

# The Legal Standing of Appearers in Authentic Deeds Made or Witnessed by a Notary Utilizing Signatures and Fingerprints of the Appearer as Evidence

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**Abstract.** In an authentic deed made or witnessed by a notary, appearers must possess legal standing and have the capacity and legality to take legal actions. The power and lawfulness of the appearer must be supported by a correct identity. The signature and fingerprint of the appearer are used to confirm the legitimacy of the deed. This paper aims to analyze the legal standing of appearers in authentic deeds made or witnessed by a notary utilizing signatures and fingerprints of the appearer as evidence and the legal consequences of not fulfilling such a legal standing. This is normative legal research using data collected through the literature study. The results indicate that signatures and fingerprints of the appearer are the main requirements that make authentic deeds the perfect evidence, in addition to other requirements regarding objects in the deeds. Meanwhile, failure to fulfill legal standing in authentic deeds can result in a defective legal action stated in the deed. The injured party has the right to terminate the deed and sue the notary for interest and fines.

**Keywords:** Appearer, Notarial Deed, Signature, Fingerprint

## 1 Introduction

Positive laws arise from human activity and have been posited or outlined. Legal positivism has several meanings; most of its followers hold to two fundamental propositions. First, the definition of law should not depend on matters of moral validity. Second, the law should only be identified according to concrete formal provisions, such as legislation, case law, and customary traditions [1]. The varying attitudes of various legal practices towards legality status were caused mainly by a particular event in the history of jurisdiction [2].

One of the main requirements to realize the validity of a legal act is the legal standing of the appearer in an authentic deed made or witnessed by a notary. Legal standing is the authority to take legal action. Legal actions can create legal consequences or, in other words, create rights and obligations [3].

According to Article 1866 of the Civil Code, evidence is classified into written evidence, witness evidence, allegations, and confessions. Article 1867 of the Civil Code explains that written evidence can be both notarial and private deeds. Article 1868 of the Civil Code states that authentic deeds are deeds made according to the law or before the relevant public official at the place of its creation. Article 1870 of the Civil Code states that for interested parties and their heirs or those receiving rights from these parties, an authentic deed serves as perfect proof of what is contained therein. The conception of authentic deeds no longer refers to the provisions

of Article 1868 of the Civil Code but rather to Article 1 point 7 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Notarial Occupation (hereinafter referred to as Notarial Law) which states that notarial deeds, hereinafter referred to as deeds, are authentic deeds made by or before a notary according to the format and procedures stipulated in this Law.

Article 39 of the Notarial Law defines the requirements for appearers to be able to take legal actions in an authentic deed made by a notary, namely:

- a. Appearers must meet the following criteria: 1) At least 18 (eighteen) years of age or already married, and 2) Capable of doing legal actions.
- b. The notary must be acquainted with or be introduced to the appearer by 2 (two) identifying witnesses who are at least 18 (eighteen) years old or married and capable of taking legal actions or by 2 (two) other appearers.

Appearers are obliged to include their signatures in the original deed. Article 1 point 8 of the Notarial Law states that an original deed contains the signatures of the appearers, witnesses, and notaries, which are kept as part of the Notary Protocol. Article 44 Paragraph (1) further explains that as soon as the deed is read, it must be signed by every party, witness, and notary, except for one or more appearers being unable to sign with the reason being provided. Appearers must also provide fingerprints in the original deed as stipulated in Article 16 Paragraph (1) letter c of the Notarial Law, whose function is to strengthen, guarantee, and ensure that the appearers present and mentioned in the original deed are among the parties concerned.

Appearers must possess capacity and legality in an authentic deed. An identity must support capacity and legitimacy. Appearers are legal subjects that can represent themselves, others through a power of attorney or acting on behalf of their authority. Therefore, appearers must have the authority to take legal action. In an authentic deed, the legal standing of the appearers greatly determines the legality of their legal actions. Failure to show legal status can invalidate legal actions, leading to the parties concerned filing a lawsuit to terminate the deed in question.

## **2 Research Questions**

This research aims to:

- a. First, review and analyze the legal standing of appearers in authentic deeds made or witnessed by a notary utilizing signatures and fingerprints of the appearer as evidence.
- b. Second, to find out and analyze the legal consequences of the appearer not fulfilling legal standing in authentic deeds made or witnessed by a notary utilizing signatures and fingerprints of the appearer as evidence.

## **3 Research Method**

This is normative juridical research. Normative legal or literary law research methods are used in the legal study that examines existing library materials [4]. This type of research conceptualizes law as what is written in laws and regulations (law in books) or rules or norms that are benchmarks for human behavior that are deemed appropriate [5].

## **4 Results and Discussion**

### **4.1 The Legal Standing of Appearers in Authentic Deeds Made or Witnessed by a Notary Utilizing Signatures and Fingerprints of the Appearer as Evidence**

In authentic deeds, appearers are legal subjects, namely humans and legal entities. To act on an authentic deed, the appearer must possess legality and capacity. The identity of the appearer is a form of guarantee on the validity of the data provided. This can be in the form of an identity card, family card, marriage book, marriage certificate, passport, birth certificate, or other proof of identity such as a certificate issued by the authorities. The original identification must be shown to the notary and a copy must be attached to the original deed in an authentic deed.

The anatomy of an authentic deed is stipulated in Article 38 of the Notarial Law, namely the head, body, and closing of the deed. The most important part of an authentic deed is the body, as it contains the name of the appearers, complete with their capacity and legality. This is called the identity section.

Appearers can represent themselves, other parties through a power of attorney, or based on capacities such as on behalf of a legal entity or a non-legal business entity, or acting based on authority, for example, a parent representing an underaged child.

The capacity of the appearers in an authentic deed, whether or not they possess authority or legal standing, must be proven by their legality. For example, for a father to represent his underaged child, legal proof that the child is his and the identity of both the father and child is required. In this case, it can be proven by showing the father's identification and the child's birth certificate.

The appearers must be able to follow the law when representing themselves or other parties properly. Article 1330 of the Civil Code considers minors to be unable to carry out legal actions. According to Article 330 of the Civil Code, a minor is one who is not yet 21 years old and is not married. In addition, Article 1320 of the Civil Code also considers those under guardianship/custodianship, even adults, in the same category. Article 433 of the Civil Code considers a mentally challenged person in the same category as those under guardianship/custodianship. In Indonesia, a person is viewed as an adult if they are 18 years of age or is/has been married. This is shown in norms that regulate age, for example, Article 39 of the Notarial Law, Article 47 of Law Number 1 of 1974 concerning Marriage (hereinafter referred to as the Marriage Law), as well as the Circular Letter of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency Number 4/SE/I/2015 of January 26, 2015, which states that a person must be 18 years old to carry out a legal action in the land sector.

Legal standing is essential in determining the legality, capacity, and identity in carrying out legal actions in an authentic deed to guarantee that an authentic deed can be considered perfect evidence. The identity section elaborates the appearers' capacity, legality, and identity, which is an absolute requirement for their legal actions. The following are examples regarding legal standing:

- a. Regarding parents or guardians representing minors, they must refer to Article 33 Paragraph (1) and (2) of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, which states that in the case of parents and family members of the minor cannot carry out the obligations and responsibilities as referred to in Article 26, a person or legal entity that meets the requirements can be appointed as guardian based on a court order.

- b. In carrying out legal actions on behalf of their children regarding the transfer of rights or guarantee of assets, parents must comply with Article 393 of the Civil Code, which states that they must request a court ruling.
- c. The legal standing of the appearers regarding joint assets must comply with the provisions of Article 36 of the Marriage Law regarding joint assets, which states that the husband or wife can only act with the consent of both parties.
- d. The director in a limited liability company has the authority to act for and on behalf of the board of directors based on Article 92 Paragraphs (1) and (2) of Law Number 40 concerning Limited Liability Companies (hereinafter referred to as LLC Law). This article states that the board of directors carries out the management of the company for the benefit of the company and following the aims and objectives of the company and is authorized to carry out management as referred to in Paragraph (1) under the policies deemed appropriate within the limits stipulated in this Law and/or the articles of association. The articles of association can determine whether or not the commissioner's approval is required in carrying out specific actions. For example, approval is needed in borrowing or lending money for and on behalf of the company in addition to fulfilling the provisions of Article 108 of the LLC Law, which states that if there is more than one commissioner, an assembly is required. Likewise, in taking legal action to guarantee or acquire assets, the board must comply with the provisions of Article 102 of the LLC Law, namely obtaining approval in a GMS.
- e. In carrying out legal actions, the management of a foundation must obtain approval from the founder, especially in transferring rights to foundation assets as stipulated in Article 37 Paragraph (1) of Law Number 16 of 2001 concerning Foundations.

Based on the examples above, the appearers must possess the legal capacity to create a notarial deed that can be proven with original documents and identification. The appearers must sign the authentic deed and provide fingerprints for the original deed. If unable to do so, the appearers must provide reasoning at closing the deed and a thumbprint of their right hand on the original deed. The signature or fingerprint is evidence that the appearers approve of the contents of the deed and, in turn, making the authentic deed a piece of perfect evidence.

In Indonesia, proof of a person's identity is more popular in an Identity Card (ID Card). ID Card has a Single Identity Number or often abbreviated as NIK (Nomor Induk Kependudukan). The Single Identity Number printed on the ID Card to prove whether or not an appearer has legal standing and capacity to do a deed. Under the system in Indonesia, a notary can confirm the legal status by checking the data of an appearer through its Single Identity Number on the website <https://htel.atrbpn.go.id>. With the current e-ID Card system, the Single Identity Number is a quick way to find out the credentials of a citizen.

#### **4.2 The Legal Consequences of the Appearer Not Fulfilling Legal Standing in Authentic Deeds Made or Witnessed by a Notary**

As public officials, notaries have the authority to do authentic deeds following the prevailing laws and regulations [6] based on the request of the appearers. The notary should listen to the explanations or statements of the appearers without bias, which will then be written into a notarial deed after an agreement. After the deed is read out by the notary and approved by the appearers, it will then be signed. In addition, the deed must be in accordance with Article 38 of the Notarial Law [7].

Article 1869 of the Civil Code confirms that deeds that cannot be considered authentic, either because of the lack of authority or incompetence of the public official concerned or defects, can be regarded as a private deed when signed by the relevant parties. For an authentic

deed to be considered perfect evidence, it must meet the legal requirements as stated in Article 1320 of the Civil Code. These requirements cover self-binding agreements, the ability to make an agreement, specific subjects, and specific causes that are not prohibited. Article 1321 of the Civil Code reaffirms that the signing and fingerprinting of an authentic deed made or witnessed by a notary can become defective due to errors or if obtained through coercion or fraud. If the defect is proven, the notarial deed will be degraded into a private deed.

Agreement and proficiency are personal requirements in an authentic deed. These are the main requirements to guarantee the legal certainty of appearers who wish to do authentic deeds before a notary. The agreement will be written in the deed and bind the appearers. The provisions of Article 1338 of the Civil Code explain that a legal agreement will act as law for the relevant parties. The agreement cannot be terminated without the agreement of all parties or for reasons determined by the law and it must be carried out with good intention. Article 1338 of the Civil Code states that to enforce an agreement made by several parties, they must possess legal standing.

Before an authentic deed is signed and fingerprinted, it is read out. Article 44 Paragraph (1) explains that as soon as the deed is read, it must be signed by every party, witness, and notary, except for one or more appearers unable to sign with the reason being provided. Following this, the appearers are considered to have agreed upon the contents contained in the deed.

An appearer who does not have the authority to act cannot carry out legal actions in an authentic deed. According to the provisions of Article 41 of the Notarial Law, if an appearer is proven to be incompetent, the authentic deed will be considered a private deed.

As authentic deeds, notarial deeds are considered physical proof (*uitwendige bewijskracht*), which is the ability of the deed to prove its validity as an authentic deed (*acta public probant sese ipsa*). If an authentic deed has the correct physical format and meets all the legal requirements of an authentic deed, then the deed is valid until proven otherwise. In disproving the validity of an authentic deed, the burden of proof rests on the party denying its authenticity. A notarial deed can be considered authentic if the notary's signature is found on both the original deed and the copy, from the beginning (title) to the end of the deed [8].

In determining the physical evidentiary value of a notarial deed, it must be seen as is, not from its contents. Physically, there is no need to compare it with other evidence. If a party considers a notarial deed to be invalid, then, through court action, they are obliged to prove that the deed is not physically authentic based on the requirements of an authentic deed [8]. Failure to fulfill legal standing regarding capacity, legality, and identity in authentic deeds can result in an authentic deed being degraded into a private deed. The injured party has the right to terminate the deed and sue the notary for compensation, interest, and fines.

## 5 Conclusions

Finally, it can be concluded that:

- a. Signatures and fingerprints of the appearers are the main requirements that make authentic deeds the perfect evidence, in addition to other requirements regarding objects in the deeds. The legal standing of the appearers in an authentic deed is highly dependent on their capacity, legality, and identity. The appearers are considered to approve the contents of the authentic deed if their signatures and fingerprints are attached to the original deed.

- b. Failure to fulfill legal standing in authentic deeds can result in a defective legal action stated in the deed. The injured party has the right to terminate the deed and sue the notary for compensation, interest, and fines.

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