



Legal Protection for a Notary in the Case of Data Falsification by the Parties (Case Study Number 385 K / Pid / 2006)

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Abstract

Notary in carrying out his position if violating the law or code of ethics can be imposed sanctions, which are civil sanctions and administrative sanctions. The UUJN does not mention the application of criminal sanctions, but if an offense committed by a notary contains elements of forgery or intentional / negligence in making authentic letters / deeds whose information is false and proven in court then after being subjected to administrative sanctions and civil sanctions, will be criminal sanctions are also imposed. This thesis using normative juridical approach. Data collected in the form of data from related regulations and books. The type of data used is Secondary Data consisting of primary, secondary and tertiary legal materials. The focus of the study in this study is to examine how the legal protection of notaries in connection with falsification of data by the parties in case number 385 K / Pid / 2006. The result showed that the Legal Protection of the Notary with the privileges owned by the notary, right of refusal, the obligation to reject and exclusive rights.

Keywords: *Legal Protection; Notary; Case of Data Falsification*

I. Background of Research

Notary in practice is often involved with legal cases both as a witness and as a suspect. The involvement of a notary public in a legal case is caused by an error in the deed he made, either because of the mistake of the notary himself or the fault of the parties or one of the parties who did not provide any actual information or documents (lack of good will from the parties or one of the parties) or has there is an agreement between a notary and one of the parties that causes harm to the other party¹. If the notary is proven jointly with one of the parties with the aim of harming the other party then criminal liability may be held, but if the notary does not know about falsification or other actions that cause harm to the other party, the notary cannot be held liable, because the notary is only responsible for the formal side of the deed.²

¹ Mulyoto, 2010, Notary Error in making Deed of Basic Changes to CV, Horizon Media, Yogyakarta, p. 2

² Pieter Latumaten, 2009, The Cancellation and Degredation of the Strength of Notary Deed Evidence and Actual Model, Paper presented at the XX Congress of the Indonesian Notary Association in Surabaya.

In reality, what happens in the community is that many parties provide incorrect data and information to the notary to make a deed. The task of a notary is to enter data and information provided by the parties without further investigating the truth of the data. As we all know, the notary does not have the authority to investigate or seek material truth from the data and information provided by the parties. This has an impact on the deed he made which later becomes problematic. Problems arise in the form of notary accountability to the process of making authentic deeds whose data and information are falsified by the parties.

Notary as Public Official granted legal protection by law in order to give testimony in court. The legal protection given is Ingkar's Right, namely the right to refuse to give testimony in court. The rejection is not limited to what is stated in the deed he made, but the whole facts related to the deed. This right is not only limited to that right, but is an obligation not to speak.

The legal consequences for a notary in exercising his right of silence before the court are, first, that the notary must be released from his obligations as a witness or give testimony before the court, if he uses the right to deny. Because legally, the testimony that will be given according to his knowledge is considered contrary to oath of office or violate the secret of office. Second, freeing the notary from all legal claims from the parties concerned, if the denial is denied by a judge / court or according to the provisions of the law he is required to give testimony before the court.

In accordance with the juridical character of a notary and notarial deed born of three jurisprudential Supreme Court Decisions, namely: Decision of the Supreme Court of the Republic of Indonesia number 702 K / Sip / 1973, dated September 5, 1973; Decision of the Supreme Court of the Republic of Indonesia number 3199 K / Pdt / 1992, dated October 27, 1994; and Decision of the Supreme Court of the Republic of Indonesia number 1140 K / Pdt / 1996, dated 30 June 1998.

Based on the jurisprudence, the juridical character of the notary and notarial deed are: First, the cancellation of the notary deed by the judge cannot be justified, because the deed is the will of the appellant. Second, that the notary function only records the wishes of the parties which are conveyed before the notary public. Third, the notary has no material obligation on matters stated before the notary public. Fourth, the notary deed has a perfect proof of strength for the parties, their heirs and anyone who gets the right from the deed. Fifth, each notary deed (or one notarial deed) only contains one legal action or act. If a notarial deed contains more than one legal act, then the deed does not have the power of an executorial title and is invalid.

In this research the object of study is the Decision of the Supreme Court of the Republic of Indonesia Number 385 K / Pid / 2006. In this case, the Notary Public in the name of R. Soeharto, SH, was charged with deliberately giving the opportunity, means or falsification of the letter to the authentic deeds to the complainants in the form of a false statement and a fake power of attorney in the sale and purchase agreement number 28 of 2000 dated 13 November 2000 and certificate of attorney number 29 dated November 13, 2000. R. Soeharto, as a Notary and Officer for Land Deed (PPAT), been visited by the witness Yapi Kusuma (seller) and witness Kurniawati (buyer) with the aim to make buying and selling of a plot of land plots with a letter of authorization under the hand of the witnesses Ventje Rein Caroles (Director of PT. Bintang Karyasama), to witness Yapi Kusuma (as the Head of PT. Bintang Karyasama), the contents of which were as if the witness Ventje Rein Caroles gave power to Yapi Kusuma to represent PT. Bintang Karyasama, conducted a sale and purchase transaction of land and buildings with witness Kurniawati. Based on the background above, the authors are interested in conducting research with the title **"LEGAL PROTECTION FOR A NOTARY IN THE CASE OF DATA FALSIFICATION BY THE PARTIES (Case Study Number 385 K / Pid / 2006)"**

Ii. Research Method

The research method used in this study is a normative juridical, a research approach based on normative literature study and conducted through investigating law secondary data.³ To conduct this study, the researcher completes any materials required in studying and finishing this study by investigating the primary, secondary, and tertiary data.⁴ The techniques to collect the data are:

1. Literature study is conducted through collecting law materials relating to the study of materials, such as books of law whether in a form of written texts or soft-copy edition, such as e-books, journal articles, papers, government publication, and other sources provided in the internet and accessed via online. Besides, reading, studying, and noting some reviews of literature materials relating to the object of this study are conducted.
2. Study of interview was conducted to some related interviewees, such as the Head of National Land Agency of West Sumatera Province and Conveyance.

The method of data analysis used in this study is qualitative descriptive. Qualitative approach in this study is a procedure to produce descriptive data as revealed by the respondents orally and behaviorally. Then, the objects investigated and studied in this study is the whole research⁵.

Iii. Result of Research

Komar Andasasmita said that each notary has extensive and in-depth knowledge and skills so that they can become public trust officials in designing, compiling and making various authentic deeds, so that the arrangement of the language, technical jurisdiction is neat, good and right, because in addition to the expertise also requires honesty or sincerity and the objective view.⁶

Position and profession of notary to provide legal services to the people who need it, obviously not apart from the roles and responsibilities. A notary must always strive to continue to explore and follow the development of law in society, so that they can carry out their profession based on the Law Notary and Notary Code as well as possible. The public thinks that the notary profession can solve all legal problems⁷

In the case of the object of this study, that according to the belief of Notary & PPAT R. Soeharto, in carrying out his position as a notary to make the Sale and Purchase deed requested by brother Yapi Kusuma correctly based on the power of attorney under the hand brought by Yapi Kusuma, but in fact it was later discovered that the power of attorney under the hand contained a fake signature from the East Java Puskoveri manager, Ventje R. Caroles. In addition, the Notary Public has ignored the requirements that should be fulfilled by a Notary Public before making a legal sale and purchase certificate, including attaching the approval of the Commissioners or through a General Meeting of Shareholders (GMS).

³ Mamudji Sri, et al., *Legal Research and Writing Methods*, Faculty Publishing Board Law of the University of Indonesia, Jakarta, 2005, Page 4-5.

⁴ Adi Rianto, *Social and Legal Research Methodology*, Granite, Jakarta, 2004, page 31.

⁵ Soerjono Soekanto, *Introduction to Legal Research*, UI Press, Jakarta, 2006, Page 32.

⁶ Komar Andasasmita, 1983, *Notary with History, Role, Duty Obligations, Secret Position*, Sumur, Bandung, p. 14.

⁷ Habib Adjie, 2002, *Enforcement of Notary Professional Ethics and Systems Approach Perspective*, Media Notariat, April-June 2002 Edition, INI, Jakarta, p. 6-7.

Based on the Supreme Court Decree No. 385 K / Pid / 2006, according to Judge Defendant R. Soeharto was not proven guilty so the judge acquitted him therefore the primair indictment and stated that the actions of the defendant R. Soeharto in the subsidair indictment had been proven guilty but the actions were the notary did not constitute a criminal offense, so the judge released the defendant notary from all lawsuits and restored the defendant's rights to the position, ability and dignity. Because basically related to the counterfeiting act, the Notary did not know at all and there was no Notary's authority to further examine the authenticity of the power of attorney brought by Yapi Kusuma, the only notary error was the negligence and lack of caution because they felt they knew Yapi Kusuma well, and also neglected to attach the approval of the commissioner.

In this case, according to Philipus M. Hadjon, a legal protection measure was repressive and preventive. Preventively, Notary R. Soeharto in his belief had carried out his position according to the Law of Notary Position, then repressively, Notary during the case. This has been processed in court with the right of denial used by the notary public.

Legal protection for Notaries in carrying out their duties as a Public Official has been regulated in Act Number 30 of 2004 concerning Notary Position (UUJN) and Act Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Position. Specifically related to the making of a deed carried out by a Notary Public, Law Number 2 of 2012 concerning Amendment to Law Number 30 of 2004 concerning Notary Position provides legal protection to Notaries as contained in Article 4 paragraph (2) of Law Number 2 Year 2012 concerning Oath / Notary Promise, one of which reads:

"That I will keep the contents of the deed and the information obtained in the implementation of my position".

Legal protection of a Notary in carrying out his position as a Public Official can be seen in several regulations that reflect notary privileges, such as the right of denial, denial obligation and exclusive right when called for questioning by investigators, public prosecutors or judges. With this right of denial, denial obligation, the Notary can still maintain the confidentiality of all matters concerning the deed he made and all the information obtained for the deed making. However, the instrument of denial, etc. is not strong enough to serve as a legal umbrella for legal protection for notaries to anticipate acts of criminalization and imprisonment by law enforcement officials.

References

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