

# Legal Certainty Principle of Notary's Liability to Attach Fingerprints on Minuta Deed

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## Abstract

The Act Number 2 of 2014 on Position of Notary regulates some provisions that must be run by Notary. One of which is the obligation to attach fingerprints on Minuta Deed (the original deed), as stipulated in Article 16 Paragraph (1) sub-paragraph C of the Act that in carrying out the duty, Notary shall attach letters, documents and fingerprints on Minuta Deed. Article 16 Paragraph (1) sub-paragraph C stated that a notary must "attach" the fingerprint on Minuta Deed. It means that the fingerprint is taken in a paper other than Minuta paper. It is to avoid denial of the appearer of signing on Minuta, because the appearer may not know why the fingerprint is taken. Various kinds of interpretations appear related to the obligation of Notary in attaching fingerprints on Minuta deed. Some say that the appearer is required to put the tenth of the fingerprints, while others argue that the thumbprint is enough.

**Keywords** : Notary, Fingerprint, and Minuta deed

## 1. Preliminary

Indonesia is a country adheres to Continental European law tradition or often referred to as civil law system. One of the main features of the civil law system is the importance of statutory law or statutory legislation. To regulate the State's administration by the institutions, to limit the power of State organizers, and to protect the rights of the citizens, the civil law system is necessary to have many laws and regulations, in addition, the State of the Republic of Indonesia as a state of law makes the law as a guide / by the government in running the government of the State.<sup>1</sup>

The role of legislation in the context of a constitutional state is to become the foundation for the implementation of the state and as a guideline for organizing the government both the central government in the form of constitution and the local government in the form of local regulations, as well as to solve social problems. Self-made regulations and allowing society to solve social problems without following standard legal products will cause irregularity in the life of society and state. Therefore, legal products in the form of legislation exist. The legislation required shall be accommodating to the demands, needs and development of society to create a democratic legal state or also called as the welfare state.<sup>2</sup>

The Law is needed by all people in filling their lives, especially on the economic system in the globalization era. These needs are realized in the form of clear legal products and that have legal certainty as well as law enforcement actions from law enforcement officers<sup>3</sup>. In order to ensure certainty, law and order of law requires authentic written evidence of circumstances, events or legal actions made before a particular official. Indonesia as a country that puts the law as the highest power based on Pancasila and the 1945 Constitution of the Republic of Indonesia has guaranteed all citizens to obtain certainty, order and legal protection based on truth and justice. The assurance of certainty, order and protection of the law would require concrete efforts to be implemented carefully as a form of state responsibility for the prosperity of all Indonesian people.

The history of the notary begins in Italy beginning in the XI or XII century known as the "*Latinjse Notariat*" which is the origin of the development of the notary, placed in Northern Italy, which then extends to French where throughout the tenure, position of notary is a devotion made to the general public whose needs and functions always get recognition from society and from the State, from France the second phase of its development in the nineteenth century, The notary institution is extended to other countries in the world including Indonesia.

- a. The name Notary with the name of this institution drives from the name of the first devotee i.e., *NOTARIUS* signifying a group of people who do a certain form of writing, but the meaning of *notarius* slowly changes from its original meaning.
- b. In the second and third centuries BC, even far before "NOTARY" means a person having the expertise to use a form of writing quickly in carrying out the duties which is now called stenographer, these notaries have high position where their work is to write down everything that was spoken in the emperor's council at

<sup>1</sup> Jimly Asshiddiqie, *Perihal Undang-Undang*, (Jakarta, PT. Raja Grafindo Persada, 2010), page 10

<sup>2</sup> Acmad, Ruslan, *Teori dan Panduan Praktik Pembentukan Peraturan Perundang-undangan di Indonesia*, (Rangrang Education, Yogyakarta 2011) page 3-4

<sup>3</sup> A.A. Andi Prajitno, 2010, *Pengetahuan Praktis Tentang Apa dan Siapa Notaris di Indonesia*, (CV.putra Media Nusantara, Surabaya), page 11

- meeting.
- c. In addition to the notary, at the beginning of the third century AD tabelliones are known. They have some similarities with the devotees of the notary assigned to the public interest to make the deeds and other letters, even though their positions are appointed by the general authorities to do the formality prescribed by the Act, the tabelliones known during the Aleutian, the deeds and letters made by tabelliones only act as Private Deed.
  - d. In addition to the tabelliones, there is still a group of people who mastered the technique of writing called *tabularii* who provide assistance to the community in processing deeds and letters, these *tabularii* are civil servants who have the task of holding and maintaining the financial accounting of cities and also assigned to supervise the archives of the cities under which they belonged.

The more advanced the era, the more developed the relationship of civil law that occurs in society, public awareness of legal certainty guarantee increases, authentic deed is needed to get a guarantee of legal certainty to the civic relationship that they make.

The authentic deed must be made by an authorized official. Meanwhile, the authorized official having the authority to make an authentic deed in the field of civic law is a notary public listed in Article 1 number 1 of Act Number 30 of 2004 concerning Position of Notary, enacted in the State Gazette of the Republic of Indonesia of 2004 Number 117 on October 6 2004 and Act Number 2 of 2014 concerning Amendment to Act Number 30 of 2004 regarding the Regulation of Notary Position enacted in the State Gazette of the Republic of Indonesia of 2014 Number 3 on January 15, 2014 stating that the notary is a public officials who is authorized to make an authentic deed and who have more authority as referred to in this Article or under other laws.

Based on Act Number 2 of 2014 on Position of Notary, there are many new provisions that must be run by a Notary. One of them is the obligation to attach fingerprints in the Minuta Deed, as stipulated in Article 16 Paragraph (1) sub-paragraph. The Act regulates that in carrying out the position, Notary must attach letters and documents and fingerprints to the Minuta Deed. Article 16 Paragraph (1) Sub-paragraph C stated that a notary must attach the fingerprint on Minuta Deed to avoid the appearer denying the signature on Minuta Deed. Various kinds of interpretations appear related to the obligation of Notary in attaching fingerprints on Minuta Deed. Some say that the appearer is required to put the tenth of the fingerprints, while others argue that the thumbprint is enough.

Therefore, there are three legal issues in this study, namely: (1) what is the legal basis of Notary's obligation to attach fingerprints to the Minuta Deed? (2) What is the fingerprint criteria attached on the Minuta Deed to comply with the principle of legal certainty? (3) What is the future arrangement of the obligation of a notary to attach a fingerprint on the Minuta Deed in order to comply with legal certainty?

## 2. Research Methods

Research method is an important factor for scientific writing, methodology is how to find or obtain something or run an activity to obtain concrete results and the main way to achieve goals. Legal research is a process to find the rule of law, legal principles, and legal doctrines to address the legal issues faced.<sup>1</sup> This study belongs to normative juridical (legal research). The normative juridical research focuses on assessing the application of norms in positive law. It is conducted by examining various formal legal rules such as Acts, literature containing theoretical concepts which are then linked to the issues that are the subject of the study.<sup>2</sup>

The approach used in this study is the statute approach, the conceptual approach and the historical approach. The statute approach is done by reviewing all laws and regulations relating to legal issues with the discussions.<sup>3</sup> This approach will open the opportunity for writers to learn the consistency and conformity between one law and another. The conceptual approach is an approach that moves from the views and doctrines that develop within the science of law<sup>4</sup>, thus finding ideas that give rise to legal notions, concepts, and legal principles relevant to the issues faced. Historical Approach, According to Jack. R. Fraenkel & Norman E. Wallen, 1990: 411 in Nurul Zuriah, 2005: 51 historical research is a study that exclusively focuses on the past. This study attempts to reconstruct what happened in the past as completely and accurately as possible, and usually explains why it happened. The data is obtained systematically to describe, explain, and understand the events that occurred in the past.

The purpose of historical research is to understand the past, and try to understand the present on the basis of past events or developments (Jhon W. Best, 1977 in Orphan Riyanto, 1996: 23 in Nurul Zuriah 2005: 52). While Donald Ary (1980) in Yatim Riyanto (1996: 23) states in Nurul Zuriah (2005: 52) that historical research enriches the researcher's knowledge of how and why a past event can occur and the process of how the past becomes present, in the end, it is expected to increase understanding of current events and gain a more rational

<sup>1</sup> Peter Mahmud Marzuki, 2010, *Penelitian Hukum*, Kencana Prenada Media Group, Jakarta, page.35

<sup>2</sup> *Ibid*, page. 29

<sup>3</sup> Peter Mahmud Marzuki, *Op.Cit*, page. 93

<sup>4</sup> *Ibid*, page. 95

basis for making choices in the present.

### 3. Results and Discussion

These results and discussions will analyze some of the problems described above, so to be coherent this discussion will describe one by one the issue with the following results:

#### 3.1 Legal Consideration Basis of notary's obligations to attach fingerprints on Minuta Deeds.

##### 3.1.1 Background of Fingerprint Attachment on Minuta Deed.

Notaries Deed used a lot of words to prove that the concerned appearer came to Notary of his own will, for example the word facing or has faced or face to face or has presented, that the appearer physically presence (*verschijnen*).<sup>1</sup> Regarding the evidence of the appearer presence before the Notary, fingerprints are necessary, moreover Position of Notary Law has regulated it, especially if the only appearer or all of the appearers cannot sign it. The evidence is the appearer's fingerprint, even if the authentic deed is authentic.

The obligation to attach fingerprint on Minuta Deed is stipulated in Article 16 paragraph (1) sub-paragraph c of Act Number 2 of 2014 on Amendment of Act Number 30 of 2004 on Notary Position. The provisions of Article 16 paragraph (1) sub-paragraph c are not in line with the provisions of Article 1 number 8 of the Position of Notary Act which states points that should be included on in Minuta Deed, but does not mention fingerprints among them.

The various interpretations and opinions about the synchronization of the two articles become legal issues among Notaries. Some notaries said the attachment of fingerprints on Minuta Deed is mandatory under the provisions of Article 16 paragraph (1) sub-paragraph c Notary Position Act without relating it to the provisions of Article 1 number 8 of the Notary Position Act. Some argue that the attachment of fingerprints is due to the parties cannot sign or are illiterate. The making of deed by Notary is going on without waiting for the uniformity of opinion on the synchronization of the two articles. While the various socialization about the new Notary Position Act, include fingerprinting, has been widely practiced in various regions, one of which the author attended in Yogyakarta namely the National Seminar on "Building the Law of Notary in Indonesia".

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The provision of Article 16 Paragraph (1) Sub-Paragraph C of the Notary Position Act is concerning Notary's obligation to attach fingerprints on Minuta Deed. Based on positivism legal theory, attachment of fingerprint should be implemented, because according to this theory "the law is an order." The theory of positivism law explained that the law is made by the ruler, for example the ruler makes laws and regulations. The law, according to this theory, is anything according to the law (*wet*), not what it should be.

The government imposes notary to cancel the deed, though notary cannot do, whereas if the notary deed is supported by facts, it should be canceled without having to wait for the court's verdict. Therefore, government hopes that fingerprints of the appearer should be attached and documentation should be taken to ensure the notary the appearer truly see the notary. It is to avoid a fake appearer that might harm business world in Indonesia. The history of legal drafting on Notary Position Act, explain different obligation of Notary as referred to in Article 16 paragraph (1) sub-paragraph c of the Notary Position Act. Draft of the House of Representatives of the Republic of Indonesia (DPR RI) is to attach letters and documentation of the appearer in the form of visual images and facts. While in the government draft (Ministry of Law and Human Rights) is to attach letters and documents and fingerprints of the appearer on Minuta deed. Letter is writing whether intended as evidence or not, made on paper or other medias. While document is all the text or images that can be used for an interest. In other words, the definition of document is more extensive than definition of letter, because document may contain pictures, photos, etc.

Furthermore, attaching fingerprints of the appearer "means "attaching document containing fingerprint of the appearer". The meanings contained in the provisions are letters and documents related to the identity of the appearer, as well as documents containing fingerprints of the appearer. The use of the term "attaching fingerprints on Minuta Deed" is less common, since what commonly attached on Minuta Deed are letters and documents. Embedding documents containing fingerprints cannot be separated from the notion of Minuta Deed, which expressly stipulates what embedded by the appearer, witnesses, and notaries are signatures, not

<sup>1</sup> Herlien Budiono & Albertus Sutjipto, *Beberapa Catatan Mengenai Undang-Undang Jabatan Notaris*, Ikatan Notaris Indonesia, Bandung, 2005, page.13.

fingerprints.

Answering the Minuta Deed question of how the Notary should address the stipulation of the fingerprint, there is no provision that forbids a Notary to apply his opinion or interpretation whether or not to attach fingerprints, or depending on the circumstances. The most important thing is that the appearers are willing to embed fingerprints when requested by the notary. Notary must also be consistent with his decision during his duties and positions no matter what.

Considering the Minutes of the Session of the Law Drafting concerning Notary Position in relation to the enactment of Act Number 2 of 2014 concerning Amendment of Act Number 30 of 2004 regarding Notary Position, particularly Article 16 paragraph (1) sub-paragraph c, the obligation of notary to attach the appearer's fingerprints on Minuta Deed is to identify the presence of the appearer. Attachment of fingerprints on Notarial Minuta Deed as an additional evidence aimed to anticipate the appearers denial of their signature on Minuta Deed. Embedding fingerprint documents on Minuta Deed is indeed useful and a precautionary attitude. However, if the obligation to attach the fingerprint document is obliged to the appearer, the obligation should also be applied to the witnesses, because the existence of the witnesses is one of the requirements of the authenticity of a notary deed.

Some Notaries interpret Article 16 paragraph (1) sub-paragraph c of the Notary Position Act differently. Some of them associate the article with article 1874 of the Civil Code, that the fingerprints are identical with the thumbprint. Whereas the attachment of the thumbprints referred to in Article 1874 of the Civil Code is intended for non-signatories. Likewise, a provision of *Staatsblad* Number 276, that thumbprint is used as a substitute for signatures.

### **3.1.2 Regulation of the Appearer's Fingerprint Attachment on Notarial Minuta Deed.**

Act Number 2 of 2014 as Amendment to Act Number 30 of 2014 concerning Position of Notary stipulates several additional provisions, one of which is the fingerprint regulation set forth in Article 16 paragraph (1) sub-paragraph c which determines: Notary public must attach the letter and documents as well as fingerprints on Minuta Deed. The provision of that article means that there has been fingerprint recognition. Human fingerprints are used for identification purposes because it is different from one another. In the Police realm, Fingerprint identification (*daktiloskopi*) is often used. In human anatomy, thumb is one of the fingers. Fingerprint is the result of finger reproduction which is deliberately taken, stamped with ink, or any print left on the object as it is touched by the skin of the palm of the hand or foot. In the field of office of notary in Indonesia, fingerprints are used as a substitute for signatures if a person cannot attach his signature, either because of illiteracy or physical defect. If the appearer has disability, the obligation to use fingerprints has been regulated in Article 16 paragraph (1) sub-paragraph c of the Act on Amendment of Position of Notary Acts, but concerning the appearer inability to attach fingerprint has not been expressly stipulated in the Regulation of Notary Position. It requires regulations aimed at providing legal certainty to the parties conducting a legal act which makes a written evidence before a notary in the form of an authentic deed, so that the parties get equal protection of law, and clear legal arrangements are not only beneficial to the interests of the parties, but also to the notary in running his position. In Article 44 Paragraph (1) of the Act on Amendment of the Position of Notary Acts there is a requirement if the appearer cannot sign the deed due to physical defect on his hand, according to Article 44 paragraph (1) The amendment of Position of Notary Acts at the end of the deed is explained the reason why the appearer cannot sign the deed, and therefore the appearer may authorize verbally to the person appointed by the appearer in condition that appearer present before the notary and witnessed by 2 (two) witnesses as the legal requirement of a notarial deed in which its composition can be made as follows:

-the appearer, Mr. A, has been introduced to me, Notary by two witnesses who also attended before me, Notary and I to my question, Notary, claiming successively named Mr. B was born in....., on....., the nationality....., occupation....., living in ....., street., holder of Identity Card Number .....

Every deed read by a Notary shall be attended by at least 2 (two) witnesses, witnesses and instrumental witnesses unless the laws and regulations specify other, and the witness must meet the following requirements:

- a. Be at least 18 (eighteen) years old or married;
- b. Proficient in performing legal actions;
- c. Can sign;
- d. Understand the language used in the deed;
- e. Has no marital relationship or maternal relation in straight line up or down without any degree limitation and lateral line up to third degree with notary or parties.

The witnesses must be recognized by Notary or introduced to Notary or explained to Notary in which the identity and authority is expressly stated in the deed.<sup>1</sup>

<sup>1</sup> Edmon Makarim, 2011, *Notaris dan Tanda Tangan Elektronik*, Cetakan Pertama. PT. Rajawali Grafindo Persada, Jakarta, page.40

### 3.1.3 Notary Obligation in Attaching Fingerprint on Minuta Deed.

Obligation, according to Full Dictionary of Indonesian Language, means something that must be done.<sup>1</sup> According to Article 1 number 1 Position of Notary Acts: Notary is a public official who is authorized to make an authentic deed and have more authority as referred to in this Act or under other laws. While embedding according to Complete Dictionary of Indonesian Language, means attached to something.<sup>2</sup> Furthermore, according to Article 1874 paragraph 2 of the Civil Code, fingerprints means signing a handwritten text in the same manner as a thumbprint, completed with a dated statement from a notary or other employee appointed by the law from where he knows the person giving the thumbprint, or that this person has been introduced to him, that the contents of the deed have been made clear to that person, and that the thumbprint is attached before the employee. The employee must record the writing. The appearer is a legal subject that comes to the notary on his own will.<sup>3</sup> In Article 1 number 8 Position of Notary Acts the notion of Minuta Deed is the original Deed that includes the signatures of the appearer, witnesses, and notaries, which are kept as part of the notary protocol.

Amendments to the Position of Notary Acts especially amendments of Article 16 paragraph (1) sub-paragraph c obliged notaries to make Minuta Deed, as stated "In carrying out the duty, a notary must attach letters, documents and fingerprints on Minuta Deed". The provisions of the above Article stipulate that the amendment of Article 16 paragraph (1) sub-paragraph c of the Position of Notary Acts, the legislator provides an additional obligation to notary to attach fingerprints on every Minuta Deed made. The purpose of attaching fingerprints on Minuta Deed is: Minuta Deed is the original deed consisting of 2 (two) types of deeds made in front of notary (deed *partij*) and deed made by notary (deed of official). Fingerprints do not act as substitution of signatures to the *partij* deed and do not have any function in the official deed, as defined in articles 44 and 46 of the Position of Notary Acts. Thus, the fingerprint attachment function on Minuta Deed referred to in Article 16 paragraph (1) sub-paragraph c is not a legal action in determining the validity or authenticity of the deed, but only to ensure the correctness of the identity of the appearer.

The purpose of the implementation of Notary obligation is to create justice for the community. Mochtar Kusumaatmadja and B. Arief Sidharta said that justice is an inseparable element of the law as a set of principles and rules that guarantee orderliness (certainty).<sup>4</sup> This view bases justice as the goal of legal certainty, in other words legal certainty will have implications on justice.

## 3.2 Criteria of Fingerprint Attachment on Minuta Deed To Fulfill the Legal Certainty Principle.

### 3.2.1 Fingerprint Attachment Policy Used by Notary on Minuta Deed Based on Notary Position Act.

In the provision of Article 16 Paragraph (1) Sub-Paragraph c of the Notary Position Act, it is stated that in performing the duty, Notary is obliged to attach letters, documents and fingerprints on Minuta Deed, based on the provisions of the article above the obligation of Notary to attach the appearer's fingerprints in unclear, because there is no further explanation in the Act of Notary Position and other legislations on the mechanism of fingerprint implementation, so many Notaries interpret the provisions of the above article differently. This difference of interpretation occurs in several matters as described below:

1. Act on Position of Notary does not specify which fingerprint of the appearer should be attached on the Minuta Deed. Therefore, the Notary may attach the fingerprint of 10 (ten) fingers:
  - A. Scrolling each finger one by one
  - B. Attaching 4 (four) right hand fingers simultaneously
  - C. Attaching 4 (four) left hand fingers simultaneously
  - D. Attaching 2 (two) thumbs simultaneously<sup>5</sup>
2. Where the fingerprint of the appearer should be attached In Article 16 paragraph (1) sub-paragraph c of the Notary Position Act stipulated that "In carrying out his position, the Notary must attach letters and documents and fingerprints on Minuta Deed".

In the implementation, many notaries use fingerprint on a separate sheet, as stated by Yusrizal, the implementation of fingerprint attachment by the appearer is made on a separate sheet, as referred to in Position of Notary Acts stated that the obligation to attach fingerprint has the same meaning as obligation to attach letters and documents.<sup>6</sup> Fathila stated that fingerprint of the appearer is attached in a separate sheet, because the sheet

<sup>1</sup> Yuwono Trisno dan Pius Abdullah, 1994, Kamus Lengkap Bahasa Indonesia Praktis, Arkola, Surabaya, page.463.

<sup>2</sup> *Ibid*, page 259.

<sup>3</sup> Adjie Habib, 2011, Hukum Notaris Indonesia (Tafsir Tematik Terhadap UU No. 30 tahun 2004), Cetakan ketiga, Refika Aditama, Bandung, page.18.

<sup>4</sup> Mochtar Kusumaatmadja dan B. Arief Sidharta, Pengantar Ilmu Hukum, Suatu Pengenalan Pertama Ruang Lingkup Berlakunya Ilmu Hukum, (Bandung: Alumni, 2000), page. 52-53

<sup>5</sup> Regulation of Minister of Law and Human Rights of Republic of Indonesia no. 37 Tahun 2016 tentang Tata Cara Pengambilan Perumusan Identifikasi Teraan Sidik Jari.

<sup>6</sup> Yusrizal, Leader of Board of commissioner of Indonesian Notary Association Medan, (cited in Barrori Mirza literarily work entitled *Kewajiban Notaris* to attach document of fingerprint on Minuta Akta based on Acts Number 2 of 2014 on Ammandement on Acts Number30 of 2004 Tentang on position of Notary, page. 5)

containing the fingerprint must be attached together with the binding of Minuta Deed, by giving information on the conclusion of the deed regarding the fingerprint and signature attached with the following information:<sup>1</sup> “This Deed, immediately after I, the Notary, read and explain to the appearer and witnesses, signed by the appearer, then by witnesses and I, the Notary Furthermore, the appearer attaches the right hand thumb prints on the supplementary sheet provided for the purposes of this deed in accordance with the Act of the Position of Notary or other laws and regulations implemented in the Republic of Indonesia”.<sup>2</sup>

According to the decision of the Central Board of the Indonesian Notary Association, the definition of letters and documents is letters and documents relating to the identity the appearer and attaching fingerprints is used for the purpose of prudence, in order to comply with the provisions of Article 16 Paragraph (1) sub-paragraph c Position of Notary Acts.<sup>3</sup> Although the Central Board (PP) of the Indonesian Notary Association recommends taking fingerprints on separate sheets, but there is no prohibition if Notary takes the fingerprints directly on Minuta Deed after being signed by the parties because there is no further provisions concerning the implementation of fingerprints attachment of Minuta Deed.<sup>4</sup>

### 3. The Use of the appearer’s fingerprints with physical defects.

The use of fingerprints on Minuta Deed based on Article 16 Paragraph (1) Position of Notary Acts is not a substitute of signature as referred to in Article 1874 Civil Code. According to Lumban Tobing fingerprints cannot be equalized with signatures, he stated that fingerprint is not a sign of letters (*lettertekens*), so it is not necessary to make name signing (*het tekenen van de naam*).<sup>5</sup> However, according to Yahya Harahap, viewed from the legal certainty, the use of fingerprints has stronger certainty than the signature. In accordance with the results of research that states each person's fingerprints is different from those owned by others which is difficult to be forged. Conversely, signatures can and often be counterfeited. Therefore, according to Yahya Harahap the refusal of fingerprint to be equated with signature is unacceptable.<sup>6</sup> The use of fingerprints, based on Position of Notary Acts, is an obligation for every Notary in performing its function as a public official authorized to make deed. However, in the implementation the appearer may get physical defect and unable to attach fingerprints as Position of Notary Acts command. In this case, according to Yusrizal, the appearer may not attach fingerprint, therefore the Notary shall give information at the end of the deed concerning the inability of the appearer to attach fingerprint on Minuta Deed which is signed by the witnesses and the Notary.<sup>7</sup>

The following is an example of an explanation where the appearer is unable to sign and attach his fingerprint:

“Immediately after I, the Notary reads this deed to the appearer and witnesses, and the appearers attach fingerprints on separate sheets, attached on this deed, so that the deed is signed by Mr. Ahmad, witnesses and I, the Notary , while the appearer, Mr. Hasan Basri, according to his statement, cannot sign this deed because his right hand is in a state of severe burns and hence Mr. Hasan Basri attach his left thumbprint on this Minuta Deed before witnesses, and I, Notary”.<sup>8</sup>

In the Notary Position Act, it is not mentioned clearly that those who cannot attach fingerprints should be informed at the end of the deed / cover of the deed. Article 44 Paragraph (1) of the Position of Notary Acts stipulates that immediately after the deed is read out, the deed is signed by every appearer, witness, and notary, unless there is the appearer who cannot sign by mentioning the reason. Referring to Article 44 Paragraph (1) of Position of Notary Acts above that Position of Notary Acts requires in any condition, the process of signing and attaching fingerprint must be described by the Notary at the end of the deed / cover of the deed, so that if the appearer is unable to give his fingerprints on Minuta Deed, it becomes obligation for the Notary concerned to explain the matter in Minuta Deed made.<sup>9</sup>

<sup>1</sup> Fathila, Notaris/PPAT at Jalan Kirana Nomor 30, Medan, , (cited in Barrori Mirza pada karya ilmiah yang berjudul *Kewajiban Notaris* to attach document of fingerprint on Minuta Akta based on Acts Number 2 of 2014 on Ammandement on Acts Number30 of 2004 Tentang on position of Notary, page. 5)

<sup>2</sup> In the provision of Article 38 paragraph (4) sub-paragraph b Position of notary Acts mentioned that Notary is obliged to explain the implementation of signature, for explanation of fingerprint attachment is done to inform that the one who attach fingerprint is the one having rights based on the laws and regulations.

<sup>3</sup> Rahmad Nauli Siregar, secretary Board of commissioner Indonesian Notary Association Medan, , (cited in Barrori Mirza entitled *Kewajiban Notaris* to attach document of fingerprint on Minuta Akta based on Acts Number 2 of 2014 on Ammandement on Acts Number30 of 2004 Tentang on position of Notary, page. 6)

<sup>4</sup> G.H.S. Lumban Tobing, Position of Notary Regulation (Jakarta : Erlangga, 1999), page. 205

<sup>5</sup> G.H.S. Lumban Tobing, Position of Notary Regulation (Jakarta : Erlangga, 1999), page. 205

<sup>6</sup> M. Yahya Harahap, Civil Code (Jakarta : Sinar Grafika, 2005), page. 561-562

<sup>7</sup> Yusrizal, Leader of Board of commissioner of Indonesian Notary Association Medan, (cited in Barrori Mirza literarily work entitled *Kewajiban Notaris* to attach document of fingerprint on Minuta Akta based on Acts Number 2 of 2014 on Ammandement on Acts Number30 of 2004 Tentang on position of Notary, page. 6)

<sup>8</sup> Where the appearer is not able to attach fingerprint depends on the condition of the fingers.

<sup>9</sup> Yusrizal, Leader of Board of commissioner of Indonesian Notary Association Medan, (cited in Barrori Mirza literarily work entitled *Kewajiban Notaris* to attach document of fingerprint on Minuta Akta based on Acts Number 2 of 2014 on Ammandement on Acts Number30 of 2004 Tentang on position of Notary, page. 7)

Regarding the above problems, it is seen that there is no uniformity of the Notary in using fingerprint of the appearer, for the Notary is demanded to be a decision maker<sup>1</sup> in responding all matters relating to the duty of his position as a Notary. A Notary does not need to wait for command or opinion of others about what to do in carrying out the duties.<sup>2</sup> Therefore, Notary can perform duties in terms of attaching fingerprints of the appearer on the basis of the agreement taken by the Indonesian Notary Association which will become the guideline for every Notary in carrying out the obligation to attach fingerprints of the appearing on Minuta Deed.

### 3.2.2 Important Points of Fingerprint Attachment Provisions.

There are several things that must be considered in attaching fingerprints of the appearer by Notaries, namely:

A. There are 4 (four) points to attach fingerprint of the appearer:

1. The fingerprint is properly the correspondent's finger
2. The fingerprints is directly from the appearer's finger
3. Fingerprints are taken as they relate to the making of specific deeds (taken on each of the deeds made in the form of minuta deeds), taken on separate sheets containing clear descriptions i.e, title of deed, date of deed, number, name and signature of the appearer.
4. Fingerprints taken on the same day and date before the notary and witnesses at the time of the deed making.

B. Ink Color Used.<sup>3</sup>

1. Manual fingerprint attachment as referred to in Article 6 shall be made by using *Daktiloskopi* ink and special slip sheets in accordance with the standards set by the General Director.
2. *Daktiloscopy* Ink as referred to in paragraph (1) is a special durable black ink.

C. Where the fingerprint should be attached.

1. Article 16 paragraph (1) sub-paragraph c determines "In performing his / her position, Notary must: ... c. attach letters, documents and fingerprints of the appearer on Minuta Deed."  
For a deed originally made, a notary must also attach the fingerprint. By reading the provisions of article 16 paragraph 1 sub-paragraph c Position of Notary Acts, it is clear that the obligation to attach fingerprints is only on the deed made in the form of Minuta Deed.
2. Special slip sheets as set in paragraph 1 are 20x20 cm (twenty by twenty centimeters) in white base color and 150 mg (one hundred and fifty milligrams) of paper thickness<sup>4</sup>
3. The format of the special slip sheet as referred to in paragraph 3 shall be contained in the annex which is an integral part of this Ministerial Regulation.<sup>5</sup>

A. Fingerprint attachment of the appearer making multiple deeds

Referring to Article 16 Paragraph (1) Sub-Paragraph c of Position of Notary Acts stipulating that Notary must attach fingerprints of the appearer on Minuta Deed, it means that the Notary's obligation to attach the fingerprints shall be applicable for every Minuta Deed made.

The attached fingerprint is the fingerprint of each appearer, any person who becomes the appearer in the making of the deed, whether acting for oneself, someone in certain position, including fingerprints from the Board of Directors of the bank and other officials.

### 3.3 Future Arrangement on Notary's Duty to Attach Fingerprint Against Compliance to Comply with Legal Certainty.

The obligation to attach the fingerprints on Minuta Deed is unclear when the notaries do not have any clear regulations on which fingers to use and the mechanism of electronic fingerprinting use and how the fingerprint attached on a deed.<sup>6</sup>

The word purpose, based on Kamus Besar Bahasa Indonesia, is a goal or object. Law is a set of rules arranged in the form of a system that limits the movement of human behavior as a legal subject of things that can and cannot be done in social life with certain sanctions. Thus, the legal object is a goal realized by a law.

The law contains three identity values proposed by Gustav Radbruch:

1. The principle of legal certainty or *rechtmatigheid* viewed from the juridical side.
2. The principle of legal justice or *gerechtigheit* viewed from philosophical side.

<sup>1</sup> decision maker is a process where organization committee take an action to respond problems and opportunity faced.

<sup>2</sup> Arif Rahman Mahmoud, "Implikasi Hukum Bagi Notaris yang Tidak Melekatkan Sidik Jari Penghadap Pada Minuta Akta" (Jurnal, Program Studi Magister Kenotariatan, Universitas Brawijaya, 2014), page. 8

<sup>3</sup> Article 8 paragraph 1 and 2 Regulation of minister of law and Human Rights Republic of Indonesia no. 37 of 2016 on Mechanism of Fingerprints attachment.

<sup>4</sup> Article 8 paragraph (3) Regulation of minister of law and Human Rights Republic of Indonesia no. 37 of 2016 on Mechanism of Fingerprints attachment.

<sup>5</sup> Article 8 paragraph (4) Regulation of minister of law and Human Rights Republic of Indonesia no. 37 of 2016 on Mechanism of Fingerprints attachment.

<sup>6</sup> *Ibid*

### 3. The principle of expediency viewed from the sociological side<sup>1</sup>.

The law performs its functions as a means of human interest conservation in society. The purpose of the law is to divide the rights and obligations between individuals within the community. The law also authorizes and regulates ways of solving legal problems and maintaining legal certainty.

Legal certainty can be realized in a predetermined form of a legal act and event. The applying laws must be obeyed and should not be distorted by the subject of law. With legal certainty, one obtains clarity on the rights and obligations under the law. Legal certainty can be manifested through good and clear norms in an Act so that legal certainty can create an order.

Justice is equity of the parties, either in the form of profit or loss. Justice can be interpreted as giving equal rights to a person's capacity or enforcement to each person proportionately, but it also means giving everyone in equal to what is his share based on the principle of equality. Law without justice is meaningless<sup>2</sup>. legal expediency is said as the existence of a benefit for community on the existence of acts or laws that regulate. So for the sake of achieving the objectives of law that demands peace, tranquility, prosperity and order in society, the principle of priority in the legal goal by Gustav Radbruch can be used as a guide. Priority principles that promote justice rather than legal benefits and certainty answer any problems of pluralism in Indonesia. Liliana Tedjosaputro argues that the law is functioned as a means of community renewal and guardian of society, so it must be established in a planned and structured way. It is intended to be used as a means of community renewal, in order to run harmoniously, and that the legal life reflects justice, social benefits and legal certainty<sup>3</sup>. Likewise it is expected that the article 16 paragraph (1) sub-paragraph c Position of Notary Acts become the philosophical foundation through the products issued by Notary, to ensure legal certainty, justice and legal benefit of every user of Notary service or Notary itself.

### 4. Conclusion

Based on the legal analysis discussion, cancellation of the employment agreement since it against the morals does not reflect the principles of legal protection of the workers. The invalidity of the employment agreement is a legal consequence if the employment agreement is contrary to morality. In other word, if in the employment agreement contains work as an objective condition is contrary to morality, then the contrary provisions are null and void.

The construction of cancellation meaning is *contractus sui generis* or agreement having special character different from the agreement in general. The special character is motivated by the unequal position of the worker as a party in the employment agreement so that the agreement cancellation is an effort to protect workers. Protection of workers in this respect refers to a number of things, such as, the existence of workers having unequal position in the employment relationship; the political commitment of labor law as stipulated in the consideration of the Act No.13 of 2003, the Constitution of the Republic of Indonesia Article 27 paragraph 2D paragraph 2 which mandates that working is a constitutional right of the workers, the philosophical aspects of Pancasila Industrial Relations that become the basis of industrial relations in Indonesia. Therefore, *contractus sui generis* on the employment agreement also gives the consequences of constructing a meaning different from the agreement in general.

### 5. Suggestion

Attaching fingerprint documents on Minuta Deed is indeed useful and a precautionary attitude. However, if the obligation to attach the fingerprint document is obliged to the appearer who can attach his signature, the obligation should also be applied to the witnesses, because the existence of the witnesses is one of the requirements of the authenticity of a notary deed.

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<sup>1</sup> Muntasir Syukri, (tanpa tahun), Keadilan dalam Sorotan, diakses dari: Artikel keadilan dalam sorotan.pdf,

<sup>2</sup> Rasjuddin Dunge, (tanpa tahun), Kepastian Hukum, diakses dari: <http://rasjuddin.blogspot.com>.

<sup>3</sup> Liliana Tedjosaputro, 1994, Etika Profesi Notaris Dalam Penegakan Hukum Pidana, Biagraf Publishing, Yogyakarta, page 4.



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