

NOTARIAL DEED IN TRANSFER OF RIGHTS TO LOCAL GOVERNMENT ASSETS

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ABSTRACT

Abstract: Based on the existing background, a formulation of the problem can be drawn, namely (1) what are the reasons for the prohibition of making authentic notary deeds outside the notary's office area? (2) What are the legal consequences for notary deeds made outside the notary's office area? The type in this research is to use the type of normative legal research. The types of approaches in this study are statutory and statutory approaches. The analysis in this study was carried out by taking an inventory of legal materials, then classifying legal materials according to the problem, then systematizing them, interpreting them in analysis, and concluding them. The results of this study prove that some of the reasons why a notary is prohibited from making notarial deeds outside the area of office are to guarantee legal certainty to the community, prevent unfair competition between notaries in carrying out their positions, and keep a notary in carrying out and being responsible for actions and certainty. law. The legal consequences of a notarial deed made outside the office area of the notary deed are inauthentic and the deed has no force and is null and void. For the notary himself, if he is found to have violated the laws and regulations regarding the position of a notary, he will receive sanctions in the form of an oral warning, or a written warning, which will then be subject to administrative sanctions. Sanctions can be in the form of temporary dismissal, or respectful discharge, even if the mistake is truly fatal and is proven to have violated the applicable rules and laws, sanctions can be given in the form of dishonorable dismissal.

Keywords: Notary; Legal Consequences; Notary Area

Introduction

A Notary deed must be able to provide legal certainty to people who request services from a Notary itself. The notarial deed in Article 1 number 7 of the UUJN states "a Notary Deed is an authentic deed made by or before a notary according to the forms and procedures stipulated in this Law". A deed made by a Notary Public has perfect evidentiary power, unlike a deed under hand. An underhand deed is a deed made by the interested parties themselves without the help of a general official. Authentic deeds are Notary products that are needed by the community to create legal certainty (Munir, Budiarto, & Sara, 2023).

This parallel order would reflect the classical sociological definition of legal pluralism. Alternatively, with the New Haven School's approach, understanding the international legal system as a larger, more inclusive, and pluralist system that goes beyond traditional State-centrism, it is possible to reflect more freely on the various engagements that local governments have with international legal systems and norms. In an iterative process, depending on how prepared international law will be to consider contestations made by local governments, the international legal system will become increasingly plural to accommodate the challenges and criticisms posed to it, or keep restricting and pushing local governments into their parallels. alternative normative order. Regardless of the outcome, local governments have developed into norm-producing communities in international law, advancing pluralism, with their primary influence on positive international law to be evaluated in the coming years (Zainal & Hamdani, 2018).

The establishment of Human Rights entails incidents where local governments have sought opportunities to directly contribute to the official law-making process at the international level, joining forces with States and international organizations. The normative formulation by local governments in the forum does not include the central government in the category of Human Rights Contestation. Perhaps the most significant event that the Formation shows is the process that led to the codification of the content of the Right to Housing. In the Habitat conference, the Global Campaign for Secure Tenure and Urban Governance, and in other formal and informal processes, local governments played an important role in creating the positive legal content of the right to adequate housing. Less self-evident and more difficult to trace, local governments could potentially contribute to the development of customary international law, through the production of (sub-)State practices as well as opinion juris, as discussed in Section 5. In the examples included in Defence of Human Rights, local governments pushing back national policies that progress on human rights sometimes receive international attention and response, which can become Juris opinions when analyzed retrospectively (Renggong & Ruslan, 2021).

Research Method

This study used a normative juridical approach. The normative juridical approach is an approach that is carried out based on the main legal material by examining theories, concepts, legal principles, and laws and regulations related to this research. This approach is also known as the literature approach, namely by studying books, laws and regulations, and other documents related to this research.

This stage of data analysis uses the deductive method, which is the process of reasoning from one or more general statements (premises) to reach certain conclusions. The deductive method will prove a new truth derived from existing and known truths (continuously).

This study discusses the law regulating notarial deeds in transferring rights to local government assets. The laws used are Article 15 paragraph 1 of the UUJN and Law No.30 of 2004.

Result And Discussion

Article 18 paragraphs (1) and (2) of UUJN state that notaries have a seat in the district or city area, and the notary has the territory of the department covering the entire territory of the province from the place of his seat. Furthermore, Article 19 paragraph (1) and paragraph (2) states that notaries must have one office at their place of residence, and notaries are not authorized to regularly hold offices outside their place of residence.

According to Habib Adjie, according to Article 18 paragraph (1) Notaries have a seat in the district or city area. The position of notaries in city or regency areas is by Article 2 paragraph (1) of Law Number 32 of 2004 concerning Regional Government, that the Unitary State of the Republic of Indonesia is divided into provinces and provincial areas are divided into regencies and cities. That at the notary's place of residence means that the notary has an office in the Regency City area and only has 1 (one) office in the Regency City area.

Until recently, discussions of these local "sharing wars" have embraced an unstated assumption: if sharing companies survive the current fight, their future will be largely free from government regulation.' In this storytelling, cities will either shut down sharing companies, or they will leave them alone. This assumption, however, is inconsistent with how local governments generally behave. Industries that share the economic enterprises that participate in them—for example, taxi transport, housing, hotels, and restaurants—have long been subject to extensive local-level policymaking. The city subsidizes companies in the industry, regulates them to achieve social policy goals, taxes them, promotes them as tourists and visitors, and relies on them to help provide government services. This focus is not accidental. Cities have long had the political incentive and legal power to strictly regulate activity in these sectors to ensure local market depth and efficient matching and to minimize the impact of urban congestion (Prihatin, 2015).

Prospective residents will only be willing to pay high urban property prices if the city provides access to "agglomeration advantages" such as those generated by deep markets for these goods and services. Thus, promoting and regulating such industries is an important part of urban development policy. The sharing economy is no exception to this trend. Conversely, as sharing companies permanently establish themselves in industries such as transportation, hospitality, and consumer goods, local governments will increasingly leverage those companies to realize nuanced urban development goals. Today, cities express their power over corporate sharing primarily in the form of restrictions, limiting sharing in the name of consumer protection (or, more cynically, protection of the ruling industry). Tomorrow, however, the interplay between the

economic forces driving urban development and the legal forces of cities will mean that cities pursue a more complex set of policy outcomes. And for their part, sharing companies themselves will most likely want more from local governments rather than being left alone. Instead, they will actively pursue benefits, subsidies, and contracts from local and state governments.

The city will (1) subsidize sharing companies to get them to enter or expand certain services; (2) utilize sharing firms for economic redistribution; and (3) hire a sharing company as a contractor to provide municipal services. The focus of this article is positive, not normative, predicting the emergence of such policies but not advocating for them. However, the article will highlight the policy and political rationale for this prediction and the important legal and policy questions that will arise if it were to occur. Our first prediction is city-level subsidies. In the coming years, local governments will increasingly shift from discouraging corporate sharing to actively subsidizing them, either with cash or, most likely, with in-kind profits. To explain this possibility, we looked at the model offered by the comparable development question: municipal subsidies for professional sports stadiums. Of the many different arguments offered to justify stadium subsidies, the best is that they: (1) produce substantial public goods in the form of civic pride and excitement that teams cannot capture alone, as well as consumer surplus for rabid fans, (2) signifies a city "on the map", thus boosting industries such as tourism and reducing "brain-draining" emigration to other, larger cities, and (3) can be the catalyst needed to overcome political opposition that stands in the way of necessary urban improvements (Pribadi & Ghufron, 2019).

In many ways, this "stadium" dynamic also applies to corporate sharing. By serving as an exchange market for goods the population already owns and which has few easy-to-buy substitutes, such enterprises generate an unusually large surplus of producers and consumers for the participants in their exchanges. Sharing companies also provide public goods to produce valuable pricing information, such as rental rates for homes in a particular city. Furthermore, the presence of a passionate sharing firm can signal that a city is "on the map", especially for young, educated, and mobile citizens. Like stadiums, sharing firms can also "hack" local political blockades by bypassing – thereby reducing – the influence of incumbent firms, environmental groups, and unions over local regulators. Subsidies for sharing companies may thus be attractive to city politicians and state leaders trying to cope with perceived arrests by local regulators. In addition, unlike stadiums, corporate sharing also serves to reduce urban "congestion," factors that ultimately limit agglomeration profits. The density and prosperity of cities are ultimately limited by factors such as land costs and traffic. Sharing companies can reduce such congestion by reducing space demand for items such as cars or closet space for consumer goods. Furthermore, the existence of a common market can reduce the need for governments to regulate in the name of ensuring increased capacity for things like parking lots or hotels. Therefore, like stadiums, sharing economy companies can make a strong argument for receiving monetary or in-kind subsidies. This trend is already

emerging in some cities.¹⁵ Going forward, we expect this to be particularly pronounced in cities where regulatory bodies are particularly recalcitrant, in smaller towns looking to demonstrate "greatness", and in cities trying to prop up competing sharing firms where one firm has gained an advantage. Too much market power, or in places where "tech-savvy" or "politically progressive" are seen as the core of the local ethos. While there is a theoretical case for such subsidies, cities will face the challenge of determining exactly when and to what extent they can be justified, and limiting the amount to the public interest only (Amin, Wibowo, & Jasri, 2019). Further, there are substantial questions about which entity would have the power to provide such subsidies under statutes and state statutes, and about whether certain forms of subsidies violate the state constitution.

The title of this section should seem paradoxical. If by definition notaries are public authors, and if public archives store their documents, how can there be private notary archives? Notaries are paradoxical figures (Saputro, 2017). The logic of the notary's position means he straddles the boundary between the courtroom and the market. The compacts made by medieval legislators with Italian notaries had a direct bearing on the way they kept their records. This entitles the profession to fees not only at the time of the original transaction but also at the next moment when an original or 'public' copy of the original document is required. This is the key. Any evidence that a plaintiff or defendant presents to a judge will be convincing if, and only if, his notary or successor has the same record in his protocol. Its position in the notary volume guarantees the reliability of the document. It also promises revenue potential for anyone with that protocol. Whenever a client needs a public copy of one of their acts or one of their ancestors or benefactors, they owe the owner of the volume, the notary or the notary's heirs, a fee both for the privilege of viewing and acquiring a copy. While the law recognizes that notary records are income-generating property, in Indonesia it does not give absolute freedom to their owners to do whatever they like. Although the protocol is not supposed to be bought, sold, or destroyed. The small number of medieval protocols that have survived in Rome shows that enforcement of these prohibitions was weak. Nevertheless, in theory, the protocol itself serves as a legal archive of notarial deeds. Some clients have a habit of recording the notary's name and transaction date separately precisely because at some point they or their descendants may need to find the original notarized volume and obtain a certified copy of the document. The property nature of the notarial deed shapes its preservation in somewhat different ways depending on whether the profession was open to everyone (before the sale of the first office in the 1470s) or limited to a closed group of officeholders who could be bribed (in 1600). Despite these differences, however, the authorities, whether it is a notary, SPQR, or papal college, show careful respect for the money rights of the owners of notary protocols. They were so respectful that they did not at all demand to keep them in public archives, as we have seen, until the middle of the 15th century. It was only then that Rome saw its first intervention to protect these letters, which were limited to letters that had fallen into the hands of widows or children who were not notaries (Lubis, 2018).

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In the social sciences, cities, or rather 'global cities' have attracted widespread academic interest since the 1990s, famously led by Saskia Sassen.⁵⁰ Through trends of urbanization, globalization, and decentralization,⁵¹ cities in many countries have grown in population and economic strength, while at the same time being given new legal obligations – especially in the realization of social and economic rights – in their national arrangements.⁵² Diverse metropolises and Economically strong typically adopt a more liberal political outlook.⁵³ Two global issues on which the nation-state in particular has failed the international community have become major playing grounds for cities: climate change, and migration. Regions in the U.S. have implemented parts of the Kyoto Protocol locally, without federal government ratification.⁵⁵ More recently, as President Trump withdrew from the Paris Climate Agreement, many regional and local governments, including New York and San Francisco, have made public commitments

to uphold the Paris commitments in their full force.⁵⁶ The Sustainable Development Goals have also seen strong advocacy and support among local governments, with New York City being the first local government to report its progress to the United Nations, a task considered only for the state. Local government involvement can respond to human rights criticism in a variety of ways (Bahagijo, Santono, & Okitasari, 2019). Local governments are said to be uniquely placed to localize human rights⁵⁸ and bridge the gap between the poles of universality and cultural relativism. They are actors who are often able and willing to travel between physical and discursive spaces at local and international levels and offer first-hand experience of the realization of human rights, relevant to the international community when codifying human rights norms capable of providing tangible protection. With their pragmatic perspective,⁵⁹ they can also bring together different actors and segments within the locality (Human Rights Coordination), and establish human rights as the normative basis for living together in the city, spreading the distinction between rights holders vs. duty bearers. Of course, all these positive potentials do not negate the flip side of decentralization and localization, which is that local governments can also choose to use their competence and ability to take regressive stances against human rights requirements.⁶⁰ However, given the lack of scholarship mapping the positive potential of local engagement with and for human rights, local governments' regressive policies would be beyond the scope of this article. Regardless, any violation of human rights by local governments will fall under Implementation (which includes an element of responsibility), whereas any alternative imagination of human rights that seems to undermine its essence will be a Human Rights Contestation (Nasution, 2014).

On the contrary, what drives papal policy toward notarizing writing in a judicial context, particularly in civil disputes, is the aim of persuading subjects to take their conflicts to court rather than resorting to extra-judicial means. In a logic completely contrary to their fiscal goals, to make corrupt offices attractive to buyers, the popes imposed economics on notaries to lower the costs of civil justice. The two acts that caused the greatest outrage among Capitoline notaries, both enacted in 1612, were the abolition of the cost of viewing notarial deeds and the upgrade of cheaper 'simple' copies to the same status as public copies as the highest value. judicial evidence.⁴⁸ In addition, the government's longstanding practice of limiting the cost of notary services continues with new additions. Although securing notarial deeds is not necessarily the goal, the intense wave of regulations does have an indirect effect on document storage. Even without new enforcement methods, binding seems to have become routine in corrupt offices, ensuring that loose contracts or wills are not lost. In addition, the rule creates new expectations of access among customers. Indeed, requiring that the sheets in the protocol be numbered and that each volume begins with the names of the parties makes it even easier for clients to find their previous records when they visit a notary. After 1612 they didn't even have to pay to see it.

Two factors, responsibility, and access, help explain the spread of this new filing practice among thirty notaries in the early seventeenth century. The fined buyers of notary offices make it clear in their written contracts that the responsibility for securing the papers lies with the title holder. They stipulate not only that notaries comply with government laws regarding the binding and indexing of their deeds but also that they never leave office unattended. The contractual relationship between owners and notaries means that investors who want to protect their assets can sue negligent rights holders, who will not only lose their offices but also their reputation, which is essential to staying in business. In addition to their vulnerability to owner scrutiny, Capitoline notaries are the target of their customers' attention. As we have seen, the client can freely enter the notary's workplace to check his protocol or record of his judicial actions. This access imposes clear discipline on notary records. It is not uncommon for a client to notarize his notary to the Roman criminal court if one of his documents listed in the protocol's table of contents is missing from the volume. Accusations, *falsum*, are not just forgeries but encompass many things. various fraudulent practices that undermine public trust. In the absence of special personnel to enforce the heavy burden of legislation on notary writing, the client himself provides an outstanding guarantee of compliance.

An inventory made by a notary in 1704 served the purpose of the inspector to obtain a thorough view of the conditions of storage of all notary records in Rome. Their investigation, which has never been repeated on such a scale, gives us a unique picture of what documents existed at the time to compare with what the state archives hold today. For notaries of Capitoline, the largest corrupt college and the group most likely to be sought by ordinary city dwellers, the comparison is enlightening. The preservation of the protocol is almost complete; The original contracts and wills made between the time the thirty offices were first sold in 1586 and the investigation of 1704 have come down to us almost intact. They form the bottom layer of 28,000 volumes in an archival series known as the *Trenta Notai Capitolini di Archivio di Stato Roma*.

Anyone wondering what notaries did in early modern Rome would be forgiven for thinking that the answer can be found in those thousands of protocols. However, they will be wrong, or at least partially wrong. The 1704 inventory also reveals the existence of missing records, the judicial actions of Notary Capitoline, litigation office records, complaints, summonses, witness testimony, and warrants to seize or release goods or debtors. Present in the offices in 1704 all disappeared. According to the 1704 inventory, for example, between 1640 and 1648 the notary Angelo Canini's office produced seventeen volumes of manuals, and summary records of all the judicial affairs of the office, but only five remained. Other offices do not exist. The deposit, which was supposed to be stored in its bound volume, was abundant in 1704, equally uneven today (Anggi, 2023).

While contracts will survive because they have ongoing financial value to notaries who get paid for copying them for subsequent clients, no one is interested in paying for copies

of old warrants or subpoenas. Judicial acts do not have eternal life as a commodity, and sometimes between the beginning of the 18th century and the end of the 19th century, rights holders or perhaps archivists get rid of them.⁶⁰ Litigation may be the key to why so many early modern citizens sought notary services, not only because notaries occupied civil court portals but because notary deeds stood better than any other writing in court. If a customer has a fear that a particular property transaction might be up for grabs, he or she is willing to pay an additional fee for the notary to make and keep the contract. The close relationship between legal disputes and notary records is essential to understanding the existence of these documents (Yenny Febrianty & MHum, 2023).

In the context of sharing, this two-sided structure has important ramifications. First, a two-sided platform can yield useful information whose value cannot be captured by the platform itself.⁸⁸ For example, trading prices on a stock exchange offer valuable information to the public—whether they are members of the exchange or not. Similarly, in the sharing economy: Airbnb rental prices are useful information for anyone who wants to rent out their flat, regardless of whether they're an Airbnb customer. The result is a classic public good: non-rival, non-excludable information, which makes resource exploitation easier for customers and non-customers alike. In addition, for users, a two-sided sharing platform can generate a large surplus of producers and consumers, as it allows existing assets to be traded in new ways. Many people already own cars, parking lots, power tools, or homes, and use sharing services to reduce the cost of those ownership. While a marginal seller may be a professional, investing in a specialty item to rent it on a sharing platform, there is a large population of infra-marginal sellers who gain a huge producer surplus when sharing firms enter the market. In addition, there are some easy substitutes for some of the services made possible by the sharing economy, such as hourly car rentals or daily children's toy rentals. This means new sharing companies make high-demand consumers much better overall, a huge increase in consumer surplus. Despite the surplus effect, two-sided platforms have the characteristics of complex economies of scale. Sharing companies are no exception: on the one hand, there are intuitive economies of scale due to the high fixed costs of developing a sharing platform compared to the minimal cost of adding members. This is doubly true because each new "buyer" makes the market more valuable to the "seller", and vice versa.

However, two-sided markets also risk creating diseconomies of scale because, the more members who join, the harder it is for participants to identify high-value matches. In a city with thousands of options available on Airbnb, finding one that fits a particular need becomes more difficult. Therefore, the optimal size of the sharing platform may be difficult to determine (Novitasari, Pebrina, Sutardi, Nugroho, & Putra, 2022).

Following a basic data collection process from table and field research (consisting of 24 interviews with officials from 10 different local governments in Turkey, South Korea, and Brazil, NGOs, international organizations, and city networks, as well as participant

observations in 5 large meetings of city networks and international organizations) this typology has been created to offer a systematic – albeit incomplete – mapping of the rich normative engagement of governments areas with human rights and international law. This data was collected as part of the Cities of Refuge project which explores the role of human rights as law, praxis, and discourse in the reception and integration of refugees by local governments in six European countries and transnational forums.⁹⁰ Desk research conducted into international resolution organizations on local government and human rights, publications and social media activity of transnational city networks, and the policies and laws of the local governments involved. Qualitative data collected through field research do not claim to be generalizable, nor are they based on a representative sample of local governments. Instead, the grounded theory approach allows the subtraction of certain ideal types of data, followed by theoretical sampling to reach a saturation point where no new types of engagement emerge from the new data.⁹¹ As with most typological limitations, this typology will not be able to cover every form of urban engagement and will use some simplifications. Nevertheless, such mapping arguably contributes to research on cities and international law by offering scholars a contemporary overview of the normative engagement of local government. Frug and Barron pioneered the scholarly mapping of local government relations with international law, focusing somewhat conservatively on subject-object differences in international law, placing cities as objects governed by law, and emphasizing the dangers of possible recognition of their actors.⁹² Aust on On the other hand, in their dissertation 'Das Recht der Global Stadt' identified three general forms of internationalization of local government activities: horizontal networks between local governments, vertical cooperation between local governments and international organizations, and references in local politics and legislation to international norms.⁹³ Marx et al. presented the various functions of local governments in localizing fundamental rights in the EU system, as rule-makers, rule-brokers, service providers, policy supporters, and policy coordinators.

From the various descriptions above, it has been explained that a notary not only has authority and obligations, but notaries also have prohibitions that have been clearly stated in Article 17 letter a of the Law on Notary Positions, the reason why notaries are prohibited from carrying out positions outside their office area. What is meant by carrying out the position here is the notary carrying out his authority and obligations, especially in making authentic deeds (Okta, 2011).

Conclusion

As a legal consequence of a deed made by a notary who has violated the notary law, namely that the notarial deed in its production is carried out outside the territory of office, the notarial deed is not authentic and the deed does not have the force of a deed under hand if signed by the parties concerned. The cancellation of the notarial deed includes; Revocable, null, and void, and has the power of proof as a deed under hand. A notarial deed void or null and void has the power of proof as a deed under hand

occurs because of the non-fulfillment of the conditions that have been determined by law, without the need for certain legal actions from the concerned concerned.

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