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Notary's Liability for Falsified Power of Attorney to Sell (Study of Court Decision Number 773/Pid.B/2021/PN Smg)

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Abstract. *Forgery of power of attorney deeds is a common problem in notarial practice in Indonesia. As authentic evidence, power of attorney deeds should provide legal certainty and protection, but in practice, notaries often make irregularities in their preparation, resulting in discrepancies between the contents of the deed and the legal facts, resulting in disputes and legal uncertainty. This study aims to analyze the notary's responsibility for forged power of attorney deeds and the judge's considerations in Semarang District Court Decision Number 773/Pid.B/2021/PN Smg. The approach used in this study is a normative juridical approach with a type of normative legal research that focuses on the study of laws and court decisions related to the research problem. The data used are secondary data obtained through literature studies, including primary, secondary, and tertiary legal materials. Data analysis was conducted using a qualitative descriptive method by systematically and logically describing and interpreting the data to answer the research problem. The results of the study show that notaries can be held accountable for administrative, civil and criminal matters if they are proven to have been intentional or negligent in carrying out their authority, resulting in the forgery of a power of attorney to sell. The judge considered that the creation of a deed without the presence and signature of the principal fulfilled the elements of forgery of a deed as regulated in Article 264 paragraph (1) of the Criminal Code, which confirms that notaries are not immune to criminal sanctions.*

Keywords: *Deed Forgery; Notary Responsibilities; Power of Attorney to Sell.*

1. Introduction

Indonesia, as a nation based on the rule of law (Pancasila) and the 1945 Constitution of the Republic of Indonesia, places legal certainty and protection as fundamental principles in every aspect of social and state life. In the context of civil law, the existence of authentic written evidence is a crucial instrument for ensuring the certainty of the rights and obligations of the parties. According to Darus (2017), in the Indonesian legal system, notaries play a strategic role as public officials authorized by the state to create authentic deeds with perfect evidentiary force.[1]An authentic deed, as defined in Article 1870 of the Civil Code (KUH Perdata), provides binding evidentiary force for the parties, heirs, and any party receiving rights therefrom. Therefore, the validity and formal truth of a deed are essential foundations for ensuring legal certainty. Granting power of attorney as a form of agreement is regulated in Articles 1792 to 1819 of the Civil Code. Article 1792 of the Civil Code defines granting power of attorney as an agreement in which a person authorizes another person to manage an interest on his behalf. In notarial practice, a power of attorney is a derivative form of a power of attorney agreement (lastgeving) that is often used in land transactions and credit settlements. Research by Setyawan (2016) shows that the use of a power of attorney in banking practices, particularly in the settlement of problem loans, often gives rise to legal issues if it is not prepared and implemented in accordance with statutory provisions.[2]This indicates a potential gap between legal norms governing the granting of power of attorney and practice in the field.

As a public official, a notary based on Article 1 paragraph (1) of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary (UUJN) has the authority to make authentic deeds and other authorities regulated by law. Notaries are not only tasked with expressing the wishes of the parties in the form of a deed, but are also required to provide legal counseling as regulated in Article 15 paragraph (2) letter e of the UUJN. Adjie (2014) emphasized that notaries must maintain independence, integrity, and professionalism in carrying out their duties, because the deeds they make have broad legal consequences.[3]However, in practice, it is not uncommon for notaries to be faced with legal problems due to formal or material errors in making deeds.

Various studies and legal reports show that notaries are often involved in civil disputes and criminal cases related to the deeds they have drawn up. Heriani (2016) identified a number of problems that often drag notaries into the legal realm, including the drawing up of deeds without the presence of the parties, identity discrepancies, incorrect object data, and allegations of forged signatures in the minutes of the deed.[4]This condition shows a gap between normative provisions that require notaries to act carefully, honestly and impartially, and the practical reality that shows that procedural and substantial violations still occur.

One concrete example can be seen in the Semarang District Court Decision Number 773/Pid.B/2021/PN Smg which ensnared notary Madiyana Herawati because she was proven to have falsified a power of attorney to sell as regulated in Article 264 paragraph (1) of the Criminal Code. In this case, the power of attorney to sell was made without the presence and signature of the parties who should have appeared, but was still used as the basis for the transfer of land rights. This incident shows that although the UUJN does not explicitly regulate criminal sanctions against notaries, criminal liability can still be imposed based on the provisions of the Criminal Code, specifically Articles 263 and 264 of the Criminal Code. On the other hand, the UUJN also opens up the possibility of administrative sanctions in the form of dishonorable dismissal if the notary is proven to have committed a serious violation. Based on the above description, there appears to be a gap between the ideal norm that places notaries as guardians of the certainty and authenticity of deeds and the reality that there are still practices of making deeds that do not comply with legal provisions and result in criminal and administrative liability. Therefore, identifying the problem regarding the form and limits of notary liability for falsified deeds of power of attorney to sell is important to provide conceptual and normative clarity, as well as an effort to strengthen the integrity of the notary profession in the Indonesian legal system. This study aims to analyze the notary's liability for falsified power of attorney deeds based on Decision Number 773/Pid.B/2021/PN Smg.

2. Research Methods

a. Approach method

This research uses a normative juridical approach method.

b. Research specifications

The specification of this research is descriptive-analytical.

c. Data collection method

The data collection method was carried out through library research using:

1) Primary legal materials include the 1945 Constitution of the Republic of Indonesia, the Civil Code, the Criminal Code, the Criminal Procedure Code, and

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[1]Darus, LH 2017. Notarial Law and the Responsibilities of the Notary Public. Yogyakarta: UII Press.
[2]Setyawan, A. 2016. Legal review of the use of a power of attorney to sell mortgage objects in the settlement of bad debts. Jurnal Selat, 4(1), 11.
[3]Adjie, H. 2014. Indonesian Notary Law (Thematic Interpretation of Law Number 30 of 2004 concerning the Position of Notary) (4th Edition). Bandung: Refika Aditama.
[4]Heriani, FN 2016. 7 things that often drag notaries into the vortex of cases. Hukumonline.

Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary.

2) Secondary legal materials, in the form of books, scientific journals, and previous research results that are relevant to the issue of notary accountability.

3) Tertiary legal materials, in the form of legal dictionaries, encyclopedias, and other reference sources that support research.

d. Data analysis methods

The data analysis method used is qualitative analysis.

3. Results and Discussion

3.1. Notary's Liability for Falsified Power of Attorney to Sell Deeds in Decision Number 773/Pid.B/2021/PN Smg

The case examined and decided by the Semarang District Court in Decision Number 773/Pid.B/2021/PN Smg is a criminal case of falsification of authentic deeds involving a notary as a public official. In this case, Madiyana Herawati as Notary and PPAT acted as Defendant I, along with her staff, Fransiska Ely Wulandari, as Defendant II. The case began with the creation and use of a Deed of Power of Attorney to Sell that did not comply with legal requirements, including the forgery of the signature of the party who pretended to grant power of attorney. The object of the case relates to Certificate of Ownership Number 2105 in the name of Suratinah which was previously pledged to BPR Restu Arta Makmur Semarang and was then split into four new certificates. Based on the deeds made, some of the land objects were sold to third parties without the consent or presence of the legal owner.

The trial revealed that on December 28, 2013, four Power of Attorney to Sell Deeds (Nos. 53, 54, 55, and 58) were executed without the presence and request of Suratinah and other related parties. The forensic laboratory examination revealed that the signatures in Deeds No. 53 and 54 were not identical to Suratinah's original signature. These deeds were then used in shophouse sales transactions to several parties, resulting in losses for the original rights holder. In a separate case, Puput Ariyanto was also found guilty of using the deeds as if they were genuine based on Decision No. 192/Pid.B/2021/PN Smg.

In the first instance verdict, the panel of judges stated that Defendant I and Defendant II were legally and convincingly proven guilty of committing the crime of ordering and participating in the forgery of authentic documents as regulated in Article 264 paragraph (1) in conjunction with Article 55 paragraph (1) point 1 of the Criminal Code, as well as other related provisions in the Criminal Code. Defendant I was sentenced to 1 year and 6 months in prison, while Defendant II was sentenced to 1 year and 4 months in prison. At the appeal level, the verdict against Defendant I was upheld, while Defendant II was acquitted on the grounds that his role was limited to carrying out administrative orders. At the cassation level, the Supreme Court rejected the parties' application so that the appeal decision had permanent legal force.

Normatively, the position of a notary as a public official as regulated in the Notary Law places the notary as the party responsible for every deed he or she makes. Violation of the obligations of his or her position can give rise to administrative, civil, or criminal liability. From an administrative aspect, a notary who is convicted of a crime is potentially subject to sanctions based on the provisions of Law Number 2 of 2014 concerning the Notary, including temporary or dishonorable dismissal, through a supervisory mechanism by the Notary Supervisory Board and a decision of the Minister of Law and Human Rights. From a civil aspect, the act can be qualified as an unlawful act that gives rise to an obligation to compensate based on Article 1365 and Article 1366 of the Civil Code. As for the criminal aspect, the panel of judges considered that the elements of falsifying an authentic deed had been fulfilled, including the elements of making or falsifying a letter, using a letter as if it were true, the status of the deed as an authentic deed, and the occurrence of losses.

Thus, Decision Number 773/Pid.B/2021/PN Smg confirms that a notary can be held criminally liable if, in carrying out his/her duties, he/she is proven to have falsified an authentic deed, without disregarding the possibility of administrative and civil liability arising as a legal consequence of the violation.

3.2. Judge's Considerations in Decision Number 773/Pid.B/2021/PN Smg Regarding the Forged Power of Attorney to Sell Deed

In the Indonesian criminal justice system, judges are required to include legal considerations, including aggravating and mitigating circumstances for the defendant, in rendering a verdict. These considerations serve as a rational and normative basis for determining the type and severity of the sentence imposed. This obligation is expressly stipulated in Article 197, letters d and f of the Criminal Procedure Code (KUHAP), which requires that the verdict contain a brief description of the facts, circumstances, and evidence obtained during the trial as the basis for determining the defendant's guilt, and include the articles of the statutory regulations that form the basis for the sentence, along with the aggravating and mitigating circumstances.

In addition to the Criminal Procedure Code, the judge's obligation to formulate legal considerations is also regulated in Law Number 48 of 2009 concerning

Judicial Power, specifically Article 5 paragraph (1) and Article 8 paragraph (2). These provisions emphasize that judges are obliged to explore, follow, and understand the legal values and sense of justice that exist in society, and in considering the severity of the sentence, they are obliged to pay attention to the good and bad character of the defendant. Thus, the judge's considerations are not only based on normative and rational dimensions, but also contain ethical and moral dimensions that are oriented towards substantive justice.

In the context of the authentic deed forgery case analyzed, namely Decision Number 773/Pid.B/2021/PN Smg which was examined and decided by the Semarang District Court, the judge's considerations can be classified into legal and non-legal aspects. The legal aspect is reflected in the assessment of the layered charges submitted by the Public Prosecutor, namely the primary charge based on Article 264 paragraph (1) in conjunction with Article 55 paragraph (1) 1 of the Criminal Code, subsidiary charges based on Article 266 paragraph (1) in conjunction with Article 55 paragraph (1) 1 of the Criminal Code, and more subsidiary charges based on Article 263 paragraph (1) in conjunction with Article 55 paragraph (1) 1 of the Criminal Code. The Public Prosecutor in his indictment assessed that the elements of the crime as formulated in the primary charge had been fulfilled and demanded a two-year prison sentence for the defendant.

The legal facts revealed at trial indicate that the defendant, Madiyana Herawati, as a Notary and Land Deed Making Official (PPAT), had drawn up a number of deeds relating to the sale and purchase agreement and power of attorney for land objects originally registered in the name of Suratinah. During the trial, witness statements, documentary evidence, instructions, and the defendant's own statements were consistent and confirmed that the power of attorney for sale was used as the basis for the transfer of rights without the presence and direct approval of the rights owner. The evidence presented, including the minutes of the power of attorney for sale, a statement of full payment, a savings book, and a warning letter from the Notary Supervisory Board of Central Java Province, further confirmed the existence of a series of acts that fulfilled the elements of the crime as charged.

The non-juridical aspects of the verdict are reflected in the consideration of mitigating and aggravating circumstances for the defendant. Mitigating factors include the defendant's status as a housewife, the presence of family responsibilities, and her lack of prior convictions. Meanwhile, aggravating circumstances include the defendant's failure to admit guilt and the lack of reconciliation with the injured party. These considerations demonstrate that the panel of judges did not solely rely on proving the elements of the offense, but also took into account the defendant's subjective condition and the social impact of her actions.

Based on the analysis, the decision reflects the application of the law in accordance with the provisions of statutory regulations and the principles of criminal law. The panel of judges objectively assessed the fulfillment of the elements of the crime, while balancing them with considerations of humanity and a sense of justice. The relevant theoretical frameworks in analyzing this decision are the Theory of Legal Certainty and the Theory of Legal Responsibility. The Theory of Legal Certainty is reflected in the judge's consistency in basing decisions on written norms and legally valid evidence, while the Theory of Legal Responsibility is reflected in the affirmation that the defendant can be held criminally responsible for actions that fulfill the elements of error and are unlawful.

Thus, Decision Number 773/Pid.B/2021/PN Smg confirms that criminal penalties are imposed as a form of legal accountability based on valid evidence, comprehensive normative considerations, and an assessment of the defendant's subjective aspects, thus reflecting a balance between legal certainty, justice, and expediency.

4. Conclusion

Based on the results of research and discussion, the responsibility of a notary who is proven to have falsified a deed of power of attorney to sell includes three forms of sanctions, namely administrative, civil, and criminal. Administratively, the notary has violated the obligations of his position as regulated in Article 16 paragraph (1) letter a and letter m of the Notary Law, specifically the obligation to act trustworthy, honest, thorough, impartial, and the obligation to read the deed and present the parties in signing. Civilly, this act causes material and legal losses for the holder of the right to the Certificate of Ownership. Criminally, the notary's actions have fulfilled the elements of the crime of falsifying an authentic deed as regulated in Article 264 paragraph (1) in conjunction with Article 55 paragraph (1) point 1 of the Criminal Code, because the deed was made without the presence and approval of the authorized parties and contains information that does not correspond to the actual situation, then used as if it were valid, thereby harming other parties. In Decision Number 773/Pid.B/2021/PN Smg which was decided by the Semarang District Court, the Panel of Judges stated that the act was legally and convincingly proven to fulfill the elements of the crime of falsifying an authentic deed and sentenced the notary concerned to 1 (one) year and 2 (two) months in prison. In carrying out their duties, notaries should always be guided by the principles of prudence, honesty, and professionalism in accordance with the provisions of the Notary Law and the Notary Code of Ethics, especially in ensuring the presence of the parties and the material truth of the data and documents before the deed is signed, in order to prevent the forgery of authentic deeds. In addition, the Notary Supervisory Board needs to improve its supervisory and development functions more effectively, systematically, and sustainably towards

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the implementation of notary duties, especially regarding the creation of deeds that have the potential to give rise to legal disputes, so that similar violations can be minimized in the future.

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