

LEGAL PROTECTION FOR THE PARTIES FOR FALSE STATEMENTS IN MAKING AUTHENTIC DEEDS

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ABSTRACT

A notary is a public official whose job is to provide legal certainty, order and legal protection through authentic deeds made by and before him, so an authentic deed is the strongest and most complete evidence. An authentic deed also has perfect evidentiary strength because it does not require the addition of other evidence, in other words, an authentic deed has outward, formal and material evidentiary strength. If there is a dispute with the authentic deed, the deed can be canceled or null and void by law. Cancellation of a Notary deed through a court decision must be proven invalid both from the outward, formal, and material aspects. The objective of writing is to understand the legal protection for the parties for false statements in making authentic deeds and the notary's responsibilities for authentic deeds made with fake statements. Legal research was related to the issue of void UUJN (Law on Notary Position) norms. Furthermore, the research approach was carried out through a conceptual approach that analyzed legal concepts. The research results revealed that a notarial deed could be requested to be annulled based on a decision that had permanent legal force determined by the court; hence, it did not have binding force for the parties who made it. The forgery had the consequence of legal responsibility for the Notary. The notary could also be sued for compensation if the violation or mistake committed by the notary caused a deed to become inauthentic and degraded into an underhanded deed. It was a form of protection given to appearers if a Notary did not carry out his duties and obligations.

Keywords: Authentic Deed, False Statement, Legal Protection

INTRODUCTION

Notaries play a role in creating legal certainty for the community in the framework of law enforcement. Notaries are a profession created indirectly from the results of interactions between communities, which then develop to meet the community's needs. The role of a notary in preventing (preventive) legal problems is carried out by having an authentic deed as evidence with perfect evidentiary strength. "A deed is writing deliberately made to be used as evidence". Deeds can be called authentic if they are made before an authorized official.

Based on "Article 1 number 1 of Law No. 2 of 2014 concerning Amendments to Law No. 30 of 2004 on Notary's Position" (hereinafter abbreviated UUJN), "Notary is a public official authorized to make authentic deeds and has other authorities as referred to in this Law". The most important position of a Notary in legal relations relates to his authentic deed.

A public official holds a position, is appointed and dismissed by the state, and is given authority and obligations to fulfill the interests of members of the public in civil law. Therefore, the Notary is a state organ in which the state gives authority to the Notary, through the provisions of UUJN, to make an authentic deed. Notaries, as public officials who have authority in some state tasks, not only work for their interests but are also required to be responsible for meeting the need for services and treatments to the community related to civil law actions.

Notaries, in carrying out their duties and positions, are required to be independent, not dependent on other people, regardless of social status or degree of a person, and have freedom because they stand alone (impartiality and independence) (Rositawati et al., 2017).

The notary makes a deed not based on personal desires but on the free will of the parties with interest. The notary is assigned to verify all information and statements given to him regarding what is wanted and desired by the parties concerned. The deed includes actions or agreements assigned to a Notary based on statutory regulations (Dewi and Ibrahim, 2020).

For instance, a notary in Lhoksumawe named Immran Zubir Daoed, wrote false data on an authentic deed he made; this case was decided by the Lhoksumawe District Court Number 40/Pid.B/2013/PN.Lsm, 29 April 2013. The decision of the Lhoksumawe District Court stated that the Notary was officially proven guilty of violating the crime of forgery. The Lhoksumawe District Court gave him a two-month prison sentence.

Notary violations of the procedure for making authentic deeds are regulated in Article 16 paragraph (1) letter a UUJN, namely, "Notaries must act honestly, thoroughly, independently, impartially and protect the interests of the parties involved in legal actions", UUJN does not provide a significant explanation on "act honestly, thoroughly, independently". Notaries must protect the "parties' interests" in a legal action; it is interpreted as the appearer concerned in making the deed must have legal protection.

Indeed, these provisions can be further developed because the function of public officials, i.e., a notary, has the authority to make something called an authentic deed that has an offense against actions, engagements, agreements, and provisions. These matters have been stipulated in positive law. An explanation of an authentic deed has been contained in Article 1868 of the Civil Code stipulating, "An authentic deed is a deed made in the form determined by law by or before a public official authorized at the place where the deed is made". The law cannot be separated from people's lives. They always have legal regulations, i.e., if there is a community, there are legal norms.

The legal system refers to the protection of all human dignity. The law always regulates interests and balances to prevent conflicts from occurring. There is a law to strike a balance between individual and collective rights. Thus on a legal basis, it must be fair and certain to function properly (Hendra, 2012).

Article 1338 of the Criminal Code stipulates, “All agreements made in accordance with the law apply as laws for those who make them. The agreement cannot be withdrawn other than with the agreement of both parties or for reasons determined by law the agreement must be carried out in good faith”. It can be interpreted that to implement the engagement, it is mandatory to comply with the essence of agreements in good faith by the parties. If there is a dishonest intention between one of the individuals who carried out the binding or the making its implementation, thus, those to comply must get legal protection. With the statement above, the appearer present at the Notary to draw up the deed must be protected by law. Efforts to protect the law against appearers are regulated in the provisions of sanctions in Article 16 paragraph (11) of UUJN, which stipulates that sanctions can be allowed by a Notary who violates the provisions of UUJN.

This explanation asserted that the UUJN does not form criminal sanctions involved in criminal sanctions for notaries who make fake data on authentic deeds. Therefore, UUJN does not have rules regarding criminal sanctions for notaries who have violated UUJN. Hence, a problem is raised: how to regulate the Notary’s responsibilities who commits a violation in carrying out his position and how legal protection is obtained by the appearer for falsifying data carried out by a Notary.

Based on the research background, the research objective is to understand how legal protection is for the parties for false statements in making authentic deeds and understand the notary’s responsibilities for authentic deeds made with fake statements.

In case of the originality, the researchers describe some previous research with similar legal issues, i.e., Nur Arini, with the title “Notary Responsibilities for False Statements Conveyed by Appearers in the Deed of Establishment of a Limited Liability Company, discussed the issue of false statements made by appearers” (Aini and Simanjuntak, 2019). Furthermore, Anita Ratna Sari, through the title “Notary Responsibilities in Making Deeds of Credit Agreements using Fake Letters (Case Study of Decision of the West Jakarta District Court Number 952/PID. B/2019/PN. JKT. BRT.), examined issues regarding making credit agreement deeds with fake letters” (Sari, 2020).

Based on some of the research described previously, there were differences in the research object in this writing which specifically examined legal issues from false statements made by appearers; hence, this research had a renewed idea and urgency to do; thus, appearers presented at the Notary to draw up the deed could be protected by law to prevent violation of the appearer’s rights.

RESEARCH METHOD

The research method was normative law to examine the issue of norms that occurred, i.e., a void in norms that were not regulated regarding criminal sanctions and forms of legal protection for appearers in making deeds. The research employed the statutory and fact approaches. This research contained sources, namely primary, secondary, and tertiary legal materials. The research approach was carried out through a conceptual approach that analyzed the concept of organizing violations by a Notary and the statutory regulatory approach needed in examining legal issues raised by referring to legal provisions (Soekanto and Mamuji, 2001). This research used the document study technique as a collection of legal materials. Then, the data analysis technique used qualitative analysis as a descriptive analysis method, i.e., an activity that surely determined the definition of legal arrangements, which would later be employed to solve topic issues in research.

RESULTS AND DISCUSSION

Legal Protection for the Parties for False Statements in Making Authentic Deeds

The notary makes the deed obligatory to contain information based on the party’s wish or will who comes before him. Suppose there is a legal dispute regarding the deed made by a Notary at a later date; in this case, the Notary is morally obligated to be responsible, and disadvantaged parties can sue the Notary for accountability.

If the Notary is proven to have a mistake related to his deed, the Notary can also be held accountable civilly, administratively, and criminally. From “civil liability for a Notary who commits an unlawful act, the Notary must be held accountable for his actions by being subject to civil sanctions in the form of reimbursement of compensation costs to the aggrieved party for the unlawful act committed by the Notary” concerned. However, “before the notary is subject to civil sanctions, it must first be proven that there has been a loss arising from the unlawful act of the notary against” the parties. Besides, “between the loss suffered and the unlawful act of the notary, there is a causal relationship, and “the unlawful act or negligence of the notary is caused by an error that can be accounted for by the notary concerned”.

Administratively, five types of administration are given if a Notary violates UUJN provisions: verbal warning, written warning, temporary dismissal, respectful discharge, and dishonorable dismissal. It applies in stages, from verbal reprimand to “dismissal with no respect” (Adjie, 2013).

In criminal law, the notary’s responsibility for the deed he made is not regulated in UUJN, but the notary’s criminal responsibility is imposed if the notary commits a criminal act. UUJN only regulates sanctions for violations committed by a Notary against UUJN. The sanction can be in the form of a deed made by a Notary that does not have authentic strength or only has the power as a private deed. The Notary can be given sanctions as a warning to dishonorable dismissal. To ask for this accountability, before a permanent court decision, the notary deed must be considered legal and binding (*presumtio justea causa*) (Wulandari, 2018).

The legal vacuum is related to the absence of explicit provisions on criminal acts made towards the Criminal Code. Hence, the Notary who is dishonorably terminated due to a violation of “the Notary alludes to imprisonment based on a court decision that has permanent legal force as a result of committing the crime of falsification of a deed he made with a sentence of five years in prison or more; thus, the Notary protocol is carried out by another Notary who has been chosen by the Minister of Law & Human Rights based on the Central Supervisory Council”. In addition, the Notary can also be sued for compensation under Article 1365 of the Civil Code if a violation or mistake by the Notary causes a deed to become inauthentic and degrades into an underhanded deed. It is a form of protection given to appearers if a Notary does not carry out his duties and obligations.

The provisions of Article 55 paragraph (1) of the Criminal Code can be used if a notary deed is made using fake data and the notary knows that the data is fake and is still willing to make the deed. Moreover, the notary concerned can be declared a *medepleger*; the notary participated in making the deed and falsifying the data. Suppose using fake data to make a Notary deed is done intentionally; in that case, the Notary can be held accountable based on Article 266 paragraph (2) of the Criminal Code, which stipulates “Anyone who intentionally uses a fake letter whose contents are not true or forged as if it were true and not falsified if the forgery of the letter can cause losses”. Then, the Notary can be held criminally liable based on the provisions of Article 263 paragraph (2) stipulating” using fake data provided by the appearer as the basis for making an authentic deed”.

However, if the Notary does not know the falsity of the data used to make the deed, he is only considered negligent in carrying out his authority. In this case, the appearer falsifies the data, while the Notary uses this fake data for an authentic deed. Suppose the Notary does not intentionally use this fake data because the Notary does not know the falsity of the data. Hence, the responsibility that can be given to the Notary is civil liability. Conversely, if the Notary knows the falsity of the data and deliberately uses it, then the Notary concerned can be subject to criminal liability (Siahaan, 2019).

According to Moeljatno, the theory of criminal responsibility states, “the occurrence of a criminal act a person will be held responsible for these actions if the action fulfills an element against the law and an element of no justification or negation of an unlawful nature for the crime he committed” (Moeljatno, 2003).

Moeljatno conveyed that “only someone capable of being responsible can be held accountable for his actions”, in this case, the Notary can be responsible for his further actions when reviewed, and there is an error element. If the Notary does not know the making of a deed with fake data, then there is no element of error. Conversely, if a notary deliberately makes a deed, even though it is known that the data used is fake, then in this case, the notary must be criminally responsible (Moeljatno, 2003).

The notary’s responsibility regarding the elements of error must be examined in advance to determine whether the notary deliberately made an authentic deed with false data. In that case, a criminal law can be imposed on a notary who deliberately makes an authentic deed using fake data. It is a form of protection given to appearers if a Notary does not carry out his duties and obligations.

Notaries’ Responsibilities for Authentic Deeds Made with False Statements

This authentic definition has perfect evidentiary power. Whoever is involved in the deed, the truth cannot be justified. On the contrary, it is based on a court decision with permanent legal force. There are several formal requirements for an authentic deed, i.e., a deed made in a structure based on statutory rules, held before a Public Official, and has authority over the authentic deed where the deed is made. Adami Chazami ensures that the crime of forgery is a crime that contains untruth factors in objects that are different from the truth (Chazami, 2001).

The notary’s act of committing the criminal act of forgery on an authentic deed that he made cannot be justified and will certainly harm the parties’ interests regarding the authentic deed because the parties related to the notary deed who feel their rights have been harmed as a result of a notary who violates the criminal act of forgery are entitled to carry out a related legal remedy. The aggrieved party may file a lawsuit with the district court to request an authentic deed to be canceled. A notary can also cancel an authentic deed if the appearer knows that there is negligence stated in the deed. Consequently, it can create confusion over the agreement of the appearer; thus, the notary can cancel the deed if a Notary commits a forgery of a deed or a Notary participates in forging a letter which can be defined as a criminal act so that juridically it cannot be tolerated based on criminal provisions but on Civil Code Regulations and UUJN.

When a deed made by a Notary contains a legal defect or contains a criminal act of forgery, then based on the indictment by the party related to the deed, surely the Notary’s deed can be requested to be canceled in the district court and based on a decision that has permanent legal force determined by the district court, it is stated as a non-binding deed for the parties who made it (Sandro and Tjempaka, 2019).

Indeed, the Notary concerned can be held accountable administratively, civilly, or criminally. As for the sanctions of a Notary who falsifies data in making an authentic deed, the sanctions given by the Notary include:

- a. Sanctions according to the law of the Civil Code;
- b. Sanctions according to the law of the Criminal Code;
- c. Administrative sanctions or Notary Code of Ethics.

Administrative sanctions are given if they do not carry out their obligations and commit a ban on positions or violations or deviations from office obligations and a ban on positions. Administrative sanctions are distinguished on:

- a. *Reparative sanctions* are used to correct an act of violation of the rule of law.
- b. *Punitive sanctions* are an additional burden and an action that can give fear to the offender; in this case, can be in the form of a strict reprimand.
- c. *Regressive sanctions* are a risk or result of non-compliance with the rule of law (Adjie, 2013).

Non-compliance with something that is an obligation contained in statutory regulations can cause unexpected non-compliance from statutory regulations. Sanctions are used to enforce a rule that contains an obligation. Sanctions as a form of coercion to give awareness to those who commit violations that their actions have deviated from the applicable legal norms so that the harmony of the rule of law can be maintained. Besides, it can also provide awareness and a deterrent effect to the offenders. The sanction given to the Notary is useful as a form of giving awareness to the Notary that he has committed a deviation in carrying out his duties and that the Notary obeys all the rules determined and stipulated in the laws and regulations. Sanctions also protect people who use their services to avoid things that can harm them.

CONCLUSION

As a legal consequence of the notary deed containing a criminal act of forgery, the notary deed can be requested to be canceled, and based on a decision that has permanent legal force determined by the district court, the notary deed can be canceled and declared a non-binding deed for the parties who made it. Surely, the Notary concerned can be held accountable administratively,

civilly, or criminally. As for the sanction of a Notary for falsifying data in making an authentic deed, the sanctions given by the Notary are administrative sanctions or the Notary's Code of Ethics, sanctions according to the Civil Code, and sanctions according to the Criminal Code. The notary can also be sued for compensation if the violation or mistake committed by the notary causes a deed to become inauthentic and degrades into an underhanded deed. In making an authentic deed, if a Notary does not intentionally use fake data because the Notary does not know the falsity of the data, the responsibility that can be given to the Notary is civil liability. Conversely, if the Notary knows the falsity of the data and deliberately uses it, the Notary concerned can be held criminally liable.

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