

## **Legal Protection for Notaries for Forgery of Documents by Clients in Making Authentic Deeds in Nganjuk Regency (Study of the Decision of the Supreme Court of the Republic of Indonesia Number: 20 PK/PID/2010)**

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**Abstract.** *The deed made by the Notary is a deed of the parties (partij akte) where in fact the Notary only expresses or formulates the wishes of the parties in the Notary's deed so that in fact the contents of the deed are not the Notary's will, but investigators often argue and then accuse the Notary that the Notary has ordered the client or presenter to enter false information into an authentic deed (notarial deed), in fact the Notary has absolutely no authority to order the client to do anything when appears before the Notary. There have also been cases where Notaries have been accused of having ordered clients or presenters to enter false information into the deed made by the Notary himself, even though if the Notary had done that, it would have been possible that in the future the Notary would have been accused of entering false information into an authentic deed or falsifying the deed. Notaries require legal protection that protects Notaries from forgery of documents carried out by Clients to make authentic deeds. The purpose of this research is to find out and analyze legal protection for Notaries for document falsification carried out by clients in making authentic deeds in Nganjuk Regency (Study of the Decision of the Supreme Court of the Republic of Indonesia Number: 20 PK/PID/ 2010). This research method is a Normative legal research method. The approach in this research uses a case approach and a statutory approach. The data required includes primary data, namely consisting of the 1945 Constitution; Law Number 2 of 2014; Criminal Code; 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 using the data collection method by means of literature study. The data analysis method uses qualitative methods. Based on research, it was concluded that in the Case Decision of the Supreme Court of the Republic of Indonesia Number 20 PK/PID/2010 the Judge stated that the Defendant's actions were proven to have committed a criminal act. The notary should refuse to make the proposed decision because he knows about the situation that occurred in*

*the YPCU. A notary should never rely solely on or trust a client or presenter even if the client or presenter is a close friend. Notaries must be intelligent, careful, careful and neat in making deeds related to legal aspects which are legal acts contained in the deed.*

**Keywords:**

## 1. Introduction

The meaning of the rule of law according to the Preamble (1945 Constitution) is none other than a rule of law in the material sense, namely a state that protects all Indonesian people, the blood of Indonesia, and to advance public welfare, educate the nation's life and participate in maintaining world peace based on independence. Eternal peace and social justice, which are arranged in the 1945 Constitution of the Republic of Indonesia based on Pancasila.

Service to the community by Notaries in accordance with their job duties has clearly shown that Notaries mean nothing if the community does not need them.<sup>1</sup>

A notary is a public official appointed by the government to assist the general public in this case in making evidence in the form of authentic deeds needed by the community. A notary has an obligation to include what is contained in the deed with a serious understanding and in accordance with the wishes of the parties, namely by reading it so that the contents of the deed are clear, and providing an explanation of all information and legal regulations related to the deed he made. The need for a deed made before a notary is to guarantee legal certainty and to fulfill strong evidentiary laws for the parties who carry out certain legal acts. Relating to a state of law where the law protects a person's interests by allocating a power to him to act in the context of those interests. This allocation of power is carried out in a measured manner, which means that its breadth and depth are determined. Not every power in society can be called a right, but only that which is given by law to a person.<sup>2</sup>

The scope of the duties of the Notary's office is to make evidence desired by the parties for a certain legal action, and the evidence is within the scope of Civil Law, and that the Notary makes a deed because there is a request from the parties who appear, without a request from the parties, the Notary will not make any deed, and the Notary makes the intended deed based on evidence or information or statements of the parties stated or explained or shown to or before the Notary, and then the Notary frames it outwardly, formally and materially in the form of a Notarial deed, while still adhering to the legal rules or procedures or procedures for making deeds and the legal rules relating to the

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<sup>1</sup>HFA Vollmar, 1948, Introduction to the Study of Civil Law, CV. Rajawali, Jakarta, p. 14.

<sup>2</sup>Satjipto Rahardjo, 2000, Legal Science, PT. Citra Aditya Bakti, Bandung, p. 53 (Hereinafter referred to as Satjipto I).

legal action in question which are stated in the deed.<sup>3</sup>

In practice, it is often found that if a Notarial Deed is disputed by the parties or other third parties, the Notary is often implicated as a party who participated in or assisted in committing a criminal act, namely making or providing false information in the Notarial Deed.

Notaries need legal protection that protects Notaries from document forgery carried out by Clients for the creation of authentic deeds. In this case, the Notary does not know that the documents brought by his client are fake because it is very difficult to check them.

Notaries can always be held accountable for the deeds they make, in this case not only from the main substance of the deed they make but also from the formal requirements to be made by the notary, often notaries in their limitations often cannot anticipate parties who want to intentionally carry out actions that are actually prohibited by legal principles and regulations where in this case the duties and functions of the notary's position are not as investigators of the deeds they make but only limited to making authentic deeds against the wishes of the parties in their position as public officials. What is the legal position of authentic deeds made by notaries on the basis of falsification of data from clients? How is the legal protection for notaries for falsification of documents carried out by clients in making authentic deeds (Study of the Supreme Court of the Republic of Indonesia Decision Number: 20 PK / PID / 2010)?

The purpose of this research to find out and analyze the legal position of authentic deeds made by notaries on the basis of falsification of data from clients, as well as legal protection for notaries against falsification of documents carried out by clients in making authentic deeds (Study of the Decision of the Supreme Court of the Republic of Indonesia Number: 20 PK/PID/2010).

## **2. Research Methods**

This research uses a normative legal research method, with the approach used in this legal research. The approach in this study uses a case approach and a legislative approach. The data required includes primary data consisting of the 1945 Constitution; Law Number 2 of 2014; Criminal Code; Criminal Procedure Code; Civil Code; Notary Code of Ethics, as well as secondary and tertiary data containing books and other supporting documents. Taken with the data collection method by means of literature study. The data analysis method uses a qualitative method.

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<sup>3</sup>Habib Adjie, 2014, Indonesian Notary Law "Thematic Interpretation of Law No. 30 of 2004 Concerning the Position of Notary", PT. Refika Aditama Fourth Edition, Bandung, p. 24 (Hereinafter referred to as Habib Adjie II).

### 3. Results and Discussion

#### 3.1 Legal Position of an Authentic Deed made by a Notary on the Basis of Falsification of Client Data

##### 1. Legal Consequences of Notarial Deeds

ImplicationsThe law regarding the cancellation and annulment of notarial deeds based on Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary is as follows:

##### a. Notarial Deeds Can Be Canceled

A notarial deed can be cancelled as a sanction against a legal act that contains a legal defect (cause of cancellation) in the form of cancellation of the legal act at the request of a certain party and the legal consequences of the cancellation are that the legal act has no legal consequences since the cancellation occurred, and the cancellation or ratification of the legal act depends on a certain party, which causes the legal act to be cancelled or ratified.

##### b. Notarial Deed is Void by Law

Notarial deed is null and void if a notarial deed does not fulfill the objective elements in the agreement, then the notarial deed can be null and void. Void by law is a civil sanction against a legal act whose cause of nullity contains a legal defect (cause of nullity), in the form of a legal act that is carried out does not have legal consequences since the occurrence of the legal act or the legal act becomes invalid since the deed is signed and the legal act referred to in the deed is deemed never to have occurred.

##### c. Notarial Deed which has the power of proof as a private deed

Violation of these provisions results in a notarial deed having evidentiary force as a private deed, and thus it can be concluded that a notarial deed that has evidentiary force as a private deed, if it is expressly stated in the relevant article, and which is not expressly stated in the relevant article, shall be valid as a private deed as long as there is no judge's decision that has permanent legal force, the deed remains valid and binding, and the notarial deed becomes non-binding after there is a judge's decision that has permanent legal force stating the deed.

##### 2. Legal Consequences of the Position of Notary

##### a. Imposition of Ethical Sanctions

Administratively, the law enforcement instruments in the law include preventive measures (supervision) and repressive measures (imposition of sanctions). Preventive measures are carried out through periodic examination of notary protocols and the possibility of violations of the code of ethics in the implementation of the notary's position. The imposition of sanctions in the form of dismissal of a notary is divided into 3 (three) categories, namely:

- a. Temporary suspension, where the notary is temporarily suspended from his position, because:
  1. In the process of bankruptcy or suspension of debt payment obligations.
  2. Under guardianship.
  3. Committing a reprehensible act, namely committing an act that is contrary to religion, moral norms and customary norms (temporary suspension for a maximum of 6 (six) months).
  4. Violates the obligations and prohibitions of the position (temporary dismissal for a maximum of 6 (six) months).
- b. Honorable dismissal, where the notary resigns or is honorably dismissed from his position because:
  - 1) Die.
  - 2) He is 65 (sixty five) years old.
  - 3) Own request.
  - 4) Not mentally and/or physically capable of carrying out the duties of a notary continuously for more than 3 (three) years, as evidenced by a medical certificate, or
  - 5) Holding concurrent positions means holding concurrent positions as a civil servant, state official, advocate, or other position that is prohibited from being held concurrently with the position of notary.
- c. Dishonorable dismissal, where a notary is dishonorably dismissed from his position by the minister upon the recommendation of the central supervisory board if:
  - 1) Declared bankrupt based on a court decision that has permanent legal force.
  - 2) Being under continuous guardianship for more than 3 (three) years.
  - 3) Committing acts that degrade the honor and dignity of the notary's office, such as gambling, getting drunk, abusing drugs and committing adultery.
  - 4) Committing a serious violation of the obligations and prohibitions of the position, namely not fulfilling obligations and violating the prohibitions of the position.
  - 5) Sentenced to imprisonment based on a court decision that has permanent legal force for committing a crime that is punishable by imprisonment of 5 (five) years or more.
- d. Imposition of Legal Sanctions  
Regarding criminal sanctions, it is not regulated in the notary law, but the criminal responsibility of a notary is imposed if the notary commits a criminal act. The Notary Law only regulates sanctions for violations committed by a notary against the notary law. These sanctions can be in the form of a deed made by a notary that does not have authentic power or only has the power as a deed under hand.

### **3.2. Legal Protection for Notaries Against Document Forgery Carried Out by Clients in Making Authentic Deeds**

#### **a. Legal Protection**

Legal protection for a Notary in carrying out his duties and position in the event of document falsification carried out by the person appearing in the making of this deed is based on the theory of legal protection.

The following are some legal protections for Notaries in carrying out their duties and positions:

#### **a) Legal protection is usually sought by the notary himself.**

Legal protection which can be attempted by the Notary himself, namely by adding 1 (one) Article before the closing of the deed which is the legal umbrella for the Notary which states that the person appearing or the persons appearing guarantees that all information, data/documents and ID cards submitted and handed over to the Notary are true, therefore if in the future it turns out to be untrue/fake or invalid, then the civil liability and criminal charges of the persons appearing will be the ones responsible while the Notary is exempted from civil lawsuits and criminal charges for this matter.

Other protections that can be sought by the notary himself, namely the notary must master the law/legislation properly and correctly, the notary should not just copy paste from the existing deed because the case faced by the client may not match the existing deed, the notary should never rely on or trust the client or the person appearing even though the client or person appearing is a close friend, so that he entrusts the signing of the minutes of the deed without having to be present before the notary or the notary only orders his staff to sign the minutes of the deed. related parties in connection with the making of the law contained in the deed, finally the notary should never rely on or trust the notary's employees/staff even though it is known that the employees or staff are honest, careful, trustworthy and smart. The notary must continue to re-examine the draft or plan of the signed deed.

#### **b) Protection for Notaries according to the Notary Law.**

The Notary Law regulates the form of legal protection that can be given to Notaries who carry out their duties as public officials. This is reflected or stated in Article 66 paragraph (1) and (2) of the UUJN regarding the taking of minutes of deeds and summoning Notaries, which states:

#### **(1) For the purposes of the judicial process, investigators, Public prosecutors, or judges with the approval of the Notary Honorary Council have the authority to:**

- a. Taking a photocopy minutes of the deed and/or letters attached to the minutes of the deed or Notary Protocol in the Notary's custody; And**
- b. Summoning a Notary to attend an examination relating to a deed he has made or a Notarial Protocol which is in the Notary's custody.**

(2) Retrieval photocopy of the minutes of the deed or letters as referred to in paragraph (1) letter a, made a report of the handover. UUJN explains, the right to refuse is owned by a Notary, where this right to refuse is an obligation of a Notary as stated in Article 16 paragraph (1) letter f UUJN which explains: "A Notary in carrying out the duties of his position is obliged to keep confidential all matters related to the Deed he made and all information obtained for the making of the Deed according to the promise/oath of office, but with exceptions if the Law determines otherwise."

c) Legal Protection for Notaries According to the Notary Honorary Council. Legal protection from the Regional Supervisory Council, which is now the Notary Honorary Council, is to provide supervision of Notaries so that Notaries continue to work as professionals. The form of legal protection is when the Notary has acted in accordance with the UUJN and the Notary Professional Ethics, then the Notary is not permitted to attend or be examined either as a witness or as a suspect.

The Regional MKN can refuse to investigators, public prosecutors and judges if a criminal event is clear and obvious without the need for examination of a Notary as a witness. Then in the case of the Regional MKN giving approval if the Notary's testimony is needed in a criminal event that occurs and cannot be processed further, so that the Notary's testimony is needed so that the criminal event becomes clear and obvious.

The Notary Honorary Council has the authority to examine and provide approval or rejection of requests from investigators, public prosecutors or judges regarding:

- 1) Taking photocopies of the minutes of the deed and letters attached to the minutes of the deed and/or the Notary's protocol in the Notary's storage and summoning the Notary.
- 2) Taking the minutes of the deed and the letters attached to the minutes of the deed and/or the Notary's protocol in the Notary's storage and summoning the Notary.
- 3) Summons of a Notary for legal enforcement proceedings by investigators, public prosecutors, or judges.

The position of the MKN in providing legal protection for Notaries is an independent institution, because in this case the existence of the MKN is not a sub-section of the government that appointed it. The MKN in carrying out its authority to issue a decision is not influenced by other parties or institutions, so that in this case the decision produced by the MKN cannot be challenged. "

Based on the description of the facts in this case that has permanent legal force, it can be seen that the defendant is a notary who has been convicted of the crime of forgery of documents. The defendant Notary AS together or individually acted for themselves as the person who did, who ordered to do or participated

in doing with several other defendants has made incorrectly or falsified a document that can give rise to a right, obligation or release 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 the contents were true.

and not forged, if the forgery can cause losses, namely forgery of letters against authentic deeds.

The deed issued by the defendant Notary AS has been used by SH, WNS, DD, SUB, EHS, PRA, SUD, IND, DK and GJA to control Unitomo assets which are part of the Cendekia Utama Education Foundation so that the official management suffered losses of around Rp. 12,000,000,000,- (twelve billion rupiah).

This case is quite complex with non-criminal settlements including civil lawsuits (160/Pdt.G/2004/PN.Sby), case Dispute Brand (04/HKI/MERK/2008/PN.Niaga.Sby), State Administrative Case (92/G.TUN/2005/PTUN/JKT) and legal efforts made by the defendant against the verdicts of the above cases. The sequence of the trial examination of the criminal case along with the court decision that ensnared the defendant include the following:

1. District Court Decision Nganjuk Number 240/Pid.B/2006/PN.Ngjk. dated May 16, 2007 stated that the defendant Notary AS has been proven legally and convincingly guilty of committing the crime of "falsifying an authentic deed carried out jointly" with a prison sentence of 1 (one) year and 2 (two) months.
2. The High Criminal Court Decision Number 396/PID/2007/PT.SBY, dated September 17, 2007 accepted the appeal request and confirmed the Nganjuk District Court Decision Number 240/Pid.B/2006/PN.Ngjk. dated May 16, 2007, which was appealed.
3. The Supreme Court's Cassation Decision Number 687K/Pid/2008 dated 28 November 2008 rejected the cassation application from the Cassation Applicant, defendant Notary AS.

Supreme Court Decision No. 20 PK/Pid/2010 strengthens the previous decision, namely that the Applicant for Judicial Review was rejected and the Notary must still serve the sentence as charged by the prosecutor in prison for 1 year and 2 months. That in this case the notary is considered a person who participated in making or falsifying a letter that can give rise to rights, obligations or debt relief or which is intended as evidence of something with the intention of using or ordering someone else to use the letter as if its contents were true and the falsification causes harm to others.

Legal status of authentic deeds made by a notary on the basis of falsification of client data can be legally flawed and void, depending on several factors:

1. Data Falsity Level

If the falsified data is essential data and underlies the contents of the deed, such as the identity of the parties, the object of the agreement, or the value of the



transaction, then the deed is null and void. This means that the deed has no legal force at all and cannot be used to bind the parties.

If the falsified data is not essential and does not form the basis of the contents of the deed, such as the party's address or telephone number, then the deed still has legal force, but can be cancelled by the injured party through a lawsuit in court.

## 2. Notary Involvement

If the notary is aware of the falsification of data and intentionally makes it into an authentic deed, then the notary can be prosecuted under the article on falsification of documents (Articles 263-266 of the Criminal Code) and his/her license can be revoked. In this case, Notary AS was sentenced to 1 year and 2 months in prison because he was considered to have known and intentionally made it into an authentic deed even though Notary AS was an employee of YPCU. If the notary is not aware of the falsification of data and makes an authentic deed in good faith, then the notary cannot be prosecuted, but the deed can still be canceled by the injured party.

Parties who are harmed by an authentic deed made on the basis of falsified data can take the following legal action:

1. Requesting cancellation of the deed to the court.
2. Demand compensation from the notary and/or the party who falsified the data.
3. Report the forgery to the police.

Determination of the legal defects of an authentic deed must be carried out by a judge in court through a case examination process. Clients who falsify data in an authentic deed can also be prosecuted under the article on forgery of documents.

Supreme Court Decision Number: 20 PK/PID/2010, the Supreme Court provides several important points related to legal protection for notaries against document forgery by clients, namely that Notaries are not automatically responsible for document forgery by clients. Notaries are obliged to exercise caution in examining documents submitted by clients. However, if the notary has exercised careful and reasonable care, and does not find any indication of forgery, then the notary cannot be blamed for the forgery of the document. In this case, the Judge decided that Notary AS was sentenced to 1 year and 2 months in prison.

The decision, when viewed from the aspect of legal certainty, reflects the existence of legal certainty. Legal certainty means that in every legal norm it must be clearly formulated regarding the sentences contained therein so as not to result in different interpretations. So that it can result in obedient or disobedient behavior towards the law. In practice, many legal events arise, where when faced with the substance of the legal norms that regulate it, sometimes it is unclear or imperfect so that different interpretations arise which

then lead to legal uncertainty.<sup>4</sup>

Legal certainty is not only in the form of Articles in the Law but also the consistency in the judge's decisions between the decisions of one judge and the decisions of another judge for similar cases that have been decided.

#### **4. Conclusion**

The legal status of an authentic deed made by a notary based on falsification of data from the client can be legally flawed and null and void. If the falsified data is essential data and underlies the contents of the deed, such as the identity of the party, the object of the agreement, or the transaction value, then the deed is null and void. This means that the deed has no legal force at all and cannot be used to bind the parties. If the falsified data is not essential and does not underlie the contents of the deed, such as the party's address or telephone number, then the deed still has legal force, but can be canceled by the injured party through a lawsuit in court. In the Supreme Court Decision Number: 20 PK/PID/2010, the Supreme Court provided several important points regarding legal protection for notaries against document falsification by clients, namely that notaries are not automatically responsible for document falsification by clients. Notaries are obliged to exercise caution in examining documents submitted by clients. However, if the notary has exercised caution carefully and reasonably, and does not find any indication of forgery, then the notary cannot be blamed for the falsification of the document. Determination of caution is carried out by considering several factors such as the type of document submitted, how the document is submitted, the credibility of the client, whether or not there is reason to suspect the authenticity of the document. If the notary is proven to be negligent in exercising caution, then the notary can be punished for assisting in the falsification of documents. As happened in the case of Notary AS, so he was sentenced to 1 year and 2 months in prison. Legal protection for notaries against document forgery by clients depends on the level of care taken by the notary. Notaries who are careful and reasonable in conducting document examinations will generally not be held accountable for document forgery by clients. The form of legal protection from the Notary Honorary Council is to supervise and examine Notaries so that they remain on the right track in accordance with the Law. When a Notary is summoned in a criminal case, the Notary Honorary Council has the authority to agree to be examined or not examined as long as the Notary has acted in accordance with the UUJN and/or laws and regulations.

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<sup>4</sup>Riduan Syahrani, 1999, Summary of the Essence of Legal Science, Citra Aditya Bakti, Bandung, p. 23.

## **5. References**

- Habib Adjie, 2014, Indonesian Notary Law “Thematic Interpretation of Law No. 30 of 2004 Concerning the Position of Notary”, PT. Refika Aditama Fourth Edition, Bandung, p. 24 (Hereinafter referred to as Habib Adjie II).
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