

Notary's Responsibility for The Occurrence of Identity Forgery in The Making of Authentic Deeds (Demak District Court Decision Study No.143/Pid.B/2023/PN Dmk)

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Abstract. *Currently the number of Notaries in Indonesia is increasing and making Notaries only focus on the large number of deeds made every day, so this creates a legal loophole, namely that the parties can use fake identities. This study aims to determine the responsibility of Notaries in the event of and legal protection for Notaries if there is falsification of identity carried out by the party in making authentic deeds with a case study on the Decision of the Demak District Court Number Decision 143 / Pid.B / 2023 / PN Dmk. This research method uses a normative legal approach, meaning that the research is conducted using a literature study approach and a statute approach. The type of data uses secondary data obtained from a literature study. The analysis in this study is prescriptive. The results of the study show that a Notary's deed whose face is using a false identity cannot be treated as an authentic deed. Regarding legal protection for Notaries, this can be done by adding a clause at the end of the deed stating that the Notary is not responsible for the false data of the face.*

Keywords: *Authentic Deed; Criminal Investigation; Right of Refusal; Notary.*

1. Introduction

According to R. Soegondo Notodisoerjo, a Notary is a public official who is open to ambtenaren, because it is closely related to the authority or task and main obligation to make authentic deeds.¹An authentic deed made before a notary is a

¹R. Soegondo Notodisoerjono, Notary Law in Indonesia: An Explanation (Jakarta: Raja Grafindo Persada, 1993), p. 8.

type of document that has the strongest evidentiary power in every legal relationship that occurs in the life of society. An authentic deed can also be used as evidence in court to prove an existing truth. In essence, an authentic deed contains formal truth in accordance with what the parties have informed the notary. In this case, the notary is not only obliged to check the formal truth but also the material truth of the parties. Notaries are expected to apply the principle of caution in exercising their authority to avoid unwanted things.

An authentic deed is a means of evidence that has perfect evidentiary power in the trial process. Perfect evidentiary power means that an authentic deed is the most complete and strongest evidence and encompasses the value of material, formal, and external evidentiary power.² In addition, authentic deeds are also important in maintaining legal certainty in an agreement. In the world of law, one of the most essential aspects is legal certainty, namely that the law aims to guarantee certainty in relations between subjects in society.³

CST Kansil, & Chistine ST Kansil, emphasized that a Notary's position as a public official is required to work professionally by mastering the ins and outs of his profession in carrying out his duties, a Notary must be aware of his obligations, work independently, honestly, impartially, and with a full sense of responsibility and professionally.⁴

Notaries are burdened with some of the state's powers, therefore creating authentic and executory deeds. The function and role of notaries in the increasingly complex national development movement are certainly increasingly broad and developing, because the smoothness and legal certainty of all efforts carried out by all parties are increasingly numerous and extensive, and this is certainly inseparable from the services and legal products produced by notaries. The government and society certainly have hopes that the services provided by notaries truly have value and weight that can be relied on.

In reality, it often happens in the field that when making a deed, a notary does not check the identity of the parties in detail. As a result, when one of the parties or the parties provide the notary who must bear the responsibility for the mistakes of the parties that do not match the data on the parties' identities. It often happens that the notary and the notary's employees, with their busy schedules, do not understand the consequences that will occur if the parties use false identities in their deed. Violations that often occur in the case of a notary making a deed do not guarantee the formal truth of the deed that has been made, meaning that there has been a procedural violation in making the deed. In addition, it can also be caused by the parties never appearing before a notary or

²Komang Ayuk Septianingsih, et al, 2020 "The Strength of Authentic Deed Evidence in Proving Civil Cases," *Journal of Legal Analogy* 2, number 3, <https://doi.org/10.22225/ah.2.3.2584.336-340>, Accessed on November 29, 2024 at 19.45 WIB

³Theresia Ngutra, 2016 "Law and Sources of Law", *Supremacy Journal* 11, no. 2, pp. 193–211.

⁴CST and Chistine ST Kansil, 1996, *Principles of Legal Professional Ethics*, PT. Pradnya Paramita, Jakarta, p. 87

the parties never appearing before a notary together.

Case Example of Demak District Court with case number 143/Pid.B/2023/PN.Dmk involving Agus Supriyanto who was charged with theft of 58 waqf land certificates, falsification of identity, and inclusion of false information in authentic deeds. The defendant used a false identity to access information and submit the certificates to the National Land Agency (BPN) without permission, and ordered the Notary to include false information regarding a meeting that was never held. After considering the evidence and witnesses, the court sentenced the defendant to 2 years in prison and ordered the return of evidence. This case confirms that even though the Notary has acted in accordance with his authority, negligence in verifying the identity of the person appearing can have legal consequences. If an authentic deed is made based on false information or documents hidden by the person appearing, then the deed is legally flawed and the injured party has the right to file a criminal complaint.

Based on the background, the author wants to examine how the Notary Law regulates the responsibility of a Notary in the event of identity falsification carried out by the person appearing. Indonesia has not clearly regulated the truth of the existence of a false identity because the Notary Law stipulates that a Notary is only authorized to make a deed based on what is desired and conveyed by the person appearing and does not have the authority to investigate whether the things conveyed by the person appearing are true or fraudulent. The community still has bad intentions in making deeds and the rules regarding the protection of Notaries in the event of identity falsification are unclear. Therefore, the author is interested in conducting an in-depth analysis, the results of which are made in the form of research entitled "Notary's Responsibility for Identity Falsification in Making Authentic Deeds.

2. Research Methods

This research method is a normative juridical legal research with analytical descriptive specifications, which aims to analyze the notary's responsibility for falsification of identity in authentic deeds. The approaches used include legislative and conceptual approaches, with a focus on synchronizing data from literature and regulations. Data sources are secondary data, consisting of primary legal materials (legislation), secondary legal materials (literature and research results), and tertiary legal materials (legal dictionaries). The data collection method is carried out through literature studies, while data analysis is prescriptive, providing arguments regarding legal facts based on research results.

3. Results and Discussion

3.1. Notary's responsibility in the event of identity falsification by the person appearing in the making of an authentic deed

The responsibility held by a Notary adheres to the principle of responsibility based on fault of liability, in making an authentic deed, a Notary must be responsible if the deed he made contains an error or violation that is intentional by the Notary. On the other hand, if the element of error or violation occurs from the parties appearing, then as long as the Notary exercises his authority according to the regulations. The Notary concerned cannot be held responsible, because the Notary only records what is conveyed by the parties to be stated in the deed.⁵

The problem with the case of decision Number: 143/Pid.B/2023/PN Dmk, where a Notary in his decision was not proven to be involved in his trial case. In that case, the Defendant's actions were proven to have submitted a deed with an identity that did not correspond to the actual situation, such as using a fake identity, so that the Defendant's actions had fulfilled the elements as charged by the Public Prosecutor.

As for the legal consequences and responsibilities for the deed made by a Notary if in the making of the deed the Notary is involved which contains elements of unlawful acts in its formation and has obtained permanent legal force. Form of responsibility of a Notary who Commits Unlawful Acts.

A lawsuit against a Notary can occur if the issuance of a Notarial deed is not in accordance with the procedure, resulting in losses. On the other hand, if a deed is canceled, the Notary concerned can be held responsible according to Administrative Law, Civil Law and/or Criminal Law.⁶

Notary criminal liability is imposed if the Notary commits a criminal act. The Notary concerned cannot be held responsible, because the Notary only records what the parties have conveyed to be stated in the deed. False information conveyed by the parties is the responsibility of the parties.⁷What can be held accountable to the Notary is if the fraud or deception originates from the Notary himself.⁸

Notaries must comply with criminal provisions as regulated in the Criminal Code, and with regard to implementation, considering that Notaries carry out acts in their official capacity to differentiate them from the actions of Notaries as legal subjects. Article 50 of the Criminal Code provides legal protection for Notaries: Anyone who carries out acts to carry out statutory regulations may not be punished.⁹The understanding of the application of Article 50 of the Criminal Code to Notaries is not merely to protect Notaries to free them from criminal acts, but considering that Notaries have the authority as per Law Number 2 of 2014

⁵Interview with Head of Criminal Investigation Unit AKP. Winardi on January 20, 2025

⁶Interview with Head of Criminal Investigation Unit AKP. Winardi on January 20, 2025

⁷Yogi Priyambodo, Gunarto, Review of Violations of the Code of Ethics of the Notary Office in Purbalingga Regency, Jurnal Akta, Volume 4 Number 3, September 2017, p. 332.

⁸Aslan Noer, Searching for Notary positions, Citra Aditya Bakti, Bandung, 2005, p. 58

⁹R. Soesilo, Criminal Code (KUHP) and its Complete Article by Article Commentaries, Politeia, Bogor, 1993, p. 66.

whether the acts carried out when making Notarial deeds are in accordance with applicable regulations.¹⁰

Notaries only record information submitted by the parties, and false information is the responsibility of the party. Legal certainty in making a foundation deed must be based on positive law, and a Notary cannot change the applicable law. Gustav Radbruch emphasized that legal certainty must be adhered to even though it is sometimes unfair. Notaries are required to provide legal advice in accordance with the regulations, but criminal responsibility remains with the individual Notary if proven to have committed a violation.

Problematic Notarial Deeds due to the use of false identities can be caused by two possibilities: the error of the parties appearing or the error of the Notary. If the Notary is not aware of the false identity, then the responsibility lies with the parties appearing, because the Notary only records their wishes. However, if the Notary is actively involved and knows about the use of false identities, he can be questioned as a witness or even become a suspect.

3.2 Legal protection for notaries if there is identity falsification committed by the person involved in making an authentic deed

If a Notarial Deed later becomes problematic due to the parties appearing before it using false identities, then there are two possibilities, namely whether it is an error on the part of the party appearing before the Notary or it is purely an error on the part of the Notary.¹¹ The first possibility is that the Notary actually did not know that the parties were using false identities, because what was stated in the Notarial deed was the will and desire of the parties, not the will and desire of the Notary. The Notary only realized the will in an authentic deed.

However, if there is a third party who feels aggrieved and wants to sue the Notary for the deed he made, then it is beyond the Notary's responsibility. The parties who appear must be responsible for their actions if there is a third party who wants to sue and feels aggrieved. Thus, it can be interpreted that materially the falsity of the use of identity in the Notarial deed is the responsibility of the parties who appear before the Notary. This is because, the Notary in carrying out his position is only formally responsible for the making of the deed.

The second possibility is related to the Notary being actively involved, meaning knowing the use of false identities by the parties. Regarding the use of false identities in Notarial deeds, the Notary may be examined and asked for information by investigators, public prosecutors, or judges.¹²

¹⁰Sjaifurrachman and Habib Adjie, *Aspects of Notary Responsibility in Making Deeds*, (Bandung: Mandar Maju, 2011), p. 198.

¹¹Mulyoto, *Notary's Responsibility in Making Authentic Deeds and Identity Forgery* (Yogyakarta Publisher, 2016), p. 45.

¹²Siahaan, Marisius, *Notary Law in Indonesia: Theory and Practice* (Jakarta Publisher, 2015), p. 82.

The liability of a Notary who is subject to criminal sanctions for his actions in knowingly falsifying the identities of the parties to an authentic deed must fulfill the following requirements:¹³

1. committing a crime. In this case, it must first be legally established that the Notary is proven to have legally committed or participated in falsifying the identity in an authentic deed. Such proof can be shown by the issuance of an authentic deed made by the Notary concerned;
2. have the capacity and ability to be responsible. This capacity and ability to be responsible refers to the mental state of a Notary. This mental state can be shown through the state of the Notary who does it consciously and without coercion or pressure from any party related to the falsification of the identities of the parties in the Notarial deed. This is the justification for imposing criminal sanctions on a Notary who falsifies the identity of an authentic deed; and
3. Intentionally. This element of intentionally is interpreted as the act of falsifying the identity carried out by the Notary was done intentionally, which means that the Notary wanted and was aware of the falsification of the identity in the deed he made.

The Notary's actions in falsifying the identity of the person appearing may also be subject to administrative sanctions. The imposition of these administrative sanctions is carried out as a repressive effort carried out by the Regional Supervisory Board, the Central Supervisory Board, and the Regional Supervisory Board. The imposition of these administrative sanctions can be carried out through:¹⁴

1. written warning;
2. temporary suspension;
3. Honorable discharge; or
4. dishonorable discharge.

The next sanction that can be imposed on a Notary for falsifying an identity in an authentic deed is a civil sanction. This civil sanction is usually carried out after a court decision states that the injured party wants to sue for damages, costs, and interest.¹⁵

Notaries who are proven to be involved in identity forgery can be subject to criminal sanctions (Articles 55, 263, and 264 of the Criminal Code), administrative (written warnings to dishonorable discharge), and civil sanctions in the form of claims for compensation. However, if the Notary is not aware of the identity forgery, the only protection that can be done is to add a clause to the deed, which confirms that the parties are fully responsible for the accuracy of the data submitted. In addition, Article 50 of the Criminal Code also provides protection by stating that a person who carries out duties based on the law cannot be

¹³Darmawan, Rina, "Notary's Responsibility in Making Authentic Deeds: Case Study in Indonesia," *Journal of Law and Policy* 11, no. 2 (2017): 215-220.

¹⁴Wijaya, Irawan, *Identity Forgery in Notarial Practice* (Malang Publisher, 2020), p. 58.

¹⁵Zaki, Fauzan, "Legal Analysis of the Use of Fake Identity in Making Notarial Deeds," *Indonesian Law Journal* 17, no. 2 (2020): 190-205.

punished. This legal protection is important so that Notaries can continue to carry out their duties with integrity in accordance with statutory regulations. The Notary has no obligation to further investigate materially regarding the information and data submitted to him. The use of false identities by the parties who appear that are not known to the Notary is entirely the responsibility of the parties. The Notary cannot be sued regarding this problem if he has carried out his position in accordance with the UUJN, UUJNP and other laws and regulations relating to the position of Notary.

4. Conclusion

Notarial Deed is one form of evidence that has perfect evidentiary power. The deed made by a Notary is essentially a reflection of the wishes and intentions of the parties who appear before him, so that in this case only the parties are bound by the authentic deed. A Notarial Deed is no longer entitled to be treated as an authentic deed if it is proven that there is the use of a false identity. A Notarial Deed that contains material "defects" can be degraded to a deed under hand, and the deed can even be canceled or null and void by law. Determining the status of a deed that is already "defective" is the authority of the judge in court. Legal protection for Notaries, basically in UUJNP or in other laws and regulations there is no regulation regarding this matter. This means that Notaries must act independently to protect themselves regarding the use of false identities of the parties by adding a clause at the end or closing of the deed. The author's suggestion regarding legal research is that Notaries are given legal protection in carrying out their duties and positions. This legal protection should also be stated in a law to further guarantee the certainty and security of Notaries in working.

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