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Notary's Liability for Forgery of Signature by Applicant (Civil Case Study Number 256/PDT/2020/PT.BDG)

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Abstract. *The legal system in force in Indonesia regarding and determining the existence of written evidence is in accordance with the provisions in Article 1866 of the Civil Code, hereinafter referred to as the Civil Code, which states that the means of evidence include written evidence, witness evidence, allegations, confessions and oaths. The method used in this study is the normative legal research method.The approach method used is a qualitative approach.. Types and sources of data using primary and secondary data. The data analysis method used in this study is prescriptive. The results of this study are: Notary's liability for the Deed of Transfer of Rights and Power of Attorney made before Notary DF, SH, M.Kn. Numbers 6 and 7 dated November 30, 2009 in Cibinong, Bogor Regency which contains elements of forged signatures (in the figure), the Notary cannot be held accountable, either civilly or criminally. As a result of the unlawful act in the form of forgery of the signature of the person appearing in the Deed of Transfer of Rights and Power of Attorney made before Notary DF, SH, M.Kn. Numbers 6 and 7 dated November 30, 2009 in Cibinong, Bogor Regency, the notarial deed is null and void. On the grounds that the element of a "lawful cause" is not fulfilled, which is one of the objective requirements for the validity of an agreement.*

Keywords: *Court; Decision; Forgery; Responsibility; Signature.*

1. Introduction

Guarantee of certainty, order, and legal protection in society requires the existence of writing as a form of action, agreement and legal provisions that have the strongest and most complete evidentiary force. One of the writings that has perfect evidentiary force is a notarial deed. A notarial deed is an authentic deed

because it is made in a form determined by law, made by and/or before public officials authorized for the deed, at the place where the deed is made.[1]

Basically, the legal system in force in Indonesia regarding and determining the existence of written evidence is in accordance with the provisions in Article 1866 of the Civil Code, hereinafter referred to as the Civil Code, which states that the means of evidence include written evidence, witness evidence, allegations, confessions and oaths. Even for evidence in civil matters, written evidence is ranked higher. Article 184 paragraph (1)Criminal Procedure Coderegulates the valid evidence in criminal procedure law, which includes Witness Statements, Expert Statements, Letters, Instructions, Defendant Statements. Written evidence can be in the form of a private deed or an authentic deed where an authentic deed is ranked as the strongest evidence. In addition to functioning as the strongest evidence, in the field of property law for certain legal actions must be made in the form of an authentic deed because in this case the function of the deed is as an absolute requirement for the existence of a legal act, for example the establishment of a limited liability company, the establishment of a Foundation and the provision of fiduciary guarantees.[2]

In relation to the need for an authentic deed as the strongest civil evidence according to the applicable legal order, it is necessary to have a public official assigned by law to carry out the making of the authentic deed. The realization of the need for the presence of a public official for the "birth" of an authentic deed is thus unavoidable. In order for a writing to have the value of an authentic deed whose form is determined by law, it brings the logical consequence that the public official who carries out the making of the authentic deed must also be regulated by law. An official who exercises part of the state's powers that are binding on the public (publiekrechtelijk) is called a Public Official. A notary has a position as a public official who is authorized to make authentic deeds and other authorities regulated in the UUJN. A notary provides legal certainty for the parties to the deeds he makes. The function which is also within the authority of the Notary as a public official is to make authentic deeds regarding all acts, agreements and provisions which are required by statutory regulations and/or which are desired by those interested to be stated in authentic deeds, guarantee the certainty of the date of making the deed, store the deed, provide grosses, copies and quotations of the

[1]Academic Text of the Draft Law on Notary Positions, as accessed inhttps://www.scribd.com/document/372152866/NaskahAkademikRUUJN, accessed on July 20, 2024, at 20.00 WIB

[2]Habib Adjie and Rusdianto Sesung, 2020, Interpretation, Explanation, and Commentary on the Notary Law, PT Refika Aditama, Bandung, p. 3.

deed, all of this as long as the making of the deeds is not also assigned or excluded to other officials or other persons as determined by law.[3]

In the Notary Position Regulation and the Civil Code, provisions are generally regulated regarding the implementation of the Notary position. The purpose of the Notary position service is to free members of the community from fraud and to provide certain people with certainty regarding the loss of their rights, so that for this purpose special preventive measures are needed, including maintaining the position of authentic deeds, especially Notary deeds.[4]

Law of the Republic of Indonesia Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary (UUJN) is a new legal product in the field of notary, while the old paradigm regulations known as the Regulations on the Position of Notary (Reglement op het Notarisambt Stb 1860/3) which came into effect on July 1, 1860.

In carrying out his/her functions or authorities, a Notary must act honestly, fairly, independently, impartially, and protect the interests of the parties involved in the legal act. Notaries provide services in accordance with the provisions of applicable laws and regulations, namely in accordance with Law Number 30 of 2004, unless there is a reason to refuse it. The reason for refusing it here is a reason that causes the notary to be impartial, such as a blood relationship or marriage with the notary himself/herself or with his/her husband/wife. Notaries must also keep confidential everything regarding the deed he/she makes and all information obtained for the purpose of making the deed, this is done to protect the interests of all parties related to the deed so that there is a guarantee of legal certainty.[5]

Notary authority is related to the power inherent in a notary. Notary authority is constructed as the power granted by law to a notary to make authentic deeds and other powers.[6]In accordance with his authority, a notary is authorized to make authentic deeds as regulated in Article 15 paragraph (1), (2) and (3) of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary (UUJN), including the following:

"Notaries have the authority to make authentic Deeds regarding all acts, agreements and stipulations that are required by statutory regulations and/or that are desired by those interested to be stated in authentic Deeds, guarantee certainty of the date of making the Deed, store the Deed, provide grosses, copies

[3]Umar Ma'ruf, Dony Wijaya, "Legal Review of the Position and Function of Notaries as Public Officials in Making Authentic Deeds (Case Study in Bargas District, Semarang Regency)", Journal of Legal Reform, Vol. 2, No. 3, 2015, p. 302.
[4]Muhammad Adam, 1985, Origin and History of Notaries, Sinar Baru, Bandung, p. 45.
[5]Ibid, p. 303
[6]Salim HS, 2015, One Deed Making Technique (Theoretical Concept, Notary Authority, Form and Minutes of Deed), Radja Grafindo, Jakarta, p. 49

and quotations "Deeds, all of which as long as the deed is made are not assigned or excluded to other officials or other people as determined by law."

So, one of the authorities of a Notary is to make authentic deeds based on Article 15 paragraph (1) UUJN. Authentic deeds according to the Civil Code are:

"An authentic deed is a deed which, in the form determined by law, is made by or in the presence of public officials who have authority for that purpose in the place where the deed is made."

An authentic deed made by a notary as a public official is the strongest and most complete legal evidence and has an important role in every legal relationship in community life.

An authentic deed essentially contains formal truth in accordance with what the parties have informed the Notary. However, the Notary has an obligation to ensure that what is contained in the Notarial Deed has been truly understood and is in accordance with the wishes of the parties, namely by reading it so that the contents of the Notarial Deed are clear, and providing access to information regarding related laws and regulations for the parties signing the deed. Thus, the parties can freely determine whether or not to agree to the contents of the Notarial Deed that they will sign. The signature on an authentic deed functions as a sign of agreement to the obligations attached to the deed.[7]A signature is a statement of the will of the person who makes the signature (signer), that by affixing his signature under a writing, he wishes that the writing be considered as his own writing in law. This definition includes an assumption that a statement made in writing must be signed by the person concerned.[8]

Regarding signatures, Article 1875 of the Civil Code also explains the validity of a signature as follows:

"A private writing which is acknowledged as true by the person who is presented with it or is legally considered to have been confirmed by him, creates complete evidence like an authentic deed for the people who signed it, their heirs and the people who receive rights from them; the provisions of Article 1871 apply to this writing."

[7]Dhea Mardheana, (July 2016): "Legal Implications of Forgery of Signatures on Minutes of Deeds on the Position of Notary (Study of Supreme Court Decision Number 1234 K/Pid/2012)," Lex Renaissance 1, p.279

[8]Tan Thong Kie in his book Notarial Studies and All About Notarial Practice as quoted in Togar Julio Parhusip, "Are There Any Legal Problems If You Change Your Signature?"https://www. Hukumonline.com/klinik/detail/ulasan/lt570f5347ae286/adakah-problem- Hukum-jika- change-signature,downloaded July 20, 2024.

With the authorities possessed by a Notary, the Notary cannot escape from being able to pay attention to the form of responsibility that will be borne by him in carrying out every legal act carried out by him. Therefore, the form of responsibility will be borne by the Notary in carrying out his position as a public official.[9]

In addition, the notary will also conduct an examination of the existing parties and sign the related deed by looking at the identity of the parties.[10] If there is any suspicion of the involvement of a Notary in an unlawful act and participating in the crime of falsifying documents, which in Indonesian law falsifying something is a form of criminal act that has been regulated in the Criminal Code (KUHP).

In this regard, there is a dispute over the rights to cultivated land where in the Decision of the Bandung High Court Number 256/PDT/2020/PT.BDG, A is the Recipient of the rights to cultivated land located in Pulo Sirih Block, Pekayon Jaya Bekasi, West Java Based on the Deed of Transfer of Rights and Power of Attorney made before Notary C Number 6 dated November 30, 2009 in Cibinong, Bogor Regency, which was made between A and B which has also been paid in full amounting to Rp. 469,000,000, - (four hundred sixty nine million rupiah). The control of the land rights is based on a private statement with sufficient stamp duty dated December 29, 2006 which has been recorded by the Head of Pekayon Jaya. However, it turned out that B, as the owner of the disputed land, stated that he did not know anything and did not even know who A was and who Notary C was. So, according to B, it is impossible for B to carry out a sale and purchase transaction or transfer of the right to cultivate the disputed object with parties who are unknown and have never met at all.

2. Research Methods

TypestudyThis is Normative Legal Research. According to Mukti Fajar and Yulianto Achmad Normative Legal Research is a legal research that places law as a building of normative systems. The normative system in question is about the principles, norms, rules of laws, court decisions, agreements and doctrines (teachings).[11]

The approach method used in this research is a normative legal approach. Mnormative legal approach method or doctrinal legal research, namely legal research that uses secondary data sources. Conducted by emphasizing and adhering to the legal aspects.

[9]Nusantara, Widinasnita Putri, Chairunnisa Said Selenggang, and Aad Rusyad Nurdin, September 2020, "Legal Responsibility of Notaries for Deeds of Release of Land Rights Signed by Non-Legal Owners Analysis of Supreme Court Decision Number 1249 K/Pid.Sus/2018." Indonesian Notary 3, pp. 716-734.
[10]Ibid
[11]Mukti Fajar and Yulianto Achmad, 2010, Dualism of Normative and Empirical Legal Research, First Edition, Pustaka Pelajar, Yogyakarta, p. 34

Types andsourcedata used inlibrary research supported by field research. Library research is collecting data by reviewing library materials or secondary data which includes primary legal materials, secondary legal materials, and tertiary legal materials.[12]Written or image data sources in the form of official documents, books, magazines, archives, documents related to research problems.[13]

Data analysis is an activity in research in the form of conducting a study or review of the results of data processing assisted by previously obtained theories. The analysis in this study is prescriptive.

3. Results and Discussion

3.1. Notary's Responsibility for Forgery of Signatures by Applicants

a. Case Position

Case StudiesDecision of the Bandung High Court Number 256/PDT/2020/PT.BDG, the Plaintiff is the recipient of the rights to the cultivated land located in Pulo Sirih Block, Pekayon Jaya Bekasi, West Java Based on the Deed of Transfer of Rights and Power of Attorney made before Notary DF, SH, M.Kn Number 6 dated November 30, 2009 in Cibinong, Bogor Regency, which was made between the Plaintiff and the Defendant which has been paid in full in the amount of Rp. 469,000,000, - (four hundred and sixty nine million rupiah). The control of the land rights is based on a private statement with sufficient stamp duty dated December 29, 2006 which has been recorded by the Head of Pekayon Jaya. Furthermore, the Plaintiff as the land owner on the basis of the Transfer of Rights and Power of Attorney Agreement to submit an application for land rights to be transformed into a certificate.

The application for the letter could not be processed because there was an objection from the Defendant as the owner of the old land rights. However, it turned out that the Defendant, as the owner of the disputed land, stated that he did not know anything and did not even know who the Plaintiff and Notary DF, SH, M.Kn. were. So, according to the Defendant, it was impossible for the Defendant to carry out a sale and purchase transaction or transfer of the disputed object's land rights with parties who were unknown and had never met at all. Then the Defendant also stated that he had never signed the deed.

The transaction of sale and purchase of the disputed object of Cultivated Land which was carried out based on the Deed of Transfer of Rights and Power of Attorney Number 6 and 7 dated November 30, 2015 made by Notary DF, SH, M.Kn. notary in Cibinong, Bogor Regency contains legal defects because the transaction was not attended by the Defendant as the owner of the disputed object's cultivation rights, even the money for the transaction was handed over directly to

[12]Soerjono Soekanto and Sri Mamudji, Op. Cit, p. 39

[13]Sudarto, 2002, Philosophical Research Methodology, Raja Grafindo Persada, Jakarta, p. 71

WS as the Plaintiff's confidant so that there is a strong indication of fraud and forgery carried out by WS by falsifying the Defendant's existence (in the figure). However, the Plaintiff insisted on enforcing his will to file a lawsuit with the Bekasi District Court against the Defendant.

b. Case Analysis

Based on the case, the Deed of Transfer of Rights and Power of Attorney made before Notary C Number 6 dated November 30, 2009 which is said to be made between A and B for the transfer of rights to cultivated land, contains criminal elements, namely forgery of signatures and identities by a party claiming to be B to sell rights to the cultivated land without the knowledge of B as the actual owner. However, in this case there is no evidence of any indication of involvement in the criminal act of forgery of letters by Notary C in the making of the Deed of Transfer of Rights and Power of Attorney, that the Notary did not order the inclusion of false information or in the deed. The Notary only made the deed based on the information and wishes of the parties. It is different if the related deed is a release deed or a deed containing a description of what was seen, witnessed, and made by the Notary himself at the request of the parties.

Therefore, the imposition of Article 263, Article 266 Paragraph (1) in conjunction with Article 55 Paragraph (1) of the Criminal Code on Notaries is not appropriate, because the elements of the three articles are not fulfilled. In order to be held criminally responsible, a notary must fulfill the following elements: committing a crime; having the capacity to be responsible; intentionally or negligently; and there is no excuse.26

Notaries in carrying out a legal action must always act carefully so that the notary before making a deed, must examine all relevant facts in his considerations based on applicable laws. Examining all the completeness and validity of the evidence or documents shown to the notary, as well as hearing the statements or statements of the parties must be done as a basis for consideration to be stated in the deed. If the notary is not careful in examining important facts, it means that the notary is acting carelessly.

A Notary can be involved in criminal liability and be held accountable if it meets the elements prohibited by law. However, in this case, it must first be seen whether there are any actions by the Notary that indicate his participation in a criminal act, and this must be proven. Because in this case, the task of a Notary is not as one of the parties, but as a public official who standardizes events in a deed of release and/or contains information and the will of the parties contained in the deed. As in this case, in the event that a party deed made by a Notary is problematic in the future, the Notary cannot be directly blamed and held accountable. This is because the deed was made based on the request of the parties, not on the advice or opinion of the Notary.

The theory of justice is used to answer the first problem formulation in civil cases in Decision Number 256/Pdt/2020/PT.BDG. Because in terms of the role of a notary in resolving problems containing elements of forgery of signatures (in the figure) has received a court decision that has permanent legal force, the notary must be fair, because the notary must be able to see the wishes of the parties. Associated with the evidentiary power of the Notary's deed, namely the evidentiary power of material. That the guarantee of truth by a Notary of an authentic deed is not unlimited, but the Notary only guarantees the truth according to what has been conveyed and explained by the parties, which means not including things that were not conveyed to the Notary. If in the future there is a party who doubts the truth of the contents of the deed and feels aggrieved by it, then that party is obliged to prove the untruth of the contents of the deed in question.

3.2. Legal Consequences of Forgery of Signatures by Applicants

A Notary is seen as a figure whose statements are reliable and can be trusted, whose signature and seal (stamp) provide guarantees and strong evidence in the authentic deed he makes.[14]However, at this time there are often legal problems in the making of deeds made by notaries. because the deeds made are indicated to contain criminal elements because the parties facing the process of making the deed provide fake documents or letters and include false information in the authentic deed made by the notary.

There are indications of forgery of signatures and identities of the parties in the Deed of Transfer of Rights and Power of Attorney, of course there are conditions for the validity of the agreement that are not met. According to Article 1320 of the Civil Code (hereinafter referred to as the Civil Code), where the conditions for the validity of an agreement are:

1. Agreement of the parties, namely that both parties who made the Agreement have agreed/concurred regarding the main matters of the agreement, namely by providing a signature as a sign of their agreement:

2. Capacity to make a contract or legal act, namely that every person who makes an Agreement must be an adult, of sound mind, and not under guardianship and is an authorized party and has the legal capacity to carry out the legal act;

3. A certain thing, namely the existence of an object as something that is promised in an Agreement and the object of this Agreement must be a clear thing or item;

4. A lawful cause, namely the Agreement is not made for a false or prohibited reason, and does not conflict with applicable laws and regulations. Article 1335 of

[14]Maria SW Sumardjono, 2001, Land Policy Between Regulation and Implementation, First Edition, Kompas, Jakarta, p. 14

the Civil Code explains that an agreement that does not use a lawful cause, or is made for a false or prohibited reason, has no legal force.

That the valid requirements of an agreement are regulated in Article 1320 of the Civil Code, which are further divided into subjective requirements and objective requirements. The agreement of the parties and the capacity to make a contract and legal act are subjective requirements. While a certain thing and a lawful cause are objective requirements. In an agreement if it does not meet the subjective requirements, it can be canceled, which means that the cancellation must be requested to the Judge, but if there is no cancellation from one of the parties and there has been no cancellation from the Judge, then the agreement remains valid as an agreement that does not have a defect of will. While an agreement that does not meet the objective requirements, the agreement is null and void by law, so that the agreement is considered never to have existed and legally from the beginning there was no agreement and there was no obligation between the people who intended to make the agreement.

When associated with the case, the element of "There is a lawful cause" in the requirements for the validity of an agreement is not fulfilled, because party A is not willing to legally sue the parties who are considered to have committed the alleged Criminal Act of Fraud and Forgery, and has deliberately filed a lawsuit with the Bekasi District Court against party B even though he knew that the purchase of the disputed object was made to the wrong person and not the true owner of the disputed object, resulting in both material and immaterial losses to party B as the legal owner of the disputed object.

If the element of a "lawful cause" is not fulfilled, which is an objective requirement for the validity of an agreement, the agreement is null and void by law, meaning that the agreement is deemed to have never existed and legally from the start there was no agreement and there was no obligation between the people who intended to make the agreement.

Then regarding the perpetrator's mistake in the case, namely because the Plaintiff has purchased the Dispute Object from the wrong person and not the actual owner of the disputed object and paid the purchase price of the disputed object to WS, where WS is a trusted person of the Plaintiff who based on daily information works as a Civil Servant at the Local Government Office who is not actually the owner of the disputed object. It is known that in both deeds of Transfer of Rights of the Dispute Object, WS is stated to have acted as a witness and as a Notary employee who also signed the deed of Transfer of Rights in question. An error that should have been known and understood by the Plaintiff even at the time the Deed of Transfer of Rights was signed, that this transaction was very unusual and strongly indicated the existence of a criminal act of fraud.

Based on the provisions of Article 84 of the UUJN, there are 2 types of civil sanctions, if a Notary commits an act of violation of certain articles and also sanctions of the same type are spread across other articles, namely:

1. Notarial Deed which has the power of proof as a private deed; or
2. The Notarial Deed becomes null and void by law.

Article 84 of the UUJN states that an act of violation committed by a Notary that results in a deed only having the power of proof as a private deed or a deed being null and void by law can be a reason for the party who suffers the loss to demand reimbursement of costs, damages, and interest from the Notary as civil liability. The Notary is considered to be careless and not careful in carrying out his/her duties because the deed he/she made only has the power of proof as a private deed so that he/she can be subject to administrative sanctions according to the applicable code of ethics. Then in relation to the case, the Defendant is clearly harmed by the unlawful act of forging a signature in the name of the Defendant.

The theory of legal certainty in civil cases applied in Decision Number 256/Pdt/2020/PT.BDG, is useful for resolving unlawful acts in the form of forgery of the signature of the person appearing in the Deed of Transfer of Rights and Power of Attorney made before Notary DF, SH, M.Kn. Number 6 and 7 dated November 30, 2009 in Cibinong, Bogor Regency, namely the notarial deed is null and void. If in this settlement there is legal certainty, then in this case regarding the clarity of the Deed of Transfer of Rights and Power of Attorney, it becomes null and void and has provided legal certainty for the disputing parties.

4. Conclusion

Notary's liability for the Deed of Transfer of Rights and Power of Attorney made before Notary DF, SH, M.Kn. Number 6 and 7 dated November 30, 2009 in Cibinong, Bogor Regency which contains elements of forged signatures (in the figure), the Notary cannot be held accountable, either civilly or criminally. The theory of justice is used to answer the first formulation of the problem in the civil case in Decision Number 256/Pdt/2020/PT.BDG. First, this is very closely related to the evidentiary power of the deed, namely the evidentiary power of material, where the Notarial deed is only intended to prove the existence of statements from the parties that are stated in the deed, but not with the intention of proving the truth of the statements. Therefore, matters outside of those conveyed by the parties are not the responsibility of the Notary. Second, in the absence of evidence of the Notary's involvement in committing the crime of forgery of documents, that the Notary did not know anything about the unlawful acts committed by the parties and that the Notary did not order them to include false information or use false identities in making the deed, then the elements of the crime as stated in Article 263, Article 266 Paragraph (1) in conjunction with Article 55 Paragraph (1)

of the Criminal Code are not fulfilled. Thus, the Notary cannot be held criminally responsible;

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