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The Legal Protection for Notaries against Making of Deeds Based on Document Following by Acceptors

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Abstract. *Notaries, within their limitations, often cannot anticipate the parties who want to deliberately take actions that are prohibited by the rule of law. The notary is not an investigator of the deeds he makes, but is only limited to making authentic deeds against the wishes of the parties in his position as a public official.. This research aims toknow and analyze about Legal Protection for Notaries against Making Deeds Based on Forgery of Documents by Appearers. (Study of the Decision of the Supreme Court of the Republic of Indonesia Number: 385 K/PID/2006), and to find out and analyze the Legal Position of Deeds made by Notaries Based on Fake Documents by Appearers. The approach method in this study is the normative juridical approach. The specification of this study uses descriptive analysis specifications. The data required includes primary data, which consists of the 1945 Constitution; Act No. 2 of 2014; Criminal Code; The Criminal Procedure Code; Code of Civil law; Notary Code of Ethics, as well as secondary and tertiary data containing books and other supporting documents. Taken by the method of data collection by way of library research (Library Research). Methods of data analysis using qualitative methods. Based on the research concluded Legal protection for Notariesin the Case of the Decision of the Supreme Court of the Republic of Indonesia Number 385 K/Pid/2006 the Judge stated that the Defendant's actions were proven but not a criminal act, so that the Defendant was released from all lawsuits and that in the a quo case, the Defendant as a Notary was not authorized to examine whether or not the Underhand Power of Attorney submitted by the Appellant. The legal status of a deed made by a Notary based on fake documents is null and void.*

Keywords: Documents; Fake; Notary; Protection; Public.

1. Introduction

Notary as a public official is an honorable position given by the State in an attributive manner through a law to someone he trusts and the person who

appoints him is the Minister of Law and Human Rights, according to Article 2 of Act No. 30 of 2004 concerning the Position of Notary as amended with Act No. 2 of 2014 concerning Amendments to Act No. 30 of 2004 concerning the Position of Notary (UUJN).
With the appointment of a Notary by the Minister of Law and Human Rights, a Notary can carry out his duties freely, without being influenced by the executive body and other bodies. The meaning of freedom here is so that the Notary will not be afraid to carry out his position, so that he can act neutrally and independently.[1]

Notary is a public official authorized to make authentic Deeds and other authorities as referred to in UUJN. Other authorities related to these provisions are the authority to make authentic deeds regarding all actions, agreements and stipulations that are required by laws and regulations and/or are desired by interested parties to be stated in an authentic deed, guarantee the certainty of the date of making the deed, save the deed, provide grosse, copies and excerpts of the deed, all of that as long as the making of the deed is not also confirmed or exempted from other officials as determined by law.[2]

Article 1868 of the Civil Code which reads: "Authentic deed is a deed which, in the form determined by law, is made by or before public officials who have the power to do so at the place where the deed was made". Here we see that there are several elements: First, that the deed was drawn up and formalized (verleden) in a legal form. Second, that the deed was made by or before a public official. Third, that the deed was made by or before an official authorized to make it at the place where the deed was made. So the deed must be made in the place of authority of the official who made it.[3]

In practice, it is often found that if there is a Notary Deed disputed by the parties or other third parties, then the Notary is often withdrawn as a party that participates in committing or assisting in committing a crime, namely making or providing false information in a Notary deed.[4]In this case, the Notary, intentionally or unintentionally, together with the parties/appearers to draw up a Deed with the intent and purpose to benefit only certain parties or appearers or harm other appearers must be proven in court.
In this case R. Soeharto (Notary) was visited by Yapi Kusuma (seller) and witness Kurniawati (buyer) to carry out a sale and purchase transaction of a plot of land. Yapi Kusuma carried a power of attorney under his hand which stated that the

[1]Doddy Radjasa Waluyo, Only One Notary Public Official, Notary Media, p. 41.
[2]Sjaifurrachman, 2011, Aspects of Notary Liability in Making Deeds, Mandar Maju, Bandung, p. 228
[3]R. Soegondo Notodisoerjo, 1982, Notary Law in Indonesia An Explanation, CV. Rajawali, Jakarta, p. 42
[4]Habib Adjie, 2008, Notary Law in Indonesia-Thematic Interpretation of Law no. 30 of 2004 concerning the Office of a Notary, Refika Aditama, Bandung, p. 24

witness Ventje Rein Caroles (Principal Director of PT. Bintang Karyasama) authorized him to represent PT. Bintang Karyasama conducts land and building sale and purchase transactions. So that problems arise regarding the responsibilities of a notary who is considered to have met the standards of making a deed in statutory regulations, but as a notary has moral and material responsibilities for the deed he made based on a document forged by the appearer. Yapi Kusuma (seller) and witness Kurniawati (buyer) visited Soeharto (Notary) to carry out a sale and purchase transaction on a plot of land. Yapi Kusuma carried a power of attorney under his hand which stated that the witness Ventje Rein Caroles (Principal Director of PT. Bintang Karyasama) authorized him to represent PT. Bintang Karyasama conducts land and building sale and purchase transactions. So that problems arise regarding the responsibilities of a notary who is considered to have met the standards of making a deed in statutory regulations, but as a notary has moral and material responsibilities for the deed he made based on a document forged by the appearer. Yapi Kusuma (seller) and witness Kurniawati (buyer) visited Soeharto (Notary) to carry out a sale and purchase transaction on a plot of land. Yapi Kusuma carried a power of attorney under his hand which stated that the witness Ventje Rein Caroles (Principal Director of PT. Bintang Karyasama) authorized him to represent PT. Bintang Karyasama conducts land and building sale and purchase transactions. So that problems arise regarding the responsibilities of a notary who is considered to have met the standards of making a deed in statutory regulations, but as a notary has moral and material responsibilities for the deed he made based on a document forged by the appearer. Bintang Karyasama) authorized him to represent PT. Bintang Karyasama conducts land and building sale and purchase transactions. So that problems arise regarding the responsibilities of a notary who is considered to have met the standards of making a deed in statutory regulations, but as a notary has moral and material responsibilities for the deed he made based on a document forged by the appearer. Bintang Karyasama) authorized him to represent PT. Bintang Karyasama conducts land and building sale and purchase transactions. So that problems arise regarding the responsibilities of a notary who is considered to have met the standards of making a deed in statutory regulations, but as a notary has moral and material responsibilities for the deed he made based on a document forged by the appearer.

2. Research Methods

The research method used in this thesis is a normative juridical research method. The specification of this study uses descriptive analysis specifications. The data required includes primary data, which consists of the 1945 Constitution; Act No. 2 of 2014; Criminal Code; The Criminal Procedure Code; Code of Civil law; Notary Code of Ethics, as well as secondary and tertiary data containing books and other

supporting documents. Taken by the method of data collection by way of library research (Library Research). Methods of data analysis using qualitative methods.

3. Results and Discussion

3.1. Legal Protection for Notaries against Making Deeds Based on Forgery of Documents by Appearers (Study of the Decision of the Supreme Court of the Republic of Indonesia Number: 385 K/PID/2006)

Philipus M Hadjon stated, Indonesia's legal state has its own characteristics in protecting human rights, because it prioritizes harmonious relations between the government and the people, as follows: "Protecting human rights prioritizes the principle of harmony in the relationship between the government and the people. From this principle, other elements of the Pancasila legal state concept will develop, namely the establishment of a proportional functional relationship between state powers, the settlement of disputes by deliberation while the judiciary is the last means and regarding human rights it does not only suppress rights or obligations but establishes a balance between rights and obligations.[5]

Legal protection for Notaries in carrying out their duties as Public Officials has been regulated in Act No. 30 of 2004 concerning the Position of Notary (UUJN) and Law no. 2 of 2014 concerning Amendments to Act No. 30 of 2004 concerning the Position of Notary. Specifically related to the making of the Deed carried out by a Notary, Act No. 2 of 2014 concerning Amendments to Act No. 30 of 2004 concerning the Position of Notary provides legal protection to Notaries as contained in the provisions of Article 4 paragraph (2) of the Law on Notary Position regarding the Notary's Oath/Promise, one of the fragments of which reads: "that I will keep the contents of the deed and information obtained in the exercise of my position confidential."[6]

This provision is further regulated in Article 16 paragraph (1) letter f of Law no. 2 of 2014 concerning Amendments to Act No. 30 of 2004 concerning the Position of Notary, which reads: "In carrying out his position, a Notary is obliged... e. keep everything confidential regarding the deed he made and all information obtained in order to draw up the deed in accordance with the oath/pledge of office, unless the law determines otherwise".[7]

Based on all the statutory provisions mentioned above, the case that the author raises as a study in this writing is the case at the Supreme Court of the Republic of Indonesia with the study of the decision 385/K/PID/2006 where this case stems from a criminal case with the defendant namely R. Soeharto, as Notary and PPAT deliberately gave the opportunity, means or statement of forgery of

[5]Hadjon, Philip Mandiri, 2007, Legal Protection for the People in Indonesia Special Edition, Yogyakarta: Civilization, p. 20
[6]See Article 4 paragraph (2) of Act No. 30 of 2004
[7]See Article 16 paragraph (1) of Act No. 2 of 2014

letters against authentic deed namely in the form of information in the deed of binding sale and purchase No. 28 of 2002.

R. Soeharto, as Notary and Land Deed Making Officer (PPAT), was visited by witness Yapi Kusuma (seller) and witness Kurniawati (buyer) with the aim of carrying out a sale and purchase transaction of a plot of land by bringing a power of attorney under the hand of witness Ventje Rein Caroles (Principal Director of PT. Bintang Karyasama) to witness Yapi Kusuma (as Head of Division of PT. Bintang Karyasama), which stated that the witness Ventje Rein Caroles gave power of attorney to Yapi Kusuma to represent PT. Bintang Karyasama to carry out land and building sale and purchase transactions with witness Kurniawati.

In accordance with the beliefs of Notary & PPAT R. Soeharto, because he considered that he already knew witness Yapi Kusuma well, R. Soeharto ignored the conditions that a Notary should have fulfilled before making a deed, including attaching the approvals of the commissioners or going through a general meeting of shareholders (GMS). Based on the sale and purchase bond agreement and there is a guarantee from Notary R. Soeharto that the agreement is valid, so the land and building was purchased at a price of Rp. 43,830,000.- (forty three million eight hundred and thirty thousand rupiah) but at that time it was only partially paid, namely Rp. 37,915,000.- (thirty seven million nine hundred and fifteen thousand rupiah) and the money was fully handed over to the witness Yapi Kusuma.

Then when witness Kurniawati was about to pay off the underpayment for the land and building at PT. Bintang Karyasama and asked the completeness of the paperwork for the building he bought from the witness Yapi Kusuma by bringing the deed of binding sale and purchase agreement and deed of power of attorney issued by R. Soeharto, only then did the witness Ventje Rein Caroles know that the power of attorney was a forged letter both in content and signature witness Ventje Rein Caroles, even though the Notary should examine the requirements that must be met, namely certificates in the name of PT, KTP, KSK Director and Commissioner if the Commissioner cannot attend, the Commissioner can make a letter of approval a copy of the deed of establishment of PT and changes if any, AD/ART PT, NPWP, SIUP, TPD, SK Menkeh and HAM PT, state gazette, regent's principle permit, location permit and Set-plane before the deed of sale and purchase binding was made, but this was not done by the Defendant. Whereas as a result of the defendant's actions which gave witness Yapi Kusuma the opportunity to use the forged Power of Attorney, witness Kurniawati suffered a loss of Rp.43,830,000.- (forty three million eight hundred and thirty thousand rupiah) or at least Rp. 37,915,000,- (thirty seven million nine hundred and fifteen thousand rupiah).

The case study that the author raised as the author described above, broadly speaking, is a notary who, in carrying out his duties and position in making authentic deeds, had neglected to check the required conditions because he trusted his prospective clients because they already knew each other. long. However, the Notary has carried out his duties according to the SOP as said by the expert witness, so in this case the Notary cannot be blamed because the error occurred and was committed by the party facing him. However, in the case of a notary being made a defendant, that is why legal protection is needed for a notary in carrying out his duties and position.

Normatively legal protection for Notaries in carrying out their duties and positions has been provided by the applicable laws and regulations, namely:

a. The establishment of the Supervisory Board as mandated in Article 67 UUJN is formed by the Minister, which consists of 3 (three) elements, namely the government, Notary organizations and academics. The supervision includes the implementation of the position of Notary.
b. Regarding the procedure for taking minuta deed and summoning a notary, Article 66 UUJN states: that for the benefit of the judicial process, investigators, public prosecutors or judges with the approval of the MKN have the authority to: take photocopies of minuta deed and letters attached to minuta deed. Summoning the Notary in an examination related to the deed. This means that in carrying out examinations, especially criminal cases, law enforcement officers must go through the procedures for summons when the Notary Honorary Council does not agree, the Notary does not need to be present in the investigation process. This article provides legal protection for every Notary.
c. Notary Refusal Right as regulated in:
1. Article 170 of the Criminal Procedure Code;
2. Article 1909 number 3 Civil Code;
3. Article 146 paragraph (1) number 3 HIR;
4. Article 277 HIR;
5. Article 4 UUJN and Article 16 paragraph (1) letter e UUJN.

Legal protection for a Notary in carrying out his duties and positions in the event of falsification of documents by appearers in making this deed is based on the theory of legal protection. Philipus M. Hadjon argues that the theory of legal protection is legal protection for the people in the form of preventive and repressive government actions. Preventive in nature means that the government is more careful in making and making decisions because it is still in the form of preventive measures. In this case a Notary must always be careful in order to protect himself in carrying out his duties and position, so as to avoid problems in the future, both civil and criminal problems.
Legal protection for a Notary in carrying out his duties and positions as a Public Official can be seen in several instruments that reflect the privileges of a notary,

including the right of denial, the obligation to deny and the exclusive right when summoned for questioning by an Investigator, Public Prosecutor or Judge, that is, it must be with the approval of the Regional Notary Honorary Council (MKN).
Legal protection for a Notary in a case with the Supreme Court of the Republic of Indonesia Number 385 K/Pid/2006 The Judge in his legal considerations stated that the Defendant's actions were proven but not a criminal act, so that the Defendant was released from all lawsuits and that in the a quo case, the Defendant as a Notary is not authorized to review whether or not the private Power of Attorney submitted by the witness Yapi Kusuma at the time of the binding sale and purchase of land and the house with witness Kurniawati was made. The fact that the signature in the underhand Power of Attorney is fake, criminal responsibility cannot be borne by the Defendant, so that the charges should not have been proven and the Defendant should not have been released from criminal charges but acquitted of charges.

3.2. Legal Position of the Deed made by a Notary Based on False Documents by the Appearance

At present, in the life of a developing society, legal certainty is needed in the traffic agreements that occur in social life. Legal certainty can be obtained from written evidence that has perfect evidentiary power. Overall, valid evidence or recognized by law, consisting of:[8]

a. Written evidence;
b. Witnesses;
c. Conjectures;
d. Confession;
e. Oath.

What is meant by written evidence can be done with an authentic deed or with a private deed.

The deed has 2 (two) important functions, namely as follows:[9]

a. Deed as a formal function (causa formality)

that a legal action will be more complete if a deed is made. As an example of a legal act that must be set forth in the form of a deed as a formal requirement is Article 1610 of the Civil Code concerning chartering agreements, Article 1767 of the Civil Code concerning debt agreements with interest and Article 1851 of the Civil Code concerning peace. For this reason, it is implied that there is a deed under the hand. Meanwhile, what is implied by an authentic deed, among

[8]M. Ali Boediarto, 2005, Compilation of the Rules of Law of the Supreme Court, Half a Century of Civil Procedure Law, Jakarta: Swa Justitia, p. 157
[9]Sudikno Mertokusumo, 1999, Knowing the Law of an Introduction, Yogyakarta: Liberty, p. 121-122

others, is Article 1945 of the Civil Code concerning taking an oath by another person.

b. Deed as a function of evidence

namely the deed as a means of proof where the deed is made by the parties bound in an agreement intended for proof at a later date. In article 1870 of the Civil Code it is explained that "A deed to provide between the parties and their heirs or people who get this right from them, a perfect proof of what is contained therein".

Evaluation of a Notary deed as a deed made by a Public Official must be carried out by applying the principle of legal presumption (vermoeden van rechtmatigheid)[10]or presumptio lustae causa. This principle is used to assess a deed drawn up by a notary, namely a deed drawn up by a notary must be considered valid until it is proven by the party who argues that the deed is invalid. To declare or judge that the deed is illegal, a lawsuit must be filed in court. As long as the lawsuit is ongoing until there is a court decision that has permanent legal force, the notarial deed must still be considered valid and binding for the parties or anyone who has an interest in the deed.[11]In a lawsuit stating that the notarial deed is invalid, it must first be proven about the existence of invalidity from various aspects, namely the physical aspect, the formal aspect and the material aspect of the notary deed. If these three aspects cannot be proven, then the deed in question will remain valid and remain valid and still binding for the parties or anyone with an interest in the deed.

The principle of legal presumption (vermoeden van rechtmatigheid) or presumptio lustae causa which has been mentioned above relates to conditions where a notary deed can be canceled. A deed that can be canceled occurs if there is an action that contains defects, namely the result of not being authorized by a Notary at the time of making the deed, the outward, formal, material aspects are not fulfilled and are not in accordance with the applicable laws and regulations in the case of making an authentic deed. This principle of legal presumption (vermoeden van rechtmatigheid) or presumptio lustae causa applies if the notarial deed has never previously been filed for cancellation by the interested parties to the general (state) court and there has been a general court decision that has permanent legal force or the notary deed is not declared to have the power of proof as a private deed or not null and void or not canceled by the parties themselves. Thus, the application of the legal presumption principle to a notarial deed is carried out if the provisions as mentioned above have been fulfilled.

[10]Philipus M. Hadjon, 1993, Government According to Law (Wet-en Rechtmatig Bestuur), Surabaya: Yuridika, p. 5

[11]Habib Adjie, 2008, Civil Sanctions and Administrative Sanctions Against Notaries as Public Officials, Bandung: Refika Aditama, p. 82

The Law on Notary Office stipulates that when a Notary in carrying out his duties and positions is proven to have committed a violation, the Notary may be subject to sanctions or be subject to sanctions, in the form of civil, administrative and Code of Ethics sanctions, but does not regulate criminal sanctions. In practice it is found that the violation of the sanction is then qualified as a crime committed by a Notary. These aspects include:

a. Certainty of day, date, month, year and facing time;
b. the parties (who are) who appear before the Notary;
c. facing signature;
d. The copy of the deed does not match the minutes of the deed;
e. There is a copy of the deed, without the minutes of the deed being made; and
f. The minutes of the deed were not completely signed, but the minutes of the deed were issued.

Examination of violations committed by a Notary must be carried out by means of a holistic-integral examination by looking at the physical, formal and material aspects of the Notary's deed, as well as the implementation of the duties of a Notary's position related to the Notary's authority. Apart from being based on the rule of law governing acts of violation committed by a Notary, it also needs to be integrated with the reality of Notary practice. Examination of a notary is inadequate if it is carried out by those who have not studied the world of notaries, meaning that those who will examine a notary must be able to prove a major mistake made by a notary intellectually, in this case the power of logic (law) is needed in examining a notary, not the logic of force or power.

The notary can be released from legal responsibility and liability if there is a defect in the deed he made, as long as the legal defect is caused by the fault of another party or the parties who appear before him, or the statement or evidence of the letter submitted by the client. Causes of legal defects that are not included in the Notary's fault, namely for example the presence of asphalt or original but fake identities, such as Identity Cards (KTP), Family Cards (KK), Passports, Inheritance Certificates (SKW), Certificates, Marriage Certificates, Birth Certificates and so on. These documents are generally always related to the Notary's position and these documents are the Notary's reference in carrying out his duties and positions as a public official to serve in this case the task of representing the State to make an authentic deed.

The problems described above show a connection with the theory of legal certainty. The theory of legal certainty is used because all actions must have certainty in the eyes of the law, because certainty is the goal of law. Because with legal certainty, the Notary before carrying out a legal action will be able to estimate all the consequences of the legal action. With regard to the deed made by a Notary, in terms of the process of making a deed must be in accordance

with legal provisions so that the deed can be said to be valid and binding for the parties. Legal certainty for a deed made on the basis of fake documents will result in the deed being null and void, because it has violated the objective requirements of an agreement.

The status of a notarial deed made on the basis of false information from the parties who appear before him is null and void. This is because in making a Deed it violates the objective conditions in an agreement which is one of the legal terms of the agreement. The notary in this case is not a party to a deed, so that if there is false evidence or false information used by the appearers in making the deed, this becomes the responsibility of the appearers and criminal responsibility cannot be borne by the Notary.

4. Conclusion

In the Decision of the Supreme Court of the Republic of Indonesia Number 385 K/Pid/2006 the Judge in his legal considerations stated that Judex Facti was wrong in applying legal provisions, because he stated that the Defendant's actions were proven but not a criminal act, so that the Defendant was released from all lawsuits and that in In the a quo case, the Defendant as a Notary is not authorized to examine whether or not the private Power of Attorney submitted by the witness Yapi Kusuma at the time of the sale and purchase agreement of the land and the house with witness Kurniawati. The fact that the signature in the underhand Power of Attorney is fake, criminal responsibility cannot be borne by the Defendant, so that the charges should not have been proven and the Defendant should not have been released from criminal charges but acquitted of charges.

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[9] Sudikno Mertokusumo, 1999, *Mengenal Hukum Suatu Pengantar,* Yogyakarta: Liberty

Regulation:

[1] Act No. 2 of 2014

[2] Act No. 30 of 2004