

THE LEGAL STUDY OF ALLEGED MALPRACTICES IN THE PROCESS OF MAKING AUTHENTIC DEEDS OF SALE AND PURCHASE

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Abstract

The notaries who are suspected of committing acts of malpractice in their official duties, either intentionally or through negligence and violating Law No. 2 of 2014 concerning the Position of Notaries, can result in losses for the parties and can complain to the Notary Honorary Council and the police. This research aims to determine and analyze the authority of notaries in making authentic deeds, and legal certainty for the parties in an authentic deed. The research method uses normative legal research with a legislative approach that uses legal sources with library methods which are then analyzed to obtain a conclusion. The results and conclusions of the research are that a Notary is a public official who has the authority to make an authentic deed based on attribution or Law No. 2 of 2014, apart from that, authentic deeds are required by statutory regulations in order to create legal certainty, order and legal protection, so that the meaning of legal certainty will be properly actualized if the parties understand what is the purpose of the deed.

Keyword: *Authentic; Deed; Malpractice; Notary; Public.*

A. INTRODUCTION

The sale and purchase transaction of land and/or buildings cannot be separated from the existence of an agreement, where there is an agreement between the parties to bind themselves to each other, with one party handing over an object, and the other party will make payment according to what was previously agreed, as stipulated in Article 1457 Civil Code. Thus, the agreement creates rights and obligations for the parties who make it, in this case the seller and the buyer.¹

Article 1313 BW24 stated that "An agreement is an action in which a person or more agrees to bound himself to one person or more". KRMT Tirtodiningrat defines agreement as a legal action based on agreement between two or more people in order to cause legal consequences that can be enforced by the Law". Based on several definitions above, then agreement is a legal action refers that each agreement is always intended to cause legal consequences.²

1 Fadhila Restyana Larasati dan Mochammad Bakri., Implementasi Surat Edaran Mahkamah Agung Nomor 4 Tahun 2016 Pada Putusan Hakim Dalam Pemberian Perlindungan Hukum Bagi Pembeli Beritikad Baik, *Jurnal Konstitusi*, Vol. 15, No. 4, 2018, page.2.

2 Emanuel Sujatmoko, Indria Wahyuni, dan Bagus Oktavian., Inter Regional Government Cooperation: Administrative Law Perspective, *Indonesian Journal of International Law*, Vol. 14, No. 1, 2016, page. 38.

The implementation of a transfer of rights or sale and purchase agreement must pay attention to the conditions determined by law. Lack of these conditions will cause the deed of agreement to transfer rights to become null and void or can be cancelled. A deed of transfer of rights is declared null and void if the objective conditions of the agreement are not fulfilled. Regarding the deed of transfer of rights, what can be canceled is if the subjective conditions of the agreement are not fulfilled.³

The PPAT Deed is an authentic deed that has strict requirements in terms of preparation procedures, form and formalities. Regarding the type and form of the deed, its implementation and procedures for making it are regulated by the Regulation of the Minister of State for Agrarian Affairs, Head of the National Land Agency Number 3 of 1997 concerning Provisions for the Implementation of Government Regulation Number 24 of 1997 concerning Land Registration, Articles 95 to Article 102. Therefore, PPAT is responsible for checking requirements for the validity of the legal act in question, namely by matching the data contained in the certificate with the registers at the Land Office.⁴

A notary is a public official who is given authority by the State to make authentic deeds. The authority of a Notary is regulated in Article 15 of Law No. 2 of 2014 concerning Amendments to Law No. 30 of 2004 concerning the Position of Notary (UUJN-P) which concerns all forms of acts, agreements and provisions required by statutory regulations and/ or what is desired by the interested party to be stated in an authentic deed. In essence, an authentic deed is the formal truth regarding what the parties have notified to the Notary to be included in the deed.

The authenticity of the deed made by the Notary/PPAT in its preparation remains guided by the provisions of the applicable laws and regulations. Referring to Article 1868 of the Civil Code, a deed can be said to be an authentic deed if it is made in the form as regulated in statutory provisions and is made before an authorized party or official according to the location where the deed was made. Apart from that, the UUJN requires material and formal requirements when making a deed. If these conditions are not met, then it cannot be called an authentic deed, because the authenticity of a deed will be lost and its evidentiary power will change.⁵

An authentic deed made by a Notary/PPAT is proof of ownership which can guarantee legal certainty if a dispute arises one day. Apart from that, an authentic deed is an instrument of legal protection for its owner. In the case of buying and selling land and buildings, now the public is aware of the importance of legality in the process of legal actions that are about to be carried out or have already been carried out and then set them down in a document in the form of an authentic deed. Public awareness of making a deed before an authorized official shows that the public is aware that to

3 R. Subekti., *Hukum Perjanjian*, Jakarta, Intermasa, 2014, page. 20.

4 Boedi Harsono., *Hukum Agraria Indonesia, Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi Dan Pelaksanaanya*, Jakarta, Djambatan, 2017, page. 328.

5 Vivin Pomantow., Akibat Hukum Terhadap Akte Otentik Yang Cacat Formil Berdasarkan Pasal 1869 KUHPer, *Jurnal LexPrivatum*, Vol. 6, No. 7, 2018, page. 90.

obtain protection and certainty for the objects they own, evidence is needed in the form of a deed. A deed can be used as a means of evidence that can clearly determine the rights and obligations of each legal object. The purpose of making a deed is none other than to avoid or minimize the occurrence of problematic or defective legal relationships that can harm legal subjects and society.⁶

Article 54 paragraph (1) of Law No. 2 of 2014 concerning Amendments to Law No. 30 of 2004 concerning the Position of Notaries provides limitations and emphasizes that Notaries/PPATs can only provide, present or announce the contents of deeds, copies of deeds or extracts from deeds for people who have a direct interest in the deed, heirs or people who obtain rights. If the Notary/PPAT does not comply with these regulations, they may be subject to administrative sanctions.

The basic ingredients for building the structure of a notarial deed come from information or explanations from the parties or the results of interviews and evidence provided or based on initial negotiations to then formulate and express it in the form of a notarial deed.⁷

However, not all information provided by the presenter or parties to the notary is true. The applicant may take advantage of the Notary's negligence by providing false information or documents to the Notary, then in this case, the deed produced by the Notary will be incorrect, which could cause losses to one of the parties. If one of the parties feels disadvantaged by the authentic deed, the notary can be sued for committing malpractice, even though the notary has worked according to professional standards in making the authentic deed. This is the basis for the need for legal protection for the position of Notary.

An example of a case of forgery of an authentic deed is that Notary Siti Masnuroh made a deed related to the Wahidin College Foundation. Before single judge Asiadi Sembiring, Siti Masnuroh, who has worked as a notary since 1999, admitted that Deed Number 77 was drawn up on 26 August 2008 at Poniman's request. Masnuroh admitted that at that time only Poniman came to his office. In the notarial deed, six or five other people signed their names. Even though the rules strictly state that all parties must sign an authentic deed before a Notary.

Legal protection for notary positions is regulated in Article 66 paragraph (1) UUJN-P which regulates the institution of the Notary Honorary Council (MKN) as a legal protection institution for notaries. The authority of the MKN is to approve or reject requests from investigators, prosecutors or judges who wish to summon and examine a Notary in court. This authority was previously the authority of the Regional Supervisory Council (MPD), which has now been declared no longer valid based on Constitutional Court Decision Number 49/PUUX/2012.

6 Anke Dwi Saputro (ed)., *100 Tahun INI, Jati Diri Notaris Indonesia: Dulu, Sekarang dan di Masa Mendatang*, Jakarta, Gramedia Pustaka, 2009, page. 15.

7 Habib Adjie., *Kebatalan dan Pembatalan Akta Notaris*, Bandung, Revika Aditama, 2011, page.37.

Regarding the regulation of the position and forms of legal protection provided by the MKN to Notaries, it is not yet clearly regulated in statutory regulations. This has led to unclear norms in law enforcement regarding notary positions related to allegations of malpractice committed by notaries in the process of making authentic deeds.

B. RESEARCH METHODS

This research is normative legal research. Legal research is a process of discovering legal rules, legal principles and legal doctrines in order to answer the legal issues faced. The approach used in this research is the statutory approach, theoretical approach. The legal materials used in this research are: a. Primary legal materials, namely binding legal materials, in writing this law include: UUJN. b. Secondary legal materials. Secondary legal materials in this research as support for the research are textbooks written by legal experts, articles and other sources that are related to supporting this research. c. Tertiary legal materials, Tertiary legal materials in this research were obtained from the Big Indonesian Dictionary. In this research, the type of writing research is normative juridical. Legal material collection techniques The data collection procedure used in this research is literature study, namely collecting data by reading statutory regulations, official documents and literature that is closely related to the problems discussed based on secondary data. This data was then analyzed and formulated as supporting data in this research.

C. RESULTS AND DISCUSSION

1. Notary/PPAT Authority to Make Authentic Deeds

The notary functions internationally under two different legal systems: common law notaries, sometimes known as public notaries, and notaries in legal jurisdictions. Despite the fact that they are both notaries, their roles and powers are distinct. Indonesia follows a civil law system that draws its primary authority from written laws or regulations. According to the law, notaries are required to be able to help and support anyone who requires genuine written documentation of legal situations, events, or activities.⁸

A notary is a public official who has the authority to make authentic deeds. Apart from that, notaries as state officials are able to provide guarantees of certainty, order and legal protection, which requires authentic written evidence regarding circumstances, events or legal acts carried out through certain positions.⁹

Notaries obtain authority from law or attribution. Attribution is the granting of government authority by a law maker to government organs, in other words attributive authority is outlined or originates from the

8 Ikhsan Lubis, Tarsisius Murwadi, Sunarmi, and Detania Sukarja., *Cyber Notary as A Mean of Indonesian Economic Law Development*, *Sriwijaya Law Review (SLRev)*, Vol. 7, No. 1, 2023, page. 63.

9 Nawaaf Abdullah dan Munsyarif Abdul Chalim., *Kedudukan Dan Kewenangan Notaris Dalam Membuat Akta Autentik*, *Jurnal Akta*, Vol. 4, No. 4, 2017, page. 658.

division of state power by the Constitution. Attributive authority is authority that comes from law.

A notary has the capacity to make regulations on every conduct or contract that is stipulated by the law to be documented into an authentic deed. A notary has the right to make an authentic deed, only if it is demanded by interested parties and not by the demand of the notary himself/herself. A notary is also granted an authority to ensure conducts that are not in accordance with the law.¹⁰

The position of a Notary as a public official in Article 1 Staatsblad 1860 Number 3 concerning Regulations on the Position of Notaries in Indonesia (Reglement op het Notaris-ambt in Indonesia), namely having 2 (two) authorities, among others, to make authentic deeds and deeds desired by interested people.¹¹

The granting of authority to a notary is carried out in order to provide "guarantees, protection and certainty of fair law and equal treatment before the law" (Article 28D Paragraph (1) of the 1945 Constitution of the Republic of Indonesia) regarding certain circumstances, events or legal acts which manifest implemented through the creation of an authentic deed (Article 1868 of the Civil Code) under the umbrella of the Notary Position Law. Therefore, with a notarial deed, of course, citizens' constitutional rights to fair legal certainty regarding certain circumstances, events or legal actions have been realized.

Apart from the Notary, another position that has the authority to publish authentic deeds is the Land Deed Drafting Officer (PPAT). PPAT is defined as a public official who has the authority to make authentic deeds regarding certain legal acts regarding land rights or ownership rights to apartment units.¹² A PPAT is given legal authority to provide public services to the community, in making authentic deeds relating to legal actions in the land sector.

To carry out its main duties, a PPAT has the authority to make authentic deeds regarding all legal acts regarding land rights and ownership rights to apartment units located within its work area and the PPAT has the authority to make deeds regarding legal acts specifically mentioned in its appointment.

There are limitations that apply to the authority of Notaries, which are regulated in the laws and regulations governing this position, namely Law No. 2 of 2014 regarding amendments to Law No. 30 of 2004 concerning the Position of Notary. Notary as a position and every position in this country has its own authority. Every authority must have a legal basis, so that the power of each Notary must be strictly and

10 Deviana Yuanitasari., The Role of Public Notary in Providing Legal Protection on Standard Contracts for Indonesian Consumers, *Sriwijaya Law Review (SLRev)*, Vol. 1, No. 2, 2017, page. 188.

11 H. Salim., *Teknik Pembuatan Akta Satu (Konsep Teoritis, Kewenangan Notaris, Bentuk dan Minuta Akta)*, Jakarta, Rajawali Press, 2015, page. 34

12 Urip Santoso., *Pejabat Pembuat Akta Tanah (Perspektif Regulasi, Wewenang Dan Sifat Akta)*, Jakarta, Prenadamedia Group, 2006, page. 61.

clearly limited, and regulated by law.¹³

In this case, it is said to be an authentic deed because apart from the fact that the deed contains a signature and is used as evidence, the process of making it is also carried out in the presence of and/or by a public official authorized to do so in a form determined by law. Because it contains information from public officials that is valid according to law, everyone must acknowledge and trust the contents of the authentic deed as true. The truth of its contents is sufficient to be proven by the form of the deed itself until it can be proven otherwise.¹⁴

In connection with the above, one of the state's obligations to be able to realize this is by appointing a notary institution in its capacity as a public official to make authentic civil deeds for every citizen who needs its services. This institution is needed because to support the success of law enforcement, authentic evidence regarding circumstances, events or legal acts carried out through notaries as officials in the field of making authentic deeds is really needed.¹⁵

2. Legal Settlement of the Parties on Problematic Deeds Made by Notaries

A proper law is regulation that live in social society system, as it means law regulation ought to settle issue of dispute settlement which happen in society. There are two models that often use by society for dispute settlement, litigation method and non litigation method. What means by litigation method is a model of structured settlement by the assistance of court to settle issue between disputing parties from a legal case. While the second model is non litigation, which means that dispute is settle by parties without bringing a lawsuit to the court. The model of non litigation also often recognised as alternative dispute resolution, which includes techniques and act of disagreeing party to settle disputes with the help of third party.¹⁶

In the Amendment UUJN there are no provisions for criminal sanctions imposed on Notaries. The formulation of Article 16 paragraph (1) letter b UUJN Amendment, in carrying out his office, the Notary is obliged to make a deed in the form of a deed minute and save it as part of the Notary Protocol. The explanation of Article 16 paragraph (1) letter b of the Amendment UUJN illustrates that this obligation is intended to maintain the authenticity of a deed by keeping the deed in its original

13 Kholida Nabila, Muhammad Sofyan Pulungan, and Isyana Wisnuwardhani Sadjarwo., Court Decision to Replace the Deed of Sale and Purchase of Land in the Agreement and Switch of Cessie Rights, *Substantive Justice International Journal of Law*, Vol. 4, No. 2, 2021, page. 134

14 Irfan Iryadi., Kedudukan Akta Otentik Dalam Hubungannya Dengan Hak Konstitusi Warga Negara, *Jurnal Konstitusi*, Vol. 15, No. 4, 2018, page. 802.

15 Endang Purwaningsih., Penegakan Hukum Jabatan Notaris Dalam Pembuatan Perjanjian Berdasarkan Pancasila Dalam Rangka Kepastian Hukum, *Jurnal Adil*, Vol. 2, No. 3, 2011, page. 323-324.

16 Patricia Audrey Ruslijanto., Transforming Landscapes: How ODR Reshaping The Prospect of Dispute Settlement in a Connected World, *Indonesian Journal of International Law*, Vol. 16, No. 1, 2018, page. 89.

form, so that if there is forgery or gross misuse, the copy or quotation can be immediately identified easily by matching it with the original. Article 16 paragraph (11) letter d UUJN Amendment jo. Article 12 letter d and the Elucidation of Article 12 letter d of the Notary Public Law state that if a Notary violates these obligations, then it can be said to have committed a serious violation and therefore can be subject to sanctions in the form of dishonorable dismissal from his position by the Minister of Law and Human Rights proposed by the Central Supervisory Council.¹⁷

The position of a Notary as a functionary in society is still respected today, for this reason a Notary as a public official in carrying out his duties must be able to provide maximum service to the community, so that the interests of all parties can be facilitated in an authentic deed. In this case, the Notary must be able to prevent problems that arise in the future through the deeds he makes, because if one of the parties feels disadvantaged or is dissatisfied with the authentic deed made by the Notary, then it is possible that the Notary will be sued or sued by the party who feels aggrieved.

The form and format of a deed made before a Notary is determined by the Law on the Position of a Notary, which contains the identity of the parties or parties, also includes the identity and position of the notary, the Notary as a public official, has the authority to make a deed (notary); and the deed is evidence that has perfect evidentiary power. Notarial deeds made using the correct procedures cannot be cancelled; The function of a notary as a public official is only to record (write) what is desired and stated by the parties appearing before the notary, there is no obligation for the notary to investigate materially what is stated by the parties appearing. Application of sanctions for the criminal act of forgery of an authentic deed, formally a Notarial deed, made by a Notary (making a fake document); falsifying authentic deeds and letters which can cause losses, is a measure to hold the notary accountable, whether his authority in making deeds is correct according to the law or not.¹⁸

A party who feels disadvantaged by a deed made by a Notary can prosecute the Notary criminally, because there are many factors that can ensnare the Notary in committing a criminal act related to making an authentic deed, for example the Notary is suspected of having helped commit a criminal act by making a fake document or inserting false information into an authentic deed. In this case, the Notary must be careful in formulating the wishes or desires of the parties into an authentic deed, because it does not rule out the possibility that the parties who come before the Notary have bad intentions, which actually takes advantage of the Notary's carelessness or inaccuracy in formulating the parties' wishes. Even though the Notary has worked according to

17 M. Jamil., Pemalsuan Akta Autentik Sebagai Aspek Pidana Notaris, *Jurnal Bestuur*, Vol. 7, No. 2, 2019, page. 118.

18 Iin Purwaningsih., Pemalsuan Akta Autentik Yang Melibatkan Notaris", *Jurnal Hukum dan Kenotariatan*, Vol. 3, No. 1, 2019, page. 9-10.

standards, there is still the possibility that there are parties who feel dissatisfied or feel disadvantaged regarding the deed made by the Notary and may be suspected of having committed a violation or error (malpractice) in making the authentic deed.

3. Legal Certainty for the Parties in an Authentic Deed.

As a civil law notary in the state of law (*rechtstaat*) Indonesia, authentic deed products made must be able to be authentic legal evidence and reflect legal products that can provide certainty and legal protection for all Indonesian citizens (in general) and for the parties (at especially). The trust given by the parties to the civil law notary in translating a legal act into an authentic deed must be able to meet the needs of the parties for the legal certainty and protection of the law itself, both to those that have been seen now and the things that have not yet been seen and must be anticipated. Therefore, it is very important for a civil law notary to be able to constrict the deed based on a philosophical, constitutional and juridical foundation (philosophy, constitutional and juridical of paradigm), as appropriate to make a product of legislation. It is said that it should be appropriate like making a product of legislation because in truth the authentic deed product will later become a different but inseparable law binding on the parties (*pacta sunt servanda*).¹⁹

Especially in the context of making authentic deeds, deeds made by notaries can be categorized into the group of rights to legal certainty and justice. This is based on the understanding that the Unitary State of the Republic of Indonesia is a legal state based on Pancasila and the 1945 Constitution of the Republic of Indonesia. The principle of the rule of law guarantees legal certainty, order and protection which has truth and justice as its core.

According to Armansyah, which states that a Notary can be responsible for the law in the form of civil, criminal or administrative (code of ethics). Based on the executorial trial by the MPPN, the notary can be disrespectfully discharged, as long as the conviction is proven to be at least 5 years in prison. If it is reported criminally, then it becomes a suspect, in court it becomes a defendant until the end of the trial it turns out to be proven guilty by the judge, then that is where the accountability of a Notary is in criminal matters. If the liability is civil, the sale and purchase binding agreement that becomes a Notary product can be cancelled, the judge punishes the defendant, in this case the Notary is proven to have committed negligence in his position and has committed an unlawful act, then the claim is material or immaterial compensation in accordance with the demands of the plaintiff, while the liability Administrative code of ethics, the most severe punishment is disrespectfully dismissal, administrative authority is in the hands of the

19 David Tan., Controversial Issues On The Making Of Notarial Deed Containing Chained Promise (Beding Berantai) With The Freedom of Contract Principle, *JILS (Journal of Indonesian Legal Studies)*, Vol. 4, No. 2, 2019, page. 330.

assembly and is executorial in nature.²⁰

The existence of a sale and purchase deed made by PPAT which is an authentic deed. Of course, this is related to the legal strength of an authentic deed made by the PPAT. Ideally, the sale and purchase deed made by the PPAT has legal force, so it contributes to legal certainty in land law, because it is a product of a government institution, in this case the PPAT, so it is proof of the transfer of land rights that cannot be contested anymore.²¹

The making of an authentic deed is required by statutory regulations in order to create legal certainty, order and legal protection, so that the meaning of legal certainty will be properly actualized if the parties understand the purpose of the deed. baik.²²

The aspect of legal certainty for holders of rights to land and buildings is realized in the provision of proof of rights which clearly shows the type of right to the land, the subject of the right and the object of the right (location, area and boundaries). Regulations that are comprehensive or complete and do not provide opportunities for various interpretations and contribute to aspects of legal certainty.²³

Legal certainty refers to the application of law that is clear, permanent, consistent and consequent, the implementation of which cannot be influenced by subjective circumstances. An indicator of legal certainty in a country itself is that there are clear laws and these laws are implemented well by judges and other legal officials.²⁴

The principle of civil law is used to answer the law from Article 16 paragraph (1) letter UUJN regarding the authority of responsibility and number of The issue of acting carefully is still unclear and gives rise to multiple interpretations, so it needs to be regulated further so that later the notary can act carefully and prevent legal problems regarding the deed he makes.²⁵

D. CONCLUSION

This research discusses and examines the authority of notaries in making authentic deeds, and legal certainty for the parties in an authentic deed. Therefore, the result of this writing is that the Notary has the authority to make an authentic deed based on the law in order to create

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- 20 Tetti Samosir, Indah Harlina, Fikri Miftakhul Akbar., The Legal Implications of Forgery Sale & Purchase Binding Agreement by Notary Public, *Jurnal Akta*, Vol. 9, No. 4, 2022, page. 449.
 - 21 Indri Hadisiswati., Kepastian Hukum Dan Perlindungan Hukum Hak Atas Tanah", *Journal Ahkam*, Vol. 2, No. 1, 2014, page 121
 - 22 Felix., Perlindungan Hukum Atas Kriminalisasi Terhadap Notaris, *Jurnal Masalah-Masalah Hukum*, Vol. 46, No. 3, 2017, page 219.
 - 23 Asari Putri Kindangen., Tinjauan Yuridis terhadap Kasus Warga Negara Asing yang Memiliki Hak Milik atas Tanah melalui Perjanjian Nominee, *Lex Et Societatis*, Vol. 7, No. 2, 2019, page. 38.
 - 24 Abdul Rachmad Budiono, *Pengantar Ilmu Hukum*, Malang, Bayumedia Publishing, 2005, page. 22
 - 25 Ida Bagus Paramaningrat Manuaba, I Wayan Parsa, and I Gusti Ketut Ariawan., Prinsip Kehati-Hatian Notaris Dalam Membuat Akta Autentik, *Acta Comitatus*, Vol. 3, No. 1, 2018, page. 63.

legal certainty, order and legal protection, so that the meaning of legal certainty will be properly actualized if the parties understand what is the purpose of the deed. Apart from that, if one of the parties feels disadvantaged or is dissatisfied with the authentic deed made by the Notary, it is possible that the Notary will be sued or sued by the party who feels disadvantaged.

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