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Liability Notary in Making Deed Based on Falsification of Letters by the Parties

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Abstract

This research aims to examine the responsibility of a notary in the event of falsification of a letter carried out by the parties in making a notarial deed according to the Notary Position Act, so that a notary may be held liable if a loss arises to one of the parties as a result of a false document from one of the party. The method used is the Normtaive method with a statutory approach. The results of the research prove that the responsibility of the Notary in the event of falsification of the letter carried out by the parties in making the notarial deed according to UUJN and the Amendment Law on UUJN is when the Notary in carrying out his position is proven to have committed a violation, then the Notary is responsible in accordance with the deeds he did both responsibility in terms of Administrative Law, Civil Law, which is in accordance with the provisions of sanctions listed in Articles 84 and 85 of the Amendment Law on UUJN and the code of ethics, but in the UUJN and the Amendment Law on UUJN does not regulate criminal sanctions.

Keywords: *Responsibility; PPAT; Counterfeiting*

Introduction

Notary is a legal profession so that the notary profession is a noble profession (nobile officium). Notary is called a noble official because the notary profession is very closely related to humanity. Deed made by a notary public can be the legal basis for the status of property, rights and obligations of a person. Misrepresentation of the deed made by a notary public may result in the deprivation of a person's rights or the imposition of a person on an obligation, therefore the notary in carrying out his / her office duties must comply with various provisions mentioned in the Notary Position Law.[1] The term "Public Official" is a translation of the term Openbare Amtbtenaren contained in Law Number 30 of 2004.

Regarding the position of Notary promulgated on November 6, 2004 in the Republic of Indonesia State Gazette of 2004 Number 117 (UUJN) jo. Law of the Republic of Indonesia Number 2 of 2014

[1] Abdul Ghofur Anshori. (2009). Lembaga Kenotariatan Indonesia, Perspektif Hukum dan Etika, UII Press, Yogyakarta, p. 46.

concerning Amendment to Law Number 30 of 2004 concerning the Position of Notary Public promulgated on January 15, 2014 State Gazette of the Republic of Indonesia Year 2014 Number 3 (Law on Amendment to UUJN). In Article 1 number 1 of the Amendment Law on UUJN which confirms that a notary is a public official authorized to make an authentic deed and other authorities as referred to in this Law. Notary Public is an arm of the state where the Notary public carries out state duties in the field of civil law. In this connection, the state in the context of providing legal protection in the private sector to citizens has delegated part of its authority to the Notary to make an authentic deed.

According to A. Kohar deed is writing intentionally made to be used as evidence. If the deed is made before a notary, the deed is said to be a notarial deed, or authentic deed, or notarial deed. A deed is said to be authentic if it is made before an authorized official.[2] The purpose of the deed is made before the competent authority is so that the deed can be used as strong evidence if there is a dispute between the parties or there is a lawsuit from another party.

Based on the description above, it is clear how important the function of the notary deed is, therefore, to avoid the illegality of a deed, the Notary Institution is regulated in UUJN. The position of a notary is very important in helping to create certainty and legal protection for the community. Notary in the realm of prevention of legal problems through authentic deed which is made as the most perfect evidence in court, what happens if the most perfect evidence is doubtful.[3]

The notary public official has the authority to make a deed containing formal truth in accordance with what the parties have notified. According to Soebekti, the so-called deed letter is a piece of writing that is merely made to prove a thing or event, therefore a deed must always be signed.[4] Meanwhile, according to Sudikno Mertokusumo, what is called a deed is a signed letter containing the events that are the basis of a right / engagement that was made deliberately for the purpose of proof. So that the making of a notarial deed can be used as proof in a legal dispute that is used as a tool to recall events that have occurred, so that it can be used for the purposes of verification.

In practice, it is often found that if a notary deed is disputed by the parties or other third parties, then the notary is often drawn as a party participating in committing or helping to commit a criminal act, which is to make or provide a false statement to the notary deed.[5] In this case the notary intentionally or unintentionally notary together with the parties / parties to make a deed with the intent and purpose to benefit only certain parties or parties or harm others that must be proven in the Court.

The power of proof of a notary deed in a criminal case is a legal proof according to the law and of perfect value. But the value of perfection cannot stand alone, but requires the support of other evidence.[6] The notary does not guarantee that what is stated by the user is true or true, this is because the notary is not an investigator of the data and information that has been provided by the parties. Whereas in the Law of Position of Notary, as a Notary Public official is required to be responsible for the deed he has made. If the deed made turns out to be behind the day containing a dispute then this needs to be questioned, whether this deed is a notary error or the fault of the parties not being honest in giving their statement to the notary, or whether an agreement has been made between the notary and one of the parties facing. If the notary deed contains a legal defect that occurs due to a notary error either because of negligence or because of the intentional notary himself, then the notary should be liable.

[2] A. Kohar. (1983). *Notaris Dalam Praktek Hukum*, Alumni, Bandung, p. 64.
[3] Pengurus Pusat Ikatan Notaris Indonesia. (2008). *Jati Diri Notaris Indonesia*, PT Gramedia Pustaka, Jakarta, p. 7.
[4] R. Subekti. (1996). *Pokok-Pokok Hukum Perdata*, Intermasa, Cet. XXVIII, Jakarta, p. 178.
[5] Habib Adjie. (2008). *Hukum Notariat di Indonesia-Tafsiran Tematik Terhadap UU No.30 Tahun 2004 Tentang Jabatan Notaris*, Refika Aditama, Bandung, p. 24.
[6] Ibid, p. 311.

The UUJN and the Amendment Law to the UUJN do not regulate the criminal liability of a notary public for the deed he has made based on data and information that is falsified by the parties. So that the legal norms arise in the Amendment Law on UUJN relating to the responsibility of a notary in making the deed based on data and information falsified by the parties. Based on this background encourage the writer to raise a title that will be discussed in this thesis is "Notary Responsibility in Making Deed Based on Falsification of Letters By the Parties."

Result and Discussion

The occurrence of a violation of the provisions of Article 15 and 16 of the Amendment Law on UUJN by notary in carrying out his position is very vulnerable to the possibility of falsification of the deed made before the parties (the parties). However, the notary's actions are very difficult to prove. This is due to the fact that in a notarial deed it is always mentioned at the beginning of the deed that the appearers face the notary and at the end of the deed it is always stated that the deed is read by the notary to the tappers and witnesses before the notary. However, in reality both the reading and signing have never been done before a Notary Public as referred to in the provisions of Article 16 paragraph (1) letter k of the Amendment Law on UUJN, so the Notary is deemed to have violated the false deed as referred to in Article 263, Article 264 and Article 266 of the Criminal Code. However, to state the existence of a notary truth, the act must certainly go through a process of proof which in the criminal procedure proving system is called a negative system, which is a system of proof by seeking material truth, namely a judge in a system of evidence before a court so that a criminal can be imposed must fulfilling two absolute requirements including the availability of sufficient evidence and the judge's conviction.[7]

Evidence as referred to in the provisions of Article 184 paragraph (1) of the Criminal Procedure Code states;

a. Witness statement;
b. Expert statement;
c. Letter;
d. Hints;
e. Defendant's statement.[8]

Based on the evidence, then to prove that the Notary has committed a criminal act of falsifying a deed or faking a notarial deed there must be at least two valid evidences as intended in Article 183 of the Criminal Procedure Code which states that:

"A judge must not convict a person unless with at least two valid evidences he obtains the conviction that a criminal act has actually taken place and that the defendant is the culprit".[9]

In the field of events, this means that the evidence of a crime has been considered enough as a basis for the criminal liability of the defendant. Thus, a person can be accounted for in criminal law

[7] Munir Fuady. (2006). *Teori Hukum Pembuktian (Pidana dan Perdata),* Citra Aditya Bakti, Bandung, p. 2.
[8] M. Karjadi and R Soesilo. (1990). *Kitab Undang-Undang Hukum Acara Pidana (Dengan Penjelasan Resmi dan Komentar),* Politeia, Bogor, p. 162.
[9] Ibid, p. 162.

insofar as it can be proven that his actions have fulfilled the entire contents of the criminal acts formulated.

Notary has the authority to make a deed, not make a letter, thus must be distinguished between the letter and the deed. A letter means a letter generally made to be used as evidence or for a particular purpose in accordance with the wishes or intent of the maker, which is not bound by a particular bond, and the deed (authentic deed) is made with the intention of evidence that has the strength of perfect proof, made in front of the authorized official to make it and be bound to the form that has been determined. Thus, the understanding of the letter in Article 263 paragraph (1) of the Criminal Code is not mutatis mutandis as an authentic deed, so it is not appropriate if the notary deed is given treatment as a letter in general. But even so in a criminal act is an act that refers to the subject (perpetrator) as long as the elements of intent and error can be proven, then the act referred to in Article 263 paragraph (1) of the Criminal Code can be applied to the Notary.

Information or statement and the wishes of the parties expressed before the Notary Public are the basic material for the Notary to make the deed in accordance with the wishes of the parties facing the Notary. Without the statement or statement and willingness of the parties, the Notary is not possible to make a deed. Even if there is a statement or information that is allegedly false included in the authentic deed, does not cause the deed to be fake. For example, an authentic deed includes information based on the marriage certificate shown to the Notary or National Identity Card (KTP) from the original physical observation. If it turns out that the marriage certificate or KTP is proven to be false, it does not mean that the Notary has entered or entered a false statement into the Notary Deed (Article 264 paragraph (1) item 1 of the Indonesian Criminal Code). Materially falsification of this matter is the responsibility of the parties concerned if the Notary does not know about the forgery itself. If the Notary public knows that this is false, then it is assumed that the provisions of the article can be applied to the Notary Public. Whereas the provisions of Article 266 paragraph (1) of the Criminal Code cannot be applied because the tasks of the Notary public only include in the deed what was stated by the complainant, for the things that were given to him. And thus, the prosecutor is not likely to commit acts of persuasion (Article 55 paragraph 1-2) or provide assistance (Article 56), because there is no crime committed by the Notary. He only stated in the deed the statements given by the tappers. He did not know that the statements he included in the deed were incorrect. So, the prohibited act is to write and include false statements in the authentic deed.

A notary who is proven to have committed an unlawful act in carrying out his profession must be held accountable for the act he did. The magnitude of the responsibility of the Notary in carrying out his profession requires the Notary to always be careful and careful in all his actions. However, as a normal human being, of course, a Notary in carrying out his duties and positions is sometimes not free from mistakes either because of deliberate or because of negligence which can then harm other parties. In imposing sanctions against Notaries, there are several conditions that must be fulfilled, namely the act of a Notary must fulfill the formulation of the act which is prohibited by law, the loss resulting from the Notary's act and the act must be against the law, both formal and material. Formally, this has been fulfilled because it has fulfilled the formula in the law, but materially must be tested again with a code of ethics, the Amendment Law on UUJN.

A notary may knowingly, intentionally to jointly with the parties concerned (the parties) carry out or assist or order the parties to carry out a legal action which he knows is illegal. If this is done, in addition to harming the Notary, the parties, and in the end the person who carries out his job as a Notary, is welcomed as the person who always breaking the law.

Legal Consequences Against False Documents in Making Authentic Deed

Notary as a public official who carries out a portion of state power in the field of Civil Law primarily to make authentic evidence (notary deed). In making a notarial deed both in the form of a *deed partij* and the deed willing, the Notary is responsible so that each deed he makes is authentic as referred to in Article 1868 of the Civil Code. Obligation of the Notary Public to be able to know the legal regulations that apply in the State of Indonesia as well as to know what laws apply to the parties who come to the Notary to make the deed. This is very important so that the deed made by the Notary has its authenticity as an authentic deed because it is a perfect proof. However, the Notary may make a mistake in making the deed. Errors that might occur, namely:

a. A typo in the notary copy, in this case the error can be corrected by making a new copy that is the same as the original and only the same copy as the new original has the same power as the original deed.
b. Mistakes in the form of a notarial deed, in this case where the minutes of the meeting were supposed to be made, but the Notary was made as a statement of the meeting's decision.
c. Error notary deed contents, in this case regarding the statements of the parties facing the Notary, where when making the deed is considered correct but it turns out later to be incorrect.[10]

If there is a Notarial Deed at issue by the parties or interested parties, then to settle it must be based on the cancellation and cancellation of the Notary Deed as a perfect proof. Errors that occur in the deeds made by the Notary will be corrected by the judge when the notary deed is submitted to the court as evidence.

According to George Whitecross Patton[11] the evidence can be in the form of oral (words spoken by a witness in court) and documents (the production of an admissible documents) or material (the production of a physical res other document). Valid evidence or received in a case (civil), basically consists of utterances in the form of witness statements, confessions, oaths, and written can be in the form of writings that have proof value. In the development of evidence today (for criminal and civil cases) it has also been accepted as electronic or recorded evidence or electronically stored as legal evidence in court proceedings. In this connection, it is necessary to emphasize and explain that there is written evidence that can be in the form of writing that has a proof value. In writing, it can bash letters (in general) and letters in certain forms and procedures for making them with officials appointed by statutory regulations.

The authority of the judge to declare a notary deed is null and void, may be canceled or the notary deed is declared to have no legal force. Acts of violations committed by a Notary to the provisions of the articles in the Amendment Law on UUJN, which causes a deed to only have the power of proof as a deed under the hand or the deed becomes null and void, then the adverse party may demand compensation, compensation and interest to a notary. If a notarial deed is canceled by a judge's decision in court, then if it causes harm to the parties concerned, the Notary may be sued for compensation, as long as it occurs due to a notary error. However, in the case of a cancellation of a notarial deed by a court on the grounds that it is not the fault of a notary public, the interested parties cannot sue the notary to provide compensation.

Regarding the cancellation of the deed is the authority of a civil judge, namely by filing a civil suit in court. If the court is asked to cancel the deed by the injured party (the victim) then the notary deed

[10] Mudofr Hadi. (1991). Varia Peradilan Tahun VI Nomor 72, Pembatalan Isi Akta Notaris Dengan Putusan Hakim, p. 142-143.
[11] George Whitecross Patton. (1953). A Text-Book of Jurisprudence, Oxford at the Clarendon Press, second editon, p. 481.

can be canceled by the civil judge if there is evidence of an opponent. As it is known that the notarial deed is an authentic deed which uses written evidence that has a binding and perfect evidence. This means that it is still possible to be paralyzed by the opponent's evidence, namely filing a lawsuit to demand the cancellation of the deed to the court so that the deed is canceled.

Conclusion

Based on the discussion of the two problems examined in this thesis, the conclusions that can be made are as follows:

1. The Notary's responsibility in the event of falsification of the letter carried out by the parties in the making of the Notary deed according to the UUJN and the Amendment Law to the UUJN is when the Notary in carrying out his position is proven to have violated, then the Notary is responsible in accordance with the deeds done both responsibility in terms of law Administration, Civil Law, which is in accordance with the provisions of sanctions listed in Articles 84 and 85 of the Amendment Law on the UUJN and the code of ethics, but in the UUJN and the Amendment Law on the UUJN does not regulate criminal sanctions. In practice it is found that the violation of the sanctions is then qualified as a criminal act committed by a notary. The aforementioned aspects are very closely related to the actions of a Notary Public in violation of Article 15 of the Amendment Law to the Law on National Social Security Law, where the result is that if a Notary Public does not carry out the provisions of the article, it will lead to falsification or falsification of the deed as referred to in Article 263, 264, and 266 of the Criminal Code so that it can cause harm to interested parties.
2. A notary cannot be held liable if a loss arises against one of the parties as a result of a false document from one of the parties, because the Notary only records what was submitted by the parties to be poured into the deed. False information submitted by the parties is the responsibility of the parties. In other words, what can be accounted for the Notary is if the fraud or trickery originates from the Notary himself. Therefore, for the sake of upholding the law of the Notary must submit to the criminal provisions as regulated in the Criminal Code, and to implement it, considering that the Notary performs an act in its capacity to differentiate from the act of a Notary Public as a legal subject. Article 50 of the Criminal Code provides legal protection against Notaries. Notary not only protects the Notary to free the existence of a criminal act he is committed, but considering that the Notary has the authority as stipulated in the UUJN and the Amendment Law on the UUJN, whether the actions that he did when making the notary deed were in accordance with applicable regulations.

Recommendations

The suggestions that can be given based on the conclusions above regarding the responsibility of the Notary in making the deed based on falsification of the letter by the parties are as follows:

1. So that the government as the executive body and the House of Representatives (DPR) as the legislative body reconstruct the regulation in the UUJN in conjunction with the Amendment Law on the UUJN regarding the absence of cumulation or incorporation of sanctions as a form of accountability for a Notary, because the regulation of cumulation or the incorporation of the application of sanctions will certainly be more provide protection and legal certainty for the injured parties including the Notary himself. And it is necessary to refine the Amendment Law on UUJN to

reinforce actions prohibited by Notaries in carrying out their duties, including the provisions in making a deed both for the Notary and those who want to make a deed, both in the perspective of their actions relating to Administrative Law, Law Civil Code, as well as Criminal Law, especially in article 66A of the Amendment Law on UUJN where the Government Regulation referred to has not yet been issued so in this case to immediately issue a Government Regulation relating to the duties and functions of a Notary Public.

2. In order for the Notary Public to carry out a noble duty to assist the community in resolving the legal problems they face, to always act carefully, be careful, and learn to increase their knowledge to explore the applicable laws and regulations while carrying out their position as a notary public, so that they can to a minimum the occurrence of an act or deed that was born was disputed by the parties concerned.

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