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Notary's Responsibility In Making A Deed Under Hand With A Signature On A Blank Stamp By The Face

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Abstract : A notary as a public official has the authority to make a deed in accordance with the Notary Office Law and the notary code of ethics. Making an authentic and underhand deed can be burdened with responsibility for his actions in connection with his work in making the deed. There is deviant behavior by notaries who abuse the making of deeds signed by the face on blank stamps. The research method used in this study is to use normative juridical research methods, using a statute approach and a comparative approach. The result of the discussion of this study is that the legal relationship that occurs on an empty stamp is a civil relationship and the legal basis is contained in article 1338 of the Civil Code. The legal conditions of the agreement are regulated in article 1320 of the Civil Code which consists of four conditions and each is qualified in two elements. Signing a deed under hand using a blank stamp will have legal consequences that are null and void. null and void due to non-fulfillment of elements of the legal conditions in the agreement which if it violates objective conditions i.e. agreements made with prohibited causa or false causa committed by a notary. because the filling of the deed includes unlawful acts that have been regulated in article 1365 of the Civil Code. The notary's responsibility for misuse of blank blanks in making deeds under hands that are not in accordance with the notary law can be held responsible both in terms of administration in the form of sanctions and has been regulated in the Notary Office Law, namely oral reprimand, written reprimand, Temporary suspension, dismissal with respect to dishonorable dismissal.

Keywords: Notary, Deed Under Hand, Blank Sign, Unlawful Deeds

1. Introduction

A. Background

People's lives today require legal certainty, among others, in the public service sector considering that the increasing or growing needs of the community itself for the existence of a service service. The role of Notaries in the service sector is to serve the public in the civil sector, especially in making authentic deeds and deeds under hand.

The notarial institution is one of the community institutions in Indonesia. According to G.H.S Lumban Tobing, "this institution arises from a need in the association of fellow humans who want evidence about the relationship of civil law with what happens between them or humans".¹

Article 1 point 1 of the Notary Office Law (UUJN) in the amendment states that a notary is a public official who has the authority to make an authentic deed and also has other authorities as referred to in the UUJN or in other laws. Regarding an authority of a Notary Public in 2its Statement, it is authorized to

¹ G H S Lumban Tobing, *Notary office regulations* (Erlangga, 1980), p. 2.

² Indonesian Law on Amendments to Law Number 30 of 2004 concerning Notary Positions, Law No. 2 of 2014, Ps. 1 number 1.

make an authentic deed or deed under hand regarding an act, agreement, and determination required by a law and or desired by the interested person to be stated in the deed he makes for ensure a certainty of the date of making the deed, keep the deed, give groose, copy and quotation of the deed, all so long as in making the deed is not assigned or exempted to other officials or other persons who have been stipulated by law.³

This is where the importance of the notary profession lies that notaries are given the power by law to create an absolute means of proof. In proving that what is in an authentic deed is essentially considered true. Notaries in carrying out their profession not only refer to UUJN and UUJN changes, but also refer to the code of professional ethics made by the Indonesian Notary Association.⁴

According to R.Soegondo Notodisoerjo, Notary is a general official of openbare ambtenaren, because it is closely related to an authority or duty and also an obligation, the main one is the making of authentic deeds and other deeds. What is meant by 5openbare ambtenaren here is an official who is given the task of making an authentic deed that serves the interests of the community, and such qualifications are given to notaries.⁶

The term deed from Dutch is "acte" or "deed" and English is called "act" or "deed". According to Sudikno Mertokusumo, a signed letter containing the events on which a right and agreement are based, which was made from the beginning deliberately for proof.⁷

Based on this opinion, it can be concluded that what is meant by "deed" is⁸

- 1) Acts (handling) or legal acts (rechthandeling);
- 2) A writing made to be used or used as evidence of the legal act, in the form of writing submitted to prove something"

A deed is a signed letter, containing information about an event or thing that is the basis of an agreement. Article 1867 of the Civil Code states that proof by writing is done with authentic writings or writing under the hand.⁹

B. Problem Formulation

Based on this background, the formulation of the problem is the legal consequences and liability of notaries for notaries and confronters of deeds under the hands made with blank signatures

C. Research Method

³ Indonesian Law on Amendments to Law Number 30 of 2004 concerning Notary Positions, Law No. 2 of 2014, Ps. 15 number 1

⁴ Ghansham Anand, *Characteristics of Notary Positions in Indonesia* (Prenada Media, 2018), p. 41.

⁵ Dudi Setiyawan, "The Effectiveness of Deeds Containing Accesor Clauses in an Effort to Provide Legal Protection for Notaries," *Journal of Law and Notarial Affairs* 4, no. 1 (2020): p. 18.

⁶ M Syahrul Borman, "Notary's position as a public official in the perspective of the Notary Office Law," *Journal of Law and Notarial Affairs* 3, no. 1 (2019): p. 76.

⁷ Audita Nurul Safitri, "Forgery of Sale and Purchase Deed made after PPAT Passed Away (Case Study of Supreme Court Decision Number 620K/PID/2016)," *Indonesian Notary* 1, no. 001 (2019): p. 8

⁸ Victor M Situmorang and Cormentya Sitanggang, *Grosse Deed in Proof and Execution* (Rineka Cipta, 1993), p. 26.

⁹ *Civil Code [Burgerlijk Wetboek]*. Translated by Subekti, (Jakarta: Balai Pustaka, 2014), Ps. 1867

The type of research used in this writing is normative juridical research. Normative juridical research is research conducted by examining *legal materials* as basic materials for research by conducting searches on regulations and literature related to the problem under study. The approach used in this study is the ¹⁰*statutory approach (statute approach)*. The legislative approach is an approach that is carried out by examining all laws or regulations related to the legal issue being researched, researchers can find ideas that can give birth to legal understanding, legal concepts and principles that are relevant to the issue being studied¹¹.

2. Discussion

A. Legal consequences for notaries and confronters of deeds under the hand made with blank signatures.

Article 1 point 1 of the Amendment Law states that a notary is a public official who is authorized to make authentic deeds and has other authorities as referred to in this law or under other laws. Regarding the authority of Notaries in their positions, they are authorized to make authentic Deeds regarding all deeds, agreements, and determinations required by laws and regulations and / or desired by those interested to be stated in the Authentic Deed, guarantee the certainty of the date of making the deed, store the deed, give grosse, copies and quotations of the deed, all of that as long as the making of the deed is not also assigned or excluded to other officials or other persons who stipulated by law.

The legal relationship that occurs on an empty stamp is a civil relationship and the legal basis is in article 1338 of the Civil Code. The legal conditions of the agreement are regulated in article 1320 of the Civil Code which consists of four conditions and each is qualified in two elements. The first condition is agreement and the second is legal competence, both are included in the subjective element of the legal conditions of the agreement.

If either of the two conditions is not fulfilled, the agreement can be canceled. The third and fourth requirements are included in the category of objective elements that contain specific objects and *halal causa*. If the objective elements are unqualified or not fulfilled then the agreement will be null and void.

When related to civil law in this case, PPAT as defendant II who instructed the faces to sign a blank stamp first before filling out the deed, including unlawful acts that have been regulated in article 1365 of the Civil Code. According to Munir Fuady, there are 3 categories of unlawful acts, namely intentional unlawful acts, namely committing unlawful acts intentionally. Unlawful acts without fault and unlawful acts due to negligence.

The signature in the deed is also as important as the reading of the deed because the signature on an authentic deed or deed under the hand actually has two basic legal functions, namely as a sign of the signatory's identity and as a sign of approval of the obligations attached to the deed. Based on these two legal functions, a conclusion can be drawn that a signature is an identity that serves as

¹⁰ Suratman and Philips Dillah. (2015), *Legal Research Methods*, Alfabeta Bandung, p. 51

¹¹ *Ibid.* p. 104

a sign of approval of the obligations attached to the deed. According to Habib Adjie, the function of the face's signature includes self-identification or self-signature concerned, Proof that the person concerned has faced, Agreement that the face agrees with everything that is or stated in the deed.¹²

The legal consequence of making a deed under hand with misuse of the signature on a blank stamp is the cancellation of the notarial deed. The cancellation of the notarial deed is related to the terms of the validity of the written agreement in article 1320 of the Civil Code, regarding the misuse of signatures on blank stamps manifestly does not meet the elements of subjective requirements seen from the terms of the word agreement.

Agreement is the embodiment of the will of the parties to the agreement regarding something they want to do, how to carry it out, when it should be carried out and who should carry it out. Before an agreement is made, usually one of the parties first makes a form of offer regarding the form of agreement to be made to the opposite party. The content of the offer is the will of one of the parties conveyed to the opponent of his party to be approved by the opponent of that party.¹³

It is said to be null and void, meaning that an agreement does not fulfill objective conditions and non-fulfillment of conditions that are essential in the agreement and because of the non-fulfillment of the formal form as required by applicable law or provisions which is called void non existent. The differences are:

- 1) Null and void as a result of which the legal act committed has no legal effect since the occurrence of the legal act. In practice, null and void is based on court decisions that already have permanent legal force.
- 2) Can be canceled, resulting in legal actions carried out have no legal effect since the cancellation occurs and where the cancellation or ratification of legal actions depends on the specific party that causes the legal action to be canceled.
- 3) Non-existent results in legal acts that do not exist, meaning those caused by non-fulfillment of the essence of an agreement or not fulfilling one element or all elements in a particular legal act.

The cancellation of the notarial deed or PPAT through a court decision is not due to the fault or negligence of the notary or PPAT alone in making the deed. But the cancellation of the notarial deed or PPAT can also be caused by errors and negligence of the parties who bind themselves to each other in the deed. And the existence of such errors or omissions causes a lawsuit from one of the parties. In civil proceedings, it is not uncommon for notaries to also be in a position as co-defendants which are given as forced efforts because in notarial deeds, especially partij acte which then becomes evidence for civil cases.

¹² Benita Katri Cinantya, Arief Suryono, M. Hudi Asrori Sayuti, *Signing of the Deed of Sale and Purchase with a blank stamp whose payment of the price of the object has not been paid off*, National Proceedings 2022 Abdurachman Saleh University Situbondo

¹³ Muhammad Muharromi, Master of Notary Affairs Study Program, Faculty of Law, University of Indonesia *Notary Responsibility for Misuse of Blank Signatures in Making Authentic Deeds* Kertha Semaya journal, Vol. 9 No. 12 Year 2021, pp. 2336-2351

In the validity of the agreement, the terms of the agreement are very important to be fulfilled. This agreement itself is characterized by offer and acceptance by means of written, oral, tacit, and certain symbols. An agreement made in a written manner can be done by deed of authenticity of the deed under hand. An underhand deed is a deed made by the parties without the intermediary of a general official.

Regarding the binding force of the parties to the deed under hand is the same as the authentic deed, so if the agreement is made validly which means it does not contradict the law, then based on article 1338 of the Civil Code, the agreement applies as law to those who make it, so that the agreement is irrevocable, except based on the agreement of both parties or based on the reasons stipulated by law.¹⁴

Subekti said that proving a deed under hand is any deed made without the intermediary of a general official. The proof can have the same evidentiary power as an authentic deed if the party signing the agreement does not deny his signature. If between the parties to the agreement there is a denying his signature, the party submitting the letter of agreement is required to prove the correctness of the signing or the contents of the deed.¹⁵

B. Notary Responsibility in Making Deeds Under Hands Signed by the Applicant on a blank stamp

The law on unlawful acts, a responsibility or obligation to pay compensation is when there is a mistake or someone has been guilty either intentionally or by negligence, but besides that it is also known in law what is called "absolute" liability or strict liability which adheres to the principle of deviating from Article 1365 of the Civil Code, namely liability based on fault.

Basically, the idea of absolute responsibility is generally not much different from the idea of responsibility as stipulated in Article 1365 of the Civil Code, this deviation lies when compensation is obtained from the perpetrator, after the party who suffers the loss can prove that the loss incurred is the result of a mistake committed by the perpetrator and the burden of proof lies with the person who feels aggrieved.¹⁶

Absolute responsibility or liability without fault is a legal responsibility imposed on the perpetrator of an unlawful act regardless of whether the person concerned in committing the act has an element of guilt or not. And the perpetrator can be held legally accountable. As for the principle of absolute responsibility, the priority is the fact of the incident by the victim and responsibility by the alleged perpetrator to whom he is not given the right to prove innocence.

According to the provisions of Article 65 of the UUJN, the notary is still responsible for the deed he made. Therefore, there is confusion regarding the

¹⁴ Subekti, 1984, Fundamentals of Civil Law, Intermasa, Jakarta, p. 139.

¹⁵ *Ibid.*,

¹⁶ Rini Dameria, Achmad Busro, and Dewi Hendrawati, *Unlawful Acts in Medical Actions and Their Settlement in the Supreme Court (Case Study of Supreme Court Decision Number 352/PK/PDT/2010)*, Diponegoro Law Journal 6, no. 1 (2017): p. 7

limit of notary liability based on Article 65 of the UUJN, namely even though all deeds made by the notary have been submitted or transferred to the depositor of the notary protocol, even though they have stopped or no longer serve as a notary, they still have to be responsible for the rest of their lives.

The Notary's responsibilities as a general official include the responsibilities of the Notary profession itself related to the deed. With this authority, the Notary Public can be burdened with responsibility for his actions or work in making authentic deeds and by hand. The Notary's responsibilities as a general official include the responsibilities of the Notary profession itself related to the deed.

Notary Public liability in civil for the deed he made. This responsibility is the responsibility for the material truth of the deed, on the construction of unlawful acts. Unlawful acts here are divided into active and passive nature: Active, in the sense of doing actions that cause harm to other parties, while Passive, in the sense of not doing actions that are mandatory, so that the other party suffers losses. So that the element of unlawful acts here is the existence of unlawful acts, errors and losses caused.¹⁷

Sanctions intended for Notaries are also an awareness that Notaries in carrying out their office duties have violated the provisions regarding the implementation of notary office duties as stated in the Notary Office Law. The responsibility that the notary has adheres to the principle of responsibility based on errors in making authentic and underhand deeds.

The Notary Public shall be responsible if for the deed he made, there is a mistake or willful violation by the Notary. However, if the element of error or violation occurs from the complainants, then as long as the Notary Public exercises its authority in accordance with the regulations. The Notary concerned cannot be held accountable, because the Notary only records what is submitted by the parties is the responsibility of the parties

3. Conclusion

The legal consequences of making a deed by misuse of signatures on blank blanks are null and void because of the non-fulfillment of elements of the legal conditions in the agreement which if it violates objective conditions, namely agreements made with prohibited causa or false causa committed by notaries. As well as the notary's responsibility for the misuse of blank blank signatures in making deeds under the hand that are not in accordance with the law so that notaries can be held responsible both in terms of administration in the form of sanctions and have been regulated in the Notary Position Law, namely oral reprimand, written reprimand, temporary dismissal, dismissal with respect to dishonorable dismissal.

4. Advice

¹⁷ Kunni Afifah, *Legal Responsibility and Protection for Notaries in Civil Manner for the Deeds they make*, Lex Renaissance Journal No.1 Vol.2, 2017, 151

Responsibility as a Notary General Officer has to carry out his position not in favor of the interests of others, has an honest nature to all parties, which will not cause harm to any party, and notaries should uphold the dignity and code of professional ethics so as to avoid violations that can harm the Notary itself. to the clients to convey general information to the clients about the deed to be made and how the procedure is in accordance with the law. In order to overcome the problems that occur in the misuse of blank signatures on notarial deeds which result in the cancellation of notarial deeds.

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