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Faculty of Law, Sultan Agung Islamic University

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The 5th PROCEEDING

“Legal Reconstruction in Indonesia Based on Human Right”

IMAM AS SYAFEI BUILDING

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PREFACE

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 Tegnau, 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.

PROCEEDINGS

The 5th International Conference and Call for Paper Faculty of Law 2019 Legal Reconstruction in Indonesia Based on Human Right

Table of Contents

<i>FRONT PAGE</i>	<i>I</i>
<i>Information of The International Seminar</i>	<i>III</i>
<i>Committee Composition</i>	<i>IV</i>
<i>PREFACE</i>	<i>V</i>
Fulfillment Of Teacher Protection Rights <i>Yenny AS, Rini Setiawati</i>	<i>I</i>
Legal Reconstruction Of Laws Regarding Human Rights Through Judicial Re- view To The Constitutional Court <i>Umar Ma'ruf</i>	<i>13</i>
Legal Analysis Of Social Security Transformation And The Reality Of Its Implementation In The Community In Indonesia <i>Siti Ummu Adillah, I Gusti Ayu Ketut Rachmi Handayani ,Adi Sulistiyono</i>	<i>30</i>
Increasing Voluntary Compliance Of Tax Payments In Micro Small And Medium Enterprises (Msmes) Post-Issuance Of Government Regulation Number 23 Of 2018 (Case Study In Semarang City) <i>Amin Purnawan, Akhmad Khisni, Aryani Witasari</i>	<i>41</i>
Legal Analysis Of Racist Exams In Surabaya Papua Dormitory <i>Ma'aruf Akib</i>	<i>50</i>
Reconstruction Of Misdemeanor Settlement Based On Pancasila Value <i>S. Andi Sutrasno</i>	<i>57</i>
Urgency Of Legal Assistance For Poor People As A Request Of Human Rights <i>Adhi Budi Susilo, Indra Yuliawan</i>	<i>63</i>
Reconstruction Of Article 156 Paragraph (1) Of Law Number 13 Year 2003 Regarding Manpower As A Guideline For The Provision Of Workers' Rights Based On Justice <i>Rahmatsyah</i>	<i>67</i>
Problematic Presidential Electoral Threshold In The Operation Of Value-Based Simultaneous Justice <i>Widayati , Winanto</i>	<i>73</i>

Reconstruction Of Learning Methods In Criminal Law Subjects Using Inquiry Methodsbased On Human Rights And Islamic Values <i>Ira Alia Maerani, Eko Sopyono, Nuridin</i>	82
Reconstruction Of Criminal Sanction And Rehabilitation Combating On Narcotic's Victims Based On Religious Justice <i>Carto Nuryanto, Gunarto, Anis Mashdurohatun</i>	91
Study of the theory of Legal Protection Against Online High Yield Investment Program Contracts in Indonesia (HYIP) <i>muhamad Iqbal al Hakiem,aryani witasari</i>	96
Reconstruction Completion Of The Crime Of Light On Value Pancasila <i>Andi S. Sutrasno</i>	102
Law Reconstruction Of Registration On Fiduciary Obligation Based On Justice Value <i>Wieke Dewi Suryandari ; Gunarto; Amin Purnawan</i>	108
Reconstruction Of Transport Regulatory On Marine Toll To Support Sea Connectivity Based On Pancasila Justice <i>Hartanto, Gunarto, Anis Mashdurohatun</i>	114
Reconstruction Of Scientific Investigation In Indonesia Based On Justice <i>Teguh Prihmono; Gunarto, Sri Endah Wahyuningsih</i>	120
Legal Construction On Training Ship Management Belongs To Human Resources Development Of Transportation (Bpsdmp) Based On Dignity Justice Value <i>Wahyu Wibisono, Gunarto, Anis Mashdurohatun</i>	126
Protection Of Law Refugees/Asylum Seekers In Indonesia (As A Transit State) No Ratify 1951 Convention Of And The 1967 Protocol <i>Muhammad Djamir</i>	133
Reconstruction Of Legal Policy On Decency Crime In Indonesia Based On Pancasila Value (Lgbt Rehabilitation Institute For Children) <i>Cucuk Kristiono, Gunarto, Anis Mashdurohatun; Suparji</i>	144
Legal Protection Against Indonesian Workers (Tki) In Abroad <i>Yaya Kareng ,Ong Argo Victoria ,Sri Yulianingsih</i>	149
Recontruction Of Auction Execution Of Mortgage Object In Determine The Auction Price Based On Justice <i>Moh Djarkasih**</i>	158

Reconstruction Policy Of Sanctions Against Destruction Of Evidence Illegal Fishing Based Small Fishing Welfare Values <i>R. Juli Moertiyono</i>	165
Reconstruction Of Legal Policy Interfaith Marriage In Indonesia <i>Moh. Zeinudin, Dian Novita</i>	179
Reform Of Couple Sexual Rights Protection In Case Of Diseases Hiv / Aids In Indonesia <i>Nana Ruhyana</i>	186
Legal Protection Against Disability In Getting Work <i>Oktavianto Setyo Nugroho</i>	193
Reconstruction Of Authority To Arrest In Doing Judge Accused Of Value-Based Justice <i>Agus Sugiarto</i>	203
Enforcement Of Criminal Law In False News (Hoax) Management According To Law No. 11 In 2008 That Has Been Amended To Be Law No.19 Of 2016 Concerning Electronic Information And Transactions In Islamic Law And Positive Laws <i>Yanto Irianto</i>	208
Reconstruction Validity Legal Deeds Are Dealing With Children In The Process Of Law Criminal Justice System Based Child Justice <i>Asep Hermawan</i>	220
Reconstruction Of Performance Assessment Of Drinking Water Companies (Pdam) Based On Consumer Protection <i>Bustaman</i>	225
Reconstruction Legal Rights Associated With A Warranty Not A Bank Debt <i>Euislistianti</i>	229
Reconstruction Of Operational System As A Community Economic System Based On Welfare <i>Abbas Ibrahim Idris</i>	234
Reconstruction Of Criminal Responsibility For Actors Prostitutional Criminal Justice In The Criminal Justice Based On Value <i>Iwan Rasiwan</i>	242
Reconstruction Of Legal Drinking Water Management Company (Pdam) Based On Justice <i>Suharyadi</i>	248

Reconstruction Of Private Criminal System Implementation In The Commitment Values In Indonesia Justice <i>Sumanto</i>	252
Reconstruction Of Justice Law Protection Law Protection <i>Wamyani</i>	260
Criminal Code Draft Law And Development In Indonesia <i>Nany Pujianti Suwigjo</i>	265
Deconstruction of the Principle of Legal Thinking <i>Sriyati</i>	270
Development Of The Law Of Complete Systematic Land Registration (Ptl) And Effect Of Conduct Values of Land Based On Dignify Justice In The District Of Kendal, Central Java <i>Desy Dwi Nurhayati Hartanti</i>	279
Interpretation Teaching Of Human Rights Laws Against Material In Corruption Provisions <i>Burham Pranawa, Hartiwiningsih, Hari Purwadi</i>	293
Reconstruction Of Article 156 Paragraph (1) Of Law Number 13 Year 2003 Regarding Manpower As A Guideline For The Provision Of Workers' Rights Based On Justice <i>Rahmatsyah</i>	301
Law Due To Delay The Registration Under Fiduciary Guarantee Pmk No 130 / Pmk.010 / 2012 <i>Jaenudin Umar</i>	307
The Effectiveness Of The Handling Of The Criminal Acts Of Light Tend To Be Settled Judicial Custom <i>Supena Diansah</i>	313
Interpretation Human Rights Law Against The Teaching Material In Corruption Criminal Offenses <i>Burham Pranawa, Hartiwiningsih, Hari Purwadi</i>	319
Urgency Of Legal Assistance For Poor People As A Request Of Human Rights <i>Adhi Budi Susilo, Indra Yuliawan</i>	327
Independence Institute Of Justice And Judge In Perspective Judicial Reform Blueprint 2010 - 2035 <i>Ahmad Agus Bahaudin</i>	331

Policies Against Crime Criminal Law Made By Children <i>Achmad Arifulloh</i>	341
Law Enforcement Of Law Number 23 Of 2004 In Preventing Efforts Human Rights Violations In Indonesia <i>Andri Winjaya Laksana , Lathifah Hanim</i>	350
Position Of Agreement On Land Acquisition For Development For Public Interest <i>Djoni Sumardi Gozali</i>	359
The Village Fund As Indonesian Social Welfare Program: The Gap Between Regulatory And Practice (A Study On Penal Perspective) <i>Ifrani*</i>	367
The Finality Of Arbitration: The Pros And Cons Of The Court's Power To Setting Aside Arbitral Awards In Indonesia <i>Yati Nurhayati</i>	376
Reconstruction Of Learning Methods In Criminal Law Subjects Using Inquiry Methods Based On Human Rights And Islamic Values <i>Ira Alia Maerani, Eko Soponyono, Nuridin</i>	382
Improvement of the Presidential System in Concurrent Elections <i>Endro Wibowo Aji</i>	391
Restorative Justice and Penal Mediation in Resolving Cases of Children Confronting the Law in Indonesia <i>Agustinus Dian Leo Putra</i>	398
Criminological Aspects of Corruption Crime <i>Angga Kusumah</i>	405
Policy Online Single Submission (OSS) System as a Public Service Innovation in the Field of Environmental Licensing <i>Haris Fadillah Harahap</i>	413
The Relevance of Civil Law and Common Law Systems in Regulating Standard Contract Law in Indonesia <i>Iman Fathurrahman</i>	421

Legal Politics In Erading Money Launching Criminal Actions In Indonesia <i>Abdul Haris</i>	427
The Legal Politics Of The State Defense Industry In Indonesia <i>Ade Christian Manapa</i>	433
Political Directions For Land Law On Land Property Rights For The People <i>Aga Wigana</i>	438
Political Form Of Pre-Justice Law In Law Enforcement In Indonesia <i>Apromico</i>	443
Inner Legal Political Strategy Prevention Of Radicalism In Indonesia <i>Beno</i>	448
The Government's Efforts Through Legal Politics In Hajj Management <i>Dhanar Dhono Vernandhie</i>	453
Political Law Of Regional Autonomy As The Management Of Local Government <i>Eka Damayanti</i>	458
Responsibility Of Corporate Crimes In Criminal Actions Of Narcotics <i>Himawan Aji Angga</i>	464
Juridical Review of The Existence of Notary Prohibitions on The Office of The Curator <i>Nurchahyo Pratomo Widodo</i>	469
The Legal Strength of Covernote and Notary Responsibility for The Making of a Covernote as a Legal Product Not Regulated by Notary Laws <i>Arif Bahtiar Jefry</i>	474
Role of Notary / PPAT in Making Authentic Assets Towards False Document Description <i>Kanzu Khirzul Yaman</i>	479
Legal Review of Personal Warranties Made Against The Notary of Lending <i>Nur Chamid</i>	484

Harmonization in Regulation of Heritage Certificate by Notary in Sociolegal Perspective <i>Desi Wulan Anggraini</i>	488
Legal Protection of The Wife's Property in Marriage by Making a Marriage Agreement Made in a Notary Provision <i>Nur Ismi Hanifah</i>	492
Legal Due To The Implementation Of Absolute Authorization In The Sale And Purchase Agreement Before The Development Of Sale And Purchases <i>Bayun Kismantoro</i>	496
Political Laws Notary Honor Assembly <i>Muhammad Wildan Mahindra</i>	500
Role of Notary in The Making of Deal of Sale and Buy Agreements to Support National Development <i>Ika Yulia Ningrum</i>	506
Legal Due to The Implementation of Public Business Credits with Guarantee of The Rights of Liability Made in Notary <i>Riska Fauziana</i>	511
Implementation of Credit Agreement Through Notary Notary And Its Legal Due When Performance Occurs <i>Iqbal Rino Akta Pratama</i>	515
Implementation of Court Determination on The Sell and Purchase Process Towards Officials of Land Associates who are Herities Under The Age <i>Zaenal Arifin</i>	519
Authority of The Notary Regional Supervisory Assembly to Issue a Client's Document Return Order <i>Adi Candra Saputra</i>	524
Implementation of Management and Environment of Damaged Land <i>Agil Aladdin</i>	528

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

¹ E.Y. Kanter, *Etika Profesi Hukum, Sebuah Pendekatan Sosio Religius*, Jakarta, Stora Grafika, 2001, p. 67

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 (KUHPerdata) 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

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 KUHPA dilengkapi 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. parties (pacta sunt servanda). In the case of a cancellation of an agreement and / 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, Ichtar 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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