THE 5th INTERNATIONAL CALL PAPER
Legal Reconstruction in Indonesia Based on Human Rights

Imam As Syafei Building
Faculty of Law, Sultan Agung Islamic University
Jalan Raya Kaligawe, KM.4 Semarang, Indonesia

UNISSULA PRESS
The 5th PROCEEDING

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Jalan Raya Kaligawe, KM. 4 Semarang, Indonesia

Diterbitkan oleh :
UNISSULA PRESS

ISBN. 978-623-7097-23-5
The 5th PROCEEDING
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Hal I-X, 1-358
Cetakan Pertama Tahun 2019
Penerbit PDIH UNISSULA
Jl. Raya Kaligawe Km. 4 Semarang 50112
PO BOX 1054/SM,
Telp. (024) 6583584, Fax. (024) 6594366

ISBN. 978-623-7097-23-5
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Legal Reconstruction in Indonesia Based on Human Right
First of all, let’s say Thanks to Allah, who has been giving us guidance, happiness, healthy, and mercy, so we can finish this conference proceeding without any obstacles. Praise and salutation upon our prophet Muhammad saw the last messenger, the best figure of this universe; the person who was able to save us from Jahiliyah era.

We would like to extend our thanks to the invited speakers: Prof. Henning Glaser from Thammasat University, Prof. Shimada Yuzuru from Nagoya University, Hilaire Tegnan, Ph.D from Sorbone University, Prof. Topo Santoso From Indonesian University, and Dr. Sri Endah Wahyuningsih, S.H., M.H from Sultan Agung Islamic University.

This was our fourth International conference and call for paper held by Faculty of Law, Sultan Agung Islamic University. This annual conference tries to gain any information and studies done by academician and practitioner in the concerned field to be discussed as guidelines to exchange and talk about views on the most important recent on Legal Construction and Development focusing on The Role of Indigenous and Global Community in Constructing National Law happens in both developed and developing countries and its role in shaping a good future, and to discuss the challenges and practical aspects in integrating competition law enforcement and guidelines to develop legal state in accordance with the diversity of all countries around the world. We hope this conference brings benefit for both participants and our faculty.

We are pleased to have your critique, suggestion and correction in order to make us better. Finally, we do thanks to all who helped this conference. May Allah guide us to always develop useful knowledge for human being.
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Role of Notary / PPAT in Making Authentic Assets Towards False Document Description

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Abstract

Actions carried out by a party that has falsified document information constitute an act that results in detrimental to the other person or the party concerned. The approach to the problem used in this paper is to use a normative juridical approach. Based on the results of the research and discussion, it can be concluded that: The responsibility of the perpetrators of falsifying document information in the Decision of the Tangerang City District Court Number. 721 / Pdt.G / 2014 / Pn.Tng fulfilled the element of responsibility for the perpetrator of the criminal act of falsifying the document's information, because the defendants had a deliberate element in not falsifying the document's information, because in this case the defendant was the main perpetrator, the party who ordered do, parties who participate in doing it, parties who deliberately persuade to do so, and parties who help do: The basis for the judge's consideration in the decision of the Tangerang City District Court Number. 721 / Pdt.G / 2014 / Pn.Tng, namely with juridical considerations in the form of statements of the accused, evidence and legal facts revealed in court; and It is known that the relevant Notary (Co-Defendant I), is a Notary who is responsible for the deed, is honest, independent and impartial, and maintains the honor of the Notary's position by being professional to come to trial when he is summoned as a co-defendant I. to punish Defendants I, II, and III in accordance with the petition submitted by the Plaintiff, namely reversing the names of the two land certificates, namely the object of the case onto the Plaintiff's name again.

Keywords: Role of Notary, Falsification of Information, Authentic Deed

A. INTRODUCTION

Authentic deeds are the strongest and most fulfilling evidence that has an important role in every legal relationship in people's lives. In various business relations, activities in banking, land affairs, social activities and others, the need for written proof in the form of authentic deeds is increasing in line with the growing demands for legal certainty in various economic, social and other relations, both at the national level, regional and global.

An authentic deed that clearly defines rights and obligations, guarantees legal certainty, and is also expected to avoid disputes. Even though in reality the dispute process cannot be avoided, the authentic deed which is the strongest and fulfilled evidence provides a real contribution to the settlement of cases cheaply and quickly.¹

The authentic deed basically contains the formal truth in accordance with what the parties have notified to the Notary. However, the Notary Public has the obligation to enter data that what is contained in the Notary Deed has really been understood and is in accordance with the wishes of the parties, namely by reading it so that the contents of the Notary Deed are clear, and providing access to information including access to laws and regulations related parties for the signing of the Notary Deed. Thus the parties can decide freely whether to approve or not to approve the contents of the Notary Deed that they have signed.²

² GHS, Lumban Tobing, *Peraturan Jabatan Notaris*, Jakarta Erlangga, p. 53
Notarial Deed is an agreement that binds the parties making it, therefore the legal requirements of an agreement must be fulfilled. Article 1320 of the Civil Code (KUHPPerdata) which regulates the terms of the validity of the agreement, namely:

- Subjective requirements, namely requirements relating to the subject who entered into an agreement or made an agreement, which consisted of agreeing and being competent to act to commit a legal act; and

- Objective requirements, namely conditions relating to the agreement itself or relating to objects that are made into legal acts by the parties, which consist of certain things and causes that are prohibited.\(^3\)

If the subjective conditions are not fulfilled, the agreement can be canceled (vernietigbaar) as long as there is a request from certain people or interested parties. This subjective condition is always overshadowed by threats to be canceled by the parties concerned. If it turns out that in the future the parties feel there is something that violates the subjective conditions and / or there is no agreement that is able to bind the parties, then it can be resolved through a court decision. If the objective conditions are not fulfilled then the agreement is null and void (nietig), without the need for a request from the parties, thus the agreement is deemed never to exist and is binding on anyone.\(^4\)

The Notary Deed which has been used as an underhanded Deed and or the Notary Deed can be canceled by a Court Decision, will result in juridical responsibility for the Notary against the canceled Deed. This is understandable, because it results in losses for the parties concerned with the Deed, so that the person concerned is not entitled to claim damages. In addition, in making a deed, it often results in civil or criminal sanctions for the party making the deed, for example in the preparation of a certificate and / or other documents for people who submit to the Civil Code, preceded by the making of the Deed. a statement by the party as partij acte, regarding the allegation of including information fake in an Authentic Deed, this problem needs to be clarified through a legal research. With the act of falsifying these documents, in his actions it has consequences for juridical, administrative and moral responsibility for the parties and the notary concerned.\(^5\)

From the problems listed in the background discussion above, it can be stated that several problem identifications will be discussed in the next discussion chapter, including the following:

1. What is the Role of Notary / PPAT in Making Authentic Deed Against Falsification Document No. 751 / Pdt.G / 2014 / Pn.Tng. Tangerang City
2. What are the Constraints or Solutions in Resolving Cases for Making authentic Deeds against falsification of documents No. 751 / Pdt.G / 2014 / Pn.Tng. Tangerang City
3. How are the sanctions imposed on the Defendant in the Case of Falsification of Document Information in the Making of an Authentic Deed, Supreme Court Decision No. 751 / Pdt.G / 2014 / Pn.Tng. Tangerang City

**B. DISCUSSION**

1. **Role of Notary Public Role of Notary / PPAT in Case of Information Falsification Authentic Deed Documents Against the Decision of the Tangerang City District Court No. 751 / Pdt.G / 2014 / Pn.Tng**

Any negligence that results in a Notary Deed is invalid and results in the Deed being made null and void, due to unfulfilled formal and material requirements based on the applicable provisions, but if the parties keep signing the Deed, then the Deed

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\(^3\) Civil Code, Article 1320

\(^4\) Habib Adjie, *Hukum Notaris Indonesia Tafsir tematik Undang-Undang Nomor 30 Tahun 2004 Tentang Jabatan Notaris*, PT. Refika Aditama, 2009,

\(^5\) R. Soenarto Soedibroto, *KUHP dan KUHAP dilenkapi Yurisprudensi Mahkamah Agung dan Hoge Raad*, Jakarta : Raja Grafindo Perkasa, 2001, hal 159-160
becomes an Underhanded Deed but still legitimate; The initial obstacle was when Mr. Yohanto, the Bachelor of Economics who was Defendant II, had the status of DPO (People Search List) by the Police and his whereabouts were no longer known, both inside and outside the territory of the Republic of Indonesia. Without the abuse of circumstances, the agreement would not be occurs, which can cause losses in any form and the abuse of the circumstances in question will cause harm to either party.

The common legal indication that occurs in connection with the Notary's accountability to the Deed he makes is the questioning of the Notary Deed by the party / party and often the Notary is withdrawn as a defendant / co-defendant, even as a party who participates in (medeplegger) or is withdrawn as a party helped commit (medeplechtig) in a criminal act. The evidence of the Deed under the hands and the Authentic Deed of both must fulfill the formulation regarding the validity of an agreement based on Article 1320 of the Civil Code, materially binding the parties that make it Article 1338 of the Civil Code, as an agreement that must be kept by the parties (pacta sunt servanda). In the case of a cancellation of an agreement / or an Authentic Deed, the use of reasons for the existence of coercion, error or deception is not required, because it causes material and material harm to the parties concerned. In order to obtain legal certainty, it is sufficient for a court decision to be proven of any deviant or misused elements.

2. Constraints or Solutions in Resolving Cases of Forgery Certificate of Authentic Deed Against the Decision of the Tangerang City District Court No. 751 / Pdt.G / 2014 / Pn.Tng. Tangerang City

The essence of the problem of the civil lawsuit against Mr. Endar Rahta Syarkoni, who in this case is the husband of Mrs. Rizki Ariesta, who has also been declared as Defendant I, stems from their unharmonious marriage and also broke up due to divorce, which was decided at the Tangerang City Religious Court. On 26 June 2014 (twenty-six June two thousand and sixteen) as stated in the divorce certificate Number 1140 / AC / 2014 / PA / Tng;

Mr. Endar Rahta Syarkoni has taken a certificate for 2 (two) parcels of land without the knowledge of the Plaintiff, namely Mrs. Rizki Ariesta, which ended with reporting the lawsuit to the Tangerang City District Court because the certificate had been reversed, on behalf of Defendant II, Mr. Yohanto Muhammad Roy, Bachelor of Economics.

Defendants I, II and III who did not attend the trial thwarted the mediation efforts that were going to be carried out and Defendant II, whose whereabouts were unknown, also delayed the trial process.

3. Sanctions Imposed Against the Defendant In the Case of Falsification of Certificate of Authentic Deed Documents Against the Decision of the Tangerang City District Court No. 751 / Pdt.G / 2014 / Pn.Tng. Tangerang City

In accordance with the principle of the burden of proof (bewijs last) which is the obligation and burden for the plaintiff to prove the truth of the arguments of his lawsuit, in the acts committed by defendants I, II and III by entering and / or placing false information in an authentic document or deed.

In general, according to the principles of criminal law regarding criminal responsibility, the Notary should also be subject to criminal sanctions if he states in his Act the statements of the Parties, while he knows from the Parties themselves that the information is untrue, or the Deed states the untruth in the head of the Deed or the contents or the cover of the Deed, but the Notary shall still include in his Deed any information or documents that the Notary himself knows is untrue.6

6 Tan Thing Kie, Studi Notariat Beberapa Mata Pelajaran dan Serba Serbi Praktek Notaris, Jakarta, Ichtiar Baru nan hoeve, 2007, page 572, explained that for the European group and those who are subject to
C. Conclusion

1. The role of the Notary / PPAT in the case of forgery of authentic deed document statements against the decision of the Tangerang City District Court No. 751 / Pdt.G / 2014 / Pn.Tng As a Public Official, the duties and authorities given by the State must be carried out by the Notary as well as possible and precisely. Mistakes and abuses committed by related parties can cause disruption of legal certainty and other losses, especially such actions can cause harm to the defendant. Therefore, continuous guidance, development and supervision efforts are required for each Notary to further develop the principles care and thoroughness.

2. Constraints and Solutions in Resolving Cases of Falsification Certificate of Authentic Deed Documents Against the Decision of the Tangerang City District Court No. 751 / Pdt.G / 2014 / Pn.Tng. Tangerang City In everything that is done by the parties, they must be held accountable, by being present in every trial and accepting every decision decided by the judge. For the parties and / or society in general, be honest in saying or acting not to deceive or deceive the related parties which in the end will cause losses to some parties.

3. Sanctions Imposing Against the Defendant Case of Falsification Document Statement Authentic Deed Against the Decision of the Tangerang City District Court No. 751 / Pdt.G / 2014 / Pn.Tng. Tangerang City To grant the Plaintiff's claim entirely;

the Civil Code in Indonesia, a Certificate of Inheritance made by a Notary Public because the education of Notaries has always been specialized in the field of codified Law.
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Kitab Undang-Undang Hukum Perdata (Burgerlijk Wetboek), ditermahkan oleh R. Subeki dan R Tjitrosudibjo, Pradnya Paramita, Jakarta 2001