

## Legal Consequences of not Attaching Fingerprints to Minuta to Notary Deed



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**ABSTRACT:** An authentic deed drawn up by a Notary as a general or public official becomes very important and is needed by parties as appearers. One of the Notary's obligations regulated in Article 16 (1) c explains that the Notary is obliged to attach letters and documents as well as the fingerprints of the person appearing on the Minuta Deed. However, what becomes a legal issue in this scientific research article is what if the appearer does not want to affix or attach his fingerprints to the minutes of the deed because Article 16 (1) c still contains a vague norm. So that the purpose of this scientific research article is to analyze whether the Notary is personally responsible for not including fingerprints at the request of the appearer and whether not including the fingerprints of the appearer in the minutes results in the position of the notary deed as an authentic deed. The method in this scientific research article uses the method of normative legal scientific research articles. The results of the analysis of this scientific research article show that first, not attaching or affixing the appearers fingerprints to a minutes of notary deed based on the request of the appearer itself remains the responsibility of the notary. Second, not affixing the fingerprints of the appearer on the minutes of the Notary Deed theoretically does not have any effect on the validity, but based on the evidentiary side this can be a consideration for the judge to then abort the minutes of the Notary deed under the hand. So, it is necessary to revise the provisions related to fingerprints in the Notary Law with the aim of clarifying and it becomes necessary to explain in more detail and detail the mechanism of affixing or attaching fingerprints to the minutes of notary deed.

**KEYWORDS:** Legal Consequence; Fingerprint; Notary Deed; Notary.

### A. INTRODUCTION

Notaries and the public are intertwined in the sense of the need to make a deed that has absolute power, that is, authentic. The definition of a deed with authentic power is regulated in Article 1868 *Burgerlijk Wetboek* or in Indonesian referred to as the Civil Code, which is a deed whose terms have been regulated in such a way in positive law or *ius constitutum*, the making of which is carried out by a public or public official who has authority to do so or before a public official or public.<sup>1</sup> In the *Burgerlijk Wetboek*, it is not explained concretely and in detail related to whom, what public or public officials are authorized to do so, but based on Law Number 30 of 2004 concerning Notary Positions which has been amended by Law Number 2 of 2014 explains clearly and concretely that Notaries are authorized to do so. Apart from Notaries, there are other public or public officials, such as Land Deed Making Officials who usually also have this status by a Notary and Auction Officer.<sup>2</sup>

The deed as explained in the previous paragraph, made by the Notary Public as a public official or the public itself or made before him in substance has authenticity related to what is agreed, what deeds are done and the determinations that have been agreed by the parties and attended by witnesses. However, in carrying out their position, notaries must always comply with the Notary Position Law and the Code of Ethics of the Notary Position.

Based on the provisions of Article 16 (1) of the Notary Office Law, it seems very clear that a notary, his authority and obligation in making a deed with authentic strength is given several obligations that must be carried out, in this case as stated in letter c it is said that one of the notary obligations that must be done is that the Notary is obliged to attach a letter and or document including the fingerprints of the parties in a minuta of the deed. The purpose of Article 16 (1) c of the Notary Office Law is as a form of legal protection to Notaries as public or public officials against the denial of a presence or signature of the parties, if they have a tendency or tendency to occur a dispute or legal problem in the civil scope. The technical vagueness of the sound of the article resulted in a multiinterpretation from a notary.

<sup>1</sup> Indah Permatasari Kosuma, "Notary Responsibility in Inserting the Notary Lawsuit Release Clause for the Deed He Made," *Notaire* 4, no. 1 (February 8, 2021): 23–42, <https://doi.org/10.20473/ntr.v4i1.25297>.

<sup>2</sup> Ghansam Anand, *Characteristics of Notary Positions in Indonesia* (Jakarta: Prenada Media Group, 2018).

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The attachment of a fingerprint on that basis to identify the presence for the parties. The norms of Article 16 (1) c of the Notary Office Law mentioned above have concretely brought various kinds of interpretations both in its implementation in the field and about the purpose of the obligation of a Notary as a public or public official to affix a form of fingerprints of related parties in the minuta deed while in the procedure for making the deed minuta as stipulated in the Notary Position Law, One of them is that there are several experts who interpret that fingerprints are included in the procedure for making deed minutas, so as not to affect the validity of authentic deeds made by notaries in the event that fingerprints are not affixed to the parties. Juridically, concretely, Article 16 (1) c can be said to experience a *vague norm* because it does not regulate clearly and unequivocally how the notary is liable if he does not attach fingerprints from the parties in a form of minuta deed and legal steps that can be taken by the face or parties who make a deed to the Notary as a public or public official who is not attached a form of fingerprint from the parties in a form of deed minuta.

So the purpose of this scientific research article is to discuss and provide an additional analysis related to legal consequences if the fingerprints of the parties or the face are not attached to a form of minuta to the notary deed. What distinguishes this scientific research article from other legal research related and closely intertwined with the same legal issue is that no one has discussed in more detail and specifically related to the responsibility of individual notaries related to the non-inclusion of fingerprints on the basis of requests from the face or parties and the position of the deed made by the Notary or made before the Notary itself as a deed with force authentic law and evidence. As in a scientific research article conducted by Aslan which discusses what is the background of fingerprint attachment in a notary deed and the attachment function of a fingerprint in a notary deed. Also in a <sup>3</sup> scientific research article conducted by Yosrila which analyzes whether the attachment of a fingerprint has legal consequences in a process of making an authentic deed and whether the attachment of a fingerprint has the same meaning and definition as a signature.<sup>4</sup> So that the formulation of the problem raised in this legal scientific research article as a form of substance direction in analyzing legal issues in this study is Is the Notary Personally responsible for the non-inclusion of fingerprints at the request of the face Does the non-inclusion of the fingerprint of the face on the minuta result in the position of the notary deed as an authentic deed?

### B. METHOD

In this legal scientific research article, researchers also use methods that are characteristic of methods in positivistic legal research, namely normative legal research methods which are used to analyze a problem or legal issue with secondary legal materials.<sup>5</sup> The type of research used is *also Reform Oriented Research*, this type of research aims to evaluate the fulfillment of a provision intensively that currently occurs at the normative level, then suggest or recommend changes to the legal situation.<sup>6</sup> The nature of this research is prescriptive, a study of a legal problem issue that does not yet have a definite solution so that it aims to find a definite answer.<sup>7</sup> The approaches also used are *the statute approach* and *conceptual approach methods*.<sup>8</sup> So that this study was analyzed to find out how the legal consequences of not attaching fingerprints to the minuta against the deed made by the Notary or made before the Notary itself.

### C. RESULTS AND DISCUSSION

#### NOTARY'S RESPONSIBILITY FOR NON-INCLUSION OF FINGERPRINTS AT THE REQUEST OF THE APPLICANT

##### Background of attaching fingerprints to notarial deeds

In various forms of notary deeds, the term is generally used to provide evidence if the person concerned then uses the services of a notary based on his own will, for example the term has been present, confronted or also currently in front. Where this has the purpose of stating if the related party really comes earnestly (*verschijnen*) *facing itself or in this case a term translated* from the word *verschijnen* is used, this has the meaning of coming directly from the related party.<sup>9</sup> This itself is regulated in Article 16 of the first paragraph of letter m in the Notary Position Law, where the presence of the face is then confirmed by affixing the signature of the party concerned to the authentic deed, so that then this truth is validated by the signature of the face. But along the way, there are many cases where the signature is denied by the parties where not infrequently the denying party has bad faith which then harms

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<sup>3</sup> Aslan, "The Urgency of Fingerprints on Notary Deeds" (Thesis, Banjarmasin, Lambung Mangkurat University, 2022), <https://repo-mhs.ulm.ac.id/handle/123456789/30554>.

<sup>4</sup> Yosrila, "Legal Aspects of Thumbprint Affixing in Making Authentic Deeds" (Thesis, Semarang, Diponegoro University, 2006), <http://eprints.undip.ac.id/17793/>.

<sup>5</sup> Burhan Ashshofa, *Legal Research Methods* (Jakarta: Rineka Cipta, 2013), <https://opac.perpusnas.go.id/DetailOpac.aspx?id=850013>.

<sup>6</sup> Rahmida Erliyani, *Legal Research and Writing Methods* (Yogyakarta: Magnum Pustaka Utama, 2018).

<sup>7</sup> Sarifuddin Azwar, *Research Methods*, Ninth Print (Yogyakarta: Pustaka Siswa, 2009).

<sup>8</sup> Peter Mahmud Marzuki, *Legal Research* (Jakarta: Kencana, 2008).

<sup>9</sup> Herlien Budiono and Albertus Sutjipto, *Some Notes on Notary Position Law* (Bandung: Indonesian Notary Association, 2005).

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other parties and notaries, this is then what makes and drags the notary into being involved in Unlawful Acts and criminal acts related to the existence of the agreement wrapped in the minuta of the notary deed.

After the enactment of the Notary Position Law related to the Notary Public is required to then ensure that the attachment of fingerprints is considered to have a useful function for well-intentioned parties and the Notary at the stage of proving this in the judicial process if in the future a dispute arises between the parties. This itself is then desired to be used as a form of prevention where then the parties concerned have no motive to forge their signatures and then deny their own signatures. Related to this, it is also necessary to be ready for the facing party to then provide his fingerprint in addition to his signature. If then any of the parties do not want to give their fingerprints, then the Notary should provide counseling related to the reasons and uses for affixing the fingerprint to the face, so that then this is accepted by the party.<sup>10</sup>

In connection with the proof of the arrival of the parties before officials, this fingerprint is also considered very necessary especially since the Notary Position Law has provided arrangements, and the most important thing is to prove that the parties involved in the deed are present according to the date and time in the deed. After the enactment of the 2014 Notary Position Law in relation to the necessity for Notaries to ensure the affixing of fingerprints provides several uses in terms of assisting Notaries as well as the parties themselves in the future in the mechanism of proof in the court if a dispute arises between them. It is mandatory for officials to then ensure that fingerprints are affixed in the authentic deed minuta deed as stated in the provisions of Article 16 paragraph of the first letter c of the Notary Position Law in 2014 stipulates that Notaries are obliged and must attach documents, letters, as well as fingerprints from parties in the deed minuta. The provision itself is not in line with the provisions of the first Article of the eighth number of the Notary Position Law which provides the definition of the minuta of a deed, but in Article 1 (8) there is no mention of fingerprints in it into the meaning of the minuta deed, it can then be seen from the sound of the article which confirms that the minuta deed is an original deed and in it bears the signatures of the facets, Notaries and witnesses are then kept by Notaries and become part of their protocols.

On this matter then emerged various interpretations of the dissynchronization of the two articles above and then caused dualism among notaries themselves. There are those who argue that the inclusion of fingerprints on an official's deed is a necessity referring to those stipulated in Article 16 (1) c of the Notary Position Law earlier, but there are also those who consider this as an option (based on Article one number eight and Article 16 paragraph first letter m) if then there are parties who do not want it. In addition, it can also be an option if the person cannot sign or because of illiteracy, it then raises a dilemma because these two understandings are both sourced from Notary Position Law. But in the end, the writing of deeds carried out by each must always run by not waiting for uniforms or agreeing with them regarding the non-synergy of the articles. In addition, all extension actions related to the new Notary Position Law (which also contains regulations on fingerprinting) have been held in many regions. The PP of the Indonesian Notary Association itself is also related to this matter must provide ideas or decide related to the inclusion of the fingerprint, with the aim that there will be elaboration on all notaries in applying the two rules (Article 16 paragraph the first letter c and the first article number 8 Notary Position Law).

In this case then each notary is expected to be able to take a stand on everything related to duties in his position as a public official. In this case, every notary must not be intervened or under the influence of threats or orders from others related to what should be mandatory to carry out their duties and obligations, but must always carry out and follow the provisions of the law. The provisions of Article 16 paragraph of the first letter c of the Notary Position Law are related to the necessity for Notaries to ensure the attachment of the fingerprints of related parties in the minuta of deeds, if then connected with the theory of positivism, on this must be done, because this theory itself prioritizes the law as the law itself. Therefore, based on the necessity to ensure the attachment of the party's fingerprint is mandated by the Notary Position Law itself, therefore ideally there is no diversity of understanding among notaries themselves. As we know that Indonesia in its early history used and adopted the system of civil law, then of course a Notary as a public or public official in this case must uphold and submit to positive law or *ius constitutum*, but then notaries themselves are in a dilemma due to dualism of views that both originate from the Notary Position Law, so that problems arise for notaries related to the attachment of fingerprints.

Therefore, it is then necessary and expected to be reaffirmed by law related to the status of fingerprints as validation of the presence of the face in the reading and signing of the deed minuta, moreover the law can provide protection that has a preventive nature, namely for the prevention of problems such as disputes and disputes as a tangible manifestation of the precautionary principle, also has the nature of resolving friction because of this often There is a problem involving a notary for the action of the party who denies the signature, contents of the deed, or the presence of the party on the date stated in the deed.<sup>11</sup> For this reason, fingerprints can then promise protection for well-intentioned parties and the Notary itself from bad faith by certain parties. This is also considered as a concrete form of implementation of anticipation related to the falsification of the arrival of encounterers who

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<sup>10</sup> Wulan Wiryantari Dewi and Ibrahim R, "The Legal Power of Notary Fingerprint Attachment in Deed Minuta," *Acta Comitas: Journal of Notarial Law* 5, no. 3 (December 14, 2020): 436–45, <https://doi.org/10.24843/AC.2020.v05.i03.p01>.

<sup>11</sup> Philip M. Hadjon, *Legal Protection for the People in Indonesia: A Study of Its Principles, Handling by the Courts in the General Judicial Environment and the Establishment of State Administrative Courts* (Surabaya: PT. Bina Ilmu, 1987).

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do not match the facts. The fact of the arrival of the party itself is really needed, this is considering the dignity of the Notary profession itself. Related to the issue of identification and other files in relation to the object of the agreement must be considered and monitored more carefully by the Notary itself.<sup>12</sup> Therefore, the attachment of fingerprints is a crucial thing, especially with the affixing of the facing fingerprints is expected to provide certainty to the notary, if the person who comes or faces is really the party concerned himself, not someone else.

### Fingerprint Attachment or Affixing to Notary Deed Minuta

The obligation of a Notary Public as a public or public official to affix a fingerprint to a minuta deed is contained and regulated in Article 16 (1) c. The article says that if fingerprints in this case are the same as letters and supporting documents attached to notarial deeds, this then causes some debate among notaries, namely where there are those who argue that fingerprints are affixed together with signatures in notarial deeds, but on that there are also notaries who argue that fingerprints are attached to minutas in separate sheets or attachments, which is then attached to the minuta.<sup>13</sup>

The author considers that the norm of Article 16 paragraph first letter c in the Notary Position Law is still not clear and clear in providing an understanding of the meaning of the word "attach" and how it applies in the minuta deed, even though in the explanation of the article it is stated "quite clear". The expression "attached" to the regulation has a relation to the term "on the minuta of the deed", which is if the attachment of a thing (files, fingerprints, also letters) is carried out in a minuta. Some think that the necessity to ensure that fingerprints are attached is positioned in a phrase similar to the necessity of pasting files and letters, which then makes the definition of "pasting files, and letters" have a similar meaning to "pasting fingerprints". If attaching a file has the meaning that the file has existed before (before the deed was made), then afterwards it is affixed with the minuta of the deed, so that then the understanding is in line with the definition of "attaching fingerprints" where the fingerprints are considered to have also existed before (before the deed was made) in a separate attachment, where then the notary must paste in a separate attachment which includes the fingerprint into the minuta of the deed. So that the fingerprint must be affixed with a minuta after the fingerprint was previously affixed in a separate attachment in front of witnesses and also Notaries and witnesses. Due to the incompleteness of authentic interpretation or official interpretation of the explanation of the Notary Position Law which only states "clear enough" while if reading the sentence against Article 16 (1) c in the Notary Position Law is still biased from a grammatical or grammatical point of view, it should be necessary to give a complete explanation to avoid different interpretations. Because there is no more mandala explanation or study in the explanation of the article, the possibility of different interpretations cannot be avoided.<sup>14</sup>

For differences of opinion related to the attachment or affixing of this fingerprint, then problems arise related to the position of the fingerprint when compared to the signature. In the context of *attaching fingerprints* to the face in the minuta of the deed directly, at first glance, the dilemma between the interpretation of Article 16 the first paragraph of letter c between the notary group who interprets the article where the fingerprint is affixed together with the signature of the face and the notary group who interprets when the fingerprint of the party is then attached to a separate attachment which is afterwards affixed in a deed request such as As well as other supporting documents such as identity cards/identification of the face, certificate/marriage certificate, certificate of establishment (at the company) and others. But if you look deeper and closer, the two interpretations have differences that have far meaning in principle. This difference can be seen, where in the case of fingerprints affixed with signatures as in Article 16 (1) m which regulates so. Based on the article, the fingerprint is affixed before the notary concerned by the face, and if it returns to the background the fingerprint is included which is to prove that the face who is signed before the notary is really the face as described in the comparison of the minuta of the notary deed, where his presence at that time is evidenced by the signature and that is, the fingerprint attached to the physical (finger) of the face. So referring to this background, the author assumes that this interpretation is what should be used by every notary in the implementation of affixing fingerprints into a deed minuta.

Based on the author's analysis, it is in order to support the evidentiary power of the notary deed, especially related to the presence of the facers. Therefore, putting fingerprints directly in a deed minuta guarantees the achievement of this goal than if it is contained in a separate sheet first and then attached to the deed minuta.<sup>15</sup> This method is considered the most reasonable and relevant, because by affixing signatures and fingerprints in the same place, it will strengthen the evidence that the complainant actually faced a notary on the date of signing the deed, so that then this will be very difficult to refute or not be recognized by the relevant complainant or mentioned in the minuta of the deed.

In the context of *attaching fingerprints to separate sheets such as documents*, this cannot also be said to be inappropriate, because the Notary Position Law itself is not described in detail about the procedure for affixing fingerprints, but this interpretation itself then raises a gap or possibility that can harm the notary itself. This is because in this way, there is then a gap or possibility

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<sup>12</sup> Dewi and R, "The Legal Power of Notary Fingerprint Attachment to Deed Minuta."

<sup>13</sup> Habib Adjie, *Thematic Interpretation of Indonesian Notary Law Based on Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Positions* (Bandung: Refika Aditama, 2017).

<sup>14</sup> Bachrudin, *Relation of Indonesian and Indonesian Legal Language in Drafting Agreements and Making Notary Deeds* (Jakarta: Kencana, 2023).

<sup>15</sup> Bachrudin.



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where the attachment of fingerprints to the attachment / separate sheet is done either before or after the signing of the minuta. In this case, the attachment of fingerprints also seems to be only a formality or as a complementary document that is the same as identification or other documents, but cannot prove the presence of the face on the date of signing the deed, this is because the fingerprints of the face are attached to a separate attachment or sheet, so that it is indeed a fingerprint specimen of the parties or face, But later could not prove that the fingerprint was affixed together with the signature on the date in the minuta of the deed. Then for the complainants to deny or not recognize the signature on the minuta (in case of unlawful acts or criminal), because there is a possibility that fingerprints are not affixed on the same day as the signing of the deed, so that this then results in the notary directly, which is later.

If you look back at Article 16 (3) c where it is said to attach a document, a stamp in the form of a fingerprint, in a deed, if referring to this article then in this case the Notary Position Law itself formulates if the fingerprint is attached the same as the identifier or other document to the minuta, which means that the fingerprint according to the Notary Position Law is not affixed with the signature of the face, Instead, it is attached in a separate attachment or sheet like other documents in the minuta deed. Based on the instructions in these articles, the author concludes that the Notary Position Law places fingerprints the same as with documents attached to other sheets (which will later be attached in minuta) as in the explanation of Article 16 (1) c, and this has weaknesses. According to this context Notaries are free to do this based on any interpretation, because the technicality of the inclusion (whether attached or affixed) of fingerprints themselves is not further regulated, for that it is then necessary to affirm this positive law or *ius constitutum* to give birth to uniformity and also the implications of the two ways of affixing fingerprints, which according to the author has implications for legal certainty of the fingerprints facing alone.

### Notary's Responsibility for Legal Counseling to the Facer related to the Obligation to Attach Fingerprints

Notaries themselves can be said to be representatives of the government in this context, namely the state, where the state has entrusted the notary to subsequently carry out state affairs mandated to him, especially in the civil field. The existence of a notary is desired to be able to provide answers to the needs of the community for impartial legal assistance, which then provides protection for the legal interests of the entire community.<sup>16</sup> If relying on a positive legal philosophy, then the notary as a general official in this case should ideally enforce everything that has been made in the regulations of the Law (norms), leaving aside various things or other external factors, then law enforcement in this case must uphold existing regulations. Positive law itself is compiled or also made into a form of normative prescriptions, which are then expected to run as they should be the basis for the actions of people in a society, so that based on the laws that have been enacted are expected to apply well so as to produce and create a society that has a high level of quality value.<sup>17</sup> Because in addition to enforcing one's own laws, this is also to educate and educate the public about the law. Each person who serves as a notary in his role as a person who has authority in this matter should provide legal counseling to every complainant without exception regarding Article 16 (1) c, where the inclusion or attachment of fingerprints is a matter that must and cannot be negotiable.

In its implementation, many notaries are afraid of losing their clients, because some clients who do not want their fingerprints listed may move to another notary, so in this case integrity is needed rather than the notary itself. It should also be noted the urgency in the inclusion of the party's fingerprint on the notarial deed, where this is actually precisely to protect the notary legally, this is because it is different from the signature which may be denied on the grounds that it is not the face who is signed, or can be forged or imitated by other parties, but fingerprints are something that is difficult to deny, Because fingerprints themselves are attached to everyone's body (in this case facing), and have different characteristics in each person. Therefore, fingerprints themselves in their urgency are very necessary to protect the notary position, especially in the rampant criminal acts that drag notaries related to this, so it is fitting that this matter becomes non-negotiable. It is true that the non-imposition of fingerprints on the minuta is at the request of the face, but a Notary Public as a public or public official in this context must give firmness to this, and not use article 1 number 8 of the Notary Position Law as an excuse that an authentic deed remains valid even if it is a signature. Therefore, it takes firmness from the notary to explain this to the face, even refuse to process the related deed, because the Notary is obliged to carry out the mandated provisions, instead of allowing it for fear that the face or client will move to another notary.

Especially in his position as a general official in the field of civil law, by waiving the request of the complainant, the notary must prioritize and comply with the positive law, namely Article 16 (1) c of the Notary Position Law as a positive rule regulating this, especially with dualism about the obligation of fingerprints in the minuta itself, even though the position and role of fingerprint affixing further strengthens the minuta deed, Where the faces will find it more difficult to deny the minuta of the deed than if it only contains signatures in the minuta of the deed. In addition, in this case there needs to be firmness from the Indonesian Notary Association itself related to the obligation to affix fingerprints, where there must be tougher and firmer rules on this matter, which

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<sup>16</sup> Arief Rahman Mahmoud, Ismail Navianto, and Nurini Aprilianda, "Legal Implications for Notaries Who Do Not Attach Fingerprints to Minuta Deed," *Legal Minutes* 10, no. 1 (June 23, 2014): 61–71.

<sup>17</sup> Soetandyo Wignjosoebroto, "The Law That Never Stands: What's Wrong with Law Enforcement Work in This Country?" in *Dialectics of Indonesian Legal System Renewal* (Jakarta: Judicial Commission of the Republic of Indonesia, 2012).

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so far violations of the responsibility for fingerprint sticking itself are not considered a form of serious violation, so this is certainly not a problem for notaries to violate it, And in this case there is an inconsistency, where there are minutas that contain the face's fingerprint, but some do not.

### Notary Liability Waiver Clause in the Deed as Notary Protection for Non-Affixing of Fingerprints of the Notary at the Request of the Applicant

To follow up on the request of the parties or the face requesting not to put fingerprints in the minuta deed even though the notary has explained the obligation to the facer, then the notary makes other alternatives, one of which is to protect himself by adding a clause that releases the notary from all responsibilities or consequences of not affixing the fingerprints of the face to the minuta. In essence, the clause contains the provision that the notary is not responsible for the non-affixing of a fingerprint of the parties to a minuta deed, and this is due to the request of the complainant himself. So that then all the consequences that occur due to the non-affixing of fingerprints are fully borne by the parties related to the minuta. Based on the party who processes it, authentic deeds are further classified into 2 types of deeds, namely *relaas* deeds or in other terms called official deeds (*abtelijke*) as well as deeds of the parties (*partij akten*).<sup>18</sup> A deed of *relaas* or commonly called minutes is a deed or agreement written by a Notary as a public or public official which then describes all activities seen by the notary himself and then based on the will of all parties applied in the form of an authentic deed. Then in another type, namely the deed of *partij* or commonly called the deed of the parties, is a deed or agreement written in front (*ten everstaan*) of the Notary as a public or public official, which is something written at the same age as the information or what the parties who come to the Notary itself.<sup>19</sup>

In the context of the deed of the parties as explained in the previous paragraph, from the context of the position or side of the Notary as a public or public official it is only limited to a neutral party or a party who only stands in the middle between the parties and expresses the wishes of the parties in a deed of authentic strength. This authentic power is also intertwined with the power of proof in a court process in the event of a dispute, because the deed with authentic strength is considered true without rebuttal.<sup>20</sup> Basically, a deed written in front of a notary or a *partij* deed generally contains the wishes of the parties. This is in accordance with what is regulated in Article 38 paragraph three letter c of the Notary Position Law which affirms if the substance of the deed is what the parties want and want.<sup>21</sup>

The preparation of a deed with authentic strength carried out by a Notary Public is very likely to be accompanied by bad intentions. The existence of this bad intention then has the potential to drag the notary into a legal case. Many notaries in the country doubled down on their protections and included a "clause releasing notaries from responsibility" for the agreement. So with the inclusion of the clause, it is further desired to be a fortress or also protection for the notary himself for the deed he owns in which there is an agreement from the parties. So then, in order to fortify himself as a general officer in this case related to the agreement of the parties contained in his deed in a neutral position, the notary then makes a solution by making a disclaimer clause for the non-inclusion of fingerprints in the minuta of the deed is at the request of the parties, in the hope that all these consequences return to the parties, in this context overrides the obligations mandated by Article 16 (1) c of the Notary Position Law.

Even though the Notary as a public or public official, who already knows the rules and norms, should enforce these norms, not instead of agreeing or following the wishes of the face that is contrary to the rules (in this case Article 16 (1) c), but in fact in practice that occurs in the field, notaries themselves do not heed this. One of them is because of the exploitation clause for the removal of responsibility, as well as the loopholes raised by Article 1 (8) and Article 16 (1) m discussed earlier, where the loopholes are the non-inclusion of fingerprints in the meaning of authentic deeds, as well as obligations that must be carried out before a notary, so that then this can be interpreted if fingerprints are not affixed then it does not have any implications for the minuta of deeds made by Notary as a public or public official as a deed with authentic power, and does not degrade the status of the related notary deed. Whereas on the one hand, fingerprinting is an "obligation" that is also required by Notary Position Law itself. Therefore, although until now Notary Position Law regulates if fingerprints are not contained does not necessarily invalidate the power of proving a notary deed as an authentic deed, the notary must still adhere to this obligation. The clause eliminating the notary's responsibility because of the non-affixing of fingerprints to the wishes of the face does not necessarily eliminate the responsibility of the notary, because the notary here in his position as a "legally literate" general official himself does not first enforce the law, and in this context actually obeys the will of the parties / faces who may be for fear of losing clients who use their services. So related to this matter itself must be returned to the integrity of the notary.

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<sup>18</sup> G.H.S. Lumban Tobing, *Notary Office Regulations* (Surabaya: Erlangga, 2001).

<sup>19</sup> Oemar Moechthar, *Basics of Deed Making Techniques* (Jakarta: Airlangga University Press, 2017).

<sup>20</sup> Rio Utomo Hably and Gunawan Djajaputra, "Notary Authority in Making Partij Deed (Example of Supreme Court Decision Case Number: 1003 K / Pid / 2015)," *Adigama Law Journal* 2, no. 2 (December 27, 2019): 482-507, <https://doi.org/10.24912/adigama.v2i2.6562>.

<sup>21</sup> Habib Adjie, *Cancellation and Cancellation of Notary Deed* (Bandung: Refika Aditama, 2015).

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### IMPLICATIONS FOR THE NON-INCLUSION OF THE FINGERPRINTS OF THE FACE AT THE REQUEST OF THE FACE AGAINST THE WORD NOTARY

#### The Power of Proof of Notary Deed as an Authentic Deed

In civil procedural law, the judge is passive, which is to see from how the evidence presented in a court process, so that the judge can only decide a case based on the evidence as determined in the positive law or *ius constitutum*.<sup>22</sup> The division into several types of related evidence aims to then help the judge in the context of giving his assessment and related to this study which discusses notarial deeds as authentic deeds, the author will focus on written / letter evidence only.<sup>23</sup>

Of course, all three have different levels, where the proof of authentic deeds is the strongest, because the form itself follows the provisions and mechanisms established by positive law or *ius constitutum*. Unlike underhand deeds, authentic deeds have the strongest evidentiary power that is binding on judges as long as they are not proven otherwise (the principle of presumption is valid). There are 3 (three) evidentiary powers possessed in a deed with authentic power as made by an authorized official or made before an authorized official in this context, namely a Notary, *first the* external evidentiary power,<sup>24</sup> which is seen in the physical context of the deed that it has authentic power (*acta publica probant sese ipsa*).<sup>25</sup> *Second*, the power of formal proof, namely the correct and definite date, signature, identity of the parties (*comparaten*) and also place. *Third*, the power of material proof, namely that what is contained in substance has indeed been done by the parties concerned.<sup>26</sup>

#### Fingerprints as a Form of Formal Evidentiary Power

Speaking of formal proof in the notarial deed minuta, as discussed earlier, this is where the notarial deed minuta provides certainty and correctness of when the deed was made and drafted, about the authenticity of the signatures of the parties to the deed, and certainty about the identity of those present (*comparaten*) as well as the location where the deed was made. In its implementation, it is matters related to this formal proof itself that are often disputed, because when it comes to the material content itself it is not the domain of a notary, and if it is then related to the material truth in the minuta in question, this is difficult to prove considering that the face or the parties themselves signed and affixed their fingerprints, which is as validation or confirmation of the parties' agreement to the contents of the deed. So then this matter related to formal truth is often questioned, and often becomes a loophole for parties with bad intentions, especially if the notary is not careful.

Regarding the minuta as formal evidence, it has then been explained above covering elements in the deed such as comparison, signature, time, and post Notary Position Law 2014 including the attachment of a form of fingerprints of the parties listed in the minuta of the Notary Deed. Fingerprints when viewed functionally and with certainty in this case have two functions at once, namely being able to ensure the presence of the face (which corresponds to the date of the deed), as well as a validation that is very difficult to deny the identity of the face compared to the signature, even this applies to people who are identical twins. The use of a fingerprint affixed to a deed minuta is not used for the need or purpose of replacing the signature.<sup>27</sup> In theory, the non-attachment of a fingerprint to a deed minuta does not have any effect on the validity or possession of the ultimate evidentiary power.<sup>28</sup> In the context of legal certainty, the existence of fingerprints adds more strength to the legal certainty of a deed minuta because the fingerprints themselves on each person are different, so that their authenticity is guaranteed rather than a signature that can be forged because it can be easily imitated by others.<sup>29</sup>

Therefore, the power of fingerprints to strengthen formal legal certainty in a deed, especially in this day and age is very difficult to refute and very relevant, especially with the rise of PMH to criminal acts related to notary deeds that drag notaries and PPAT itself.<sup>30</sup>

#### Conditions That Make Fingerprints Can Not Be Affixed in the Notarial Deed Minuta

The use of a fingerprint affixed to a deed minuta is not used for the need or purpose of replacing the signature.<sup>31</sup> In the context of legal certainty, the existence of fingerprints adds more strength to the legal certainty of a deed minuta because the fingerprints themselves on each person are different, so that their authenticity is guaranteed rather than a signature that can be forged because it

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<sup>22</sup> Rahmida Erliyani and Siti Rosidah Hamdan, *Notarial Deed in Civil Case Evidence Development of Cyber Notary* (Yogyakarta: Dialectics, 2020).

<sup>23</sup> Sudikno Mertokusumo, *Indonesian Civil Procedure Law* (Yogyakarta: Atma Jaya University, 2010).

<sup>24</sup> Bachrudin, *Deed Making Techniques and Deed Language* (Bandung: Refika Aditama, 2019).

<sup>25</sup> Bachrudin, *Relation of Indonesian and Indonesian Legal Language in Drafting Agreements and Making Notary Deeds*.

<sup>26</sup> Bachrudin, *Deed Making Techniques and Deed Language*.

<sup>27</sup> Tobing, *Notary Office Regulations*.

<sup>28</sup> Adjie, *Thematic Interpretation of Indonesian Notary Law Based on Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Positions*.

<sup>29</sup> M. Yahya Harahap, *Civil Procedure Law: on Suits, Trials, Forfeitures, Evidence, and Court Decisions*, Seventh Print (Jakarta: Sinar Grafika, 2007).

<sup>30</sup> Tan Thong Kie, *Notarial Studies, Sundries of Notary Practice* (Jakarta: PT. New Ichtiar, 2020).

<sup>31</sup> Tobing, *Notary Office Regulations*.

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can be easily imitated by others.<sup>32</sup> It has become the obligation of the Notary Public to affix or attach a form of fingerprints of the parties or can be referred to as a face in a form of deed minuta, but of course in the context of practice there are various kinds of differences in treatment if what happens is that one of the parties is defective and does not have fingerprints. So based on this fact, the Notary must clarify or confirm related to the condition of one of the parties in the final or closing part of the deed with authentic strength.<sup>33</sup>

The principle of this can actually be found in Article 44 paragraph (1). An important theme of this article is that there are other things (additional principles) that can be stated or included in the minuta of the deed, namely stated or mentioned in relation to arguments that cause the party to be unable to put a signature on the deed. Although the article does not discuss fingerprints, the author assumes that the principles contained in the article can be implemented in the event that the face cannot affix his fingerprints in the minuta of the notary deed, this is because fingerprints have the same function, namely providing legal certainty about the presence of the face before the notary when the deed is read and signed according to the date mentioned in the minuta of the deed.

### Implications of Not Including Fingerprints on Notary Deeds as Authentic Deeds

So then does the non-imposition of fingerprints on the notarial deed at the request of the face implicate the notarial deed itself, when viewed in terms of its validity as an authentic deed? It should be noted more carefully that in the definition of minuta deed in the NOTARY POSITION LAW (first article number 8) itself there is a difference with the notary obligation (Article 16 first paragraph letter c which is also mentioned in the NOTARY POSITION LAW. It is not stated that the inclusion of the party's fingerprint is part of the deed (notary), so in this case the absence of the fingerprint of the face (either affix directly in the minuta or attached in an attachment) does not have any effect on the status of the minuta of the related deed as a deed with authentic strength. In this context the position of the fingerprint of the notary deed seems to have a position that is not the same as the signature (in this case under the signature), even though it is the same as the signature, the affixing of fingerprints itself is specifically regulated in Article 16 (1) c and as discussed in the previous chapter where the notary must ensure the inclusion of the fingerprint in the deed.

So this itself is very unfortunate, considering the legal certainty given by fingerprints even when compared to signatures, but unfortunately until now there are still many notaries who do not heed the rules regarding the attachment of fingerprints, especially this is done open because of the defect of the face or damage to the face's fingerprint, but solely based on the request of parties who do not want to affix a form of fingerprint in a Minuta related deed. In many notary law journals, most authors argue that fingerprints do not implicate the validity or authenticity of a notary deed as an authentic deed, which means that the existence of fingerprints here is not in a condition equivalent to fingerprints as proof of the presence of the face in a Notary deed minuta, so that the absence of fingerprints is considered by many parties to have no implications whatsoever for the notarial deed as an authentic deed, This only results in sanctions on the Notary concerned, but does not have any consequences or consequences on the Notary Deed as an authentic deed.

The attachment of a fingerprint form becomes important for Notaries to identify for related parties.<sup>34</sup> So for the whole, to be said to be an authentic deed, a deed must also be fully intertwined with applicable conditions, mechanisms, and methods that are entirely determined by positive law related to the authentic deed, in this case NOTARY POSITION LAW. If considered further and carefully, this article also refers to other related articles in the NOTARY POSITION LAW. So that the obligation of Article 16 (1) c cannot be ruled out, then it is not appropriate to separate Article 16 (1) c from Article 16 (1) m, where many interpret the letter m if what must be done before a notary by the face is the signing of the deed, while fingerprints do not have to be at that time, even though both rules are contained in the article, even the same verses, so they should not be interpreted separately, but are a unity.

But in this case the author has another response, the author assumes that fingerprints in this case are not only to guarantee the correctness of the identity of the face, if fingerprints have stronger legal certainty than signatures. Therefore, in this case fingerprints that are attached directly (as discussed in the previous chapter) are important, because then the fingerprints become a validation of the correctness of the presence of the face when reading the deed and signing the deed on the date the minuta of the deed is signed, so that in this case the fingerprint also has a role to prove the validity of the minuta deed. Moreover, fingerprints are taken from samples of the facer's own body parts that cannot be forged, fingerprints will be an important aspect in the important validation of the presence of the face next to the signature, and where the notary is required to attach a form of face's fingerprint according to Article 16 (1) c should not be blocked or separated from Article 16 (1) m, The author considers that related norms should be considered as a whole, and the framers of NOTARY POSITION LAW must have a special reason behind the affixing of fingerprints on the background of fingerprints included next to signatures due to the rampant denial of signatures by dangerous faces for notary positions and law enforcement in Indonesia in general.

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<sup>32</sup> Ha *Civil Procedure Law: on Suits, Trials, Forfeitures, Evidence, and Court Decisions*.

<sup>33</sup> Yusrizal, "The Role of Notaries in Encouraging the Creation of Legal Certainty for Investors in Foreign Investment," *Lex Renaissance* 3, no. 2 (2018): 359-76, <https://doi.org/10.20885/JLR.vol3.iss2.art7>.

<sup>34</sup> Barrori Mirza, "Notary's Obligation to Attach a Sheet Containing the Facer's Fingerprint to the Deed Minuta Based on Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Position," *Premise Law Journal* 1 (2016): 1-16.



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Although the absence of fingerprints does not necessarily invalidate the notarial deed as an authentic deed, this is one aspect that should be considered by the judge on the correctness of the notary deed as evidence of an authentic deed, the power of proof and legal certainty itself is difficult to refute compared to a signature that can be changed, especially by the face who has bad faith from the beginning of the agreement or even since the precontractual phrase.

### D. CONCLUSION

The non-attachment or affixing of the fingerprints of the face to a minuta of a deed made by a Notary or made before the Notary itself based on the request of the Notary itself remains a responsibility of a Notary as a public or public official, the inclusion of a waiver clause a form of responsibility from a Notary for the non-affixing of the facer's fingerprints based on the request of the face does not necessarily release responsibility The Notary Public replied, as an authorized official who should carry out the Law and provide legal counseling is not firm and consistently carries out Article 16 (1) c, so that in this context the Notary Public is negligent in carrying out its responsibilities, and is subject to the will of the face in addition to what is mandated by laws and regulations.

The non-affixing of the fingerprints of the parties to the minuta of the deed made by the Notary or made before the Notary itself theoretically has no effect related to the legality or validity of a form of related deed, so that the related deed still has legality and has strong evidentiary power, but based on the evidentiary side this can be considered by the judge to then cancel the minuta of the related Notary deed only under hand Moreover, especially with regard outwardly there are rules that are not followed in making the deed, besides the reduced strength of the deed due to the absence of fingerprints whose background is regulated to strengthen the proof of an authentic deed in terms of formal proof. So it is necessary to revise the provisions related to fingerprints in the NOTARY POSITION LAW with the aim of clarifying and becoming necessary to explain in more detail and detail about the mechanism of affixing or sticking fingerprints in a minuta deed made by a Notary or before the Notary itself.

### REFERENCES

- 1) Adjie, Habib. *Cancellation and Cancellation of Notary Deed*. Bandung: Refika Aditama, 2015.
- 2) ———. *Thematic Interpretation of Indonesian Notary Law Based on Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Positions*. Bandung: Refika Aditama, 2017.
- 3) Anand, Ghansam. *Characteristics of Notary Positions in Indonesia*. Jakarta: Prenada Media Group, 2018.
- 4) Ariatmaj, I. Gusti Ayu Agung Devi Maharani. "Notary Authority in Land and Building Sale and Purchase Transactions: A Case Study of Withholding Building Use Rights Certificates." *Kertha Patrika* 40, no. 2 (August 31, 2018): 112–21. <https://doi.org/10.24843/KP.2018.v40.i02.p05>.
- 5) Ashshofa, Burhan. *Legal Research Methods*. Jakarta: Rineka Cipta, 2013.
- 6) <https://opac.perpusnas.go.id/DetailOpac.aspx?id=850013>.
- 7) Aslan, Aslan. "The Urgency of Fingerprints on Notary Deeds." Thesis, University of Lambung Mangkurat, 2022. <https://repo-mhs.ulm.ac.id/handle/123456789/30554>.
- 8) Azwar, Sarifuddin. *Research Methods*. Ninth printing. Yogyakarta: Student Library, 2009.
- 9) Bachrudin, Bachrudin. *The Relationship of Indonesian and Indonesian Legal Language in the Preparation of Agreements and Making Notary Deeds*. Jakarta: Kencana, 2023.
- 10) ———. *Deed Making Techniques and Deed Language*. Bandung: Refika Aditama, 2019.
- 11) Budiono, Herlien, and Albertus Sutjipto. *Some notes regarding the Notary Office Law*. Bandung: Indonesian Notary Association, 2005.
- 12) Dewi, Wulan Wiryantari, and Ibrahim R. "The Legal Power of Notary Fingerprint Attachment in Deed Minuta." *Acta Comitas: Journal of Notarial Law* 5, no. 3 (December 14, 2020): 436–45. <https://doi.org/10.24843/AC.2020.v05.i03.p01>.
- 13) Erliyani, Rahmida. *Research Methods and Legal Writing*. Yogyakarta: Magnum Pustaka Utama, 2018.
- 14) Erliyani, Rahmida, and Siti Rosidah Hamdan. *Notary Deed in Civil Case Evidence Development of Cyber Notary*. Yogyakarta: Dialectics, 2020.
- 15) Hably, Rio Utomo, and Gunawan Djajaputra. "Notary Authority in Making Partij Deed (Case Example of Supreme Court Decision Number: 1003 K / PID / 2015)." *Adigama Law Journal* 2 , no. 2 (December 27, 2019): 482–507. <https://doi.org/10.24912/adigama.v2i2.6562>.
- 16) Hadjon, Philip M. *Legal Protection for the People in Indonesia: A Study of Its Principles, Handling by Courts within the General Judicial Environment and the Establishment of State Administrative Justice*. Surabaya: PT. Bina Ilmu, 1987.
- 17) Harahap, M. Yahya. *Civil Procedure Law: on Suits, Trials, Forfeitures, Evidence, and Court Judgments*. Seventh printing. Jakarta: Sinar Grafika, 2007.
- 18) Kie, Tan Thong. *Notarial Studies, Sundries of Notary Practice*. Jakarta: PT. New Ichtiar, 2020.
- 19) Kosuma, Indah Permatasari. "Notary liability in the insertion of the notarial lawsuit release clause for the deed made by him." *Notaire* 4, no. 1 (February 8, 2021): 23–42. <https://doi.org/10.20473/ntr.v4i1.25297>.

## Legal Consequences of not Attaching Fingerprints to Minuta to Notary Deed

- 20) Mahmoud, Arief Rahman, Ismail Navianto, and Nurini Aprilianda. "Legal implications for notaries who do not attach fingerprints to the minuta of the deed." *Minutes of Law* 10, no. 1 (June 23, 2014): 61–71.
- 21) Marzuki, Peter Mahmud. *Legal Research*. Jakarta: Kencana, 2008.
- 22) Mertokusumo, Sudikno. *Indonesian Civil Procedure Law*. Yogyakarta: Atma Jaya University, 2010.
- 23) Mirza, Barrori. "Notary's Obligation to Attach Sheet Containing Fingerprint to Minuta Deed Based on Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Position." *Premise Law Journal* 1 (2016): 1–16.
- 24) Moechthar, Oemar. *Basics of Deed Making Techniques*. Jakarta: Airlangga University Press, 2017.
- 25) Tobing, G.H.S. Lumban. *Notary Office Regulations*. Surabaya: Erlangga, 2001.
- 26) Wignjosoebroto, Soetandyo. "The Law That Never Stands: What's Wrong with Law Enforcement Work in This Country?" In the *Dialectic of Indonesian Legal System Reform*. Jakarta: Judicial Commission of the Republic of Indonesia, 2012.
- 27) Yosrila, Yosrila. "Legal Aspects of Thumbprint/Thumbprint Affixing in the Making of Authentic Deeds." Thesis, Diponegoro University, 2006. <http://eprints.undip.ac.id/17793/>.
- 28) Yusrizal, Yusrizal. "The role of notaries in encouraging the creation of legal certainty for investors in foreign investment." *Lex Renaissance* 3, no. 2 (2018): 359–76. <https://doi.org/10.20885/JLR.vol3.iss2.art7>.



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