



Due to the Legal Uncertainty of Notary in the Making of a Copy of Assets That Don't Comply with the Minute of Assets

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Abstract

The type of research used in this research is normative legal research. The position of the copy notary deed, which originally could be used as perfect evidence, becomes imperfect because the copy of the deed doesn't sound the same as the original deed, so that the copy of the deed doesn't meet the formal and material requirements of the deed making procedure. This can result in the copy of the deed being declared null and void. The legal implication of an agreement where a copy of the notary deed doesn't sound the same as the minimum deed, namely: the agreement can also be declared null and void as long as there is an agreement from the parties to cancel it because it results in losses for the parties and contains elements of error and fraud.

Keywords: *Legal; Notary; Fraud*

Introduction

If you look deeper into the formation of laws and regulations in essence, a Notary is also sworn in on the position that is attached to serving the public as in Article 4 of Law of the Republic of Indonesia Number 30 of 2004 concerning the Position of Notary (Law No. 30-2004) where basically A notary is obliged to take an oath and promise according to his religion that he will obey and be loyal to the Republic of Indonesia, Pancasila and the 1945 Constitution of the Republic of Indonesia, the Law on the Position of Notary and other laws and regulations and will carry out his position in a trustful, honest manner, be thorough, independent, impartial and will maintain an attitude, behavior, will carry out obligations in accordance with the professional code of ethics, honor, dignity and responsibility as a Notary, will also keep the contents of deeds and information obtained in the implementation of the notary office confidential.(1)

The position held by a Notary in his profession is a position of trust that has been mandated by law and society a Notary is responsible for carrying out the trust given to him by always upholding legal ethics, dignity, and the nobility of his position, therefore, if this neglect by a Notary Public will have an impact on the general public it serves.(2)

The Notary Deed is a perfect written or letter evidence, because the Notary deed has 3 (three) evidentiary powers, namely the power of physical proof (*uitwendigebewijskracht*) The power of formal proof (*formelebewijskracht*) and the power of material proof (*material bewijskracht*) which is about the certainty of the material a deed.(3)

Notary in carrying out one of its obligations as contained in Article 16 number 1 letter b Law No. 30-2004 that making deeds in the form of minuta deeds and keeping them as part of the Notary protocol. Basically, keeping the Minutes of Deed is the obligation of the Notary Public, so that the Notary should keep the Notary's protocol (which contains the Minutes of Deed) and not let the Notary's protocol be held by its employees. Minuta deed is the original deed containing the signatures of the parties, witnesses and notaries, which are kept as part of the notary protocol. Minuta deeds can be said to be the life of a notary public because minuta is the main source of a notary's deed, without the minuta there will be no copy or derivative or excerpt of the deed. In the Minuta there is the will of the parties or the parties and at the end of the deed are the signatures of the parties, notaries and witnesses. Before the deed is signed, the Notary is obliged to read the contents of the deed to the parties or parties so that it is understood by the parties or parties and give the initials on each page of the deed.(4)

Basically the copy of the deed is clarified in Article 1 number 9 of Law No. 30-2004, namely a copy of the deed is a word-for-word copy of the entire deed and at the bottom of the copy of the deed is the phrase "given as a copy with the same sound". On the copy of the deed, there is a Notary statement starting from the beginning of the deed and the end of the deed and in the copy there is only the Notary's signature. The beginning of the deed explains that the parties have appeared to the Notary Public, and at the end there is a statement that the deed has been signed perfectly and has the same sound.(5)

If in practice, the notary doesn't make a copy of the deed in accordance with the original, then the notary has violated his authority and has caused his Minuta to contain false information. Apart from making copies, in the case of making Minutes, the Notary must be careful not to contain false information, otherwise the Notary must be legally responsible. The form of notary's legal responsibility is responsibility for civil law, criminal law, Law No. 30-2004, and the Notary Code of Ethics. In addition, a Notary as a public official must also be responsible for the material truth of the Minuta he makes, where a Notary must guarantee that the Minuta he makes is an authentic Minuta.(6)

This is what was raised as a legal issue from this research, so that in the end there was no abuse of power by the Notary to make a copy of the Deed that was not in accordance with the Minutes of the Deed so that it violated the provisions of Law No. 30-2004 and the Notary Professional Code of Ethics.

Research Method

The type of research used in this research is normative legal research.(7)

Discussion

Basis for Notary Law Arrangement Against Making Copy of Deed Not In Accordance with Minuta of Deed

If you look more deeply at the legal arrangements related to the types of legal violations against Notaries in the context of making a copy of the Deed that is not in accordance with the Minutes of the Deed, it can be said that the Notary has violated Article 16 paragraph (1) letter a of Law No. 30-2004, namely not acting honestly, thoroughly, independently, taking sides and protecting the interests of the parties involved in legal actions. Other rules of legal norms that violate the law include Article 16 paragraph (1) letter c of Law No. 30-2004, namely making a copy of the deed not in accordance with the minimum deed.(8)

On another measure, the demands of morality and intelligence as well as caution (care) must always be considered by the Notary, so that the authentic deed he makes can truly guarantee legal certainty. Following Suhrawadi's opinion that legal certainty is needed for Notary products, therefore the services provided by Notaries must really have a value and weight that can be relied upon.(9)

So, notaries are required for their expertise and accuracy as well as being equipped with strong morals so that they behave in maintaining the dignity of their position. Therefore it needs to be balanced with supervision by agencies that have been appointed by Law No. 30-2004.(10)

Notaries have a role to provide legal education in connection with making deeds. Notaries also have the authority to make a copy of the Deed in accordance with the Minuta Deed. At the level of making an authentic deed, a copy of the Deed that is in accordance with the Minute of the Deed is mandatory because the authentic deed is made before a Notary, in which case the deed is the original deed that includes the signatures of the parties, witnesses and notaries. Basically, a copy of the Deed that is in accordance with the Minuta Deed guarantees certainty for the parties not to evade the contents of the deed, so that it will be legally binding for the parties.(11)

Legal Implications of Notaries on Making Copies of Deeds Not In Accordance with the Minutes of Deeds

It's necessary to know that Minuta Deed in a form of agreement has the most perfect power and position, because it proves the authenticity and validity of the deed in an agreement. The agreement will not be valid when there is no Minuta Deed besides there must also be Facilitators, Witnesses and Notaries. For this reason, the form of a copy of the Deed also complements the existence of the Minuta Deed, because it becomes a complete unit when the parties, witnesses get a copy of the Deed from a Notary which is part of the statutory regulations of a Notary. If the copy of the Deed is not in accordance with the Minuta Deed, then there are several things that could have implications for : *First*, the Deed is null and void. *Second*, the Deed can be canceled. *Third*, Legal Consistency in Agreement Status.(12)

First, the Deed is null and void. As for the notary's obligation to issue a grosse deed, a copy of the deed or an excerpt of the deed based on the minuta specified in Article 16 paragraph (1) letter d of Law No. 30-2004, and the meaning of the copy of the deed itself is also regulated in Article 1 paragraph (9) of Law Number 2 of 2014 concerning Amendments to Law No. 30-2004 which states that a copy of the deed is a word-for-word copy of the entire deed and at the bottom of the copy of the deed a phrase is given as a copy with the same sound especially regarding sentences based on the minutes and given as a copy of the same sound in the formulation of the article, the notary must issue a copy after the minutes of the deed have been made and the sound of the copy must be the same as the sound of the deed's minutes without being reduced or added. Except, the end of the deed of the copy must include the phrase as the copy which has the same sound and there is only the signature of the notary who made the deed.(13)

As mentioned above, if the copy of the deed doesn't sound the same as the minimum deed, then the deed doesn't meet the material requirements of a notary deed and can be declared null and void by the judge. This is because the copy of the deed is also an authentic deed that must be issued by a notary to the parties concerned and can be used as evidence for the parties concerned, while the original deed must be kept by the notary as a notary protocol.(14)

Considering the analysis above, if a public official, in this case a notary, makes a copy of the deed which doesn't sound the same as the minimum deed, then the notary is out of the limits of his authority, namely violating Article 16 paragraph (1) letter d and Article 1 paragraph (9) of Law No. 3-2014 which is the definition of the copy of the deed itself.

Second, the Deed can be canceled. A copy of the Deed that is not in accordance with the Minuta Akta is said to be canceled when there are mistakes and frauds. This is why the copy of the Deed is not in accordance with the Minuta Akta. It is said to be deception when someone deliberately with the will and knowledge leads astray in other people. Fraud is said to occur not only when certain facts are deliberately not disclosed or withheld, but also when misinformation is intentionally provided or occurs by other deception.(15)

Third, Legal Consistency in Agreement Status. The position of the legal subject and object in the copy of the deed which does not sound the same as the minimum deed shall still have the same legal force as the copy of the deed which reads the same as the minuta deed. This is because the position of legal subjects and legal objects isn't influenced by the cancellation of a notary deed but because of things that are not appropriate or prohibited by law.(16)

Conclusion

The position of the copy notary deed, which originally could be used as perfect evidence, becomes imperfect because the copy of the deed doesn't sound the same as the original deed, so that the copy of the deed doesn't meet the formal and material requirements of the deed making procedure. This can result in the copy of the deed being declared null and void. The legal implication of an agreement where a copy of the notary deed doesn't sound the same as the minimum deed, namely: the agreement can also be declared null and void as long as there is an agreement from the parties to cancel it because it results in losses for the parties and contains elements of error and fraud.

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