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Legal Effect on Surrogate Signature Application in Authentic Deed

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Abstract

Article 44, paragraph (1) of the UUJN mandates that subsequent to the reading of the deed, it must be signed by all parties, witnesses, and the notary, unless a party is unable to sign for a specified cause. According to the aforementioned regulations, the location of the signature may be substituted with a declaration recognised in notarial science as Surrogate. The term "surrogate" originates from Dutch, signifying "substitute." An example of surrogacy employed in a notarial deed is illustrated in Supreme Court Decision Number 2855 K/Pdt/2016. The research methodology employed in the formulation of this study is the Normative Juridical research approach. This research aims to elucidate the legal ramifications of employing signature surrogates in authentic deeds. The research findings indicate that employing a surrogate in an authentic deed, in accordance with legal laws, does not compromise the authenticity and validity of the deed. Legal restrictions ensure the utilisation of a surrogate in a legitimate document, provided it is not executed improperly.

Keywords: Legal Consequence, *Surrogate*, Authentic Deed

Introduction

A signature on a deed/document has a purpose and intention, and signing is a legal fact, namely "a statement of the will of the signer (the signatory), that by affixing their signature below a writing, they intend for that writing to be legally considered as their own [1]".

Based on the explanation above, a signature is an obligation attached to a deed. If viewed from the provisions of the Act of Public Notary Profession (later called UUJN), a signature is a formal aspect that must be fulfilled in the creation of a minute of the deed. Article 1 number 8 of the UUJN explains that a minute of the deed is the original deed that includes the signatures of the parties, witnesses, and notary, which is kept as part of the notary's protocol. Based on this understanding, the norm in the minute must include the signatures of the parties, the signatures of the witnesses, and the signatures of the notary [2].

An authentic deed not only requires the notary to affix their signature but the parties and witnesses are also required to affix their signatures, except in cases where the appearing party cannot affix their signature, in which case the appearing party must state the reason, which will later be clearly stated in the deed.

Article 44 paragraph (1) of the UUJN stipulates that immediately after the deed is read, the deed must be signed by each party, witness, and notary, unless there is a party who cannot sign and provides a reason for it. Based on the above provisions, the position of the signature can be replaced with a statement known in the field of notarial science as Surrogate. Surrogate comes from the Dutch language, meaning "Substitute."

Surrogate in an authentic deed is a statement from the appearing party recorded at the end of the deed, serving as a substitute for the signature of the appearing party who is unable to affix their signature at that time. Article 44 paragraph (1) of the UUJN contains legal norm ambiguities because there is no explanation regarding the use of this surrogate and what kind of party can be stated at the end of the deed (surrogate) in an authentic deed.

One instance of the use of a surrogate in a notarial deed can be seen in one of the Supreme Court Decisions Number 2855 K/Pdt/2016. The ruling states that in 2013, R.A. Johana F Soemartini fell ill and around November 1, 2013, was hospitalized at Rumah Sakit Husada Utama Surabaya due to a stroke and decreased consciousness, requiring treatment in the ICU.

R.A. Johana F Soemartini, who was hospitalized, on November 6, 2013, granted a power of attorney to Benedictus Setiarso Prijantono, her second child, to sell, transfer, and hand over to another party designated by the attorney-in-fact a piece of land standing on land with Ownership Rights Number 1966/Kelurahan Mulyorejo as described in the Temporary Measurement Letter dated August 24, 1983, Number 6566, covering an area of 574 m2, last registered under the name of Raden Ayu Johana Fransisca Soemartini, located in East Java Province, Surabaya City, Mulyorejo District, Mulyorejo Village, locally known as Jalan Raya Dharmahusada Indah 71/D-2 Surabaya.

This is as stated in Power of Attorney Number 04 made in the presence of Notary Vivi Soraya as the notary in Surabaya. Vivi Soraya, as the notary, has explicitly acknowledged in her deed that if R. A. Johana F Soemartini is ill, "the presenter must immediately affix her left thumbprint or left index finger, as she cannot write due to illness, but understands and comprehends the contents of this deed." Therefore, according to the law, the validity of Power of Attorney Number 04 made before Vivi Soraya as the notary in Surabaya is questionable.

Based on the decision, it can be seen that there is a notarial deed that uses a surrogate, but the validity of the deed (power of attorney for sale) is questioned because a person being treated in the ICU has granted power to another person while in a state of declining consciousness. This certainly has legal consequences for the Power of Attorney to Sell because it contradicts Article 44 paragraph (1) of the UUJN. Therefore, a study titled "Legal Consequences of the Use of Surrogate in Authentic Deeds" was conducted."

Research Method

The type of research used in this study is normative juridical, which is a system of logical exploration to uncover reality from a logical perspective according to the regulating viewpoint [3]. Philip M. Hadjon stated that the regularization of legal exploration is a kind of examination that aims to differentiate and create valid arguments through the investigation of a topic [4]. According to Sri Mamuji and Soerjono Soekanto, normative legal research, also known as library legal research, is legal research that utilizes secondary data or materials from libraries [5]. In this research, the researcher uses a legislative approach, a case approach, and a conceptual approach.

Results and Discussions

The term or word "akta" in Dutch is called "*acte*" or "*akta*" and in English, it is called "act" or "deed". According to Sudikno Mertokusumo, an act is "a signed document containing events that form the basis of a right or obligation, intentionally created from the outset for proof [6]".

An authentic deed is one of the written pieces of evidence in the form determined by law, made by or in the presence of an authorized public official at the place where the deed is made. (Pasal 1867 dan 1868 KUHPerdata). Whereas a private deed is a deed intentionally made for proof by the parties themselves without the assistance of an official. Both types of deeds have differences, in terms of the method of creation, form, and evidentiary strength [7].

Authentic deeds made by a notary can be classified into two types: "party deeds" or known as "*partij acte*" and "official deeds" or "*relaas acte*." A *relaas* deed is a deed made by a notary, meaning that this deed is made by the notary at the request of the parties, so that the notary records or writes down all events about everything or matters discussed by the parties related to legal actions or other actions by the parties, so that these actions are made or what is seen, heard, recorded, or confirmed according to the realities and laws in a notarial deed [8].

A notary, in other words, in their deed recounts testimony regarding an event or action that they have seen and heard. *Relaas* deed, a signature is not a requirement, meaning that the interested party may or may not sign the deed, and this must be stated in the deed [9].

Article 44 paragraph (1) of the UUJN states the obligation for every party, witness, and Notary to affix their signatures, except when there is a party who cannot affix their signature with a stated reason, known as Surrogate. Meanwhile, Article 16 paragraph (1) letter C of the UUJN states that a Notary is required to include fingerprints on the draft deed.

The legal norms contained in Article 16 paragraph (1) letter C and Article 44 paragraph (1) have normative ambiguities. The aforementioned article discusses parties who are physically capable, meaning those who can fulfill the obligation of providing a signature and fingerprint. Then how about those who are not physically able to affix their signatures or fingerprints because they cannot read and write, or because they are ill? (cacat ataupun penyakit lainnya yang dapat menghalangi penghadap untuk membubuhkan tanda tangan dan sidik jarinya). to address this issue, the law provides a solution by using a surrogate at the end of the deed.

The creation of an authentic deed for a party who cannot read or write can be binding if there is a substitute for the signature, namely a fingerprint/thumbprint, and it must be explicitly stated in the Notary's deed regarding this matter. The existence of a signature in a party deed is a *conditio sine qua non* (an absolute requirement), unlike in a release deed where the presence of a signature is not mandatory, unless someone cannot provide a signature and must give a clear reason which is written in the deed as a substitute for the signature. (surrogate).

A deed that cannot be signed by an illiterate person (who cannot read or write) will usually have a thumbprint as a substitute for a signature. In Indonesia, a thumbprint or fingerprint affixed in the presence of a public official is equated by law with a signature.

Based on the UUJN, it is regulated that a Notary is a public official authorized to create authentic deeds and other authorities as stipulated in this law. Furthermore, it is also stipulated that a notary is authorized to create authentic deeds regarding all acts, agreements, and decisions required by legislation and/or desired by the interested parties to be stated in authentic deeds, guarantee the certainty of the deed's creation date, store the deeds, provide the original, copies, and excerpts of the deeds, all as long as the creation of these deeds is not also assigned or excluded to other officials or persons determined by law, in this case, in accordance with Article 15 paragraph (1) of the Notary Position Law. The determination desired by the interested party to be stated in the authentic deed as referred to above includes, among others, the Power of Attorney to Sell.

The signing of a document generally has the following purposes:

1. Evidence
A signature identifies the signer with the document they are signing. When the signer affixes their signature in a specific form, the writing will have a relationship (attribute) with the signer.
2. Ceremony
The signing of a document will result in the signatory being aware that they have performed a legal act, thereby eliminating any inconsiderate engagement.
3. Approval
A signature symbolizes the approval or authorization of a written document.
If two people come to a notary, explaining that they have made an agreement or consent and request the notary to create a deed, then this deed is an authentic deed made in the presence of the notary.
When the applicant is unable to affix their signature and fingerprint, the substitute for the signature and fingerprint is called a surrogate, which has the same legal force as a signature and fingerprint. This is a statement from the applicant (not a statement from the Notary) written by the Notary, indicating that the applicant is unable to affix their signature and fingerprint on the deed due to a specific reason clearly stated in the deed.
This can be referred to as a "statement of inability to write." Such provisions are under the provisions in Article 44 paragraphs (1) and (2) of the UUJN. If there is an applicant who cannot affix their signature, the reason must be stated clearly at the end of the deed, as stipulated in the provisions of Article 44 paragraphs (1) and (2) of the UUJN.
An act will not lose its authenticity if the parties do not affix their signatures, as long as the circumstances are clearly explained in the act. Therefore, if the parties do not affix a thumbprint or other fingerprint as a substitute for the signature in the creation of an authentic act, it will not have legal consequences that result in the act losing its authenticity. The deed remains legally valid and retains its value as an authentic deed even if a thumbprint is not affixed as a substitute for a signature because the statement of the appearing party is used as the basis for the notarization of the deed, and this statement is recognized as a substitute for the signature (surrogate).
If an act is born as an authentic act and meets the requirements set by law according to Article 1320 of the Civil Code, then the act is valid or can be considered as authentic evidence until proven otherwise. Based on the explanation above, in the case where the objective requirements cannot be fulfilled, namely the existence of an object of the agreement and a lawful cause, the agreement is null and void by law. Meanwhile, if the subjective requirements are not fulfilled, namely the agreement and the capacity of the parties, the agreement is not null and void by law, but its annulment can be requested. In other words, this agreement is valid or binding as long as it is not annulled by a judge at the request of the party entitled to request the annulment.
The valid consent given by a person can take the form of a statement at the end of the deed. If the person is completely unable to affix their signature or fingerprint on the deed, then the statement at the end of the deed must be written clearly and firmly by the notary. The statement contains the reason why neither a signature nor a fingerprint could be affixed to the deed.
The legal consequence on the deed will not lose its authenticity if the parties do not affix their signatures, as long as the circumstances are explained in the deed. Therefore, if the parties do not affix their thumbprints or fingerprints as a substitute for signatures in the creation of the authentic deed, it will not result in the deed losing its authenticity. The deed remains legally valid and retains its value as an authentic deed even if it is not signed or stamped with a fingerprint.
A notarial deed becomes perfect and valid as a piece of evidence in court if its creation process has met several requirements as mentioned above, namely fulfilling the valid requirements of an agreement under Article 1320 of the Civil Code, meeting the requirements of Article 1868 of the Civil Code, and Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Notary Position, particularly in this writing, fulfilling the provisions of Article 44 of the Notary Law.
An agreement or consent remains valid as an agreement as long as it meets the valid requirements of an agreement under Article 1320 of the Civil Code, even if the agreement does not meet the provisions of Article 1868 of the Civil Code, and the Notary Public Law, particularly regarding the affixing of signatures or thumbprints at the end of the deed. Article 16 paragraph (1) letter c in conjunction with Article 44 of the Notary Public Law serves as the basis for understanding and reference for the responsibilities that a notary needs to apply when using a surrogate as a substitute for a signature. These responsibilities that the notary needs to apply will also prevent the notary from being suspected of malpractice or the possibility of the deed's evidentiary power being diminished. A notary must apply the principle of caution when using a surrogate as a substitute for a signature, which is required when the party cannot affix their signature or thumbprint to a deed.

Conclusion
In conclusion, the consequence of using a Surrogate in an authentic deed based on the provisions of legislation does not eliminate its authenticity and validity. Legislation has guaranteed the use of surrogates in authentic deeds as long as they are not done unlawfully.

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