal, as a Chief Administrator. In his capacity as Chief Administrator, he required the affixing of fingerprints to contractual documents in order to prevent dishonesty by the parties (Nagita, 2017). Historically, this demonstrates the advantages of using fingerprints in authentic deeds, namely to provide legal certainty and to minimize disputes involving the appearing parties in deeds drawn up by notaries.

The regulation contained in Article 16 paragraph (1) letter c of the Law on the Office of Notary correlates with the historical practice of affixing fingerprints to agreements. This is because both the historical background and the interpretation of the provision emphasize aspects of legal protection. As stated in Article 16 paragraph (1) letter c of the Law on the Office of Notary, the obligation to *"attach letters and documents as well as the fingerprints of the appearing parties to the Minuta of the Deed"* provides protection for notaries against appearing parties who later deny their presence during the process of signing the deed. The affixing of fingerprints functions as proof of the appearing parties' presence at the time the deed is read aloud and signed before the notary, and confirms that the deed was executed by the relevant parties themselves and not by others (Purnamasari, 2019).

The need for guarantees of legal certainty regarding the authenticity of the identity of the appearing parties is crucial in order to protect notaries from misuse or identity falsification committed by the appearing parties. The affixing of fingerprints constitutes strong evidence whose accuracy is scientifically guaranteed, as fingerprints are a natural and inherent form of personal identification (Directorate General of Legal Administrative Affairs, 2017). Nevertheless, there are practical obstacles related to the affixing of fingerprints to deeds, particularly due to the lack of clear regulation regarding which finger should be used for fingerprint affixation (Mirza, 2016). Another obstacle frequently encountered by notaries arises when an appearing party who is legally entitled to sign or affix a fingerprint suffers from a physical disability affecting the hand or fingers, thereby preventing the affixation of a signature or fingerprint on the minuta of the deed.

Based on the foregoing background, this study examines the function of the appearing parties' fingerprints affixed to the minuta of a notarial deed and the regulation of sanctions in the event that a notary fails to obtain such fingerprints. In relation to these issues, the author addresses them through a legal study entitled "The Function of the Appearing Parties' Fingerprints Affixed to the Minuta of a Notarial Deed (A Case Simulation of Non-Identical Signatures, Surrogate Signatures, and the Absence of Signatures in Official Notarial Deeds)."

2. Research Method

The research method employed in this study is normative juridical research. Normative juridical research is legal research that utilizes secondary data obtained through library research as the primary source of data. In normative juridical research, the focus is on examining the application of rules or norms contained in positive law (Ibrahim, 2006). In this study, the analysis is conducted based on Law Number 30 of 2004 concerning the Office of Notary. This research adopts an explanatory research typology, namely research that aims to strengthen or examine existing research findings or prevailing legal conditions, thereby refining and providing new perspectives in the application of legal theories or legal norms.

3. Results and Discussion

3.1 The Function of the Appearing Parties' Fingerprints Affixed to the Minuta of a Notarial Deed Viewed from the Law on the Office of Notary

The regulation of the function of the appearing parties' fingerprints affixed to the minuta of a notarial deed is governed by two provisions in the Law on the Office of Notary, namely Article 16 paragraph (1) letter c, which stipulates: *"to affix letters and documents as well as the fingerprints of the appearing parties to the Minuta of the Deed."* The function of fingerprints as referred to in Article 16 paragraph (1) letter c of the Law on the Office of Notary does not constitute a legal act in determining the validity or authenticity of the deed, but rather serves to guarantee the accuracy of the identity of the appearing parties. This provision obliges the notary to include the fingerprints of the appearing parties on the minuta of the deed as authentic evidence of their presence and identity. Another relevant provision is Article 44 paragraph (1) of the Law on the Office of Notary, which states:

> "Immediately after the deed is read, the deed shall be signed by each appearing party, the witnesses, and the Notary, unless there is an appearing party who is unable to affix a signature, in which case the reason shall be stated."

Furthermore, Article 44 paragraph (2) of the Law on the Office of Notary provides: *"The reason as* referred *to in paragraph (1) shall be expressly stated at the end of the deed."* Referring to Article 16 paragraph (1) letter c of the Law on the Office of Notary, it is stipulated that in carrying out their duties, notaries are required to affix letters, documents, and the fingerprints of the appearing parties to the minuta of the deed. In addition to constituting an obligation of the notary, the attachment of fingerprints serves as evidence of the presence of the appearing parties in the notarial deed (Mirza, 2016).

The attachment of fingerprints is closely related to Article 39 paragraph (2) of the Law on the Office of Notary, which states:

> "The appearing parties must be known by the Notary or introduced to the Notary by two (2) identifying witnesses who are at least 18 (eighteen) years of age or married and legally competent to perform legal acts, or introduced by two (2) other appearing parties."

According to the opinion of legal scholar G.H.S. Lumban Tobing, the phrase *"the appearing party is known to me, the Notary"* means that the name of the party appearing before the notary must correspond to the name known in the community or be consistent with the identity stated on the identity card. Accordingly, the appearing party may not use a false identity. If, at a later date, the identity of the appearing party is found to be false, such matter becomes the responsibility of the notary. However, it is possible for an appearing party who is not personally known to the notary to be introduced by two identifying witnesses, who are required to guarantee the accuracy of the identity of the appearing party. In practice, deviations are still found, such as identifying witnesses who themselves use false identities. This situation may give rise to legal uncertainty regarding the identity of the appearing parties before the notary. Therefore, the purpose of Article 16 paragraph (1) letter c of the Law on the Office of Notary is to ensure that the appearing party is indeed the true and rightful person. One of the measures provided for this purpose is the use of fingerprints, which cannot be falsified, thereby providing legal protection both for notaries and for parties acting in good faith.

The taking of the appearing parties' fingerprints aims to strengthen the validity of documents and reduce the risk of identity fraud. The fingerprints of the appearing parties constitute an important element in establishing legal protection for the parties involved as well as for the notary himself/herself. This is because, in addition to their function in verifying the identity of the appearing parties, fingerprints may also be used as evidence in the event of disputes arising in the future. Accordingly, the functions of fingerprints affixed to the minuta of a notarial deed include:

a. Verification of the Identity of the Appearing Parties
The use of fingerprints serves as a means of verifying the identity of the appearing parties. Therefore, if a dispute arises in the future concerning the denial of a person's presence at the time the deed was executed, verification may be conducted by matching the fingerprints that have been affixed. This is based on the fact that each individual possesses unique fingerprints, unlike signatures, which may still be forged or imitated.

b. Evidence of the Physical Presence of the Appearing Parties
Through fingerprints, it is affirmed that a person was physically present before the notary at the time the deed was executed. In addition, fingerprints may serve as evidentiary proof should a dispute arise in the future.

c. Legal Protection for the Notary and the Parties
By affixing the fingerprints of the appearing parties, the notary can demonstrate that, in carrying out his or her official duties, the principle of prudence has been observed and that the deed has been executed in accordance with applicable laws and regulations. Accordingly, the notary is afforded legal protection should disputes arise in the future.

The affixation of fingerprints occurs at the final stage of the process, after the signing of the deed. The appearing parties are directed to affix their fingerprints on a separate sheet specifically prepared for the fingerprints of the appearing parties. This fingerprint sheet is then attached to the minuta of the notarial deed, as regulated under Article 16 paragraph (1) letter c of the Law on the Office of Notary. The attachment of a fingerprint sheet is a common practice, analogous to attaching documents or letters to the minuta of a deed, the function of which is to serve as supporting documents for the minuta of the deed (Purnamasari, 2019). With the presence of the appearing parties' signatures and the attachment of their fingerprints to the minuta of the deed, the deed fulfills the formal requirements of an agreement (Purnamasari, 2019). Consequently, the risk of denial or repudiation of the deed may be minimized, because any challenge to the deed would require proof that the existing formal aspects of the deed are incorrect (Purnamasari, 2019).A deed

may be declared void if the incorrectness of its formal aspects can be proven; however, if such incorrectness cannot be established, the deed must be upheld as valid (Purnamasari, 2019).

Nevertheless, a shortcoming remains in that there is no specific regulation stipulating which finger must be used for fingerprint attachment (Mirza, 2016). Due to the lack of detailed regulation regarding the attachment of fingerprints to the minuta of a deed, the Indonesian Notary Association has further emphasized that fingerprints should be taken from the right thumb of the appearing party, and may be taken from another finger if the right thumb is unavailable or problematic (HRS, 2014). In practice, however, there are still notaries who do not perform fingerprint attachment, for example, to avoid inconveniencing appearing parties who refuse to provide fingerprints, as has occurred in Southeast Sulawesi (HRS, 2014).

Based on the case example in Southeast Sulawesi, deeds executed by a notary remain legally valid; however, the absence of fingerprints results in the lack of strong supporting documentation to provide certainty regarding the physical presence of the appearing parties at the time the deed was executed. If fingerprints are not taken, a notarial deed that has been signed remains valid and does not suffer degradation in its evidentiary value. Nevertheless, although the absence of fingerprints does not affect the validity of the deed, the attachment of fingerprints to the minuta remains a mandatory obligation pursuant to Article 16 paragraph (1) letter c of the Law on the Office of Notary (HRS, 2014).

Therefore, in the process of executing a deed, the notary should prepare a separate sheet specifically for fingerprint attachment. This sheet should contain the names of the appearing parties and the notary. Similar to signing, each appearing party affixes his or her fingerprint in the designated space corresponding to his or her name. In implementing Article 16 paragraph (1) letter c of the Law on the Office of Notary, fingerprints may be taken from either the right or left thumb, and such fact must be stated in the deed. In the event that the appearing party does not have a thumb, another finger may be used, considering that fingerprints do not function to determine the validity or authenticity of a legal act, but rather to provide legal certainty regarding the accuracy of the identity of the appearing parties. Following this process, the fingerprint attachment sheet is then affixed to the minuta of the notarial deed.

The following is an example of the attachment of fingerprints on a separate sheet:

Name	Right thumb fingerprint	Left thumb fingerprint
Notary A		
Party A		
Party B		

As quoted from Article 44 paragraphs (1) and (2) of the Notary Office Act, it is stipulated that:

> "(1) Immediately after the deed is read out, the deed shall be signed by each appearer, the witnesses, and the notary, unless there is an appearer who is unable to affix a signature, in which case the reason must be stated.
> (2) The reason as referred to in paragraph (1) shall be expressly stated at the end of

the deed."

The requirement for the appearers' signatures on the minuta of a notarial deed serves to identify the appearers who are present and to constitute evidence that the appearers approve the contents of the deed and bind themselves to its provisions. However, in practice, there are circumstances in which an appearer is unable to affix a signature, such as due to paralysis, serious illness, or other reasons. In such situations, a surrogate signature may be used. A surrogate signature is a statement made by the relevant appearer declaring that he or she intends to sign the deed but is unable to do so due to a specific reason (Article 44 of the Law on the Office of Notary (UUJN). As stipulated in Article 44 paragraph (2) of the Notary Office Act, such a statement must be expressly stated by the Notary at the end of the deed. A violation of the provisions of Article 44 paragraphs (1) and (2) of the Notary Office Act may result in the degradation of the evidentiary value of the deed into that of a private deed, and may constitute grounds for the injured party to claim reimbursement of costs, compensation, and interest from the Notary, as regulated in Article 44 paragraph (5) of the Notary Office Act, which provides:

> "A violation of the provisions referred to in paragraph (1), paragraph (2), paragraph (3), and paragraph (4) shall result in the deed having only the evidentiary force of a private deed and may serve as grounds for the party suffering losses to claim reimbursement of costs, compensation, and interest from the Notary.

According to Lumban Tobing, fingerprints cannot be equated with signatures and cannot replace signatures, because fingerprints are not written characters and therefore do not meet the statutory requirement for the signing of a name (Tobing, 1999). However, according to Yahya Harahap, the use of fingerprints provides stronger legal certainty than signatures, because each person's fingerprint is unique and difficult to falsify, whereas signatures are still frequently subject to forgery (Harahap, 2005).

The affixing of the appearers' fingerprints to the minuta of a notarial deed is carried out by the Notary to indicate the identity of the appearers in addition to their signatures. Fingerprints constitute evidence that cannot be falsified by the public, as they are scientifically inherent to each individual. Therefore, the inclusion of the appearers' fingerprints in the minuta of the deed can minimize the occurrence of disputes or legal cases arising from the deed. However, should such a dispute arise, the Notary already possesses evidence that cannot be falsified, because the fingerprints provide certainty that the appearers were indeed physically present before the Notary at the time the deed was signed.

Fingerprints do not apply as a substitute for surrogate signatures in party deeds (akta partij) and do not have any function in official deeds (akta pejabat) as regulated in Articles 44 and 46 of the Notary Office Act (Mirza, 2016). Accordingly, the function of affixing fingerprints to the minuta of a notarial deed, as mandated by Article 16 paragraph (1) letter c of the Notary Office Act, is not to determine the validity or authenticity of the deed, but solely to guarantee the correctness of the appearers' identities. This is because the Notary Office Act does not regulate that the absence of fingerprints would cause a deed to be degraded into a private deed. In such circumstances, the failure to affix the appearers' fingerprints only affects the Notary personally, who may be subject to sanctions as stipulated in Article 16 paragraph (11) of the Notary Office Act, and there is no provision governing any reduction in the status or legal nature of the deed drawn up by the relevant Notary.

3.2 Regulation of Sanctions for Notaries Who Fail to Take the Appearers' Fingerprints on the Minuta of a Deed

Every legal rule provides for sanctions in order to ensure its enforcement, as this

serves to prevent the neglect of legal provisions in the absence of firm sanctions for violations. Theoretically, Hans Kelsen explains that sanctions arise as a consequence of the non-fulfillment of existing legal obligations (Kelsen, n.d,). According to Hans Kelsen, a legal obligation arises from a legal command; therefore, it must be complied with. If such an obligation is not fulfilled, legal sanctions may arise as a form of accountability imposed on the party who fails to carry out the obligation (Kelsen, n.d,).

The Notary Office Act also regulates sanctions intended to be complied with by Notaries, not only to discipline them but also to raise awareness among Notaries who violate these provisions, with the aim of restoring their conduct in accordance with applicable legal rules. In addition, the regulation of sanctions in the Notary Office Act serves to protect the public from losses caused by a Notary's actions. These sanctions are designed to ensure that Notaries perform their duties in accordance with the law so as to prevent deviations that could tarnish the dignity of the notarial institution as an institution of public trust. This is because violations committed by Notaries may undermine public confidence in the notarial profession.

The Notary Office Act stipulates that a Notary has the obligation to affix fingerprints to the minuta of a deed. If this obligation is not fulfilled, the Notary may be subject to sanctions pursuant to Article 16 paragraph (11) of the Notary Office Act, namely:

1. Written warning;
2. Temporary suspension;
3. Honorable dismissal; and
4. Dishonorable dismissal.

These sanctions are related to deeds drawn up by the Notary. The sanctions provided for in Article 16 paragraph (11) of the Notary Office Act constitute administrative sanctions. Such sanctions may be imposed on a Notary who fails to affix the appearers' fingerprints to the minuta of a deed. The sanctions are applied in stages, ranging from a written warning to dishonorable dismissal. However, sanctions may only be imposed if the Notary is proven to have violated the provisions stipulated in the Notary Office Act.

The imposition of a written warning constitutes the initial stage of sanctions, intended to serve as a reminder before more severe administrative sanctions are imposed. A written warning grants the Notary the right to defend themselves through administrative remedies in the form of objections or administrative appeals (Mahmoud, 2014). The next stage of sanctions is temporary suspension, which is intended to prevent the Notary from exercising their office for a certain period before a sanction of honorable or dishonorable dismissal is imposed. Temporary suspension may result in three possible outcomes: reinstatement of the Notary to resume their duties, the imposition of a governmental coercive sanction in the form of honorable dismissal, or dishonorable dismissal (Adjie, 2011). In order to ensure legal certainty, the duration of the temporary suspension must be clearly determined.

Furthermore, beyond statutory regulation, there is also theoretical support for sanctions against Notaries who fail to comply with the obligation to affix fingerprints. From a theoretical perspective based on Hans Kelsen's view, the legal obligation rests with the Notary. In this case, the obligation arises from the Notary Office Act, which requires Notaries to affix the appearers' fingerprints as stipulated in Article 16 paragraph (1) letter c of the Notary Office Act. This obligation constitutes a legal responsibility that must be fulfilled by a Notary. Accordingly, if the obligation is not carried out in accordance with the law, sanctions will arise for the Notary in the form of administrative sanctions as regulated in Article 16 paragraph (11) of the Notary Office Act. From Hans Kelsen's perspective, such sanctions represent the Notary's accountability for failing to fulfill a legal obligation as

mandated by statutory law. Therefore, the imposition of sanctions on Notaries who fail to affix fingerprints is grounded not only in statutory provisions but also supported by Hans Kelsen's theory, which aligns sanctions with accountability for unmet legal obligations.

4. Conclusion

Based on Article 16 paragraph (1) letter c of the Notary Office Act, the affixation of the appearers' fingerprints to the minuta of a deed constitutes an obligation that must be fulfilled by a Notary in carrying out their duties. The primary function of taking fingerprints is to ensure that the appearers or parties who attend and sign the deed are indeed the individuals named in the deed. By affixing fingerprints, a notarial deed becomes more reliable and secure, as it can minimize the risk of identity forgery or false ims by the parties involved.

Affixing fingerprints to the minuta of a deed means placing the fingerprints on a separate sheet of paper that is attached to the minuta of the deed. The affixation of the appearers' fingerprints constitutes a legal obligation regulated by statutory provisions; however, its existence does not determine the validity or authenticity of a deed. In this regard, the affixation of fingerprints by a Notary serves solely to guarantee the accuracy of the appearers' identities. Consequently, failure to affix fingerprints only results in administrative sanctions. Nevertheless, for any appearer—whether illiterate, physically disabled, paralyzed in the hands, or refusing to sign an official deed or leaving a meeting before the signing of the deed—as long as they still have fingers, they are required to affix fingerprints, which do not function as a surrogate for a signature.

In the event that a Notary fails to carry out the obligation to take the appearers' fingerprints on the minuta of a deed, the Notary Office Act provides sanctions as a consequence of such violation. Article 16 paragraph (11) of the Notary Office Act stipulates that the sanctions imposed on a Notary may take the form of a written warning, temporary suspension, honorable dismissal, or dishonorable dismissal. The imposition of these sanctions is intended to maintain the integrity of the notarial profession, which plays an important role in the preparation of legal and authentic documents in society. The regulation concerning the obligation to affix fingerprints is expected to enhance public trust in the notarial institution and to provide legal protection for all parties involved in a deed

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