



Case Study of False Statement in Notarial Deed in the Perspective of the Law on Notary Position

Annisa Khairul; Elwi Danil; Aria Zurnetti

Faculty of Law, Universitas Andalas Padang, Indonesia

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Abstract

A notary is assigned as a general official who makes a deed in which the deed issued by the notary is a perfect, strongest, and most complete proof that can guarantee legal certainty. Therefore, a notary must carry out his/her position in accordance with his/her authority as a public official as stipulated in the Law. This thesis applies a normative juridical approach and uses data sources which include primary, secondary and tertiary legal materials obtained through literature and field studies using interview guideline and field observation. The research that had been conducted found that the legal consequences for notarial deed containing false statements from appearers are that the party who feels disadvantaged by the existence of the deed can file a lawsuit in a civil court so the judge can decide to cancel the deed. Thus, the deed no longer has legal force because it has been declared legally flawed and null and void by law. The notary's liability for the deed containing the false statement from appearer is in terms of administrative liability, civil liability, and criminal liability. The form of criminal sanction imposed on the appearer who gave a false statement for the authentic deed to the notary is that the appearer will be threatened with punishment in accordance with the provisions of Article 266 paragraph (1) of the Criminal Code; thus, the appearer deserves to be given a prison sentence. In addition, the form of civil sanction imposed on the appearer who gives false statements for authentic deeds to notaries is in the form of giving compensation to the injured party.

Keywords: Legal Consequences; Notarial Deed; False Statement; Appearer

Introduction

The Constitution of the Republic of Indonesia Article 1 paragraph (3) the Fourth Amendment states that the State of Indonesia is a legal state. This clearly confirms that everything that exists in society, state and government must be based on applicable laws in Indonesia.

A notary is assigned as a general official who makes a deed in which the deed issued by the notary is a perfect, strongest, and most complete proof that can guarantee legal certainty. Therefore, a notary must carry out his/her position in accordance with his/her authority as a public official as stipulated in the Law.

Based on Law No. 30 of 2004, as amended by Law No. 2 of 2014 concerning Notary Position, hereinafter referred to as Law on Notary Position, what is meant by notary is a general official authorized

to make authentic deeds and other authorities as referred to in this Law. It is concluded that the notary is an official who is given a mandate by the government to make authentic deeds especially in the field of civil law.

The authority of the notary is regulated in Article 15 paragraph (1), (2), and (3) Law on Notary Position which states that:

1. Notary has the authority to make authentic deeds regarding all acts, agreements, and stipulations required by legislation and/or what the interested parties want to be stated in an authentic deed, guarantee the date of making a deed, store the deed, give a *grosse*, duplicate, and copy of the deed, as long as the making of the deed is not also assigned or excluded to other officials or other persons stipulated by the Law.
2. In addition to the authority as referred to in paragraph (1), notary is also authorized to:
 - a. validate the signature and determine the certainty of the date of private deed by registering it in a special book;
 - b. compile a private deed by registering it in a special book;
 - c. make an original copy of private deed in the form of a copy containing the description as written and illustrated in the letter concerned;
 - d. validate the suitability of the copy with the original deed;
 - e. provide legal counseling in connection with deed making;
 - f. make deed relating to land; or
 - g. make auction deed.
3. In addition to the authority as referred to in paragraph (1) and paragraph (2), notary has other authorities stipulated in the laws and regulations.

The position of a notary as a public official is an honorable position given by the state attribute through the Law to someone it trusts. As a public official, based on Article 2 Law on Notary Position, a notary is appointed by the minister. After a notary is appointed, he/she can carry out his/her duties freely without being influenced by the executive and other agencies and can act neutral and independent. The duty of a notary is to carry out part of the public functions of the state and work for the service of public interests, especially in the field of civil law; even though the notary is not a civil servant who receives a salary from the state.¹

According to Article 1868 of the Civil Code, what is meant by authentic deed is a deed made in the form prescribed by the Act by or before the authorized official for that on the place of the deed made. Meanwhile, according to Article 1 number 7 Law on Notary Position, which is called notarial deed is an authentic deed made by or before a notary according to the form and procedure stipulated in the Law.

In Article 1 number 7 Law on Notary Position, the form of the deed is divided into 2 consisting of:

1. Relas Deed (Official Deed)

¹ Hartanti Sulihandari, Nisya Rifiani, *Basic Principles of Notary Profession*, Jakarta Timur, Dunia Cerdas, 2013, page 6

According to A. A. Andi Prayitno, *relaas* deed records all events that are seen, heard, and felt from the implementation of the meetings or events covered.² According to G. H. S. Lumbun, *relaas* deed contains the notary description that is seen and witnessed by the notary him/herself at the request of the parties so that the acts or actions of the parties are included in the notarial deed form.³

From the above understanding it can be concluded that the elements of the *relaas* deed are as follows:

- a. being seen;
- b. being witnessed; and
- c. at the request of the parties

The type or classification of *relaas* deed is not specifically regulated in Law on Notary Position. However, in practice, *relaas* deeds can be classified into three types which include:⁴

- a. minutes of shareholders meeting in a limited liability company;
- b. bundle registration deed; and
- c. lottery deed.

2. *Partij Deed (Deed of Parties)*

According to G. H. S. Lumbun, *partij* deed or deed of the parties contains a description or information and statement of the parties told before the notary. The parties wish that the description or information be included in the notarial deed form.⁵

The elements listed in this definition include:

- a. contains a description or information;
- b. the presence of the parties;
- c. being told before the notary; and
- d. wish to be included in a notarial deed form.

Article 1868 of the Civil Code is a source for the intensity of which notarial deed is also the basis for the legality of notarial deed existence with the following conditions:⁶

- a. The deed must be made by (*door*) or before (*ten overstaan*) a public official.
- b. The deed must be made in the form specified in the Law.
- c. The general officer or before whoever the deed is made, must have the authority to make the deed.

Notarial deed, essentially, contains formal truth in accordance with what the parties told public official (notary). The notary is obliged to include what is truly understood in the deed in accordance with the wishes of the parties and read to the parties about the contents of the deed. The statements or information of these parties are included in notarial deed by a notary.⁷ Notary is not obliged to look for material truths from the information conveyed by the appearers.

²A. A. Andi Prayitno, *Practical Knowledge on What and Who Notaries in Indonesia*, Surabaya, Putra Media Nusantara, 2010, page 69

³G. H. S. Lumbun, *Regulations on Notary Position*, Jakarta, Erlangga, 1983, page 51

⁴Salim HS, *Technique of Making Deed One*, Jakarta, Rajawali Pers, 2016, page 92

⁵G. H. S. Lumbun, *Op. Cit.*, page 52

⁶Habib Adjie, *Void and Cancellation of Notarial Deed*, Bandung, Refika Aditama, 2011, page 9

⁷Habib Adjie, *Op. Cit.*, page 45

This, in the future, triggers problems with the deed made by the notary. The emergence of problems regarding the liability of the notary in the process of making a deed is due to information or statement given by the appearer not in accordance with reality or identified as false statements.

In practice, a case was found in which the parties appearing to the notary gave a statement that was not true or not in accordance with the actual situation for the benefit of the appearer but was detrimental to the other party. However, in this case, the notary cannot be sentenced to criminal because the notary does not participate in or does not help the appearer in giving or making false statements to be included in the deed he/she made. The notary only carried out his/her duties as an official making the deed to make a deed in accordance with what was explained by the appearer to the notary.

Law on Notary Position also does not regulate criminal liability against notaries whose deeds contain false information or false statements; from the negligence of the notary him/herself or because of an appearer error that is not honest in providing information so that the deed is detrimental to the other party.

Based on the background of the above problem, the author is interested in raising the issue in a study in the form of a thesis with the title "Legal Consequences for Notarial Deed Containing False Statement from Appearer in the Perspective of the Law on Notary Position".

II. Research Method

Jan Gijssels and Mark Van Hoecker, quoted by Peter Mahmud Marzuki, explained that legal research is a process of finding legal rules, legal principles and legal doctrines to answer the legal issues at hand.⁸ Therefore, this study aims to express the truth systematically, methodologically, and consistently.⁹

Based on the formulation of the problem and the research objectives mentioned above, this is a descriptive analytical study that can provide a broad picture of the problem faced by describing the object under study; i.e., an analysis of authentic deeds containing false statements from appearers that are associated with legal theory of the deed.

1. Problem Approach Form and Method

This form of research is normative juridical; i.e. a method that examines legislation, legal theories and jurisprudence related to the problems being discussed. In this case, the research approach method is used to analyze the consequences of authentic deed laws containing false statements from the appearers reviewed from Law on Notary Position and criminal law.

The problem approach method in this study is the statute approach and case approach.

2. Data Types and Sources

The data types and sources of this study are as follows:

- a. Library research which is a method of collecting and studying secondary data. Secondary data is data that has been presented and processed which consists of:¹⁰

⁸*Ibid*, page 29.

⁹Zainudin Ali, *Legal Research Methods*, Jakarta, Fourth Print, Sinar Grafika, 2013, page 17

¹⁰Abdulkadir Muhammad, *Law and Legal Research*, Bandung, First Print, Citra Aditya Bakti, 2004, page

- 1) Primary legal material; i.e. legal materials that are binding because they are issued by state or government institutions and in the form of legislation. This primary legal material consists of:
 - a) 1945 Constitution of the Republic of Indonesia
 - b) Civil Code
 - c) Civil Procedure Code
 - d) Criminal Code
 - e) Criminal Procedure Code
 - f) Law of the Republic of Indonesia No. 2 of 2014 concerning Amendment to Law No. 30 of 2004 concerning Notary Position.
 - g) Notary Code of Ethics from the Indonesian Notary Association (INI)
- 2) Secondary legal material; i.e. legal material that provides an explanation of primary legal materials, among others, works from the legal community, theories and opinions of experts, library materials or literature relating to the problems being studied, and sources from the internet.¹¹
- 3) Tertiary legal material; i.e. instructions or explanations regarding primary legal material or secondary legal material derived from dictionaries, encyclopedias, magazines, newspapers, and so forth.
 - b. Field research is a method of collecting data by interviewing parties and relevant agencies to analyze and reflect on primary data obtained from the field and support secondary data.

3. *Data Processing and Analysis*

The collected data is processed through the editing process so that it can be arranged systematically and simplify drawing conclusions. Furthermore, the authors conducted a qualitative analysis by conducting judgments based on legislation, theory, and logic to draw conclusions as legal answers to the problem statements.

Research Results and Discussion

Arrangement Regarding Legal Consequences, Liabilities, and Sanctions for Notarial Deed Containing False Statement from Appearer Reviewed from Law on Notary Position

1. Arrangement of Legal Consequences for Notarial Deed Containing False Statement

Legal consequences are all consequences that occur from all legal actions carried out by the legal subject to the object of law or other consequences caused by certain events which have been determined by the law itself or considered as a result of the law.¹²

¹¹Suratman dan Philips Dillah. *Legal Research Methods*, Bandung, CV Alfabeta, 2012, page 115.

¹²A. Ridwan Halim, *Introduction to Law in Questions and Answers*, Jakarta, Ghalia Indonesia, 1985, page

The legal consequences can be as follows:¹³

- a. The emergence, change, or disappearance of a certain legal norm.
- b. The emergence, change, or disappearance of a certain legal relationship.
- c. Sanctions that include criminal sanctions or private sanctions.

2. Arrangement of Liabilities for Notarial Deed Containing False Statement

In the legal dictionary, liability is a must for someone to carry out what has been obliged to him/her.¹⁴ According to Indonesian Language Dictionary, the liability is the condition of having to bear things if something happens then it can be prosecuted, sued, and so forth.¹⁵ Liability in civil law is divided into two consisting of liability due to violating the law (*onrechtsmatigedaad*) and liability due to violating the agreement (*wanprestasi*).

Liability due to violating the law is regulated in Article 1365 of Civil Code, which states that “every act against the law that brings harm to another person, requires that the person who is wrong to issue the loss, compensates the loss”. Meanwhile, liability due to violating the agreement (*wanprestasi*) is a liability that arises based on an agreement that has been violated.

Generally, the principles of liability in law can be distinguished as follows:

- a. Liability based on fault
- b. Presumption of liability
- c. Presumption of nonliability
- d. Strict liability
- e. Limitation of liability

3. Arrangement of Sanctions for Notarial Deed Containing False Statement

The definition of sanctions according to the Indonesian Language Dictionary is the dependence of action, punishment, and so on to force people to keep the agreement or keep the provisions of the Law. Meanwhile, the definition of sanctions in general is a means of coercion so that everyone adheres to the prevailing norms. Sanctions against violations of legal norms can be handed over to the authorities, where sanctions are in the form of punishments that can be immediately felt by violators.¹⁶

Legal sanctions are divided into three consisting of:¹⁷

- a. Criminal Sanction

Various types of criminal sanction are regulated in Article 10 of the Criminal Code which consists of:¹⁸

- 1) The principal punishment, which is divided into:
 - a) Death penalty

¹³Achmad Ali, *Revealing the Reality of Law*, Jakarta, Kencana, 2008, page 5

¹⁴Andi Hamzah, *Legal Dictionary*, Ghalia Indonesia, 2005

¹⁵Indonesia Language Dictionary (KBBI), Liability, <https://kbbi.web.id/tanggung%20jawab>, accessed on February 27, 2019

¹⁶S. R. Sianturi, *Criminal Law Principles in Indonesia and its Application*, Alumni of Ahaem-Petehaem, Jakarta, 1996, page 28

¹⁷Handri Raharjo, *Indonesian Legal System*, Pustaka Yustisia, Yogyakarta, 2016, page 8

¹⁸*Ibid*

- b) Jail sentence
 - c) Imprisonment sentence
 - d) Fine penalty
- 2) Additional punishment, which is divided into:
- a) Revocation of certain rights
 - b) Deprivation of certain items
 - c) Announcement of the judge's decision

b. Civil Sanction

This civil sanction includes the fulfillment of achievements, compensation (costs, losses, interest), cancellation of agreements, transfer of risk, payment of court fees, and so on.¹⁹

c. Administrative Sanction

This administrative sanction includes *bestuursdwang* (government coercion), withdrawal of favorable decisions (permits, payments, subsidies), imposition of administrative fines, government imposition of forced money (*dwangsong*).²⁰

4. Arrangement of Notary Position in Law on Notary Position

a. Definition of Notary

The law concerning the notary was amended on January 15, 2014; i.e. changes from Law No. 30 of 2004 to Law No. 2 of 2014. This change was made because several provisions in the old Law were no longer in line with the development of the law at the present time. Therefore, the notary must comply with the new Law on Notary Position.

In Article 1 of Law on Notary Position, a notary is also referred to as a public official in which it comes from the word *openbare ambtenaren*. In the legal dictionary, *ambtenaren* means official. *Openbare ambtenaren* is defined as an official entrusted with the task of making an authentic deed that serves the interests of the community and such qualifications are given to the notary. The term or word of officials is defined as a government employee who holds a position (element of leadership) or a person who holds a position.²¹

Notary comes from the word “*notaries*” which is the name given to the Romans whose job was to carry out writing work at that time. There is an opinion from Notodisoerjo who argued that the notaries come from the words “*nota literaria*” which means a sign (letter mark or character) that says something.²²

According to G. H. S. Lumban Tobing, a notary is the only public official in charge to make authentic deeds regarding all acts, agreements, and stipulations required by legislation and/or what the interested parties want to be stated in an authentic deed, guarantee the date of making a deed, store the

¹⁹*Ibid*, page 9.

²⁰*Ibid*

²¹Badudu and Zain, *15. Indonesia Language Dictionary*, Jakarta: Pustaka Sinar Harapan, 1994, page 543

²²Tan Thong Kie, *Notariat Study: All About the Practice of Notaries*, First Edition, PT Ichtiar Baru Van Hoeve, Jakarta, 2007, page 16

deed, give a grosse, duplicate, and copy of the deed, as long as the making of the deed is not also assigned or excluded to other officials or other persons.²³

b. Authentic Deed

The term or the word “deed” in Dutch is “acte” or “akta” and in English it is called “act” or “deed”. Deed according to Sudikno Mertokusumo is a letter that is given a signature that contains events that form the basis of an intentionally made right or engagement to prove.²⁴

Deed is one of the main evidences in civil cases that are needed at civil proceedings. Civil Procedure Code, Article 284 RBg jo. Article 164 of the HIR states that:²⁵

Legitimate evidence consists of:

- 1) Written evidence;
- 2) Evidence with witnesses;
- 3) Presupposition;
- 4) Confessions;
- 5) Oath

An authentic deed is a deed made by an official who is authorized for it by the authorities according to the stipulated provisions with or without assistance from interested parties, which records what is requested to be included in it by interested parties. The authentic deed contains information from an official who explains what happened or about what was seen before him/her.²⁶

Tan Thong Kie gave several notes regarding the definition of deed and authentic deed, as follows:²⁷

- 1) The difference between the writing and the deed lies in the signature listed under the text.
- 2) Article 1874 paragraph 1 of the Civil Code states that what is included as private writing is a private deed, letter, register, household letter, and other writings made without intermediaries of public officials.
- 3) Article 1867 of the Civil Code further stipulates that authentic deed and private writing are considered as written evidence.

Irwan Soerodjo stated that there are 3 (three) essential elements so that the formal requirements of an authentic deed are fulfilled as follows:²⁸

- 1) It is in the form specified by the Law.
- 2) It was made by and before public official.
- 3) Deed made by or before public official in charge and in the place where the deed is made.

Notarial deed is a perfect proof of writing or letter because it has 3 (three) powers of evidence consisting of:²⁹

²³G. H. S. Lumban Tobing, *Op. Cit.*, page 37

²⁴Sudikno Mertokusumo, *Indonesian Civil Procedure Code*, Liberty, Yogyakarta, 2006, page 149

²⁵I Ketut Artadi, *Collection of Legislation of Civil Procedure Code*, Pustaka Bali Post, Denpasar, 2009, page 54 and 86

²⁶Husni Hamrin, *Making of Land Deed by a Notary*, Laksbang Pressindo, Yogyakarta, 2011, page 11

²⁷Daeng Naja, *Deed Making Techniques*. Pustaka Yustisia, Yogyakarta, 2012, page 1

²⁸Irwan Soerodjo, *Ibid*

- a) The power of outward proof (*uitwendige bewijskracht*) which is the ability to provide its validity as an authentic deed.
- b) The power of formal proof (*formele bewijskracht*) which provides certainty that an event and fact in the deed is truly known and heard by a notary public from the statement of the parties appearing in which the matters listed in the deed are in accordance with the procedures specified in notarial deed making.
- c) The power of material proof (*materiele bewijskracht*) is certainty about the material of a deed.

c. Appearer

According to Article 39 of Law on Notary Position which regulates the notary appearer, it states that the appearer that appears to the notary must fulfill the following conditions:

- 1) At least 18 (eighteen) years old or married; and
- 2) Capable in carrying out legal actions

Appearers must be recognized by a notary or introduced to him/her by 2 (two) identifying witnesses who are at least 18 (eighteen) years old or have married and are capable of carrying out legal actions or introduced by 2 (two) other appearers. Such recognition is stated explicitly in the deed.

There are three ways the notary to recognize the appearer that include:

- 1) Know personally;
- 2) Know based on written identity;
- 3) Know because he/she is introduced by 2 (two) identifying witnesses known by the notary.

Appearers can be divided into 3 types as follows:

- 1) Appearer who appears by him/herself; i.e. an appearer who acts on his/her own behalf in carrying out legal actions.
- 2) Appearer who appears by power; i.e. an appearer who acts based on the power of the other party in carrying out legal actions.
- 3) Appearer who appears based on his/her position; i.e. an appearer who acts on behalf of his/her position in carrying out legal actions.

d. False Statement

In the case of this study; i.e. regarding a criminal offense to order a false statement into an authentic deed, this is related to Article 266 of the Criminal Code. Article 266 paragraph (1) of the Criminal Code states that “whoever orders to enter a false statement into an authentic deed concerning something whose truth must be stated by the deed, with the intention of using or instructing someone to use the deed as if the statement is in accordance with truth, threatened with imprisonment for a maximum of seven years, if the use can cause harm”.

In this Article, the prohibited exercise is to enter a false statement into an authentic deed, so that the contents of the deed are not in accordance with or contrary to the truth so that the authentic deed is degraded into a private deed or also called an authentic deed.

²⁹ Habib Adjie, *Ibid*

In this case, the act carried out by the appearer who gives a false statement to the notary, to be included in the authentic deed, is an act of intellectual forgery; i.e. the act of making a fake letter in which the contents of the letter are not in accordance with the truth that exists and the action is carried out to prove it.

Legal Consequences of Notarial Deed Containing False Statement in the Perspective of Law on Notary Position

A deed can lose its authenticity and cause a loss if it does not meet the requirements to become an authentic deed determined by the Law; for instance, it does not meet the provisions in Article 1320 of the Civil Code. According to Article 1320 of the Civil Code, there are 4 (four) conditions to determine the validity of an agreement which includes:

- a. Agreement of the parties that bind themselves
- b. The ability to make an agreement
- c. A certain subject matter
- d. A reason that is not prohibited

The first and second conditions are subjective conditions because these conditions must be met by legal subjects; whereas, the third and fourth conditions are objective conditions because these conditions must be fulfilled by the agreed object. If the deed made by the notary does not meet the subjective conditions, the cancellation request can be submitted by the parties who suffer losses to the judge by filing a civil suit to cancel the deed because it has caused a loss.

In the case of false statements in notarial deed, unmet conditions are objective conditions; thus, notarial deed can result in null and void or also called cancellation. In this case, cancellation is divided into two types; i.e. absolute cancellation and relative cancellation. Absolute cancellation is that null and void legal action does not cause legal consequences for anyone whose legal action is null and void for anyone. So, no one is bound by such legal action, which means that the legal action has no legal consequences from the outset. Legal actions here are actions that cause legal consequences and the legal consequences are desired or deemed desirable. These actions are manifested in a statement, both expressly and secretly. Absolute cancellations usually relate to the problem of “form” determined by the Law.³⁰

Relative cancellation is a cancellation caused by the non-fulfillment of the elements contained in the Law. In addition, relative cancellation only applies to individuals. So, the cancellation caused by false statements given by the appearers to the notary to be included in the authentic deed is relative cancellation.

In practice, cancellations must be requested by the court; however, the application method is different. It can request that the deed be canceled because it does not meet the subjective conditions or requests that the deed be declared null and void because it does not meet the objective conditions. It is because without the legality of the court, no one knows how the position of the deed is, so that it allows the deed to be misused.

³⁰ J. Satrio, *Personal Law Part I*. Persoon Alamah, Bandung, First Print, Citra Aditya Bakti, 1999, page 57

Liabilities of the Notary against Deed Containing False Statement from the Appearer

a. Liability in terms of Legal Administration

In carrying out his/her position, if a notary violates the code of ethics, the Honorary Council which coordinates with the Supervisory Board is authorized to conduct an examination of violations committed by the notary and impose administrative sanctions on the notary concerned. The violation of the code of ethics in this case is to do actions that are generally regulated in the notary code of ethics which are included as violations including violations of Law on Notary Position, contents of the oath of notary office, and matters according to the provisions of the articles of association, bylaws and/or other decisions that have been determined by Indonesian notary organizations, which should not be violated by the members.

In the case of a deed containing a false statement, the notary cannot be subject to administrative sanctions, because in this case the appearer must be liable for giving an incorrect statement to the notary. In addition, the notary is not obliged to find out the material truth about what the appearer told him/her.

b. Liability in terms of Civil Law

A notary, as a state official in carrying out his/her duties, must be liable if one day a dispute arises caused by the deed that he/she made. However, if an error or violation occurs due to the parties, as long as the notary carries out his/her duties in accordance with the provisions of the applicable law, the notary cannot be held accountable because the notary only hears and lists the deed of what the appearer told him/her. In this case, the appearers must be liable for the disputes.

c. Liability in terms of Criminal Law

Law on Notary Position does not regulate the criminal responsibility of a notary whose deed contains false statements from the appearer. However, a notary can be criminally liable if the notary is proven to have participated in committing a criminal act in giving false information to an authentic deed or helping the appearer to commit the crime.

If the false statement comes from an appearer, the notary cannot be held liable, because the notary only listens to the appearer's statement and lists it in the form of a deed; thus, the information given by the appearer, both the actual information and false information, is the liability of the appearer him/herself. In other words, what can be held accountable to the notary is if the fraud or deception is sourced from the notary him/herself.³¹

Forms of Sanctions Imposed on the Appearers Giving False Statement to the Notary

a. Form of Criminal Sanction Imposed on the Appearers Giving False Statement to the Notary

Appearer, as a party who also provides information to a notary to be included in an authentic deed, may be subject to criminal prosecution when giving an incorrect statement or false statement. The appearer can be subject to Article 266 of the Criminal Code, which is about ordering a false statement in an authentic deed. Article 266 paragraph (1) and paragraph (2) of the Criminal Code reads as follows:

- (1) Anyone who orders to put a false statement on something in an authentic deed whose truth must be stated by the deed with the intention to use it or to order another person to use it as if the

³¹Notodisoerjo, *Notarial Law in Indonesia (an explanation)*, Rajawali Pers, Jakarta, 1982, page 229

information is in accordance with its truth, he/she is sentenced to imprisonment for seven year if its use can cause a loss.

- (2) Will be punished with the same criminal offense, anyone intentionally uses the deed as if the contents are in accordance with the truth, if the use can cause a loss.

b. Form of Civil Sanction Imposed on the Appearers Giving False Statement to the Notary.

The aggrieved party, due to the deed containing the false statement given by the appearer, can sue the appearer civilly. The indemnification demands are based on the appearer who requested a deed to a notary public containing fake or false information in which the appearer asks the notary to include it in an authentic deed. As a result, there are parties who are harmed due to their actions.

In accordance with Article 1365 of the Civil Code, perpetrators who commit acts against the law have an obligation to provide compensation to those who feel aggrieved. Such compensation can be material and immaterial. Material compensation is given for losses suffered by the aggrieved party, and also the benefits that should have been obtained if there had never been an act that violated the law. Meanwhile, immaterial compensation is the provision of an amount of money that cannot be calculated mathematically, but is given based on the policy of the judge who is reasonably requested.

Conclusion

The legal consequences of notarial deed containing false statement from appearer is that notarial deed is null and void or also called cancellation, because it does not meet the objective conditions. The liability of the notary, whose deed contains false statements from the appearer in terms of administrative liability, civil liability, and criminal liability, is that the notary cannot be held liable for the deed since the error is not from the notary.

The form of criminal sanctions imposed on the appearers who give false statements for authentic deed to notaries in the Criminal Case Decision No. 363/Pid.b/2014/PN.Pdg is that the Judges impose lighter criminal penalties; i.e. imprisonment for 3 (three) months. Meanwhile, the Public Prosecutor demanded a sentence of imprisonment for 1 (one) year because of considering matters that alleviated the defendants; i.e. the defendants were never convicted and were polite during the trial. Meanwhile, the form of civil sanctions imposed on the appearers who gave false statements to authentic deeds to the notary public were in the form of compensation to the aggrieved party.

Suggestion

Notaries, as state officials should always act meticulously and carefully in carrying out their duties, and be neutral towards anything. The notary must also be more careful in trusting the party who comes to make a deed and the documents provided by the appearer for the purpose of making a deed. The notary must also be intelligent in finding out the intention of the appearers so that there are no similar problems and the presence of bad intention from the appearers can be anticipated.

The government as an executive institution and the House of Representatives (DPR) as a legislative institution, should be able to review the arrangements in the Law on Notary Position regarding the absence of imposition of sanctions imposed on notaries regarding their negligent liabilities in carrying out their duties in order to provide protection and legal certainty towards the aggrieved parties. In addition, the Law on Notary Position needs to reinforce the actions that may or may not be carried out by the notary or the parties concerned.

References

Books

- A. A. Andi Prayitno.(2010). Practical Knowledge on What and Who Notaries in Indonesia, Surabaya, Putra Media Nusantara. page 69.
- A. Ridwan Halim.(1985). Introduction to Law in Questions and Answers, Jakarta, Ghalia Indonesia. page 30.
- Abdulkadir Muhammad.(2004). Law and Legal Research, Bandung, First Print, Citra Aditya Bakti. page 67.
- Achmad Ali.(2008). Revealing the Reality of Law, Jakarta, Kencana. page 5.
- Andi Hamzah.(2005). Legal Dictionary, Ghalia Indonesia.
- Badudu and Zain.(1994). 15. Indonesia Language Dictionary, Jakarta: Pustaka Sinar Harapan.page 543.
- Daeng Naja.(2012). Deed Making Techniques. Pustaka Yustisia, Yogyakarta. page 1.
- G. H. S. Lumbun.(1983). Regulations on Notary Position, Jakarta, Erlangga. page 51.
- Habib Adjie.(2011). Void and Cancellation of Notarial Deed, Bandung, Refika Aditama. page 9.
- Handri Raharjo.(2016). Indonesian Legal System, Pustaka Yustisia, Yogyakarta. page 8.
- Hartanti Sulihandari, Nisya Rifiani.(2013). Basic Principles of Notary Profession, Jakarta Timur, Dunia Cerdas. page 6.
- Husni Hamrin.(2011). Making of Land Deed by a Notary, Laksbang Pressindo, Yogyakarta. page 11.
- I Ketut Artadi.(2009). Collection of Legislation of Civil Procedure Code, Pustaka Bali Post, Denpasar. page 54 and 86.
- J. Satrio.(1999). Personal Law Part I. Persoon Alamiah, Bandung, First Print, Citra Aditya Bakti. page 57.
- Notodisoerjo.(1982). Notarial Law in Indonesia (an explanation), Rajawali Pers, Jakarta. page 229.
- S. R. Sianturi.(1996). Criminal Law Principles in Indonesia and its Application, Alumni of Ahaem-Petehaem, Jakarta. page 28.
- Salim HS.(2016). Technique of Making Deed One, Jakarta, Rajawali Pers. page 92.
- Sudikno Mertokusumo.(2006). Indonesian Civil Procedure Code, Liberty, Yogyakarta. page 149.
- Suratman dan Philips Dillah.(2012). Legal Research Methods, Bandung, CV Alfabeta. page 115.

Tan Thong Kie.(2007). Notariat Study: All About the Practice of Notaries, First Edition, PT Ichtiar Baru Van Hoeve, Jakarta. page 16.

Zainudin Ali.(2013). Legal Research Methods, Jakarta, Fourth Print, Sinar Grafika. page 17.

Legislation

1945 Constitution of the Republic of Indonesia

Civil Code

Civil Procedure Code

Criminal Code

Criminal Procedure Code

Law of the Republic of Indonesia No. 2 of 2014 concerning Amendment to Law No. 30 of 2004 concerning Notary Position

Notary Code of Ethics from the Indonesian Notary Association (INI)

Internet

Indonesia Language Dictionary (KBBI), Liability, <https://kbbi.web.id/tanggung%20jawab>, accessed on February 27, 2019.

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