

Notary Responsibility For Lost Authentic Deeds

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Abstract : Notary as public officials has to obey and submit to applicable regulations, adhere to the Law on the position of Notaries and also adhere to the Notary's ethics code. If a Deed which is made by the Notary gives rise to a dispute or lawsuit, so this deed needs to be questioned. This research focuses on studying legal protection for notaries in making deeds related to the fake documents by related parties. This research uses normative legal research by examining library materials. The result of this research is making a deed by a notary that carry out systematically according to the positive law of making a deed by paying attention to the structural stages of the procedure for making a deed. The principle of caution in making a deed must be possessed by every notary in order to create an authentic deed which is legally strong. Notaries in carrying out their duties have the right to recusal, the right to leave, and the right to receive an honorarium for their legal services. Deeds is made based on forged documents can become null and void after going through a series of court procedures. Notaries as passive parties in making deeds using fake documents cannot be caught in the law.

Keywords: Notary, Deed, Fake Document

1. Introduction

A. Background

The notary institution arose from people's needs who wanted civil law to exist or occur between them. The notary institution and its staff are assigned by the general authority (*openbaar gezag*) to wherever and whenever required or be required by the public, to produce written evidence that has authentic power.¹ Based on the provisions of Article 1 Paragraph (1) of Law Number 2 of 2014 concerning amendments to Law Number 30 of 2004 concerning the Position of Notaries which explains "A notary is a public official who has the authority to make authentic deeds and has other authorities as intended in the Law or based on other laws, so that it can be interpreted as a noble profession (*nobile noblen*).

In carrying out their position, notaries must be able to think professionally, based on a noble personality by continuously implementing the law while upholding their professional code of ethics, namely the notary's code of ethics. According to the Law on Notary Positions (UUJN), a notary is expected to act honestly, thoroughly, independently and impartially and safeguard the interests of the parties involved in legal actions. Within its scope, the task of carrying out the Notary's position is to produce the evidence desired by the parties for a particular legal action. This evidence is at the level of civil law. The notary makes a deed because there is a request from the party facing it.

Authentic deeds made by a notary can be divided into:

¹ G.H.S. Lumban Tobing, 1982. Notary Public Regulations, Erlangga, Jakarta, p. 2

- 1) A deed made by a (door) notary or what is called a relaas deed or official deed (ambtelijke akten).
- 2) A deed made before (ten overstaan) a notary or what is called a partij deed (partij akten).²

Furthermore, Article 15 Paragraph (2) of the Law on the Position of Notaries states that apart from the authority as referred to in Paragraph (1), notaries also have the authority, among others:

- 1) Validate the signature and ensure the certainty of the date of the underwritten letter by registering it in a special book.
- 2) Book documents privately by registering them in a special book.
- 3) Make copies of the original letters under your own hands in the form of copies that download as intended written and explained in the letter concerned.
- 4) Validate the conformity of the photocopy with the original letter.
- 5) Providing legal confirmation regarding the making of deeds.
- 6) Make deeds related to land.
- 7) Make a deed of auction minutes.

In Article 1868 of the Civil Code which states "An authentic deed is a deed in the form determined by law, made by or in the presence of public officials who have authority for that purpose in the place where the deed is made." In practice, it is often found that if a notarial deed is disputed by parties or other third parties, the notary can often be drawn as a party who participated in or helped commit a criminal act, namely making or providing a fake document in the notarial deed. In this case, the notary intentionally or unintentionally creates a deed with a party/addressee with the intent and purpose of benefiting only a particular party or addressee or harming another party, which must be proven in court.

In reality, what happens in society is that there are many parties who provide data and information that does not match the reality to the notary when making a deed. The task of a notary is to convey the data and information provided by the parties without further investigating the veracity of the data. As is known, notaries do not have the authority to carry out investigations or seek material truth from the data and information provided by the parties. This has an impact on the deeds he makes in the future and can become problematic.

B. Problem Formulation

This research focuses on studying legal protection for notaries in making deeds related to the fake documents by related parties. Based on the above background, the following problems can be formulated, namely:

- 1) What are the regulations for making deeds by a notary according to positive law?
- 2) How should the notary apply the prudential principle when making a deed?
- 3) What are the rights of a notary and the position of a deed made based on a fake document?

C. Research Methods

The type of research used in this research is normative legal research. This research examines library materials or secondary data. This type of normative

² Ibid p. 51-52

research is used in this research because this research comes from a void of norms. The absence of norms in question is the absence of norms governing protection for notaries in making deeds with fake documents by parties (in the aspect of criminal acts) in Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Positions Notary Public.

2. Discussion

A. Discussion of Arrangements for Making Deeds by Notaries According to Positive Law

A deed is a writing that is deliberately made to be used as evidence of an event and is signed by the party who made it. According to Sudikno Mertokusuno, a deed is a signed document containing the events that form the basis of a right or obligation, which was made from the start intentionally for proof.³ Based on the provisions of Article 1867 of the Civil Code, a deed is divided into 2 (two), namely an official (authentic) deed and an underhand deed.

According to Article 1868 of the Civil Code, what is meant by an authentic deed is a deed in the form determined by law that is made by or in the presence of an authorized employee (public employee) for that purpose, at the place where the deed is made. Based on this understanding, it can be concluded that a deed can be called an authentic deed if it meets the following requirements:

- 1) The deed is made by or made before a public official appointed by law, for example a notary;
- 2) The form of the deed is determined by law and the method of making the deed must be in accordance with the provisions stipulated by law;
- 3) The deed is made in a place where the public official is authorized to make the deed.
- 4) Authentic deeds also have distinctive characteristics, namely:
 - a) A notarial deed is a deed made by and before an authorized official;
 - b) There is a certainty of the date;
 - c) There is certainty about who is signing and their identity;
 - d) The notary has advised before the deed is made, regarding the legality of the contents of the deed;
 - e) If there is a denial, it must be proven;
 - f) Notarial deeds must be kept secret by the notary.⁴

According to Habib Adjie, a notarial deed can be said to fulfill the requirements as an authentic deed if the deeds made by or before the notary comply with the prescribed form. In this case, the form of a notarial deed is regulated based on the provisions of Article 38 UUJN, namely as follows:

- (1) Each deed consists of:
 - a) Beginning of the deed or head of the deed;
 - b) Deed body; And
 - c) The end or closing of the deed.
- (2) The beginning of the deed or head of the deed contains:

³ Sudikno Mertokusumo, Indonesian Civil Procedure Law, (Yogyakarta: Liberty, 1981), p.110

⁴ A. Kohar, Notaries in Legal Practice, (Bandung, Alumni, 1983), p. 30-31

- a) Deed title;
 - b) Deed number
 - c) Hour, day, date, month and year; And
 - d) Full name and domicile of the notary
- (3) The body of the deed contains:
- a) Full name, place and date of birth, nationality, occupation, title, position, place of residence of the presenters and/or the person they represent;
 - b) Information regarding the acting position of the facing person;
 - c) The contents of the deed constitute the wishes and desires of the interested parties; And
 - d) Full name, place and date of birth, as well as occupation, title, position and residence of each identifying witness.
- (4) The end or closing of the deed contains:
- a) Description of the reading of the deed as intended in Article 16 paragraph (1) letter m or Article 16 paragraph (7);
 - b) Description of the signing and place of signing or translator of the deed if any;
 - c) Full name, place and date of birth, occupation, title, position and residence of each witness to the deed; And
 - d) A description of the absence of changes that occurred in the making of the deed or a description of any changes which may be in the form of additions, deletions or replacements and the number of changes.
- (5) The deed of a substitute notary public and a temporary notary notary official, apart from containing the provisions as intended in paragraph (2), paragraph (3) and paragraph (4), also contains the number and date of the appointment, as well as the official who appointed him.

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- (1) Each deed consists of:
- a. Beginning of the deed or head of the deed;
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- (2) The beginning of the deed or head of the deed contains:
- a. Deed title;
 - b. Deed number
 - c. Hour, day, date, month and year; And
 - d. Full name and domicile of the notary
- (3) The body of the deed contains:
- a. Full name, place and date of birth, nationality, occupation, title, position, place of residence of the presenters and/or the person they represent;
 - b. Information regarding the acting position of the facing person;
 - c. The contents of the deed constitute the wishes and desires of the interested parties; And

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(4) The end or closing of the deed contains:

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b. Description of the signing and place of signing or translator of the deed if any;

c. Full name, place and date of birth, occupation, title, position and residence of each witness to the deed; And

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(5) The deed of a substitute notary public and a temporary notary official, apart from containing the provisions as intended in paragraph (2), paragraph (3) and paragraph (4), also contains the number and date of the appointment, as well as the official who appointed him.

Making an authentic deed that does not go through a structured positive law procedure can be resulted in the deed being legally defective, as happened in the case of the Gianjar District Court decision, with Decision Number 259/Pdt.G/2020/PN.Gin. The parties to the dispute in this case are Plaintiffs I and II who are foreigners against Indonesian citizens as defendants and co-defendants I and II are notaries. The verdict handed down by the panel of judges is as follows:

State:

a. Deed of Agreement Number 10, Dated 20 September 2005;

b. Deed of Agreement Number 12, Dated 20 September 2005;

c. Power of Attorney Deed Number 11, Dated 20 September 2005;

d. Power of Attorney Deed Number 13, Dated 20 September 2005;

The deed made before a Notary (Co-Defendant I) is contrary to the law and therefore invalid, null and void and does not have binding legal force (valid legal force).

B. Discussion of Application of the Prudential Principle by the Notary in Making the Deed

Principle of prudence is a principle that requires Notaries in carrying out their duties and authority to be careful and thorough in order to protect the interests of the public who are entrusted to them as public officials. The application of the precautionary principle is intended to ensure that the Notary always carries out his duties and authority within the correct corridor as mandated by law, as the basis of the Notary's authority. Thus, it is hoped that the public as users of Notary services will also gain high trust in Notaries and without hesitation use Notary services in accordance with their duties and authority. The principle of caution in notarial practice is very important, especially in various matters related to the process of making authentic deeds by a Notary. This is

motivated by the existence of legal problems related to authentic deeds made by Notaries, which are caused by parties who commit acts against the law.⁵

The application of the principle of caution must be carried out in making notarial deeds, namely:

- a) Introduce the person appearing based on his/her identity shown to the notary.
- b) Ask, then listen to and pay attention to the wishes or wishes of the parties.
- c) Examine evidence of letters relating to the wishes or wishes of the parties.
- d) Provide suggestions and create a deed framework to fulfill the wishes or wishes of the parties.
- e) Fulfill all administrative techniques for making notarial deeds, such as reading, signing, providing copies and filing minutes.
- f) Carrying out obligations related to the implementation of notary duties and positions

Forms of the precautionary principle, especially regarding carefully verifying subject and object data regarding the identity of the applicant, in this case the Resident Identity Card (KTP), are not specifically regulated or confirmed in the Law on Notary Positions, as something that is required for Notaries in carry out their duties and authority. In other words, the matters regulated in the Law concerning the Position of Notaries are not yet able to provide clear and definite limits on the extent to which the precautionary principle needs to be applied by a Notary in relation to making authentic deeds in real form. Carefully verify subject and object data against the identity of the viewer. Thus, the Notary can be legally bound regarding this matter and not only bound ethically and morally. Therefore, the Notary is not legally obliged to do this, but if the Notary has good intentions in doing so, then indirectly the Notary has complied with the provisions that bind him, even if only morally.

C. Discussion of Notary's Rights and Position of Deeds Made Based on Fake Documents

In carrying out their duties, notaries have several rights, obligations and restrictions. The rights of a notary include:

- a. Right to leave (Article 25 paragraph (1))
- b. The right to receive an honorarium for legal services (Article 36 paragraph (1))
- c. Right to refuse (Article 14, in conjunction with Article 16 letter f in conjunction with Article 54)

Regarding the right to refuse (*verschoningsrecht*) it is regulated in Article 1909 of the Civil Code, Article 146 and Article 277 HIR. There is no doubt that a notary has no obligation to provide testimony, namely as far as the content of the deed is concerned. The notary's oath of office, as stated in Article 17 PJN and the provisions in Article 40 PJN require notaries not to speak even in court, meaning that notaries are not permitted to provide testimony regarding what is contained in their deed. Notaries not only have the right to speak, but have the obligation

⁵ Kadek Diyah Permatasari and Nyoman Suyatna, 2021, Application of the Principle of Notary Caution in Making Authentic Deeds whose Presenters Use Fake Identities, Journal of Notarial Law, (Udayana University: Bali), Vol.6, No,1

not to speak. This is based on Article 1909 paragraph (3) of the Civil Code which only gives the right to demand the use of the right of recusal but based on a secret oath of office (Article 17 PJN and Article 40 PJN). The obligation to keep confidential which is expressly stipulated in these Articles overrides the general obligation to provide testimony as intended in Article 1909 Paragraph (1) of the Civil Code.

A notarial deed made based on false information does not automatically become null and void. Parties who are disadvantaged by the existence of such a deed must file a civil suit with the Court to cancel the deed. The deed will be void if it has been decided by the court and the decision is a decision that has permanent legal force.

3. Conclusion

Based on the results of the research and discussions that have been carried out, the author makes the conclusion, that are:

- A. Making a deed by a notary according to positive law begins with preparing all the requirements for further systematic procedures to become an authentic deed.
- B. The notary ensures that the administrative data is compliant with the presenting party carefully and thoroughly, either in person or online, so that the principle of prudence in making the deed can achieve its objectives.
- C. Notaries have several rights, including the right to refuse, the right to leave, and the right to receive an honorarium for their legal services. A notarial deed made based on a forged document becomes a null and void deed after being decided by the court. The notary in the case of document falsification by the filing parties does not become a suspect or defendant because he only acts as a passive party.

4. Advice

Notary can be orderly in keeping their deed minutes and minimizing risks, if these things are done, namely:

- A. Making deeds should be carried out systematically in accordance with predetermined requirements
- B. Notary must pay more attention to the accuracy and caution so that the suitability of the document's identity with the applicant's profile can be ensured as to its authenticity.
- C. 3. Notary must ensure the authenticity of the documents required to submit the deed, so that deeds that are null and void by law can be minimized.

5. References

- G.H.S. Lumban Tobing, 1982. Notary Public Regulations, Erlangga, Jakarta, p. 2
- Sudikno Mertokusumo, Indonesian Civil Procedure Law, (Yogyakarta: Liberty, 1981), p.110
- A. Kohar, Notaries in Legal Practice, (Bandung, Alumni, 1983), p. 30-31
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