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Juridical Implications on Agreements Using Back Date Made in The Form Uthentic Deed by Notary

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Abstract: A backdated agreement is created to cover certain activities that are not actually included in a contract. For example, in the early stages of implementing a project or cooperation based on trust without a previously drafted contract, both parties then realize that the cooperation needs to be further explained in a contract. Therefore, they draft the contract with a backdated date to the time when the work first began. An agreement drafted with a backdated date is basically still based on the ratification of all parties involved, so it does not cause any harm to them. However, it is important to note that differences in signing dates can have a negative impact on other parties who may not be directly involved in the agreement. This situation occurs because an agreement signed with a backdated date can be considered as a document forgery treatment. The method of research employed in this study is normative juridical, encompassing a legal-based approach, case analysis, and a conceptual approach. The findings of this research suggest that contracts with backdated dates and executed through a notary deed are legally acknowledged, but they do not hold the same legal weight as an authentic deed. Therefore, the contract is deemed valid and binding for all parties, with the guarantee structured in line with the stipulations outlined for the agreement's validity (as per Article 1320 of the Civil Code). Additionally, the legal implications of employing a backdated contract in the form of an authentic deed result in a downgrade in its status, transitioning it from authentic to private deed. Consequently, the verifying power previously held by the authentic deed, which was once robust in civil court proceedings, diminishes to the level of a private deed, rendering its evidentiary power ineffective.

Keyword: Agreement, Back Date, Authentic Deed.

INTRODUCTION

Overall, provisions regarding agreements in Indonesia are regulated in the Civil Code (KUHPerdata). Article 1313 of the KUHPerdata explains that "a contract is an agreement in which one or more parties commit to one or more other parties. Based on Subekti, a contract can be understood as a situation in which one party makes a promise to another party, or in which both parties agree to perform a certain action (Subekti, 2010). On the other hand, Abdul Kadir Muhammad stated that the meaning of the agreement contained in Article 1313

has several weaknesses, including (Muhammad, 2010): 'This statement is only relevant to unilateral agreements, because the term 'establish' originates from only one party. In addition, the meaning provided is too general, because it does not limit self-binding in the context of property law, so that it could also include marriage agreements in the realm of family law. Furthermore, this meaning does not specify the purpose, so it is unclear what the parties intend to bind themselves to. Therefore, to address this weakness, he added that an agreement is an agreement between two or more persons who mutually bind themselves to perform a specific act in the context of property law.'

The legal correlation arising from electronic transactions contained in electronic contracts is the contractual obligation arising from the contract itself. Thus, by comparison, the rules governing contracts in the Civil Code, primarily in Book III on obligations, specifically in Chapters I to IV on General Principles, can be used as universal legal standards for electronic contracts. The regulations on the conditions for the enforceability of written agreements are outlined in Article 1320 of the Civil Code. In this provision, the conditions for the enforceability of an agreement are categorised into subjective and objective criteria. Subjective criteria pertain to elements concerning the parties in the agreement, such as the mutual assent between the parties and their capacity. On the other hand, objective criteria relate to the subject matter of the agreement, including the specific subject and the lawful consideration.

An agreement that meets all four criteria for validity as outlined in Article 1320 of the Civil Code will have legal implications that validate it according to the law. On the other hand, an agreement that does not satisfy the subjective criteria may be susceptible to being legally voided, while an agreement that fails to meet the objective criteria will be considered void from the beginning. The conditions outlining the necessary criteria for an agreement to be considered valid are detailed in Article 1320 of the Civil Code, which stipulates that for an agreement to be valid, it must meet four criteria: an agreement between the parties involved, the capacity to form a legally binding contract, a definite object, and a valid consideration. The first requirement for an agreement is the actual existence of an agreement. This agreement refers to the alignment between the expression of will of one or more individuals with the other party (Salim, 2019). Sudikno Mertokusumo argues that there are five methods for reaching an agreement of intent, namely through clear written communication, clear verbal communication, communication that is not entirely clear but can be agreed upon by the other party, the use of language that can be understood by the other party, and silence that is understood or agreed upon by the other party. The ability to act or legal capacity is regulated in Law No. 1 of 1974 on Marriage, which is contained in the State Gazette of 1974 No. 1 and the Supplement to the State Gazette No. 3019 (hereinafter referred to as the Marriage Law). This capacity refers to the ability to perform legal acts, which are acts that can create legal consequences. Based on R. Soeroso in his book 'Introduction to Law,' a legal action is an act that will cause legal effects. Therefore, individuals who wish to enter into an agreement must be persons who have the capacity and authority to perform legal acts in accordance with applicable regulations.

Those eligible to carry out legal actions are individuals who have attained the legal age, while those restricted from certain legal actions are children, individuals under guardianship, and spouses. Nevertheless, changes in regulations now allow spouses to engage in legal actions under specific conditions outlined in the Marriage Law Article 31 and Supreme Court Circular Letter No. 3 of 1963 (Salim, 2019). The term 'object of the agreement' here refers to the provisions set forth in Articles 1332 to 1334 of the Civil Code. The subject matter of the agreement covered by these Articles includes objects that will exist (except for inheritance), provided that their type can be regulated and analysed, as well as objects that can be bought and sold (goods) that are used for general purposes and can be the subject of an agreement

(Raharjo, 2009). Article 1320 of the Civil Code does not offer a clear definition of what constitutes a lawful cause. Conversely, Article 1337 of the Civil Code focuses solely on causes that are forbidden. A cause is considered forbidden if it goes against laws, moral standards, and public order. A contract may be deemed invalid if it fails to meet the subjective requirements, which involve mutual agreement between both parties and the legal capacity of each party to enter into the contract (Emeralda Girsang et al., 2024). Conversely, if a contract does not meet the objective requirements, such as the presence of the contract's subject matter and a valid reason, then the contract is automatically considered void according to the law (Meliala, 2007). In general, agreements are drawn up for matters that will be confirmed in the future. However, there are also several types of agreements that are created for matters that have already been confirmed to be implemented in the past, which are usually known as backdated agreements.

Backdated agreements are also drawn up to cover certain activities that were not actually regulated in the previous agreement. For example, at the start of a project or collaboration based on trust without a formal agreement, both parties then realise that the collaboration needs to be further clarified in an agreement. Finally, the agreement is created with a date that indicates a time in the past, namely when the work began. Agreements drawn up with backdating are basically still based on agreements between the parties involved, so as not to harm them. However, it is important to note that differences in the date of signing can have a negative impact on other parties who are not directly involved. This situation occurs because agreements with backdated dates can be considered as document falsification. According to Gandjar Laksana Bondan, a lecturer at the Faculty of Law, University of Indonesia, document falsification can be divided into two types: the creation of inauthentic documents and the modification of existing documents. Creating a non-genuine document means creating a document that never actually existed, making it appear as though the document is real (fictitious). On the other hand, modifying a document means taking a valid document and altering its contents so that it appears different from the original. Thus, it can be concluded that there is a violation of applicable laws and regulations, particularly the Criminal Code (KUHP). One example of an agreement made with a backdated date is a contract related to changes in the status of employees at the Corruption Eradication Commission (KPK) and the State Civil Service Agency (BKN). During a press conference held on Wednesday, 21 July 2021, Robert Na Endi Jaweng, a member of the Ombudsman of the Republic of Indonesia, revealed the results of his study on maladministration by the KPK and BKN, which included the practice of creating contracts with backdated dates.

Backdated contracts were created by listing dates that did not match the actual signing dates. The memorandum of understanding was signed on 8 April 2021, while the self-management contract was drafted on 20 April 2021. However, the signing date was changed to make it appear as if the two documents had been signed three months earlier, on 27 January 2021. Thus, the implementation of the TWK, as explained earlier, took place on 9 March 2021 without the two contract documents. Therefore, it can be concluded that there is a legal vacuum regarding the regulation of agreements drawn up with backdated dates. Based on the previous explanation, it is important to conduct a study in the field of civil law focusing on the legal implications of agreements created with backdated dates and the strength of their evidence.

The objective of this study, which is based on the formulation of the problem, is to analyse the validity of agreements created with a backdated date (back-dated contract) in the form of an authentic deed by a Notary, as well as to evaluate the legal implications of agreements created with a previously set date in the form of an official deed created by a Notary.

METHOD

This study investigates the legal aspects of agreements that are backdated and executed as authentic deeds by a notary. A key method used is the statute approach, which involves analysing relevant laws such as Articles 1320 and 1338 of the Civil Code (KUHPdata) that govern agreement validity and the principle of *pacta sunt servanda*, along with regulations in Law Number 30 of 2004 on the Notary Profession, later amended by Law Number 2 of 2014. Furthermore, the research includes a case study on a backdated agreement involving La Nyalla Matalitti and another party, suspected to be a strategy to avoid tax obligations.

Various legal resources utilised consist of primary, secondary, and tertiary materials within the legal field. Primary materials encompass relevant laws and regulations, specifically focusing on contract law and notarial positions. Secondary resources encompass supplementary literature like books, journals, prior research findings, scientific papers, and other academic texts that offer analysis and perspective on primary legal materials. Concurrently, tertiary legal materials like the Big Indonesian Dictionary (KBBI) and legal dictionaries are employed to enhance comprehension of the legal terminology utilised in the study.

Legal materials are gathered through a review of existing literature. The examination of these legal materials involves the use of grammatical and systematic interpretation techniques. Grammatical interpretation is utilised to explain the concept of 'legal consequences' using both everyday language and legal jargon. Systematic interpretation, on the other hand, entails linking various legal provisions together to gain a thorough understanding of the legality and legal ramifications of agreements that involve a retroactive date.

RESULTS AND DISCUSSION

The Validity of Back-Dated Contracts Executed in the Form of Authentic Deeds by a Notary

According to Black's Law Dictionary, a contract can be defined as an agreement reached by two or more parties. This agreement creates an obligation to perform or refrain from performing certain actions, either in whole or in part. The main definition in Black's Law Dictionary states that a contract is defined as an agreement between the parties involved to fulfil an obligation, either by performing or not performing part of the agreement (Salim, 2019). Article 1313 of the Civil Code defines an agreement as a commitment made by one or more individuals to another individual. This particular article sheds light on the idea of mutual commitment between two parties. While not exhaustive, this definition highlights the presence of mutual obligations between parties involved in an agreement (Miru & Pati, 2012).

Agreements made with a back date must be drawn up and approved by parties who have reached the age of majority and are capable of taking responsibility for their actions in the process of making the agreement. To determine whether a person is considered an adult or not, verification can be carried out through the Identity Card (KTP) or Family Card (KK), particularly in the section that lists information about the place and date of birth of each party involved in the agreement. The third requirement for a valid agreement is the existence of a specific object, which must be fulfilled by the parties involved in the agreement, hereinafter referred to as performance. Clarity regarding the essence of the agreement or the agreed-upon object is very important to ensure the implementation of the rights and obligations of each party. This requirement must be implemented consistently with the principle of independence in contracting, which means that every individual has the freedom to make any agreement, whether regulated by law or not. However, the freedom of the parties to enter into such agreements is limited by three things, namely: not contrary to the law, not violating public

order, and not contrary to moral norms. Therefore, in the process of making an agreement, the parties must pay attention to the written legal regulations and social norms that apply in society.

According to researchers who have studied this principle, every individual has the freedom to enter into agreements and determine the content of each agreement they make. This includes the possibility of entering into agreements with backdated dates, as there are no laws prohibiting such practices, provided that the agreement benefits both parties and does not harm others, including society at large. Freedom in determining the content of an agreement must be exercised with due regard to the principle of complementarity, which means that the provisions of the law can be disregarded if the parties involved agree to make their own rules that differ from the provisions of the law. However, if there are no other provisions stipulated in the agreement, the applicable provisions of the law will still apply.

Natural elements are elements in an agreement that are inherently considered to exist without the need for explicit agreement by the parties involved (Burton, 2009). Natural elements can be found in regulatory legal provisions. Therefore, if the parties do not make any arrangements, the existing legal provisions will apply. However, due to its non-binding nature, the parties have the right to deviate from these provisions. An example of *naturalia* can be seen in Article 1476 of the Civil Code, which states: 'The costs of delivery shall be borne by the seller, while the costs of collection shall be borne by the buyer, unless otherwise agreed.' In agreements made with a back date, *naturalia* elements do not need to be explicitly regulated, but must still be implemented by the parties involved. The agreement must be carried out in good faith by all parties, and this does not need to be stated in the agreement, but must still be done in accordance with generally applicable regulations.

Accidental elements are provisions in the agreement that are specifically agreed upon by the parties involved (Wessels, 2006). Meanwhile, based on commercial law, accidental elements are provisions in the agreement that exist if desired by the parties (Komariah, 2001). Examples of *accidentalia* elements include the choice of domicile, the applicable law, and the method of delivery of goods. In agreements made with a back date, these *accidentalia* elements can be implemented in the form of provisions that have been agreed upon by the parties, particularly concerning complex issues that may arise as a result of such an agreement. This includes the method of dispute resolution and the choice of court that will be used to resolve the conflict should litigation become necessary.

The final criterion for a valid agreement is the existence of a lawful cause. *Causa* or cause refers to the reason that motivates a person to enter into an agreement. According to Article 1335 of the Indonesian Civil Code (KUHPerdata), it is stated that "an agreement without a cause, or based on a false or prohibited cause, has no legal force." However, Article 1336 provides that "if no cause is stated, but there is a lawful cause, or if there is another cause different from that which is stated, the agreement remains valid." A lawful cause, according to Article 1337 of the Civil Code, is one that is not prohibited by law, does not conflict with moral standards, and/or public order.

An example of a back-dated agreement that does not violate the principle of a lawful cause is a mutual fund. A mutual fund is a vehicle for collecting funds from investors, which are then invested in a securities portfolio by an investment manager. In the context of money market mutual funds, the term back date is indeed known. According to the trading glossary of Monex Investindo Futures (MIFX), back dating is defined as "writing a date on a cheque or other document that is earlier than the actual date of issuance." In addition, an investor who holds a mutual fund certificate and initially did not sign a letter of intent (LoI) may sign the LoI within 90 days after the date of the mutual fund purchase.

Agreements made with a back date do not violate the requirements for the validity of an agreement as stipulated in Article 1320 of the Indonesian Civil Code (KUHPerdata).

Therefore, such agreements can be considered valid and binding on the parties involved, obliging them to perform their respective rights and obligations in accordance with the terms that have been agreed upon. Furthermore, an agreement made with a back date may be considered valid if it is based on the consent of each party who has legal capacity and pertains to a specific subject matter that is not prohibited by law. The rights and obligations of the parties in the law of obligations, as set out in Article 1234 of the Indonesian Civil Code, state that “every obligation is to give something, to do something, or not to do something.” These actions under an obligation may relate to an agreement that imposes a specific duty on one party and a corresponding right on the other party to receive something under the agreement that has been concluded (Vijayantera, 2020). Based on the foregoing explanation, it can be concluded that an agreement created with a back date meets the criteria for validity under Article 1320 of the Indonesian Civil Code (KUHPdata). This includes the subjective criteria, namely that the parties involved have legal capacity and have given their consent, as well as the objective criteria, which require a definite object and a lawful cause. Accordingly, a back-dated agreement carries binding legal consequences for the parties involved, equivalent to a statute under Article 1338 of the Civil Code.

The legal consequences of a valid agreement under Article 1338 of the Civil Code are as follows: (1) The agreement is considered law for the parties involved, meaning they are obliged to comply with its terms just as they would with a statute. Should one party breach the agreed terms, it is regarded as a breach of law, and legal sanctions may apply. Hence, anyone who violates the agreement will face legal consequences as provided for under the applicable law. (2) The agreement cannot be unilaterally revoked, meaning that a validly concluded agreement is binding on all parties and cannot be cancelled or revoked solely by one party. Any cancellation or revocation requires the consent of the other party, unless there are legitimate legal grounds allowing for unilateral cancellation or revocation. (3) Performance must be carried out in good faith, which means that fulfilling the agreement must take account of decency and fairness. Execution carried out in accordance with these standards is deemed just.

A back-dated agreement that meets the requirements of Article 1320 of the Civil Code is valid and thus subject to Article 1338 of the Civil Code, making it binding upon all parties involved as though it were a statute. However, to be considered valid and binding under Article 1338 of the Civil Code, the agreement must not only fulfil the requirements of Article 1320 of the Civil Code, namely mutual consent, capacity of the parties, a definite object, and a lawful cause, but must also be founded on fundamental legal principles such as the consensual principle, the principle of *pacta sunt servanda*, the principle of good faith, and the principle governing the numbering of authentic deeds. Legal principles are, in essence, broad and abstract concepts that underpin all statutory provisions in any legal system. They are then implemented as legal regulations and serve as the foundation for creating agreements.

In essence, a back-dated agreement can be legally binding upon the parties as if it were a statute. However, this discussion addresses only the general validity of agreements and therefore such a back-dated agreement can only be recognised as a private deed, which obviously carries different legal weight than an authentic deed. A notarial deed or authentic deed (hereinafter referred to as a deed) is a deed prepared by or before a Notary in accordance with the form and procedures prescribed by law. A Notary is authorised to draw up an authentic deed concerning all acts, agreements, and determinations as required by legislation and/or as desired by the parties, to ensure certainty as to the date of execution, to store the deed, and to issue the grosse, copies, and excerpts of the deed, provided that the making of such deed is not assigned or excepted to other officials under the law. Article 38 of the Amended Notary Office Law (UUJN-P) states that each deed must consist of: “the heading of the deed, the body of the deed, and the closing of the deed.”

Article 15(1) of Law No. 2 of 2014 on the Amendment to Law No. 30 of 2004 on the Office of the Notary (hereinafter UUJN-P) stipulates that: “A Notary is authorised to draw up authentic deeds concerning all acts, agreements, and determinations as required by statutory provisions and/or as desired by the parties to be stated in an authentic deed, to ensure certainty as to the date of execution, to store the deed, and to issue the *grosse*, copies, and excerpts thereof, provided that the making of such deed is not assigned or excepted to other officials under the law.” Pursuant to Article 16(1) of the UUJN, a Notary, in carrying out their office, has the duty to: “act honestly, carefully, independently, impartially, and to safeguard the interests of the parties involved in legal acts; prepare a deed in the form of a *minuta* and keep it as part of the Notary’s protocol; issue a *grosse*, copy, or excerpt of the deed on the basis of the *minuta*; provide services as prescribed in this Law unless there is a reason to refuse; maintain the confidentiality of all matters concerning the deed they have drawn up and all information obtained in the course of preparing the deed in accordance with the Notary’s oath or pledge of office, unless the law provides otherwise; bind the deeds they have created into one or more books within one month, each containing no more than 50 deeds, and record the number of *minuta*, the month, and the year of execution on the cover of each book; prepare a list of protested deeds concerning the non-payment or non-acceptance of negotiable instruments; prepare a list of deeds concerning wills chronologically every month; send the list of deeds as referred to in letter h, or a nil report concerning wills, to the Central Register of Wills at the ministry responsible for notarial matters within five days of the first week of the following month; record the date of sending the list of wills in the repertory at the end of each month; have a seal/stamp bearing the emblem of the Republic of Indonesia with their name, title, and official seat around it; read the deed aloud before the parties in the presence of at least two witnesses and have the deed signed immediately by the parties, the witnesses, and the Notary; and accept apprentice notaries for training as part of their professional responsibility.” This provision is further amended in Article 16(1) of the UUJN-P, which requires the Notary to act professionally in upholding the values of integrity, honesty, prudence, independence, and impartiality, as well as to maintain the confidentiality of information acquired during the drafting of the deed. The Notary must draw up the deed as a *minuta*, retain it as part of their protocol, issue a *grosse*, copy, or excerpt on the basis of that *minuta*, and attach supporting documents and the fingerprint of the appearer to the *minuta* of the deed. The Notary must bind the deeds into a book within one month, record and report the list of wills to the Ministry of Law and Human Rights, note the list in the repertory, use an official stamp bearing the state emblem and their identity, read the deed aloud before the appearer in the presence of at least two witnesses, have it signed then and there by the parties, the witnesses, and the Notary, and also accept candidates for notarial training.

Based on this analysis, it can be concluded that a back-dated agreement can only be drawn up as a private deed and cannot be made into an authentic deed. Therefore, a back-dated agreement does not possess perfect evidentiary value.

The Legal Implications of Back-Dated Contracts Executed in the Form of Authentic Deeds by a Notary

Legal safeguards and specific regulations concerning back-dated contracts include:

1) Legal Implications of Back-Dated Agreements Executed as Private (Non-Authentic) Deeds

Based on Subekti (2010)’s definition of an authentic deed, which reads as follows: “a written document that is intentionally created to serve as evidence concerning a particular event and is duly signed.”. Based on Abdurrahman (2009)’s definition of an authentic deed, which reads as follows: “a document that is deliberately created and signed in order to serve as evidence concerning a particular incident.”. Based on Tresna (1976)’s

definition of an authentic deed, which reads as follows: “a signed document containing information about incidents or matters that form the basis of a right or an agreement, it can be stated that a deed is a written instrument by which a legal act is expressed.” Based on Naja (2012)’s definition of an authentic deed, which reads as follows: “a deed is a signed document, created to serve as evidence, and intended to be used by the person or party for whom the document was drawn up.”

An agreement created in the form of a deed must essentially satisfy the requirements for a valid agreement as set out in Article 1320 of the Indonesian Civil Code (KUH Perdata), which consist of: “the consent of the parties, the capacity of the parties to undertake legal acts, a specific object, and a lawful cause.” By fulfilling the requirements for a valid agreement under Article 1320 of the Civil Code, an agreement created in the form of a deed will complement the provisions of the legal regulation set forth under Article 1338 of the Civil Code, which states that: “all agreements that have been validly made shall be binding as law for those who have concluded them.” Consequently, if one of the parties breaches the terms of the agreement, that party can be considered in default (*wanprestasi*) and may be subject to sanctions in the form of compensation for damages or the performance of the obligations agreed upon by the parties beforehand.

Pursuant to Article 1868 of the Civil Code, the definition of an authentic deed is as follows: “an authentic deed is a deed that is drawn up in the form prescribed by law, by or before a public official who is authorised to do so at the place where the deed is drawn up.” (Bachrudin, 2019). When an authentic deed is created by a public official who is not authorised to do so, that deed no longer possesses evidentiary power as an authentic deed, that is, it no longer holds perfect evidentiary strength and instead only retains the evidentiary force of a private deed as regulated under Article 1869 of the Civil Code. Pursuant to Article 1874 of the Civil Code, the concept of a private deed is set out as follows: “A deed signed privately, letters, lists, household records, and other writings created without the intervention of a public official.”

The evidentiary strength of an authentic deed can be divided into three categories, namely: the strength of outward proof, the strength of formal proof, and the strength of material proof.

The outward evidentiary strength of an authentic deed is known as *acta publica probant seseipsa*, meaning that an instrument that, on its face or by its wording, appears to originate from a public official is to be accepted as an authentic deed until proven otherwise. This outward evidentiary strength applies to the parties and to third parties alike.

As for formal evidentiary strength, an authentic deed proves the truth of what was witnessed: shown, heard, and personally carried out by a public official in the course of performing his or her duties.

Article 165 of the HIR and Article 285 of the Rbg state that:

“An authentic deed is a deed drawn up by or before an official who is authorised for that purpose. It constitutes complete proof between the parties, their heirs, and those deriving rights from them concerning what is stated therein, even if it is a mere notification, yet such notification is only relevant if directly related to the matters set forth in the deed.” (Tobing, 1991). Article 1868 of the Civil Code provides that “an authentic deed is one drawn up, in the form prescribed by law, by or before public officials who are authorised to do so at the place where the deed is drawn up.” As such, several elements of an authentic deed can be identified, namely: that the deed is created and formalised in a form prescribed by law; that the deed is drawn up by or before an authorised public official; and that the deed is created by or before a public official who is authorised to draw up the authentic deed in the place where it is drawn up.

In essence, an authentic deed is the most significant instrument of written evidence, as it possesses perfect evidentiary strength if the following conditions are met: (1) the parties agree upon the contents of the agreement without any coercion or circumstance that obliges one party to simply follow the will of the other party; (2) it is created by parties who have legal capacity to take legal action (those aged 18 or above, or those who have lawfully married under the applicable law and religion); (3) the agreement is created concerning a specific object that is already in existence at the time the agreement is concluded, meaning the object cannot relate to something that will come into existence at a later date; and (4) it is based on a lawful cause that is not prohibited by law.

In connection with the final criterion for a valid agreement, that is, the cause that must not contravene applicable law, the creation of a back-dated agreement essentially breaches legal requirements regarding the notary's duty as the public official responsible for drawing up the deed. This is inseparable from the notary's authority to ensure certainty as to the date the deed is created, as mandated under Article 15(1) of Law No. 2 of 2014 concerning the Amendment to Law No. 30 of 2004 on the Office of the Notary (hereinafter referred to as the UJN-P). Article 15(1) of the UJN-P states that:

"A Notary is authorised to draw up authentic deeds concerning all legal acts, agreements, and determinations required by law and/or as desired by the parties to be stated in an authentic deed; to ensure certainty as to the date of execution; to store the deed; to issue the grosse, copies, and excerpts of the deed; all provided that the making of the deed is not assigned or excepted to other officials or other persons as determined by law."

Based on the researcher's view, the authority of a Notary to ensure the certainty of the date is not limited to the date on which the deed is created but also includes the date on which the appearers appear before the Notary and the date the agreement is signed. Furthermore, this authority requires the Notary to thoroughly verify the identities of the appearers, using official identification such as ID cards or passports, or through identifying witnesses, ensuring that the parties present before the Notary are indeed those stated in the authentic deed and are actually present before the Notary at that time. The researcher also argues that ensuring the certainty of the date is not limited solely to the date of appearance before the Notary, the date the deed is drawn up, or the date of signing, but also specifically concerns the timing of all legal acts conducted as set forth in the authentic deed. For example, it would read as follows: "At 10:00 Western Indonesia Time on 27 March 2020, before me... the Notary." From this opening clause, it can be inferred that certainty of the date refers to all instances, including the appearance of the parties before the Notary. Similarly, the closing clause "this deed was read aloud by me, the Notary, in the presence of the appearers and witnesses who are all present today in the city of Malang to sign this deed" demonstrates that the Notary's authority to ensure the certainty of the date is not merely confined to the time stated but also ascertaining that the parties were genuinely present before the Notary to sign the deed.

Based on the above explanation, it can be concluded that an agreement drawn up with a back date may still meet the validity requirements under Article 1320 of the Civil Code, as well as the elements, principles, and structural components of a valid agreement. However, such an agreement can only take the form of a private deed or oral contract because a Notary cannot draw up a back-dated agreement in the form of an authentic deed. This is because the authority of the Notary to guarantee the certainty of the date, as regulated under Article 15(1) of the UJN-P, renders the Notary incapable of creating an authentic deed with a back date.

The author further asserts that, given the legal consequences set forth under Article 84 of the UJN, a back-dated agreement cannot be nullified and void. Even though such

an agreement breaches Article 15 of the UUJN-P concerning the Notary's duty to ensure the certainty of the date, this issue pertains solely to the Notary's omission, and not to the content of the agreement agreed upon by the parties. Hence, the Notary is considered negligent, and the back-dated agreement can still be said to possess a lawful cause as required under Article 1320(4) of the Civil Code.

A back-dated agreement in the form of an authentic deed fundamentally meets the criteria for a valid agreement under Article 1320 of the Civil Code. However, such an agreement loses its perfect evidentiary power in terms of formal proof, meaning it cannot verify that the parties read and agreed to the deed at the time stated; in terms of material proof, meaning it cannot verify that the events described in the deed truly took place; and in terms of binding proof, meaning that it cannot bind third parties as to the time the parties appeared before the Notary and declared the contents of the deed on the stated date. Thus, it only retains the evidentiary strength of a private deed, as the Notary failed to discharge the duty of ensuring certainty of the date as required under Article 16(1)(m) of the UUJN-P, which states that "in carrying out his duties, a Notary must read the deed aloud before the appearers in the presence of at least two witnesses, or four witnesses specifically for the creation of a private will, and that it must be signed then and there by the appearers, witnesses, and the Notary." Accordingly, the Notary may be subject to sanctions under Article 84 of the UUJN-P, which essentially provides that a breach of Article 16(1)(m) renders the deed valid only as a private deed or null and void, and allows the injured party to seek reimbursement of costs, damages, and interest from the Notary.

Finally, the author emphasises that an agreement, in principle, can have a postponed effective date, but cannot change the date of its execution. For illustration, in the formation of a mutual fund, the investment manager and the custodian bank prepare a collective investment contract (KIK) drawn up by a notary. Before the investment manager can offer mutual fund units to investors, they must first establish the mutual fund by drawing up a KIK with the custodian bank. Subsequently, they must undergo the registration process with Bapepam to obtain an effective statement so that the mutual fund can be offered to investors. Typically, the investment manager works with selling agents whether banks, insurance companies, or other parties to offer and sell the mutual fund units to investors.

Money market mutual funds, in practice, do involve the concept of back dating. According to the website forexind.org, back dating is defined as: "the act of writing a date on a cheque or other document that is earlier than the actual date of issue. Moreover, an investor who holds a mutual fund certificate and initially did not sign a letter of intent (LoI) may sign this LoI up to 90 (ninety) days after the mutual fund purchase date." This is distinct from a Memorandum of Understanding (MoU) between the Corruption Eradication Commission (KPK) and the Civil Service Agency (BKN), which was clearly created with a back date — that is, the parties carried out the contents of the MoU first and only at a later time created the MoU to conform with what had been implemented.

2) Legal Implications of Back-Dated Agreements Executed in the Form of Authentic Deeds

In its form, an agreement consists of a series of words containing promises or undertakings that are spoken or written. Thus, the correlation between an obligation and an agreement is that the agreement gives rise to the obligation. An agreement is the basis of an obligation, alongside other foundations. An agreement is also referred to as a stipulation, since the mutual consent of the two parties to execute an agreement implies that an agreement and a stipulation are essentially synonymous.

According to Mertokusumo (2010), an agreement is a legal relationship between two or more parties based on mutual consent that is intended to produce legal consequences. In

other words, the parties agree to establish rules, obligations, or rights that bind them and must be adhered to and performed. This essentially indicates that an agreement created in accordance with the requirements for a valid contract as set out in Article 1320 of the Civil Code is binding on the parties as though it were a statutory provision.

The first criterion for the validity of an agreement is the mutual consent of the parties. However, the Civil Code itself provides no explicit definition of the term “consent,” so its meaning must be clarified by referring to legal scholars. According to Herlien Budiono, the concept of “consent” encompasses not only an agreement to bind oneself, but also an agreement to receive a performance (Budiono, 2011). In a reciprocal agreement, each party not only bears obligations towards the other party, but also holds a right to the performance that has been agreed. A unilateral agreement, which contains the right or obligation of one party to receive or provide a performance to the other, still requires mutual consent from both parties. According to Sudikno Mertokusumo, an agreement is the concordance of declarations of will between one or more persons and another party, whereby the concordance lies in the expression of those declarations because one’s will cannot be demonstrated or known by another (Mertokusumo, 2019).

The second criterion is the capacity to perform certain legal acts, including creating a contract or agreement, which is highly necessary. This is because only a person with legal capacity is capable of understanding, executing, and bearing responsibility for the legal consequences arising from the contract they create. A person’s capacity to perform legal acts is measured against the standard of majority age. Article 1329 of the Civil Code contains a definitive provision stating that every person is deemed capable of creating obligations (contracts), unless declared otherwise incapable by law. Furthermore, Article 1330 of the Civil Code sets out the qualifications of persons who are deemed incapable of creating contracts, namely: minors, persons placed under guardianship, and married women in cases where the law expressly prohibits them from creating certain contracts.

Article 1320 of the Civil Code stipulates four (4) requirements for a valid contract, so that an agreement may be considered valid if it is: agreed upon by the parties, entered into by parties with legal capacity, concerning a specific object, and founded upon a lawful cause.

As mentioned previously, in addition to meeting the criteria for a valid contract outlined in Article 1320 of the Civil Code, such as mutual agreement between the parties, legal capacity of the parties involved, a specified object, and a lawful reason, to ensure that the resulting agreement is binding like a law as defined in Article 1338 of the Civil Code, which states that “all agreements made in a lawful manner shall be considered as law by those who have entered into them,” the agreement must also follow the fundamental principles of contract law as the essential basis for its formation. Some of the key principles in contract law that can be used as a basis for drafting an agreement through an authentic deed include the principle of freedom of contract, the principle of consensualism, the principle of legal certainty (*pacta sunt servanda*), the principle of good faith, and the principle of privity (Muhtarom, 2014), and the principle of authentic deed numbering. A legal principle is essentially an abstract and broad fundamental concept that underlies and is present within the concrete provisions of every legal system, subsequently embodied in legislation and, in this context, serving as the foundation for the creation of an agreement.

In Dutch, a deed is referred to as an “acte” or “akta,” while in English it is called an “act.”. According to Mertokusumo (2002), a deed is a signed document that records an incident which forms the basis of a right or obligation, intentionally prepared from the outset for evidentiary purposes. According to Subekti (2010), a deed differs from an ordinary letter in that it is a writing deliberately created to serve as evidence of a particular

incident and is signed. A deed has two primary roles, namely as a means of evidence and as a formal instrument. In its evidentiary role, a deed functions to prove the existence of an agreement created by the parties involved, with the aim of providing proof for future reference. Meanwhile, its formal role indicates that a legal act will be deemed more valid and complete when it is documented in the form of a deed Mertokusumo (1986), the evidentiary strength of a deed that may be used in civil proceedings is divided into (Muhammad, 2000):

- a) Outward evidentiary strength refers to what is physically visible. This means that an instrument which clearly appears to be an authentic deed and fulfils all prescribed criteria shall be presumed valid and may be treated as an authentic deed, unless there is evidence to the contrary.
- b) Formal evidentiary strength ensures that the parties who have signed the written agreement acknowledge and have performed what is set forth in the deed.
- c) Material evidentiary strength serves to verify the validity of the contents contained within the authentic deed that has been drawn up.

The drafting of an agreement with a pre-determined backdate (back-dated contract) in the form of an authentic deed will have legal consequences in the form of a diminution of its evidentiary strength. Initially, the deed holds perfect probative value in civil proceedings; however, as a result of this back-dating, its probative value is reduced to that of a private deed, so its evidentiary strength is no longer perfect. This means that the deed will only have legal force if its veracity is acknowledged by all parties involved in the back-dated agreement. Clearly, this situation may cause harm to the parties, especially those who ought to have received their entitlements at the time the agreement was originally concluded.

The legal consequences that arise, as previously explained by the Author, are not equivalent to the legal consequences that occur when the requirements for a valid contract are not satisfied, namely:

- a) Non-existence: the legal consequence which holds that if there is no agreement, then no contractual obligations arise;
- b) *Vernietigbaar* (voidable): if the agreement arises due to a defect in consent (*wilsgebreke*) or incapacity (*onbekwaamheid*), in accordance with Article 1320 criteria (1) and (2), this relates to the subjective requirements of a valid contract. Hence, the contract may be set aside; and
- c) Null and void: an agreement is deemed null and void if it fails to satisfy the criteria concerning a definite object or lawful cause, or if the cause is prohibited, referring to Article 1320 paragraphs (2) and (4) of the Civil Code. This pertains to the objective elements of a valid contract, resulting in the contract being legally null and void.

CONCLUSION

An agreement drawn up with a back date contract and created through a notarial deed is legally considered valid, but the agreement does not have the same legal force as an authentic deed. In other words, the agreement is valid and binding on the parties as long as it is created in accordance with the criteria for a valid agreement (Article 1320 of the Civil Code). However, from a formal legal perspective, notaries do not have the authority to draw up back dated contracts in the form of authentic deeds. This is due to the provisions of Article 15 Paragraph (1) of the UUJN-P, which states that notaries, in carrying out their duties to create authentic deeds, are obliged to ensure the validity of the date of the deed they draw up. The Notary's responsibility to ensure the validity of the deed's date is related to the provisions in Article 16(1)(m) of the Notary Law, which stipulates that the Notary must read the deed in

the presence of the parties involved, with the presence of at least two witnesses, and must be signed simultaneously by the parties involved, the witnesses, and the Notary at that time.

The legal consequence of a contract created with a pre-determined date (back-dated contract) in the form of an authentic deed is that the deed loses its status and becomes a private deed. As a result, the verification power of authentic deeds, which previously had strong evidentiary power in civil court proceedings, will be reduced and equated with private deeds, so that their evidentiary power will not be as strong as before. In other words, the deed will only have legal force if all parties involved in the back dated contract acknowledge its validity. This situation could certainly cause losses for the parties involved, especially for those who should have obtained their rights at the time the agreement was created.

The parties involved in the agreement must understand that an agreement drawn up with a back date is valid, because it has fulfilled the necessary requirements in accordance with Article 1320 of the Civil Code. In addition, the agreement also fulfils all the elements, principles and components required in an agreement. However, this agreement can only be made in oral form or a private deed, as a Notary has the authority to verify the validity of the date, as stipulated in Article 15(1) of the Notary Office Act, which prohibits the creation of agreements with a backdated date in the form of an authentic deed, whether created in the presence of a Notary or by the Notary themselves.

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