



The Principle of Notary Prudence in Making Deeds for Attendees in Detention Houses

Elvina Wijaya, Disriani Latifah Soroinda

Universitas Indonesia, Indonesia

Emails: elvinawijaya2@gmail.com, disriani.latifah@gmail.com

ABSTRACT

Every individual, including detainees and prisoners, retains civil rights to engage in legal relations, including the execution of authentic deeds before a Notary. However, creating deeds for parties in restricted freedom carries a high risk of cancellation due to potential abuse of circumstances (misbruik van omstandigheden), as evidenced in the Medan High Court Decision No. 157/Pdt/2024/PT MDN. This study examines the principle of notarial prudence in preparing deeds for detained parties, covering both material aspects (freedom of contract, legal validity of agreements) and formal procedures (authentic deed requirements). The research employs a doctrinal approach with qualitative analysis of primary legal sources (regulations, court rulings), secondary materials (legal literature), and tertiary references (online databases). Key findings reveal: (1) detainees/prisoners maintain legal capacity unless restricted by court order; (2) Notaries must thoroughly verify parties' free will through identification, interviews, and document review; and (3) strict adherence to formal procedures (verlijden) is essential to prevent legal defects in deeds. The study concludes that Notaries must exercise heightened prudence by ensuring compliance with both material and formal requirements. Practical implications include recommendations for Notaries to develop specific protocols when serving detained parties, including detailed documentation of free will verification processes. This research contributes practical guidance to enhance legal certainty and protection for Notaries and related parties.

Keywords: detainees, inmates, abuse of circumstances, and formal procedures

INTRODUCTION

Basically, every human being has civil rights that he or she holds from birth to death. These civil rights take the form of human rights and obligations as legal subjects. When a person begins to enter society, he or she can have legal relations with others, such as making agreements, binding and buying and selling, renting, business transactions, and so on. To fulfill these interests, especially in terms of proof, the parties usually need the presence of a trusted third party to constrain their wishes and pour them into an authentic deed. In this case, the role of this trusted third party is attributed by the state to the *Notary* as a public official (Undang-Undang Nomor 8 Tahun 2010).

However, sometimes the person who has the legal relationship is not in a free environment, such as prisoners or inmates who are in a correctional institution. The reasons for their presence in

state prisons vary; it can be because they commit violations or crimes, whether criminal or civil, and so on. The only right that is lost as a result of their confinement is the loss of the right to live freely. In this case, the loss of freedom to live freely does not mean that their civil rights are also lost. Prisoners or inmates also have rights guaranteed by the state, especially related to civil rights. Evidence of the guarantee of civil rights for prisoners can be seen from the existence of facilities to conduct marriages provided by the Sleman Class IIB Prison to one of its inmates (Pengadilan Negeri Kisaran, 2023). The guarantee that marriage can still be carried out by prisoners or inmates is a form of respect for human rights, while, of course, paying attention to the requirements, security aspects, and applicable regulations. This is in line with the provisions of the Civil Code, which states that no punishment shall result in civil death, or loss of all civil rights (Undang-Undang Nomor 22 Tahun 2022).

Previous research by Kusumawati (2018) analyzed the responsibility of *Notaries* in credit agreements involving abuse of circumstances, emphasizing the need to ensure genuine consent. However, the study did not focus on the unique challenges posed by detainees or prisoners. Similarly, Yunita (2018) explored psychological superiority in abuse of circumstances within contractual agreements but limited her scope to general civil cases, leaving the intersection of notarial practice and detainee rights unexplored. This study bridges these gaps by examining both material aspects (freedom of contract and legal conditions of agreements) and formal procedures (authentic deed validity) specific to detainees, providing a comprehensive framework for *Notaries*.

The signing of a notary deed as an authentic deed with a person who is a prisoner or inmate carries a higher risk of cancellation of the deed. This is because the state of the prisoner or inmate is basically one of in freedom, so often this "unfreedom" is used as an excuse to cancel the deed. In the District Court decision Number 51/Pdt.G/2023/PN Kis jo. High Court Decision Number 157/Pdt/2024/PT MDN, there was a lawsuit to cancel the grant deed made by the *Notary* in the detention house, with the person facing the prisoner himself. This lawsuit was filed by plaintiff L as the grantor against defendant I, namely LNSY as the grantee; defendant II, namely L as the grantee; defendant III, namely SR as the plaintiff's wife; defendant IV, namely FCMG, S.H. as the *Notary* who made the grant deed; and defendant V, namely the Chairman of the Regional Supervisory Council of Notaries of the Republic of Indonesia (Pengadilan Tinggi Medan, 2024).

From the existing legal facts, it is known that the plaintiff was in a detention house at that time for committing domestic violence against his wife, and peace was made on the condition that a grant of the plaintiff's property to his children was carried out. However, after the peace agreement and grant were signed, a few days later, the plaintiff sued his wife, his children who received the grant, and the *Notary* who made the grant deed with one of his petitions asking for the grant deed to be declared null and void. The plaintiff argued that at the time of signing the grant deed, his psychological condition was severely shaken, depressed, and he could no longer bear to remain confined in a detention cell, so he signed the grant deed with a very heavy heart. The plaintiff also argued that the *Notary* involved was well aware that the plaintiff was in a period of detention, aka not independent, unlike other people in general who are free and mentally experiencing mental shocks and depression, so the *Notary* should have firmly refused to make the grant deed. In addition, the plaintiff stated that the signing of the grant deed was carried out without giving him enough time to read the details and understand fully and consciously in order to examine the content or substance of the deed.

In the district court ruling, the judge dismissed the lawsuit (*Niet Ontvankelijke Verklaard*), considering the lack of evidence, where a photocopy of the letter without the original

letter/document and without corroborating witness testimony or other evidence could not be used as valid evidence in the trial. Meanwhile, in the high court decision, the judge declared that the grant deed made by the *Notary* was null and void, considering that the creation of the grant deed was based on coercion because it was made at the same time as the peace agreement. The decision cannot be further discussed because, in this case, the defendants did not provide an answer to what the plaintiff postulated and the judge also did not provide further elaboration regarding the existence of coercive elements in the agreement. Therefore, the case is only discussed in general regarding the actions taken by the *Notary* facing such a case.

In a country that still guarantees the civil rights of prisoners or inmates, if they want to be present in a notary deed, how should the *Notary* respond? Is it forbidden for *Notaries* in the exercise of their position as public officials to make deeds where the audience is a prisoner or inmate? Considering that there is a risk of cancellation of the deed made by the *Notary*. If *Notaries* are not prohibited from making deeds for prisoners or inmates, then what must *Notaries* consider to make a deed valid and minimize the risk of cancellation? Of course, the principles of making a deed that are usually carried out against audiences in general must also be applied to audiences who are in detention houses. However, in the presence of a person who is in a detention center, it is necessary to pay more attention to the aspect of freedom of contract of the person who wants to make the agreement before the *Notary* and the fulfillment of the conditions of the agreement made.

On the other hand, regarding the formal procedure for making an authentic deed, the *Notary* must also pay attention. Indeed, it is basically good for the witness, wherever he is, that the provisions of formal procedures must still be carried out by the *Notary* in making an authentic deed. However, in the case of those who are in the detention house, it is better for the *Notary* to be more careful and ensure that this has been carried out. Usually, outside the detention house, modern technology can be used to provide protection to the *Notary* in carrying out his position; however, inside the detention house, there are limitations to the use of this technology, so the *Notary* must really carry out the formal procedure of making the authentic deed so that in the future no party can deny or manipulate the making of the authentic deed, which could harm the *Notary*.

Based on the above background, this study will discuss the actions or steps that must be taken by *Notaries* when making deeds in detention centers, associated with material aspects such as the concept of freedom of contract and the legal conditions of the agreement, as well as formal aspects to ensure the validity of a notary deed. For this reason, the author raises this problem in an article entitled "*The Principle of Notary Prudence in Making Deeds for Attendees in Detention Houses.*" The purpose of this research is to identify the principles of prudence *Notaries* must apply when preparing deeds for detainees, ensuring legal certainty and protection for all parties. By addressing material aspects (e.g., verifying freedom of contract) and formal procedures (e.g., adhering to *verlijden* requirements), this study aims to minimize the risk of deed cancellation while upholding detainees' civil rights. The findings will benefit *Notaries*, legal practitioners, and policymakers by providing clear guidelines for ethical and legally sound practices in detention settings.

RESEARCH METHODS

This research uses a doctrinal (*normative*) legal research method with a qualitative approach to analyze the principle of *Notary* prudence in making deeds for parties in custody. The research data is sourced from primary legal materials in the form of laws and regulations such as the *Notary Position Law*, the *Civil Code*, and court decisions related to the cancellation of *Notary* deeds. Secondary legal materials include textbooks, scientific journals, and theses that discuss the abuse of circumstances and the protection of prisoners' rights, while tertiary legal materials are obtained from online legal databases. The data analysis technique is carried out through several stages, namely legal interpretation of the formal and material provisions of the deed; case analysis to identify the dispute pattern of *Notary* deeds; comparative analysis with the Dutch legal system regarding abuse of circumstances; and normative evaluation to assess the adequacy of existing legal protection. The validity of the data is guaranteed through triangulation of sources and discussions with *notary* legal experts. This method was chosen to provide a comprehensive understanding of the obligations of *Notaries* in ensuring freedom of contract and meeting the formal requirements of authentic deeds, as well as filling gaps in previous research that had not specifically addressed the context of detention.

RESULTS AND DISCUSSION

Prisoner or inmate as a witness in a notarial deed

The definition of a prisoner as stated in Law Number 22 of 2022 concerning Corrections ("Correctional Law") is a suspect or defendant who is undergoing a judicial process and is being held in a state prison. Meanwhile, the definition of a prisoner is a convict who is serving a prison sentence for a certain time and life or a death row inmate who is awaiting the implementation of the sentence, who is undergoing coaching in a correctional institution. Either prisoners or inmates have rights and obligations that are regulated in the law.

When talking about prisoners or prisoners, they are not exempt from their rights and obligations. Regarding the rights of prisoners or prisoners, it can be known from the definition of the right itself, which is the authority possessed by each person to do something, where one person's rights are different from others. The right inherent in every human being is Human Rights (HAM), where this right is inherent in human beings throughout their lives and cannot be reduced by anyone. For this reason, even if a prisoner or inmate is serving a sentence for his actions, they still have inherent rights and should not be deprived of by anyone, except the right to live freely.

The rights of prisoners and prisoners are contained in the Correctional Law, where the rights of prisoners are:

- 1) carrying out worship in accordance with their religion or beliefs;
- 2) receive care, both physical and spiritual;
- 3) get education, teaching, and recreational activities, as well as opportunities to develop potential;
- 4) get proper health and food services according to nutritional needs;

- 5) obtain information services;
- 6) get legal counseling and legal assistance;
- 7) submit complaints and/or complaints;
- 8) obtain reading materials and participate in mass media broadcasts that are not prohibited;
- 9) to receive humane treatment and to be protected from acts of torture, exploitation, neglect, violence, and any act that harms physical and mental health;
- 10) get social services; and
- 11) accept or reject visits from family, advocates, companions, and the community.

For inmates, the rights mentioned above also apply and there are additional rights, namely getting job safety guarantees, wages, or premiums for work results. In the event that a prisoner has met certain requirements, he or she is entitled to remission, assimilation, leave to visit or visit family, conditional leave, leave before release, parole, and other rights in accordance with the provisions of laws and regulations, such as being a marriage guardian and/or attending a legal child marriage, distribution of inheritance, seeing a family that is seriously ill or dies.

A prisoner or convict will basically not lose the right to perform any kind of legal act. It is possible for them to commit civil legal acts even though they are physically in custody. For example, they want to buy and sell, grants, get inheritance, and so on. As stipulated in Government Regulation of the Republic of Indonesia Number 58 of 1999 concerning Terms and Procedures for the Implementation of Authority, Duties and Responsibilities of Prisoner Care which states that prisoners still have political rights and civil rights in accordance with applicable laws and regulations. This is solely for the sake of achieving the goal of law enforcement according to Mardjono Reksodiputro, which is to achieve a fair legal process (due process of law), in which there are the rights of suspects, defendants and convicts which are part of human rights, which must be protected and still considered part of citizens' rights (civil rights).

In the case of civil law that gives rise to the civil right, basically these rights are still attached to the prisoner or prisoner unless there is a restriction or revocation of these rights based on a judge's decision. For example, in the crime of money laundering, investigators, public prosecutors or authorized judge's order to postpone transactions on assets that are known or reasonably suspected to be the result of criminal acts. So, when viewed based on the rights of prisoners or prisoners, they are basically still allowed to commit civil law acts as long as they are not otherwise determined by laws and regulations or judges' decisions.

On the other hand, when looking at the provisions regarding the position of Notary, namely Law Number 30 of 2004 concerning the Notary Position jo. Law Number 2 of 2014 concerning Amendments to the Law on the Notary Position ("Notary Position Law") it is stated that there is no prohibition for Notaries to make a deed in the presence of a prisoner or prisoner. A Notary Deed is only prohibited from being made if it gives a right and/or benefit to the Notary himself, the Notary's wife or husband, witness, wife or husband of the witness, or a person who has a family relationship with the Notary or witness, whether blood relations in a straight line up or down without restriction of degree or marital relationship up to the third degree.

When looking at the authority, obligations, and prohibitions of Notaries in carrying out their duties which have been specifically regulated in the Law on the Notary Position and the Notary Code of Ethics, the Notary's authority is not limited to legal acts or acts carried out by the person in custody. The Notary's main authority is in the case of making an authentic deed regarding all acts, agreements, and stipulations required by laws and regulations and/or required by the interested party to be stated in the authentic deed. The authority of the Notary in making this authentic deed is specifically given by the State by attribution to carry out part of the state's public functions in the civil field so that the authentic deed can be used as evidence that has perfect strength.

To exercise this authority, Notaries are guided by the obligations of Notaries as stipulated in Article 16 of the Law on Notary Positions. One of the obligations of the Notary is to provide services to anyone who wants to use the services of the Notary in accordance with the provisions of the Law on the Notary Position, unless the Notary finds his own reasons for refusing the request. In his explanation, the categorical reasons for refusing it are the existence of a blood or semen relationship with the Notary or with his or her husband/wife, one of the parties does not have the ability to act to do the act, or other things that are not allowed by law.

Based on these things, prisoners or inmates who are in the presence of a notary deed to perform civil legal acts are basically not prohibited, unless there are restrictions on rights regulated by laws and regulations or judge's decisions.

Material Aspects and Formal Aspects in Making Deeds for Prisoners or Inmates as Witnesses in Notary Deeds

Notaries who carry out their duties with a presence in a detention center, either in the status of a prisoner or a prisoner, are vulnerable to the risk of the cancellation of the authentic deed made. As in the case in the court decision mentioned above, an authentic deed made by the person in the detention house as a prisoner must be ensured to have an element of freedom of contract in the making of the deed. This is because the circumstances of the person who are not independent in the detention house allow the abuse of circumstances (*misbruik van omstandigheden*) to be able to cancel an authentic deed that has been made. For this reason, Notaries need to be more careful in terms of making authentic deeds for the audience who is in custody. The points of the principle of prudence discussed in this study are related to material aspects such as freedom of contract and the legal terms of the agreement, as well as the formal aspects of the validity of an authentic deed made by a Notary.

Freedom of contract is one of the important conditions that must be met in making an agreement. The principle of freedom of contract can be interpreted as the freedom of the parties to determine or choose the cause of the agreement to be made, the freedom to determine the object of the agreement, the freedom to determine the form of the agreement, and the freedom to accept or deviate from the provisions of the law that are optional. Due to the freedom of the parties, all agreements made in accordance with the law are valid as laws for the parties who make them.

In addition to freedom of contract, an agreement made by the parties generally must meet the legal requirements of the agreement as stated in Article 1320 of the Civil Code, namely the agreement of those who bind themselves, the ability to make an agreement, a certain thing, and a halal cause. The legal conditions of the agreement in the Article should be fulfilled in every agreement made, because if one of the conditions is not met, then the potential for the agreement to be canceled or null and void for the sake of the law.

The terms of agreement and competence are included in the subjective terms of an agreement, which are related to the party who made the agreement. For this reason, if the subjective conditions are not met, then the agreement can be requested to be canceled by one of the parties to the agreement. Meanwhile, the conditions regarding a certain thing and the halal cause are included in the objective conditions, which if not fulfilled, then the agreement is null and void. If the agreement is null and void, then the agreement is considered to have never existed in the first place.

Fulfillment of the first subjective condition, namely agreement, is of course an important thing in making an authentic deed in the form of an agreement. The scope of the agreement is that there is no error, fraud, or coercion in making the agreement. First, *dwaling* can be interpreted as a mistake in the nature of an item or person. Regarding errors in the nature of goods, for example, when someone thinks he has bought a painting from a well-known painter, but it turns out that the painting is only derivative. As for the mistake of the nature of people, for example, making an agreement with a famous singer, but it turns out that the singer is not famous, even though the two have the same name. Second, fraud (*bedrog*) is defined as one of the parties giving false or untrue information deliberately and accompanied by deception to persuade the opponent to give his permission. False or untrue information in fraud must be made in such a way as to form a series of lies. Third, regarding coercion (*dwang*), which is not physical coercion, but spiritual or spiritual coercion, by being threatened or intimidated so that they are forced to agree to a treaty. The threat in this case must be in the form of a threat that is indeed a prohibited threat and not allowed by law.

In its development, in addition to these three things, there are conditions that are categorized as the reason for the cancellation of an agreement, namely abuse of circumstances (*misbruik van omstandigheden*). Although the provisions regarding the abuse of circumstances themselves have not been regulated in the Civil Code, judges often use this doctrine in deciding a case that occurs. Abuse of one's own circumstances is defined as persuasion, pressure, or influence without any physical or real force that is more than ordinary advice, which influences the opinion or will of another party who is controlled so that it cannot act freely but based on the will of the party who influences it.

In contrast to Indonesia, the doctrine of abuse of this circumstance has been clearly regulated in the Netherlands, where it is included in the third book on the general section and the law of engagement and the sixth book on the law of property in general. In Article 3:44 paragraph 1 of the *Nieuw Burgerlijk Wetboek*, it is stated that due to the abuse of circumstances in an

agreement or legal act, as well as threats and fraud, it can cause the agreement or legal act to be canceled. Then in Article 6:228 paragraph 1 of the Nieuw Burgerlijk Wetboek, it is stated that if a covenant is born due to the influence of error (*dwaling*) and if he gets the true picture, then the covenant will not be made and can be canceled.

The conditions that must be met for an act can be said to be an abuse of circumstances are, first, one party must have an economic or psychological advantage over the other party and second, there is another party who is weaker to be forced to make the agreement. In the abuse of circumstances due to economic advantage, two elements must be met, namely: one party to the agreement is superior in the economic field than the other party and the other party is pressured to enter into the agreement in question. The abuse of economic superiority in simple terms, occurs because of the imbalance of bargaining power faced by the weak and unavoidable parties, thus creating good-faith bargaining.

Meanwhile, in the abuse of circumstances due to psychological superiority, the elements that must be fulfilled are the dependence of the weak party who is abused by the party who has psychological superiority, as well as the existence of extraordinary psychological superiority between one party and the other. According to Van Dunne, the abuse of circumstances due to psychiatric superiority can be categorized into: first, one of the parties abuses relative dependencies, such as a special relationship of trust between parents-children, husband and wife, doctor-patient, or pastor-congregation, and second, one of the parties abuses the other party's special state of mind, such as mental disorders, inexperience, rashness, lack of knowledge, or poor physical condition. However, despite the existence of psychological superiority, it cannot simply cause an agreement to be void, because there must be an element of circumstance and imbalance that must be proven to exist.

The imbalance in the position of the parties in making the agreement, results in the stronger and dominant party having an advantage over the weaker party to ultimately implement the agreement or give its approval. The weaker party in the abuse of the situation causes a defect in the will in the making of the agreement in the form of the will of the weaker party in the agreement is not freely stated. Abuse of circumstances occurs when a person who is aware or should have understood that a certain condition, such as an emergency, dependence, negligence, abnormal mental state, or ignorance, prompts another person to take legal action, even though the person is aware and understands that such action could actually be avoided.

To further clarify that a condition can be categorized as an abuse of circumstances, it can be known from four conditions:

- a. Special circumstances (*bijzondere onstandigheden*), such as dependence, carelessness, insanity and inexperience, and emergencies;
- b. A tangible thing (*kenbaarheid*), where one of the parties knows or should know that the other party is moved by special circumstances to close an agreement;
- c. Misuse, where one of the parties has performed the agreement or knows or should have understood that it should not have done so;

- d. Causal relationship (causal verband), where if there is no abuse of the situation, then the agreement will not exist.

Although the Notary only plays a role in the formal truth of the making of an authentic deed, if the Notary knows that there is an element of abuse of circumstances against the agreement made by the parties, then the Notary cannot simply ignore it, especially in cases where the person is in custody. This condition of abuse is a condition that makes the risk of the cancellation of an authentic deed greater. However, this does not mean that the Notary cannot carry out his position for the audience who is in the detention house. This is because this is unfair to prisoners or other inmates who do have interests in the civil aspect and need the role of Notaries in it.

As a form of implementation of the principle of prudence in carrying out the position, Notaries in signing notarial deeds in the detention house must comply with the following procedures:

- a. To make an identification of the audience based on his identity shown to the Notary;
- b. Asking, listening, and observing the wishes or wishes of the audience or audience accompanied by questions and answers;
- c. Examining the evidence of the letter relating to the wishes or wishes of the parties;
- d. Providing advice and making a framework of deeds to fulfill the wishes or wishes of these parties;
- e. Fulfill all administrative techniques for making a notary deed, namely *verlijden* requirements, provide copies and files for the deed minutes;
- f. Perform other obligations related to the implementation of the duties of the Notary position;

All of the above-mentioned procedures must be carried out by the Notary as best and as detailed as possible, because the Notary in this case must be absolutely sure, both subjectively regarding the ability and authority to act from the person in the detention center and objectively regarding the object of the agreement that is being agreed upon by the parties. In the event of a gap in the form of procedures that are not done properly by the Notary, this can result in the status of the authentic deed being imperfect or even the authentic deed can become null and void.

The introduction of the presenter based on his identity, is generally carried out by the Notary with the aim that the Notary really knows that the parties who are the presenters are really capable and authorized parties to perform a legal act. Status as a prisoner or convict basically does not prevent a person from committing a legal act as described in the previous section.

Before making a deed against the person in the detention house, it is a good idea for the Notary to have met directly with the person in front first. The Notary's meeting with the audience can be intended for several things that support the Notary's belief to make a deed whose party is a prisoner or prisoner. Notaries can dig deeper information from the witness, especially about the freedom of the witness in carrying out these legal acts. Basically, a Notary only pours or contends the wishes of the parties in the form of an authentic deed. The notary is not authorized to add or change the stipulated wishes if the parties do not want to.

However, this needs to be considered further, especially in terms of facing the detention center. Notaries must be able to carefully explore the true intentions of the parties. As mentioned in the previous section, there is a high probability that the person in the detention center will later state that he is in a state of distress to make an agreement, so he asks for the cancellation of the agreement he has previously made. Because of this risk, the Notary must be able to dig up information so that it becomes sure that at the time of signing an authentic deed, the audience is not in a state of distress and really wants to carry out the legal act. Indeed, regarding this matter, it would be more certain if there were experts who could provide information about what the psychiatric condition of the patient was at that time. However, Notaries can also do it by asking questions and answering questions and finding out the background conditions of making the authentic deed. All things in this case must be considered by the Notary, starting from the gestures, how to answer, physical condition, so that the Notary can judge for himself whether the Notary wants to make the authentic deed or not. The Notary has the right to refuse to make the authentic deed in the event that the Notary finds a violation of the regulations, for example the presenter is in a state of inability to perform the agreement. Precisely if the Notary already knows this in advance but still makes an authentic deed, then it can be said that the Notary is doing something that is contrary to the existing regulations.

Furthermore, the Notary must properly check the documents received, whether the ownership of the document is appropriate, whether there are conditions that must be met by the parties before signing the authentic deed, whether there are irregularities in the document that can harm other parties in the future. If there is something that does not convince the Notary, the Notary must find out about it, either by confirming directly to the parties, asking for other supporting documents to convince the Notary both from the parties directly and through agencies related to the matter. This is of course to achieve the goal of legal certainty for the parties.

After the Notary collects information related to the above-mentioned matters, the Notary gets a detailed and clear picture related to the wishes of the parties. It should also be noted that Notaries also play a role in providing legal counseling related to the wishes of the parties. Not only notaries must follow the wishes of the parties. Because after all, in terms of making an authentic deed and applying the law, the Notary understands better than the parties, so if it is felt that the parties do not understand, the Notary has the right to provide legal counseling. The right to legal counseling is also the right of prisoners or prisoners guaranteed by the state, so there is no reason for any party, including the Notary, not to explain in detail what legal acts should or will be done by the person in the detention house (Adjie, 2013; Hernoko, 2014; Miru, 2010; Panggabean, 2010; Selenggang, 2023; Soekanto, 2015).

A deed can be said to be an authentic deed if it meets three conditions or elements that cause the birth of the authenticity of a deed, namely drafted, read, and signed. These three things are called *verlijden* conditions, where if one of them is not fulfilled, then the deed cannot be said to be an authentic deed. Compiled, read, and signed must be done by a Notary in his position as a public official who has the authority from the Law to make an authentic deed. Being read in this

case is not just being read without an explanation to the audience. The Audience has the right to know in detail the intent contained in the deed to be signed and the Notary is obliged to explain it in detail. This aims to prevent denial by the audience in the future. The consequence of the Notary not carrying out the *verlijden* requirements is that the deed is defective so that it can be degraded into a deed under hand, so that the power of proof is not perfect. The making of a copy of the authentic deed and its filing in the Notary Certificate must also be done in accordance with the applicable regulations.

Regarding other obligations related to the implementation of the duties of the Notary position, one of the important things that must be considered by Notaries in this regard is the acquisition of personal data of witnesses who are currently prisoners or inmates. Basically, a Notary makes an authentic deed based on personal data and documents from the parties. As is known, the audience in the detention house is in a state of in freedom, either to communicate directly with the Notary or to access his personal documents.

This data acquisition process is important because of Law Number 27 of 2022 concerning Personal Data Protection ("Personal Data Protection Law") which guarantees a person's personal data. Notaries in carrying out their positions play the role of controller of personal data subject personal data. The subject of personal data is an individual to whom personal data is attached. A personal data controller is any person, public body and international organization that acts individually or jointly in determining the purposes and exercising control over the processing of personal data. In this case, the Notary needs the personal data of the parties to be poured in the authentic deed, either in the comparison section of the parties or in other parts of the authentic deed related to the personal data of the parties (Kusumawati, 2018; Yunita, 2018; Clarins, 2019; Nainggolan, 2021; Labibah and Lestari, 2024; Mippon and Putra, 2023).

For this reason, in the processing of personal data carried out by the Notary can be in the form of acquisition, collection, processing, analysis, storage, repair, renewal, dissemination, disclosure, deletion or destruction of personal data. In the case of people who are in a detention house, which has limitations in communication with outside parties, especially Notaries, the Notary should pay more attention to the acquisition of personal data. The notary must really ensure that the personal data he obtains for the purpose of making an authentic deed is really desired by the prisoner or inmate. Because if it turns out that the Notary obtains the personal data without the consent or knowledge of the actual owner, the Notary may be subject to the provisions in the Personal Data Protection Act regarding the prohibition on the use of personal data, as stated in Article 65 of the Personal Data Protection Law, where every person is unlawfully prohibited from obtaining or collecting personal data that does not belong to him with the intention of self-benefit themselves or others resulting in the loss of the personal data subject. If the Notary violates the provisions of this article, he or she may be sentenced to a maximum of five years in prison and/or a maximum fine of five billion rupiah (Pohan et al., 2021; Putra, 2015; Wahyuni, 2022; Widyakso, 2021).

Of course, the obligations of the Notary related to the personal data of his clients do not stop there, after that the Notary in processing personal data must also be in accordance with the principle of personal data protection, namely using it specifically and transparently in accordance with the purpose, not misused, and used responsibly. Notaries are also obliged to maintain the confidentiality of the personal data. This is related to Article 4 of the Law on the Notary Position regarding the oath of office of Notary that has been taken, where the Notary is obliged to keep the contents of the deed and information obtained in the performance of his duties confidential. For this reason, in the case of personal data, Notaries are required to follow the provisions regarding personal data as stipulated in the Personal Data Protection Law and the Law on Notary Positions.

CONCLUSION

Basically, a prisoner or inmate still has civil rights, even if they are in a detention house. The only right lost is the right to live freely. For this reason, prisoners or inmates may commit legal acts before a *Notary*. *Notaries*, in carrying out their duties as public officials who make authentic deeds for purposes of proof, are not prohibited from making deeds for audiences who are in detention houses. It is just that *Notaries*, in performing this task, need to be more careful. In this case, to carry out their position properly, the *Notary* must be more active in finding out, materially, the intention of the party who wants to sign the deed—whether the party truly desires the legal act or not. This is because a prisoner or inmate is indeed in a condition of unfreedom. However, this cannot always be used as an excuse to avoid taking legal action. *Notaries* need to be more prudent in assessing this. Indeed, determining a person's psychiatric condition cannot be done by a *Notary* alone without the help of experts. However, the *Notary* is authorized to collect information and supporting documents that convince the *Notary* to make an authentic deed. This is to provide legal certainty to the parties and legal protection for the *Notary* itself. If the *Notary* has doubts regarding the correctness of the parties' wishes, the *Notary* may also refuse to make a deed. On the other hand, *Notaries* must still carry out formal procedures when making authentic deeds. The limitations on signing deeds in detention do not create reasons or loopholes for future cancellation of the authentic deed. *Notaries* must also ensure that the personal data and documents used to create an authentic deed are actually provided and desired by the authorities.

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