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Legal Strength of Notarial Deeds Made Based on Fake Documents

¹ Riska Nur Ramadhani, ² Muazzin, ³ Ria Fitri

¹ Postgraduate Student of Master of Notary, Faculty of Law, Universitas Syiah Kuala, Indonesia

^{2,3} Faculty of Law, Universitas Syiah Kuala, Indonesia

Corresponding Author: Riska Nur Ramadhani

Abstract

Article 16 paragraph (1) Law Number 2 of 2014 amends Law No. 30 of 2004 concerning the Position of Notaries. In preparing a public deed, a Notary is obliged to pay attention to the principle of prudence. The notary makes a public deed based on the wishes of the parties and is supported by documents submitted by the parties to the Notary. However, in reality several cases were found where the parties

submitted fake documents to the Notary as the basis for making a deed. The notary is not obliged to check the validity of the subject matter of the documents submitted to him. Therefore, this research explains the legal consequences of a notarial deed made based on a fake deed and the notary's obligations in relation to the deed.

Keywords: Legal Force, Notarial Deed, Fake Document

Introduction

A notary is a public official who has the authority to make authentic deeds and other authorities as intended in the Notary Public Act and other laws.¹ A notary is a public official appointed by the State to carry out State duties in providing legal services to the public in the civil sector, especially regarding the production of evidence in the form of authentic deeds in order to achieve legal certainty,² because the notarial deed is intended by the public to obtain legal certainty.³ However, the public officials referred to are not general officials in their position as State Civil Apparatus (ASN).⁴ Based on Article 1866 of the Civil Code (hereinafter referred to as the KUH Perdata) in conjunction with Article 164 HIR, the evidence recognized in civil cases consists of written evidence, witness evidence, allegations, confessions and oaths.

The evidentiary strength of documentary evidence differs between criminal procedural law and civil procedural law. In criminal procedural law what is sought is material truth or real truth, so the judge is free to use or set aside a letter. Because an official or authentic letter is a letter issued by an authorized public official based on law, it is legal evidence and has perfect value. However, it cannot stand alone considering that there is a minimum limit of proof (Article 183 of the Criminal Procedure Code). Two important things about the strength of documentary evidence are, firstly, that in civil cases, the judge decides the case based on the strength of the evidence from the authentic document which is not weakened by presumptive evidence, whereas in criminal cases the authentic document can be set aside if the judge does not believe it. Second, evidence in civil cases is to search for formal truth, while in criminal cases it is to search for material truth.⁵

The authority of the Notary concerning the creation of authentic deeds encompasses all acts, agreements, and stipulations mandated by statutory regulations or requested by interested parties to be included in these deeds. This ensures the certainty of

¹Habib Adjie, *Sekilas Dunia Notaris & PPAT Indonesia (Kumpulan Tulisan)*, Bandung: Mandar Maju, 2009, hlm.1.

²Nurjanah, "Implementasi Kewenangan Notaris Memberikan Penyuluhan Hukum Sehubungan dengan Pembuatan Akta di Kota Mataram" *Officium Notarium*, Vol. 1 No. 3, Desember 2021, hlm. 593-602.

³Cut Novadilla Halid, *et al.*, "A Ban on Notary Self Promotion as Public Official in Notary and Ethical Code Act", *International Journal of Multicultural and Multireligious Understanding*, Volume 10(1), January 2023, pp.65-73.

⁴Mariana, Darmawan, Suhaimi, Pengawasan Terhadap Notaris Yang Tidak Membuka Kantor, *Kanun Jurnal Ilmu Hukum*, Vol. 21, No. 3 (Desember, 2019), pp., 473-486.

⁵Ali Imron dan Muhammad Iqbal, *Hukum Pembuktian*, Pamulang: Unpam Press, 2019, hlm. 84.

the deed's date, the safekeeping of the deed, and the provision of gross amounts, copies, and quotations of the deeds, provided that these deeds are executed without confirmation or exclusion by other officials as specified by law.

Notaries, serving as public officials appointed and dismissed by the Minister, are anticipated to fulfill their responsibilities and exercise their authority in delivering services to the public, particularly in the creation and ratification of deeds, which falls under the Notary's jurisdiction. Even though they are called public officials, Notaries are not civil servants as intended in the law and regulations governing civil service. They are governed by specific regulatory frameworks pertaining to their positions. While notaries do not earn salaries or pensions from the government, they are compensated through honorariums or fees paid by their clients.⁶

Based on Article 1 point 7 UUN-P, a Notarial deed is an authentic deed made by or before a Notary in the form and procedures stipulated in law. Based on the party who makes it, authentic deeds are divided into 2 (two) types of deeds, namely *relaas* deeds or official deeds (*abtelijke akten*) and *partij* deeds (*partij akten*).⁷ A *relaas* deed is a deed made by a Notary as a public official which contains a description of all events seen and witnessed by the Notary himself and then at the request of the parties it is written down in the form of an authentic deed.⁸ Meanwhile, a *partij* deed or party deed is a deed made before a Notary, a deed made based on the information or statements of the parties before the Notary, and the information or statements are based on the wishes of the parties to be written down in the form of an authentic deed.

As previously mentioned, the Notary's involvement in the deed of *relaas* is as a party who sees and witnesses directly certain events which are then expressed in the form of an authentic deed by the Notary. In making the deed, the notary plays an active role based on what he sees and hears when making the deed. The Notary's involvement in a *partij* deed is not as big as a *relaas* deed, where in making this deed the Notary only hears what is told by the presenter which is supported by formal data related to an event that is desired to be stated in an authentic deed. However, both the *relaas* deed and the *partij* deed have perfect legal force because there is a Notary's involvement in them. Where both deeds are made by a Notary (*deed relaas*) or made before a Notary (*deed partij*).

Notaries make authentic deeds based on the wishes of the parties who make them. Then the Notary frames the wishes of the parties physically, formally and materially in the form of an authentic deed while remaining based on legal rules or procedures or procedures for making the deed, as well as legal rules relating to the legal action in question which is stated in the authentic deed. In making an authentic deed, the wishes of the parties are expressed through a statement and supported by data or documents submitted by the parties to the Notary.

⁶Abdul Ghofur Anshori, *Lembaga Kenotariatan Indonesia*, Yogyakarta: UII Press, 2009, hlm. 16.

⁷G.H.S. Lumban Tobing, *Peraturan Jabatan Notaris*, Jakarta: Erlangga, 1991, hlm. 51-52.

⁸Oemar Moechthar, *Dasar-dasar Teknik Pembuatan Akta*, Surabaya: Airlangga University Press, 2017, hlm. 23.

The documents submitted must be adjusted to the statements submitted by the parties to the Notary. Regarding the documents submitted, the Notary will see whether the documents can be used as a basis for making an authentic deed that can fulfill the requirements for the validity of an agreement as regulated in Article 1320 KUHPerdata. The data or documents are used as supporting evidence for the parties' statements submitted to the Notary. So that the Notary is sure that what is conveyed by the parties is true based on documents (formal evidence). The conditions for a valid agreement in Article 1320 KUHPerdata are:

1. Their binding agreement
2. The ability to create an engagement
3. There is a certain thing
4. There are reasons that are not prohibited.

Condition number one and condition number two are also called subjective conditions, because they relate to the parties entering into the agreement. Meanwhile condition number three and condition number four are called objective conditions, because they are included in the object of an agreement. Subjective conditions are conditions which, if not fulfilled, can result in an agreement being cancelled, while objective conditions are conditions which, if not fulfilled, can result in the agreement being null and void.

In practice, there are parties who deliberately provide fake document to a Notary so that an authentic deed for certain legal acts can be made. This was done because the conditions for carrying out this legal act had not been fulfilled. The fake document was given to the Notary and asked the Notary to make an authentic deed for the legal action he desired. Apart from that, sometimes it's not just documents that are falsified, there are also presenters who present people who are not entitled to be present for the signing of the deed whose presence should be in person or through a power of attorney, but for some reason they are falsified as someone else. Document falsification can be:⁹

1. Writing a letter where some or all of the contents of the letter are inappropriate or contrary to the truth. Making such a fake letter is called intellectual forgery.
2. Make a letter that looks as if the letter came from someone other than the person who wrote the letter. Making a fake letter like this is called material forgery. Whether a letter is fake or not true lies in its origin or the person who wrote the letter.

We can see the regulation of the criminal act of forgery of documents in the provisions of Article 263 KUHP, where in this article it is determined that anyone who makes a fake letter or falsifies a letter which can give rise to a right, obligation or discharge of debt, or which is intended as evidence of something with the intention of using or ordering someone else to use the document as if its contents were true and not falsified, is threatened if such use could cause loss, due to falsification of the document, with a maximum imprisonment of 6 (six) years. It is further stated that the same penalty will be imposed on anyone who deliberately uses a fake or falsified document as if it were genuine, if the use of the document could cause harm.

We need to know that, basically, when making an authentic deed, a Notary has no obligation to look for the material

⁹Adam Chazawi, *Kejahatan Mengenai Pemalsuan*, Jakarta: Rajawali Pers, 2008, hlm. 92.

truth of a document or letter provided by the parties. However, in UUJN-P, namely Article 16 (1) letter a, there is an obligation for Notaries to act in a trustworthy, honest, thorough, independent, impartial manner and safeguard the interests of parties involved in legal actions. The law includes the Notary's obligation to act in a trustworthy, honest, thorough, independent and impartial manner to maintain the authenticity of the deed he or she makes. Apart from that, applying this article is one of the initial protections for the Notary to maintain the authenticity of the deed he or she makes.

According to the stipulations outlined in this article, the Notary is required to exercise caution while executing his duties. It is essential for Notaries to foresee and evaluate the behaviors of individuals who may intentionally or unintentionally engage in actions that are, in fact, forbidden by legal statutes and regulations. This vigilance is crucial to prevent the Notary from facing legal actions, whether civil or criminal, from those who believe they have been harmed by the fraudulent documents that serve as the foundation for the deed.

Numerous instances exist where Notaries create authentic deeds using fraudulent documents presented by involved parties, as illustrated in Supreme Court decision no. 385/K/Pid/2006, which was initially adjudicated by the Sidoarjo District Court. In this particular case, R. Suharto, acting as a Notary, is alleged to have enabled the parties by offering facilities and resources to facilitate the provision of misleading information in the preparation of a sale and purchase agreement deed.¹⁰ In this case the Notary trusted the parties too much and immediately made a deed of sale and purchase agreement based on a power of attorney that had been falsified by the parties. In this case, the document that was falsified by one of the parties was a power of attorney which was used as the basis for making a deed of sale and purchase agreement.

The case of making an authentic deed based on a fake document is also contained in the decision at the Lhokseumawe District Court Number 40/Pid.B/2013/PN.Lsm. In this case, a Notary in Lhokseumawe with the initials IZD made a statement based on a fake document on an authentic deed he made. This case was decided by the Lhokseumawe District Court on April 29 2013 and in its decision stated that Notary IZD was proven guilty of committing the crime of forgery and was sentenced to 2 (two) months in prison.

This case started with Notary IZD helping witness Muslim Gunawan to make changes to the articles of association of the Non-Governmental Organization Sepakat (hereinafter referred to as LSM Sepakat), because the term of management of the LSM Sepakat had expired and also to withdraw the money from LSM Sepakat which was still in Panin Bank. then IZD made deed number 01 dated November 2 2012. At that time the deed should have been signed by Edi Fadhil as the General Chair in the composition of the NGO Sepakat Management, but in reality Edi Fadhil never signed the deed because at that time he was out of town. However, to still be able to disburse money at the bank, the IZD Notary still makes a deed based on the documents brought by the presenters¹¹

¹⁰ Direktori Putusan Mahkamah Agung Nomor 385/K/Pid/2006

¹¹ Direktori Putusan Mahkamah Agung Nomor

The previous discussion explained that based on the party making it, notarial deeds are divided into 2 (two) types, namely relaas deeds or official deeds and partij deeds or deeds of the parties. If we look at the two cases above, the type of deed in that case is a partij deed or deed of the parties.

Based on the background description above, it is interesting to carry out further research regarding the Legal Strength of Notarial Deeds Made Based on Fake Documents.

Research Methods

Scientific research is obtained from the use of appropriate research methods in creating a scientific paper.¹² In order to achieve legal truth, a researcher must be able to understand its function, know knowledge about society, and must be able to integrate it so that it can become a guide in uncovering legal truth. The type of research that will be carried out is normative juridical research.

Based on the problems above, the appropriate approaches used in this research are the statutory approach, conceptual approach and case approach. The cases examined include Supreme Court Decision Number 385/K/Pid/2006 and Lhokseumawe District Court Decision Number 40/Pid.B/2013/PN.Lsm.

Sources of legal materials in this research were obtained from secondary data and primary data to support this research. Secondary data is data obtained by researchers indirectly from the source, but through other sources, or research data sources obtained through intermediaries or indirectly.¹³

Data collection in this research was carried out by studying documents or library materials carried out at the Syiah Kuala University library by collecting secondary data, both primary legal materials, secondary legal materials and tertiary legal materials related to this research. Furthermore, to obtain supporting sources in collecting research data, interviews were conducted with competent parties to obtain information.¹⁴ Interviews were carried out by asking several questions, both written and verbal, to informants and sources freely and privately so that they could become sources of accurate data to answer the problems in this research. Direct interviews with resource persons consisting of Academics from the Faculty of Law, Syiah Kuala University in the field of Civil Law and Notaries.

This research is descriptive analytical in nature, the data that has been obtained from the results of this research is compiled and analyzed qualitatively.

Results and Discussion

1. Legal Strength of Notarial Deeds Made Based on Fake Documents

The previous discussion explained that a notarial deed as an authentic deed has perfect evidentiary power. Everyone, including judges, is bound and must assume that what is in a Notarial deed is true until a party can prove otherwise. Then

40/Pid.B/2013/PN.Lsm

¹² Mursaleh dan Musanef, *Pedoman Membuat Tulisan*, Jakarta: Haji Masagung, 1981, hlm. 31.

¹³ Suteki dan Galang Taufani, *Metodelogi Penelitian Hukum (Filsafat, Teori dan Praktik)*, Depok: Rajawali Pers, 2020, hlm. 215.

¹⁴ Ronny Hanitijo Soemutro, *Metode Penelitian Hukum dan Jurimetri*, Jakarta: Ghalia Indonesia, 1998, hlm 57.

the question is what is the legal strength of the evidence of a Notary's deed whose preparation is based on a fake document. Before discussing the legal strength of proof of a Notarial deed which is based on a fake document, we must first know what a fake document is and who has the authority to determine whether the document which is the basis for making the Notarial deed is a fake document or not.

In the literature, both legal and non-legal, there is nothing that provides a standard understanding of the meaning of a fake document. Therefore, here we will state the meaning of each word. The word forgery is a word that comes from the word fake which means "inauthentic, illegitimate, counterfeit, fake."¹⁵ "Forgery is defined as the process, method, act of counterfeiting." If we look at this definition of fake, a fake document is a document that is not genuine or a fake document. Then who has the legal authority to determine that a document is fake.

In Indonesia, judges are officials who are given authority by the Constitution and Laws to uphold law and justice for society. In Article 1 point 1 of Law Number 48 of 2009 concerning Judicial Power, it is stated that: "Judicial Power is the power of an independent state to administer justice to uphold law and justice based on Pancasila and the 1945 Constitution of the Republic of Indonesia, for the sake of the administration of the State Law of the Republic of Indonesia".

Based on the provisions of this law, judges have the authority to enforce the law regarding whether a document can be said to be fake or not. The judge has the authority to determine whether the document that is the basis for a deed is a fake document or not. So that the judge's decision can provide justice to parties interested in the Notarial deed. According to Gustav Radbruch, there are 3 (three) basic values supporting the law which are referred to as *Idee des rechts* (supporting legal ideals) which include justice, benefit and legal certainty.¹⁶

Judges make decisions based on evidence. In civil law, it is known that one of the most important principles in proving civil cases is the principle of *actori in cambit probatio* contained in Article 1865 of the Civil Code which stipulates that: "Every person who argues that he has a right, or, in order to confirm his own right or dispute a right other people, referring to an event, are required to prove the existence of that right or event."

This principle is also contained in Article 163 HIR or 283 RBG which stipulates that "anyone who claims to have a right or mentions an event to confirm his or her right, or to dispute another person's right, then that person must prove the existence of that right or the existence of an incident." That. Based on the provisions regarding the principle of *actori in cambit probatio* contained in Article 1865 and Article 165 HIR/283 RBG, if someone states that a document is fake then that person has the obligation to prove it in front of a court.

This proof is carried out by first filing a civil lawsuit. Based on the lawsuit, the plaintiff is obliged to prove his arguments

stating that a document is fake. Based on the evidence presented by the plaintiff, the judge has the authority to assess and decide whether a document is fake or not. Furthermore, apart from civil law, related to fake documents, this is also contained in criminal law, namely Article 263 (1) KUHP which formulates two acts, namely making fake letters and falsifying letters.

In principle, these two actions are different. The act of making a fake letter means that before there was no letter, then the perpetrator made a letter that was partly or completely contrary to the truth, in which case the results of the action would be used for his own interests. Forging a letter means that previously there was a letter, but the letter was changed for the benefit of the perpetrator, either in whole or in part. Forgery of a letter also includes falsification of the signature and letter maker, even if the falsification of the signature is at the behest of an interested party

Based on the previous discussion, a Notarial deed has 3 (three) evidentiary powers, namely external, formal and material. If one of the parties can prove that there is a defect in a Notarial deed whether externally, formally or materially, then the judge can determine the status of the legal force of proof of the Notarial deed. In the following, an analysis will be carried out on 3 (three) types of evidentiary strength of Notarial deeds related to their preparation based on forged documents.

a. The power of external evidence (*formele bewijskracht*)

In the previous discussion, it was said that a Notarial deed is an authentic deed because the birth of this Notarial deed fulfills the elements of an authentic deed contained in Article 1868 of the Civil Code and the provisions in the UUJN. If a party denies its existence, it must be proven before the court. This kind of proof must be done through a lawsuit in court. The plaintiff must be able to prove that in appearance the deed that is the object of the lawsuit is not a notarial deed.¹⁷ According to Yahya Harahap, the parameters for determining a Notarial deed as an authentic deed are the signature of the Notary concerned, both on the Minutes and a copy and the beginning of the deed starting from the title to the end of the deed.¹⁸

b. Formal evidentiary power (*uitwendige bewijskracht*)

- 1) Formally to prove the truth and certainty regarding the day, date, month, year, time (time) of making the deed, and the parties appearing, the initials and signatures of the parties or presenters, witnesses and the Notary, as well as proving what was seen, witnessed, heard by a Notary (in the official's deed/minute), and recording the statements or statements of the parties or presenters (in the party's deed). Based on this, if the formal aspect of an authentic deed is disputed by one of the parties, then that party must be able to prove that the formality of the Notarial deed contains inaccuracies, namely regarding.
- 2) There are formalities that are violated regarding the incorrect day, date, month, year, time when the deed was made and/or place where the deed was made.

¹⁵ Siti Malikhatun Badriyah, *Sistem Penemuan Hukum Dalam Masyarakat Prismatik*, Jakarta: Sinar Grafika, 2016, hlm. 74.

¹⁶ Siti Malikhatun Badriyah, *Sistem Penemuan Hukum Dalam Masyarakat Prismatik*, Jakarta: Sinar Grafika, 2016, hlm. 74.

¹⁷ Habib Adjie, *Hukum Notaris Indonesia*, Surabaya: Refika Aditama, 2011, hlm. 18.

¹⁸ M.Yahya Harahap, *Hukum Acara Perdata, tentang Gugatan, Persidangan, Penyitaan, Pembuktian dan Putusan Pengadilan*, Jakarta: Sinar Grafika, 2008, hlm. 545.

- 3) There are formalities that are violated regarding the untruth that what is seen, witnessed and heard by the Notary as stated in the deed is not true.

There are formalities that are violated regarding incorrect statements or statements of the parties given or presented before a Notary, and incorrect signatures of the parties, witnesses and the Notary or there are procedures for making the deed that are not carried out.

Denial of the formal requirements for making a Notarial deed by one of the parties, then that party has the obligation to prove that there were any untruths in making the Notarial deed. If the party is unable to prove the untruth, then the deed must be accepted by anyone as an authentic deed.

c. Strength of material evidence (materiele bewijskracht)

The Notary is not responsible for the contents of the deed as long as the Notary does not participate in determining the contents of the agreement to be made by the parties or is involved in the incorrectness of the statements or documents submitted by the parties. Regarding the proof of the material aspects of the deed, the person concerned must be able to prove that the Notary did not explain or state the truth in the official's deed, or the parties who have said the truth before the Notary are not true and reverse proof must be carried out to refute the material aspects of the Notary's deed.

If the Notary hears the statement of the party concerned, it means that the party concerned has definitely explained this, regardless of the truth of the contents of the statement. All authentic deeds have the power of material evidence and are left to the judge's consideration.

The three aspects mentioned above constitute the perfection of a Notary's deed as an authentic deed and anyone is bound by the deed. Proof of a Notarial deed is sufficient with the deed itself unless there is opposing evidence (tegen bewijs) which proves otherwise or proves the opposite of the deed. Furthermore, the word binding on anyone is that the judge is also bound by the Notary's deed as long as the deed made is in accordance with the provisions for the validity of an authentic deed as regulated in the Civil Code and UUJN.

If it can be proven in a court trial that one of these aspects is not true, then the judge has the authority to determine whether the notarial deed has the power of proof in the trial or not. Because no one person or official has the authority to determine the evidentiary strength of an authentic deed except the judge. Therefore, to determine if the Notarial Deed is downgraded to a private deed or to determine whether or not the agreement contained in the Notarial Deed is valid must be based on the Court's decision.

As in decision Number 385 K/Pid/2006 and decision Number 40/Pid.B /2013 / PN. NGO. In both cases in the decision above it was proven that the Notarial deed was made based on forged documents. The fake document created in decision case Number 385 K/Pid/2006 was a power of attorney from the director of PT. Star Karyasama. According to YK's statement to the Notary (defendant) that he had received power of attorney from the director of PT. Bintang Karyasama as proven by a document in the form of a director's power of attorney made privately which states that the director of PT. Bintang Karyasama gave authority to YK to sell a plot of land belonging to PT. Bintang Karyasama to witness K. Under the pretext of being familiar with YK's wishes, the Notary immediately made a deed of sale and purchase agreement (PPJB) without examining the document and not checking the completeness of other

required documents. Then it was discovered that the power of attorney brought by YK was fake, where YK forged the letter along with the contents and signature of the main director of the PT.

In his decision the judge decided that the Notary (defendant) was not proven guilty in making the sale and purchase binding agreement because it was not proven that the Notary was involved in falsifying the documents that were the basis for making the Notarial deed. In this case the Notary only confirms the wishes of the parties accompanied by supporting evidence in the form of a power of attorney under his or her hand. A notary does not have the authority to declare whether a document in the form of a private power of attorney brought by one of the parties is fake or not. This is also related to the fact that there is no obligation for the Notary to seek the material truth of a document given to him.

Furthermore, the deed of sale and purchase agreement made before a Notary by a court decision is declared null and void by law. With the judge's decision stating that the sale and purchase deed made before a Notary/PPAT is null and void, the legal act of sale and purchase is deemed to have never existed. Next is the case in decision Number 40/Pid.B /2013 / PN. NGO. In this case the Notary was made a defendant and sentenced to 2 (two) months in prison.

In this case, the notary was proven guilty by making a notarial deed based on a fake document. This case began when the complainants came to Notary IZD (the defendant) to make changes to the articles of association of the NGO Sepakat. The Notary has the obligation to verify documents to find out and see who is appearing and whether they are authorized or not to appear before the Notary. This is important because those who have the right to sign the deed are those whose names appear on the deed.

In this case, in the deed of amendment to the articles of association made by the IZD Notary there were 3 (three) names stated before the Notary, namely I, MG and EF. However, in reality EF never came to see the Notary and at the time of signing the deed EF himself was not in Aceh. EF himself is the chairman of the supervisors of the NGO Agree and with the deed of change, EF is no longer the chairman of the supervisors. In his decision, the judge stated that the defendant Notary IZD was proven guilty of committing the crime of forgery of an authentic deed.

Based on the explanation of the case in the decisions above, it can be seen that the legal force of proof of Notarial deeds is contained in court decision Number 385 K/Pid/2006 and decision Number 40/Pid.B /2013 / PN. NGOs are relegated to underhanded deeds. When related to the theory of legal certainty, Sudikno Mertokusumo states that legal certainty is a guarantee that the law is implemented in a good manner. Legal certainty requires efforts to regulate law in legislation made by authorized and authoritative parties, so that these rules have a juridical aspect that can guarantee certainty that the law functions as a regulation that must be obeyed. In this case, court decision Number 385 K/Pid/2006 and decision Number 40/Pid.B /2013/PN. NGOs have provided legal certainty for parties who feel disadvantaged by the existence of a notarial deed by declaring that the notarial deed is null and void.

2. Notary's Responsibilities in Making Deeds Based on Forged Documents

A notary is a public official who has the authority to make

authentic deeds as intended in the UUJN. An authentic deed made before a Notary must not only be in accordance with statutory regulations, but also be in accordance with what the interested parties want, ensuring the rights and obligations of the parties in order to create legal certainty, order and protection for the interested parties.

In carrying out his duties and authority as a Notary, it is not solely for personal interests, but also for the interests of society, and has an obligation to guarantee the truth of the deeds he makes, therefore a Notary is required to be honest, fair and transparent in making a deed to guarantee that all parties directly involved in making a deed are authentic. In carrying out the duties of his office, a Notary must adhere strictly to the code of ethics of the Notary's office, because without it, the honor and dignity of professionalism will be lost and the public will no longer have the trust.¹⁹

If the deed made before a Notary contains elements of negligence, whether intentional or unintentional, on the part of the Notary, where the deed is invalid due to defects or does not correspond to the actual situation, then the Notary is obliged to be responsible for his actions regarding the deed. As a Notary, you need to be very careful in making a deed so as not to violate the Law on Notary Positions or Notary Ethics (Notary Code of Ethics). If this is violated, it could tarnish the image of the Notary as a public official who makes deeds, which is feared by losing the sense of trust, dignity and prestige of the Notary in society.²⁰

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In making an agreement, the parties must fulfill these four elements before the agreement they make is valid as law for the maker and is binding. The first and second conditions are referred to as subjective conditions, where if these conditions are violated it will result in the agreement being cancelled. Meanwhile, the third and fourth conditions are called objective conditions. Violation of this condition results in the agreement made by the parties being null and void by law.

¹⁹ Niken Ariska Handayani dan Aminah, *Op. Cit.*, hlm. 116.

²⁰ Iis Laila Ridawati, "Tanggung Jawab Notaris Atas Penggunaan Dokumen Palsu dalam Pembuatan Akta Otentik, *Jurnal Justitia*, Vol. 3 No. 1, 2023, hlm. 101-102.

²¹ Laurensius Aliman S, *Notaris dan Penegakan Hukum oleh Hakim*, Yogyakarta: Deepublish, 2015, hlm.5.

If we look at the legal position of the agreement in the contents of the Notary's deed, which was made based on a fake document, it violates the provisions of Article 1320. This violation can violate requirements related to skills and agreements, such as in the case of falsifying identities, signatures, certain documents and so on. If this article is violated then the violation will be cancelled.

Apart from that, it can also violate the requirements regarding halal causes, in this case the parties involved in the agreement know that there is fraud in the agreement (the deed was made with a fake document) thus making the agreement not halal in its making. an agreement made based on false reasons is null and void and the deed whose evidentiary power is made is degraded from an authentic deed to a private deed.

Basically, in the process of making a notarial deed, only the party restates what the parties want to be stated in an agreement in a certain form. This means that the Notary is not a party involved in the agreement simply because his position makes the Notary a party who is trusted to express the form of the parties' agreement in an authentic deed. So that in the process of making a deed as long as the Notary does not have the quality of the document provided by the person present, the Notary considers the document to be correct.

In practice, parties may submit fake letters or documents to the Notary. False information given by the person appearing can be in the form of a statement given by the person appearing or by showing invalid documents. Apart from that, a document can also be said to be fake if the signature on the document is forged.

Basically regarding these matters, the Notary at the time of making the deed certainly does not know whether the basis for making the deed (letters and documents) brought by the person present is fake, this can only be known when the signing occurs.²² The notary cannot prove that the document is fake, because it is not his authority to examine the material truth of a document. So as long as the Notary remains firm in making the deed contained in the UUJN, the Notary cannot be blamed.

In the case of fake letters and statements in making an authentic deed given by the person conveying it to the Notary, the material responsibility is the responsibility of the party who gave the fake deed to the Notary. The perpetrator can be prosecuted and must be held accountable for his actions. As is known, the Notary's job is only to express the wishes of the parties in the form of a deed, not to guarantee the material truth of the deeds provided by the parties. The Notary's attitude when examining the deeds brought by the applicant is only to see that the deeds provided by the applicant are valid. For example, ensuring that the KTP brought by those appearing really belongs to them and is issued by the Dukcapil Service or looking at the minutes brought by the parties present at the meeting or brought by the person authorized by the articles of association. In cases like this, it is clear that the Notary only looks at the formality of the deed and does not examine the evidence of the deed.

If in the future there is a party who reports because they feel disadvantaged by the deed, it is discovered and it is proven that it was forged, then as long as the Notary did not

²² Ika Susilawati, *Notaris/PPAT di Kabupaten Aceh Besar, Wawancara*, tanggal 19 Juli 2024.

participate or there was no element of deliberate falsification of the deed., Notaries can protect themselves in court and in the police in legal proceedings. The deed is not reduced to a private deed because the formal requirements have been fulfilled. In the event that the problem has been resolved through a legal process depending on the request of the aggrieved party, the judge can decide that the deed cannot be withdrawn, but the form of the deed remains as the original deed but is invalid between the parties. Or the judge could also state that the deed has lost its evidentiary power to become a private deed.

When examining the UUJN, we find that a Notary has several obligations in the creation of an authentic deed. Breaching these obligations can diminish the evidentiary value of the deed, rendering it a private deed instead. Among these obligations, the violation of Article 38 and Article 39 of the UUJN stands out as particularly significant. Article 38 outlines the formal requirements for a Notarial deed, while Article 39 specifies the qualifications and authority of a Notary. If either of these articles is breached, it indicates that the Notary has failed to adhere to the formal requirements of the deed and has created a deed for an individual lacking the proper authorization.

When examined through the lens of responsibility theory, this framework evaluates the obligation of legal entities or offenders who engage in unlawful or criminal activities to endure costs or losses resulting from their negligence or fault. Therefore, the Notary cannot be held accountable for actions taken based on fraudulent documents. As long as the Notary can prove that he has applied the principle of prudence in making the deed and has fulfilled all the formalities in the form of a deed required in the UUJN, then the Notary cannot be blamed and held responsible. Because the error was not caused by the Notary's negligence or carelessness in making the deed, but rather due to fraudulent actions by the parties who made the contract themselves.

Conclusion

A notarial deed has three evidential powers, namely external powers. These three strengths of evidence provide absolute evidentiary value to the Notary's deed. If any of the things above can be proven to be untrue in a trial, then the judge has the right to determine whether the Notary's deed has evidentiary value in the trial. Therefore, it is the judge's responsibility to determine the probative value of a notarial act based on a forged deed.

The notary is not responsible for a deed made based on a false deed. As long as the Notary can prove that he adheres to the principle of prudence in making the deed and fulfills all the formalities required in the UUJN in connection with the deed, the Notary cannot be accused and held responsible. This is because the error was not caused by the Notary's negligence or carelessness in making the deed, but rather due to fraud on the part of the parties entering into the agreement themselves.

Suggestion

It is recommended that the Notary before making a deed first verify the documents submitted to him which are used as the basis for making the deed. This is to maintain the authenticity of the Notarial deed so that it is not degraded into a private deed.

It is recommended that Notaries be more careful in carrying out their position in terms of making deeds, especially in

receiving supporting documents in making deeds so that the deeds they make still have perfect legal force.

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