

Juridical Study of False Information from the Appellant Used as the Basis for Making an Authentic Notary Deed

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Abstract

Article 1870 of Indonesian Civil Code is binding and perfect evidence, it must be considered true, as long as it cannot be proven otherwise. In fact, authentic deeds made before a notary as a public official sometimes contain false information from interested parties, which results in the notary being involved in criminal cases both as witnesses and suspects so that the notary concerned is disturbed in carrying out his office. Type of normative juridical research with a case approach. This research intends to conceptualize law as what is written in legislation with related literature. The specification of this research is descriptive analytical. For the type of data used in this study is secondary data. Regarding the validity of the authentic deed made on the basis of false statements from the appearers, it can be proven in a court trial, that one of the aspects is not true, then the deed the power of proof is degraded as an underhand deed. In the law on notary, there is no legal protection for notaries except the right to deny.

Keywords: false information, power of deed, notary, legal protection.

Introduction

The need for authentic deeds as written evidence is increasing in line with the demands for legal certainty in various economic and social relations. Authentic deeds clearly direct rights and obligations, guarantee legal certainty, and make a real contribution to conflict resolution more efficiently in accordance with the circumstances, conditions, events, legal actions carried out by certain positions.

Notary, known as a notary institution, is a social institution that was born because of the interests of the community who want evidence regarding civil law relationships. Notary institutions are assigned by general powers or known as foreign openbaar gezag, if the law requires the public to have perfect written evidence. It can be concluded that the existence of a notary position is due to the will of the community, not something that was suddenly created and introduced to the general public (Tobing, 1983). That is, the existence of a notary as a public official is due to the community's need for authentic evidence regarding the civil relationship that occurs between them, so that an agreement made can guarantee certainty, order and legal protection as perfect evidence in the future (Kie, 1994).

The juridical basis in carrying out the position of a notary has been determined in Law Number: 2 of 2014 concerning Notary. The authority of a notary in the law regulated in Article 15 Paragraph (2) letter e is to provide legal counseling regarding the making of a deed. In this case the Notary can provide advice or conduct relevant legal socialization on the problems faced by the appearers regarding the matters included in the deed, but still according to the wishes of the appearers not based on the will of the Notary (Adjie, 2008). In connection with

this authority, conflicts can arise if in the future the deed made by the parties is declared null and void and is proven to be contrary to the applicable legal rules.

Not infrequently Notaries come into contact with legal disputes, sometimes as witnesses and even become suspects due to errors in making the deed caused by the Notary or the negligence of the parties who provide information or documents that do not match the facts which result in losses to other parties. Law on Notary emphasizes that if in carrying out his duties and position a Notary legally makes a mistake, the Notary is given sanctions including civil sanctions, administrative sanctions, criminal sanctions, and other sanctions contained in the Notary's code of ethics.

Legal problems that can occur if the appearer turns out to provide false information or statements when making a deed before a notary. According to Chazawi (2014), false information is information that is not true or different from the real information. In making the deed, the Notary shall provide a statement or statement in the deed without knowing that the information or statement is false. What happened in the future turned out to be the party who felt aggrieved by the Notary deed to report the Notary to the police on the basis of an alleged unlawful act. In this case, the Notary is asked to be criminally responsible for his actions which are suspected to have violated legal provisions. This is in line with the opinion of the legal expert Hans Kelsen & Somardi (2007) that the philosophy of legal responsibility has a correlation with legal obligations, namely the legal responsibility borne by a person for his actions.

Information or statements as well as the will of the parties submitted before a Notary become the basis of a Notary in making a deed, it is impossible for a Notary to make a deed in the absence of information or statements and wishes from the appearers. If there are statements and documents that are suspected to be false, they are included in the authentic deed, it does not necessarily result in the deed being fake and it is not necessarily the case that the Notary intentionally affixed false information to the deed. Materially falsity is the responsibility of the parties concerned, and the legal process that can be pursued is to cancel the deed in question through a civil lawsuit.

Basically, the Notary is responsible only for the formal side of the deed. Although there is no instrument of criminal sanctions in the Notary Law, it does not cause the Notary to be free from the burden of criminal responsibility in carrying out his position. If a Notary in carrying out his position makes a mistake that contains a criminal aspect, he can then be given criminal sanctions in accordance with the rules contained in the Criminal Code.

Considering that authentic deeds as the strongest and most complete evidence have a fundamental role in every legal relationship in social life, in line with what is stated in Article 1867 of Burgerlijk Wetboek. An authentic deed that clearly outlines the rights and obligations of the parties then provides legal certainty guarantees and is also expected to minimize conflict (Tobing, 1983). Legal problems that often occur are related to the authority of a Notary, namely the discovery of Notary deeds made based on information and statements that turn out to be false. Article 15 of Law on Notary has provided a corridor regarding the authority of a Notary, but in empirical facts this authority is only limited in formal juridical. Making a Notary deed is the will of the appearer, good intentions or bad intentions in providing information in making the deed are entirely on the appearer. Based on the description in the background above, the problems that will be studied in this research are the validity of the Notary Deed made based on false information, and the legal protection of a Notary regarding false information from an appearer that is used as the basis for making an Authentic Deed related to the Notary Law.

Theoretical Framework

Legal protection theory is used for analysis in this study. Legal protection is an effort to provide protection against one's interests by utilizing power to act on the basis of an interest (Rahardjo, 2003). The purpose of the law is to integrate and regulate the various interests of the community because with regard to interests, protection is carried out by limiting the various affairs of other parties. The essence of legal interest is to manage human rights and affairs, as a result, the law has the highest power in determining human affairs that should be considered and protected (Rahardjo, 2014). It can be said that legal protection is protection given to legal subjects in the form of legal instruments. Related to the legal protection of a Notary in making the deed, it is contained in Law on Notary and the Notary Code of Ethics.

The theory of legal certainty as a legal guarantee whose substance is justice, as well as a theory to analyze the problems in this research. The rules that promote justice should focus on being the rules that are adhered to. Gustav Radbruch said that justice and legal certainty are an integral part of the law that must be observed in order to create a sense of security and order in a country. As a result, the law is always obeyed in accordance with the theory of legal certainty and according to the value to be achieved, namely justice and happiness (Ali, 2002). Law on Notary and the Notary Code of Ethics are used to examine the authority of a Notary in making authentic deeds desired by his clients.

Research Methods

The originality of this research article will compare the current research with previous research with the same theme, the similarity in the subject and the object in addition to the originality of the research will illustrate the dissimilarity of the current research with previous research. Nurlete (2020) has examined the juridical study of false information from the appeals as the foundation for making an authentic notary deed. this study focuses on the notary's responsibility for false deeds based on types of norms violations and sanctions. The difference with previous research is that although both of them analyze authentic deeds containing false information, this study emphasizes the validity of the notarial deed based on false information and the legal protection of a notary against false information from an attorney which is used as the basis for making an authentic deed related to the law about notary position by focusing on the legality of the deed and the legal protection provided in Law on Notary.

The study applies normative juridical in the form of a case approach as a type of research in research articles, then the legal conception will be carried out as something written in the legislation through a study of the Notary Law. The specification of this research article is in the form of analytical descriptive. Intends to describe the validity of the notary deed made based on false information and the legal protection of the notary against false information from the appearer which is used as the basis for making an authentic deed related to the law on the position of a notary in relation to the problem, this research article then explains and gives meaning to the main issues analyzed so that obtain a detailed picture.

Secondary data was obtained through literature study with the document study method through primary legal materials and secondary legal materials including legislation, documents, newspapers, magazines, journals, text books, and the results of previous research (Suteki & Taufani, 2020). The analytical method used is qualitative analysis. The data obtained were processed and analyzed to answer the problems in this research.

Results

Validity of Notary Deed Made Based on False Information

The dynamics of daily activities in society are so complex that it requires legal certainty guarantees in order to create peace and order in society, this cannot be separated from the notarial realm which makes legal certainty something crucial related to duties, positions, and Notary deeds which become evidence with strength. perfect proof. The evidence that is valid according to law includes written evidence, witnesses, allegations, confessions and oaths (Boediarto, 2015).

An authentic deed or a private deed can be used as a reference for the burden of proof in written form, the value of proof is the main dissimilarity between the two types of deed, an authentic deed has perfect proof, while a private deed has the power of proof as long as the parties confirm or do not refute as a result the deed is in If there is a party who does not justify the deed, then the validation of the evidence is charged to the party who disproves the deed and the assessment of the refutation of the evidence is left to the judge's decision.

The dissimilarity of the strength of proof of authentic deeds and also underhanded deeds, namely authentic deeds, is evidence of the truth of all substances, so that there is an indication that the deed is false. Meanwhile, the deed under the hand has the strength of evidence if there is no objection to the correctness of the signature, but the date of the deed against a third party has no power as evidence.

Sudikno Mertokusumo (1988) also explained that an authentic deed has the strength of evidentiary value externally, formally and materially. The value of outward proof is a form of the ability of the deed to prove its validity as an authentic deed until it is proven otherwise if it is not an authentic deed.

One well-known notary practitioner, Habib Adjie (2011) believes that the deed is called authentic in that the burden of proof is left to the party who denies the authenticity of the notary deed. The benchmark for determining a Notary deed as an authentic deed is the Notary's signature in the Minuta and a copy and there is a beginning to the end of the deed. Outwardly there is no need to dispute with other evidence. If there are parties who deny that a Notary deed does not meet the qualifications as a deed, then the person concerned must prove that the deed is not outwardly an authentic deed. The rebuttal is based on the qualification of the Notary deed as an authentic deed. Proof can be done through an effort to file a lawsuit to the court and must prove the facts of the object of the lawsuit.

Guarantee of certainty that real events and facts were carried out by a Notary or explained to the public in accordance with the rules set out in the making of the deed into a formal proof value in terms of day, date, month, year, initials, signatures of appearers, witnesses, Notaries, as well as evidence the Notary saw , witness, listen as well as record statements or statements from the audience (Adjie, 2011). If there are parties who refute the formal proof of the deed, they can file a lawsuit to the court to prove the untruth in the formal aspect (Tobing, 1983).

The material certainty of a deed becomes the material evidentiary value contained in the deed is valid proof of the parties who made the deed or those who have rights and apply to the public, unless there is evidence to the contrary. Information or statements put forward before a Notary and then contained in the official deed must be judged to state the truth. If it is proven that the statement or statement of the appearer is untrue, then it becomes the

responsibility of the parties without involving a Notary. Proof in the material aspect of the deed, namely the interested party is obliged to provide other evidence that can confirm that the Notary did not explain the facts contained in the deed, or the parties who said the truth in front of the Notary said it was not true and reverse proof must be carried out to refute the material aspects of the deed. Notary Public.

The perfection of the notary deed is seen from the aspects described above, as an authentic deed and anyone is bound by the deed if they can prove in court if one of these aspects is not true then the strength of the proof of the deed is degraded as a private deed. The evidence of a private deed or authentic deed must complete the elements of the legal requirements of an agreement in accordance with Article 1320 and Article 1338 of the Civil Code materially the parties are bound by the agreement made and must be fulfilled by the parties.

In contract law, subjective and objective conditions must be met. If the subjective conditions are not met, the agreement can be canceled as long as there is a request from the people concerned. In addition, if the objective conditions are not met, then the agreement is null and void without the need for a request from the parties, therefore it is considered that there is no agreement that binds anyone.

An absolute void agreement occurs if the agreement made is not fulfilled, even though the legal rules have determined that legal actions must be made in a predetermined way or do not conflict with general rules, there is no reason for the parties to sue each other by any means because the agreement is considered non-existent.

Evaluation of a notary deed as a legal product issued by a public official can be implied by the principle of a valid presumption. This principle serves to evaluate the notary deed, namely the notary deed must be considered valid until there are parties who declare the deed invalid through the court. Since the lawsuit is being processed until there is an inkraht decision that it is proven that the Notary's deed is flawed from the external, formal, and material aspects. The cancellation of the deed is closely related to the principle of legal presumption. The principle of presumption is valid if there has never been a request for cancellation by an interested party to the general court and there has been an inkraht decision from the court or a notary deed has no evidentiary power as an underhand deed or is not null and void by law or is not canceled by the parties themselves. It can be concluded that the implementation of the legal presumption principle for Notary deeds is carried out in a limited manner if the above rules have been met.

The desire or will of the appearer becomes the basis for making a notary deed as argued by Hatta Isnaini Wahyu Utomo, if there is no request from the appearer, the notary is not allowed to make the deed in question. The appearers must attend with their own awareness and explain their wishes before a notary and then it is poured into a notarial deed according to the regulations in force in Indonesia.

Similar to the description above, the Notary only formulates the will of the appearer into the deed. A Notary Deed is a binding agreement between the parties, therefore the legal requirements of an agreement in Article 1320 of the Civil Code must be fulfilled. Subjective conditions, namely relating to the subject who made the agreement, include a statement that they have agreed to bind themselves, are competent/competent to carry out a legal act, and objective conditions are related to the agreement or object that is used as a legal act by the appearer, covering a certain matter and a lawful cause.

At the beginning of the deed, it is categorized as a subjective requirement, while the objective requirement is found in the body of the deed. Thus, if the requirements of the parties appearing before the Notary do not meet the subjective requirements, based on the request of the interested party, the deed can be canceled. However, if in the substance of the deed the objective conditions are not met, then the deed is null and void.

In principle, notaries are passive in nature and act to record or write in the deed the things disclosed by the appearers, they have no right to change, reduce or add statements to the appearers (Subekti, 2015). Regarding the topic of this research article, Yahya Harahap (1982), a civil law expert and former deputy chairman of the Supreme Court during the New Order Era, explained that such an attitude was considered very inflexible, therefore the argument arose that a notary had the authority to regulate events before him in order to better accommodate the substance of the deed. In terms of the ratio to passive nature, it is not absolute but more flexible by referring to the implications of the principle that a notary is not authorized to investigate in more detail the truth of the information submitted by the appearers. In the event that the information submitted by the parties is contrary to the laws and regulations, morality and public order, the notary has the right to object to making the deed.

The basis for making an authentic deed is the will of the appearer. The notary is only tasked with establishing as well as formulating the things explained by the appearer based on the agreement made by the appearer, in this case it is possible if the appearer gives false information to the notary. The law of the agreement becomes the benchmark for the making of a notary deed. False information disclosed by the appearer to the Notary can be classified into bad faith or bad faith and contrary to a lawful cause, as a result, the authentic deed is null and void.

Legal Protection of a Notary Regarding False Information from an Appearer which is used as the basis for making an authentic deed related to law applied

Authentic deeds are often disputed by interested parties because it is considered that there is a discrepancy between the substance and the facts, for example, denial of the substance of the deed, signatures, presence of witnesses, and even indications of false statements/statements resulting in losses for other parties. In relation to the civil liability of the Notary, due to his accuracy and inaccuracy, the Notary has actually plunged the Notary into an act that is contrary to the rules that damage the nobility of the dignity of the position.

Notaries receive legal protection during the examination process and provide trial testimony, maintain the confidentiality of the information contained in the deed in order to protect the interests of the appearers, maintain the minutes or letters attached to the minutes of the deed, as well as the Notary protocol in the storage room. Regarding the error of the deed made before or by a notary, it is the business of the parties themselves, the notary should not be involved because he is not a party to the deed. Notaries can be held civilly responsible if the parties file a rebuttal against the day, date, month, year, feel that they have never been present to sign the deed, there is no reading of the deed before the notary and other reasons according to the formality of the deed.

Regarding the taking of the minutes of deed and the summons of a Notary, it is contained in Article 66 paragraph (1) and paragraph (2) of the JN Law, the contents are: 1). In the event that the interests of the judicial process as investigators, public prosecutors, or judges require permission from the Notary Honorary Council with the following authorities: a). Take a photocopy of the minutes of the deed and/or the letters attached to the minutes of the deed or the Notary Protocol in the Notary's storage room; b). Calling the Notary to be present at the

time of the examination related to the deed he made or the Notary Protocol that is in the Notary's storage room; c). Taking a photocopy of the minutes of the deed or documents must be accompanied by a report of submission complete with the signatures of a Notary, investigator, public prosecutor, judge and the involvement of two witnesses.

The Notary Honorary Council was formed as an effort to provide protection to Notaries who have members from the Notary delegation, the government and academics, who act as institutions / containers for the protection of the Notary Law in connection with the deed made by or before the Notary.

The Law on Notary only contains the matter of notarizing the right to deny further, it does not contain provisions regarding legal protection for Notaries, but if applying the law in general, a person who is proven innocent cannot be sued and cannot be given a sentence. Maintaining the right to deny and the obligation to deny it must be respected by the authorities but the Court and the police have the right to summon the Notary concerned but with the first step must obtain permission or approval from the Notary Honorary Council if it is not willing to give permission or agree with the Notary Honorary Council to deal with it. with the police.

The existence of the Notary Honorary Council is expected to contribute optimally to the Notary organization in carrying out its duties as a forum that provides legal protection. There are no specific rules in Law on Notary or other regulations regarding the position and form of legal protection from the Notary Honorary Council. Based on his capacity as a public official who represents and acts for and on behalf of the state, the author is of the opinion that it is commonplace and it is appropriate for a notary to get special rights such as the right to refuse and the obligation to deny as a means of legal protection against a notary, as stated in Article 50 of the Law. Criminal Law states that: "Whoever commits an act to implement the provisions of the law is not punished" means that someone who commits an act to implement the rules applicable in the law, cannot or should not be punished. Finally, as long as the notary carries out his duties and positions according to the minimum service standards listed in the regulations relevant to the notary position.

Thus, law enforcement officers must have qualified and comprehensive insights regarding the world of notary, the substance of which is contained in Law Number 2 of 2014 concerning Notary that the responsibility of a notary as a public official who represents and acts for and on behalf of the state in carrying out the obligation to serve the community in the realm of civil law in order to increase the effectiveness and efficiency of legal protection for notaries. That is, the legal realm related to notarial activities is in the realm of civil law.

Conclusion

The validity of the notarial deed made based on false information and can be proven in court the strength of the proof of the deed is degraded as a private deed. Notary legal protection regarding false information from the appears as the basis for making authentic deeds in connection with the Law on Notary, notaries are only given the right to refuse, if they are not proven to have made a mistake, they cannot be sued, let alone sentenced. The judiciary and the police have the right to summon the Notary concerned to be asked for information on the deed he made must obtain permission from the Notary Honorary Council.

A notary deed should be a deed that has a perfect burden of proof, and has a value of trust in the eyes of the Indonesian people. However, regarding the truth of the information or documents given by the appearer, it has not been regulated in a concrete way. In addition, in

Law on Notary it is clear that the notary exercises authority regarding the making of the deed according to the wishes of the appearer, in other words, the notary does not have the authority to investigate and further investigate the material truth about matters given by the appearer to the notary (Article 15 of Law on Notary). It is clear that there are no rules that fully protect the notary profession in carrying out its position. According to the author's opinion on such legal rules, if the Notary is not yet sure about the material truth of the identity of the appearers, the Notary can ask the appearers to bring in an identifying witness known as foreign attestereid getuigen to introduce the appearer and convince the Notary of the correctness of the identity and documents that presented before the Notary.

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