

NOTARY RESPONSIBILITIES FOR MAKING DEEDS BASED ON FALSE STATEMENTS (CASE STUDY OF DECISION NUMBER: 782/PDT.G/2020/PN JKT.SEL)

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ABSTRACT

Notaries are public officials (openbare ambtenaren) appointed by the Ministry of Law and Human Rights (KEMENKUMHAM) who have the authority to make authentic deeds. The notary deed clearly explains the rights and obligations of the parties so that the notary deed becomes the strongest and most complete means of evidence because it can prove the truth of its contents compared to a deed made privately. If a Notary as a public official is proven to have made a mistake in the deed they made, then as a result of their actions they can be held accountable both criminally and civilly if it causes a loss. In the case of the South Jakarta District Court decision number 782/PDT.G/2020/PN JKT.SEL a Notary in Tangerang was involved in a civil case of unlawful acts that resulted in the deed's cancellation. A notary deed that is canceled by a court decision does not mean the result of a notary's mistake in making the deed, but can also be caused by an error or negligence on the part of the parties resulting in a lawsuit because the notary has made the deed in accordance with the regulations. The notary as a public official has the right to refuse not to notify the contents of the deed in accordance with the oath of office they uttered and taking the minutes of the deed and calling the notary must go through the approval of Notary Honorary Council as an institution that has the authority to carry out guidance and supervision of the notary and the existence of the right of refusal. become a form of legal protection for Notaries when carrying out their duties. This study uses normative legal research methods, by analyzing court decisions as the primary legal.

Keywords: Notary; Deed; Unlawful Acts; Legal Protection; False Statements

Introduction

Notaries are public officials (openbare ambtenaren) appointed by the Ministry of Law and Human Rights (KEMENKUMHAM) who have the authority to make authentic deeds. The main authority of the Notary is to execute authentic deeds made according to the JN Law in front of a Notary (Abady & Rahayu, 2023).

The existence of the position of Notary in Indonesia certainly cannot be separated from the influence of Dutch law basic concordant, so that the position of Notary has been known for a long time in Indonesia (Harahap, 2020). Regulations related to the position of Notary originally came from the Regulation of 1860 Number 3 Regulations on Het Amby in Netherlands Indie, and is still valid until there are no amendment regulations (Prabawa, 2017)

Notaries in carrying out their positions are guided by the rules stipulated in Law Number 30 of 2004 concerning the Position of Notary as amended by Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 regarding the Position of Notary. Based on Article 1 number 1 of Law 2/2014 it is stated that a Notary is a public

official authorized to make needs authentic and has other authorities as referred to in this Law or based on other laws.

The notary deed clearly explains the rights and obligations of the parties so that the notary deed becomes the strongest and most complete evidence in resolving a dispute that occurs (Flora, 2012). An authentic deed can prove the truth of its contents compared to a deed made under the hand. An authentic deed can prove that what is stated in the deed is true and is the will of the parties (Fatmawati & Halim, 2022). The implementation of the position of Notary is subject to laws and regulations and a code of ethics. The Notary Code of Ethics is a moral principle determined by the Association of Indonesian Notary Associations which must be obeyed by everyone who performs their duties as a Notary. The Notary Code of Ethics in its application contains demands, guidance, moral guidelines, or decency both as individuals and as public officials who provide services to the community for making deeds (FR, 2021). The supervision over the implementation of the code of ethics is carried out by:

- a. At the Regency/City level by Regional Managers and Regional Honorary Councils;
- b. At the provincial level by the regional administrators and the regional honorary council;
- c. At the National level by the Central Executive and the Central Honorary Council.

Forgery of letters is a crime regulated in CHAPTER XII of the Second Book in Article 263 paragraph (1) of the Criminal Code which reads "Anyone who makes a fake letter or forges a letter that can give rise to a right, agreement or debt relief, or which is designated as evidence of something things with the intention to use or order other people to use the letter can cause loss, for forgery of letters, with a maximum imprisonment of six years", in Article 264 paragraph (1) of the Criminal Code it is also stated that forgery of authentic deeds is punishable by imprisonment for a maximum of 8 (eight) years and based on Article 266 paragraph (1) Criminal Code, if you enter a false statement into an authentic deed with the intention of using or ordering someone else to use the deed and cause a loss, you may be subject to imprisonment for a maximum of 7 (seven) years (Prabawa, 2017). As for what is meant by "making a fake letter" is compiling a letter or writing in its entirety, the act of falsifying the letter is carried out by making changes without permission in a letter, either changing the signature or the contents of the letter so that it causes a loss so that the act can be categorized as an unlawful act. Provisions related to unlawful acts in Indonesia are regulated in Article 1365 of the Civil Code. As for according Miriam Darus Badruzaman's rule that the condition of an action is an act against the law as follows:

- a. There must be action, both positive and negative;
 - b. The act must be against the law; (Tanaya, 2018)
 - c. There are downsides;
 - d. There is a cause-and-effect relationship between the illegal act and the loss;
- It is. There is an error (schuld).

If a Notary as a public official is proven to have made a mistake in the deed he made, then as a result of his actions he can be held accountable both criminally and civilly if he causes a loss.

Authentic deed essentially contains formal truth based on the information received by the Notary by the parties, so that a Notary profession requires thoroughness and caution in carrying out their duties because an authentic deed has the perfect and strongest evidentiary power in court. If it is proven that the authentic deed made by the Notary is fake, it can be said that the authentic deed has turned into a private deed and can be

canceled by law. If the elements of error are met in an authentic deed, then the Notary can be held accountable.

Research Method

Types of research

This research uses normative legal research because this research is sourced from secondary data with primary legal materials in the form of UU JN, secondary legal material, namely the South Jakarta District Court Number: 782/PDT.G/2020/PN JKT.SEL and with use other research materials

Research Approach

In this study, the authors use a statutory approach or statute approach. By examining all the regulations in force in Indonesia that are related to the legal issues that are the topic of research.

Types of Legal Materials

Data used in research are:

1. Primary materials consisting of regulations that are related to the topic of this study, namely:
2. The 1945 Constitution of the Republic of Indonesia;
3. Code of Civil Law;
4. Criminal Code;
5. Law Number 30 of 2004 concerning the Position of Notary; Law Number 2 of 2014 concerning Amendments to Law Number 40 of 2004 concerning the Position of Notary; And
6. Regulation of the Minister of Law and Human Rights Number 7 of 2016 concerning the Honorary Council of Notaries.

Secondary legal materials consist of books, journals, scientific papers, websites, and articles. Tertiary legal materials, in this case, the Big Indonesian Dictionary or other sources own related to the topic of this research.

Data Collection Techniques

In this study, the authors used techniques to collect data by conducting a literature study consisting of books, journals, and other supporting documents related to the topic of this research. In addition to the literature study, the author will also conduct interviews Which later can become supporting data in the form of analysis of the results of interviews with someone who serves as a Notary.

Analysis Techniques

The legal material that will be used in this study uses the deduction method by applying logic to one or more statements based on the given premises. In general, analysis by deduction method is concluding a general problem to get something special from that general thing.

Result And Discussion

Research result

Case Description

M. Ismet Abdullah ("Plaintiff") owns a plot of land with an area of 1,989 m² which is located at Jl. Abdul Majid No. 1RT 005/ RW 007, South Cipete Village, Cilandak District, South Jakarta with Certificate Property Rights No. 2765/South Cipete. Then, Kemal Suryo Setyo Utomo ("Defendant I"), Yenni ("Defendant II"), Frederik Tomasowa (Defendant III), and Achmad Fikri ("Defendant IV") jointly made the deed of the Sale and Purchase Agreement (PPJB) No. 12 dated October 19, 2019, at the Notary Office of

Lusi Indriani, S.H., M.Kn. ("Co-Defendant I") of land belonging to the Plaintiff to Noven Yuliat ("Co-Defendant II") without the knowledge of the Plaintiff as the legal owner of the Land Object. The Defendants made the PPJB deed by committing identity theft and falsifying documents for the land sale and purchase transaction, while the falsified documents were:

- a. Identity Card (KTP) with Population Registration Number (NIK) 3174061708490005, is the identity of Plaintiff with a photo that has been replaced with the face of Defendant I;
- b. Identity Card (KTP) with Population Registration Number (NIK) 3174065010550004, is the identity of the Plaintiff's wife with a photo that has been replaced with the face of Defendant II;
- c. Family Card (KK) Number 3174062711141017 made as if Defendant IV was the head of the family;
- d. The marriage book that was forged as if it belonged to the Plaintiff's wife; It is. Certificate Property Rights No. 2765/South Cipete which was forged.

The entire process of transferring land objects owned by the Plaintiff through PPJB Number 12 between the Defendants and the Co-Defendant is an illegal act and makes the PPJB that has been made null and void or at least can be canceled because it was made in violation of the legal terms of the agreement based on Article 1320 KUH Civil. Co-Defendant I was involved as a Notary in the case because he had made a deed based on a stolen identity and fake documents, the deeds that had been made for the sale and purchase transaction process included:

- a. Sale Purchase Agreement (PPJB) No. 12th October 19th, 2019;
- b. Deed of Emptying Agreement No. 13th October 9th, 2019; And
- c. Act of Power to Sell No. 14 on October 9, 2019.

The existence of the land sale and purchase transaction began when Defendant IV, who is a financial administrator, was in debt of Rp. 2,000,000,00.00 (two billion rupiahs) with a third party, which then Defendant IV received advice to take certificate ownership above object Ground from Plaintiff's safe to forge. After checking the Land Objects by a broker and Co-Defendant II, an agreement was made to buy and sell the Land Objects for Rp. 5,000,000,000.00 (five billion rupiahs) and the Plaintiff denied that he had ever received money from a sale and purchase transaction. This is from Co-Defendant II.

If calculated based on the selling price of the Tax Selling Object Value (NJOP) of the Land Object, the selling price should be around IDR 18,000,000,000.00 (eighteen billion rupiahs) and if calculated by the Public Appraisal Service Office (KJPP), the selling price object The land at least is IDR 50,000,000,000.00 (fifty billion rupiah) at the time of liquidation and IDR 75,000,000,000.00 (seventy-five billion rupiah) when the fair price was applied. So that the selling price in the transaction carried out by the Defendants constitutes legal smuggling. The presence of unlawful acts (PMH) committed by the Defendants resulted in legal defects in the process of transferring the Plaintiff's Land Objects.

As a result of the loss as described and accompanied by legal evidence, it is correct for the Plaintiff's actions to file a lawsuit

Judge's Consideration

In giving judges' considerations before deciding, some analyses in giving considerations: ([Sugiannur et al., 2020](#))

- a. The evidence submitted by the plaintiff and the defendant fulfills the material and formal requirements;

- b. Evidence from which party has reached the minimum limit proof;
- c. What are the arguments for the lawsuit and which arguments for rebuttal are proven;
- d. The strength of evidence owned by the parties.

The judge's considerations used in deciding the case described above, are that it is true that the plot of land which is the object of the dispute covering an area of 1,989 m² with a Certificate of Ownership Number 2785 Cipete Selatan Village, Cilandak District, South Jakarta City belongs to the Plaintiff and to the land which is the object of the dispute was PMH by the Defendants. The authentic deed made by Co-Defendant I has evidentiary value outwardly and is the strongest evidence and because the Plaintiff, in this case, feels disadvantaged as a result of the deed, the Plaintiff is obliged to prove the mistake of issuing the deed based on Article 163 HIR/283 RBg. Certificate of Ownership No. 2785 as a supporting document for sale and purchase transactions object This land is proving fake in due the plaintiff was able to provide evidence in the form of an authentic deed and based on Article 1870 Civil Code has perfect evidentiary power and refers to court decisions with numbers as follows:

- a. Excerpt of Decision on Criminal Case Number: 421 /Pid.B/2020/PN.Jkt.Sel;
- b. Excerpt of Decision on Criminal Case Number: 419/Pid.B/2020/PN.Jkt.Sel;
- c. Excerpt of Decision on Criminal Case Number: 4161/Pid.B/2020/PN.Jkt.Sel;
- d. Excerpt of Decision on Criminal Case Number: 417/Pid.B/2020/PN.Jkt.Sel; And It is. Excerpt of Decision on Criminal Case Number: 420/Pid.B/2020/PN.Jkt.Sel.

With what has been described above and the evidence submitted by the Plaintiff and based on the information from Witness I, namely the child of the Plaintiff, and Witness II, namely the son-in-law of the Plaintiff, hereinafter referred to as the Witnesses, which is essentially October 1, 2019, to 15 October 2019, the Plaintiff together with Witness I traveled to Japan and South Korea, so it is not by the date on which the Deed of Sale and Purchase Agreement Number 12, Deed of Emptying Agreement Number 13 and Deed of Power of Attorney to Sell Number 14 were signed, namely on October 9, 2019. So, the legal requirements of the agreement are not fulfilled and the deeds become null and void and can be asked for compensation or can provide the fairest decision (*ex aequo et bono*) to provide legal certainty for the parties and to create law enforcement.

Judge's decision

The principle of freedom of judges in opinion (impartial judge) as in Article 5 of Law Number 48 of 2009 concerning Judicial Power is reflected in the attitude of judges when giving court decisions, a judge must be on the right side, not be one-sided and not discriminate between people. Court decisions must contain 4 (four) principles as follows: (Madinah, 2020)

- a. Contains Clear and Detailed Basic Reasons
All court decisions must contain the reasons and basis for the decision by including the articles of the legislation relating to the case or based on unwritten law or jurisprudence or a legal doctrine. Judges as law enforcers must explore and understand the values that live in society.
- b. Compulsory to Trial All Parts of the Lawsuit
Before deciding on a case, the judge is required to thoroughly examine and adjudicate every lawsuit filed.
- c. Can't grant more than the claim
This prohibition is called *ultra petite parties*, and will be called acting beyond its authority if deciding a case exceeds the *posita* or *petite* of the plaintiff even though it intends to have good faith or for the public interest, which is also confirmed through the Supreme Court Decision Number: 1001 K/Sip/1972 that judges are prohibited from granting things that were not asked for.

d. Spoken in public

Decisions are pronounced in court hearings that are open to the public to ensure that the judicial process that is carried out is avoided from being disgraceful as stipulated in Article 13 of the Law on Judicial Powers.

As described in the description of the case and the consideration of the judges in the Decision of the South Jakarta District Court Number: 782/Pdt.G/2020/PN JKT.Sel it is stated that the Defendants, both individually and jointly, have committed PMH which resulted in the deeds notary in the form of Deed of Sale and Purchase Agreement Number 12 dated 9 October 2019, Deed of Emptying Agreement Number 13 dated 9 October 2019 and Deed of Power of Attorney to Sell Number 14 dated 9 October 2019 declared legally disabled and has no strength legally binding. The court is a place for people seeking justice, so that the Panel of Judges is expected to be able to give decisions in the fairest way possible in order to achieve legal certainty, justice, and expediency.

Discussion

Elements of Unlawful Acts (PMH) Against the PPJB Deed Based on South Jakarta District Court Decision Number: 782/PDT.G/2020/PN JKT.SEL

The results of the Decision of the South Jakarta District Court Number: 782/Pdt.G/2020/PN.JKT.Sel, stating that the Defendants either individually and/or jointly have carried out PMH, and stated the Sale and Purchase Binding Deed Number 12, Deed of Emptying Agreement Number 13 and Deed of Power of Attorney to Sell Number 14 made before Notary Lusi Indriani, S.H., M.Kn. is legally disabled and has no binding legal force. The three deeds are party deeds that are subject to Article 1320 of the Civil Code with the following conditions:

1. Agree those who bind themselves;
2. Ability to make engagements;
3. A certain thing;
4. A legitimate reason.

The objective requirements that are not met here are due to bad faith, as stated in Article 1338 of the Civil Code (Amalia, 2018). Defendant IV as a family member of Plaintiff who has a debt of Rp. 2,000,000,000 (two billion rupiahs) has committed legal smuggling to take advantage of paying his debts by conducting a sale and purchase transaction on object Plaintiff's land. The will and willingness to mutually bind the parties to make an agreement which is one of the legal requirements of the agreement. In this case, where the Plaintiff's figure was replaced and the Plaintiff's identity was falsified and he was not aware of a sale and purchase transaction object Land indicates that there is indeed no will from the Plaintiff owner object Land to make the deeds.

In the description of the case described above, the actions of the Defendants constituted an unlawful act in the form of falsifying authentic deeds by providing false statements with the intention that deeds be drawn up for the purpose of buying and selling transactions object Land has fulfilled the elements of an unlawful act as stipulated in Article 1365 of the Civil Code. If there is a loss that a person gets because of an unlawful act committed by another person, then he has the right to make a claim for compensation by filing a lawsuit for his actions that conflict with the obligations of the perpetrator.

When based on the elements of acts against the law, the actions of the Defendants can be described as follows:

1. There is an action

The actions, in this case, were in the form of signing the Deed of Sale and Purchase Agreement Number 12 dated 9 October 2019, the Deed of Emptying Agreement

Number 13 dated 9 October 2019 and the Deed of Power of Attorney to Sell Number 14 dated 9 October 2019 as well as engineering a sale and purchase transaction object Land.

2. This act is against the law
The actions committed by the Defendants can be categorized as unlawful acts, because they fulfill the following elements:
 - a. Violation of applicable laws;
 - b. Acts that violate the rights of others guaranteed by law;
 - c. Actions contrary to the legal obligations of the perpetrator;
 - d. Acts contrary to morality;
 - e. Actions are the opposite of good attitudes.

The action referred to here is the signing of the deed that violated Article 1320 of the Civil Code regarding the legal terms of the agreement and as described above that the deed was made in violation of the legal terms of the agreement and violated the Plaintiff's rights as the owner object Land. The existence of bad faith to make buying and selling transactions object to Land by falsifying documents, violating the principles and subjective rights of the Plaintiff causing harm to the Plaintiff.

3. There is a loss
Losses in the form of identity theft belonging to Plaintiff by Defendant IV for the purpose of buying and selling object Land, where Plaintiff has no intention to relinquish his rights to the Land Object ([Boris Tampubolon, 2021](#)). The loss that there is a possibility that Plaintiff will lose the right to the Land Object as a result of the existence of the authentic deed, as well as losses material and immaterial.
4. There is a causal relationship between the deed and the loss
The losses described above were of course caused by unlawful acts committed by the Defendants.

Notary Responsibilities for Deeds Based on False Statements

If a Notary is proven to have committed an unlawful act, he must be held accountable for the consequences of his actions, because the Notary in carrying out his profession is guided by the JN Law so that he always behaves carefully and scrupulously. Based on Article 65UUJN, the Notary is responsible for every deed he makes even though the Notary protocol has been submitted to the Notary protocol keeper. Legal protection for a Notary in carrying out his duties and positions is regulated in Law Number 30 of 2004 concerning the Office of a Notary as amended by Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of a Notary. This can be seen when a Notary is involved in a legal case as stipulated in Article 66UUJN, that taking a minuta deed and summoning a Notary must be approved by the Notary Honorary Council as an institution that has the authority to carry out guidance and supervision of Notaries.

A notary as a public official has the right to deny not notifying the contents of the deed in accordance with the oath of office he uttered under Article 16 paragraph (1) letter f of the JN Law, with the permission of the Supervisory Board a Notary can provide information relating to the contents of the deed if necessary for the benefit of court and the right of refusal is a form of legal protection for a Notary who has carried out his duties based on the JN Law and the Code of Ethics, besides that an authentic deed is a state document so that its authenticity needs to be maintained and the contents of the deed must be kept confidential. When the Notary pronounces his oath of office, at that

time he is also fully responsible for all his actions by determining whether a legal action can be included in the deed. (Supriadi, 2023)

Examination of the Notary must be based on the procedure for making a Notary deed, namely (Adjie, 2011):

- a. Perform identification of appeasers, based on the identity shown to the Notary;
 - b. Understand the wishes or desires of the parties (question-and-answer);
 - c. Checking evidence of letters related to the wishes or wishes of the parties;
 - d. Giving advice and creating a deed framework to meet the wishes of the parties;
- It is. Fulfill all administrative techniques for making notarial deeds, such as reading, signing, giving copies and filing of minutes deed; And
- f. Carry out other obligations related to the implementation of Notary duties.

A notarial deed that is canceled by a court decision does not mean the result of a notary's mistake in making the deed, but can also be caused by an error or negligence of the parties resulting in a lawsuit from one of the parties who feel aggrieved. In the Decision of the South Jakarta District Court Number: 782/PDT.G/2020/PN JKT.SEL which was decided on Tuesday, October 19, 2021, is a cancellation of the Notary deed caused by an error by one of the parties and the decision has legal consequences for the Co-Defendant I as a Notary, namely in the form of Sale and Purchase Agreement Deed Number 12 dated October 9, 2019, Deed of Emptying Agreement Number 13 dated October 9, 2019, and Deed of Power of Attorney to Sell Number 14 dated October 9 2019 which must be declared legally disabled and do not have binding legal force, the role of Notary in making the deed only put the interests of the parties into the deed.

In principle, if a notarial deed is made in compliance with the regulations stipulated by laws and regulations and fulfills the formal requirements, then the deed cannot be canceled. However, in this case, the deeds were drawn up based on false information provided by the Defendants for a sale and purchase transaction object The land and of course, the cancellation of the deed has an impact on third parties, namely Co-Defendant II as the buyer and the responsibility for this incident is not borne by the Notary because the Notary has carried out his duties in accordance with applicable regulations and therefore the Notary cannot be prosecuted for the making of the deed made based on false information.

Deeds that are declared null and void, can be canceled and non-existent are the same thing, that is, they both result in an agreement becoming invalid, as for the differences between them is as follows (Mulyoto, 2012):

1. Null for the sake of law, namely the legal action has no legal consequences since the existence of a legal action based on a court decision that has permanent legal force because it does not meet objective requirements;
2. Can be canceled, namely the legal action has no legal consequences since the cancellation. The canceled deed can still be valid and binding on the parties if there is no court decision that has the permanent legal force to cancel the deed;
3. Non-existent, namely those caused by not fulfilling the essential elements of an agreement, and in practice it requires a court decision that has permanent legal force with the same implications as being null and void.

Co-Defendant I as the maker of the deed is obliged to be responsible for his negligence by complying with the court's decision to cancel the deed. However, if the fault lies with the notary who was involved in making the deed intentionally based on the false statement, then the aggrieved party can file a lawsuit against the notary's actions by being able to prove that there was a mistake made by the notary which caused a loss and

between the loss and the mistake. have a causal relationship (Mayra & Simatupang, n.d.) The judge's decision in this case was very appropriate, because the deeds were made based on false information and this action was an act against the law.

Conclusion

A notary as a public official has the right to deny not notifying the contents of the deed in accordance with the oath of office he uttered under Article 16 paragraph (1) letter f of the JN Law, this can be seen when the Notary is involved in a legal case as stipulated in Article 66UJN, that taking minuta deed and summoning a notary must go through the approval of the Notary Honorary Council as an institution that has the authority to carry out guidance and supervision of a notary and the existence of the right of refusal is a form of legal protection for a notary who has carried out his duties based on UJN and the Code of Ethics, in addition to that authentic deed which is a state document so it is necessary to maintain its authenticity and keep the contents of the deed confidential.

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