

Forgery of Authentic Deeds by Notaries in The Case of The Judgment of The District Court of Sleman No. 196/PID. B/2018/PN.SMN

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ABSTRACT

As a general officer, a Notary has the authority to make authentic deeds by adhering to the Notary's Rules of Office and Ethics. However, in practice, Notaries still abuse their power in doing original deeds, namely without following the obligations and limitations set in the laws and regulations and even forging letters. This can cause adverse legal consequences for related parties and Third Parties. If this happens, the Notary can be blamed and asked for compensation by parties who feel aggrieved and cause implications in the form of Notary responsibility. This research will focus on discussions related to the authority to make Notarial deeds and the responsibility of Notaries if they are proven to have committed criminal acts of forgery of authentic deeds. This research will also discuss the legal consequences imposed on Notaries by analyzing the Sleman District Court Decision Number 196 / Pid.B / 2018 / PN.Smn. The research method used is a juridical-normative approach, examining the principles and elements of the Notary Position and Ethics Regulations and the Criminal Code. The results of this study show that the validity of a deed made by a Notary without meeting formal requirements or material requirements is null and void and is considered to have never been born. A copy of the deed issued is an act of forgery of letters. The consequences for a Notary who is proven to have committed the show can be in the form of administrative sanctions and can be threatened with criminal sanctions based on the provisions of Article 264 paragraph (1) of the Criminal Code

ABSTRAK

Namun, dalam praktiknya masih terdapat Notaris yang menyalahgunakan wewenangnya dalam membuat akta autentik, yakni tanpa mengikuti kewajiban serta batasan yang telah ditetapkan dalam peraturan perundang-undangan bahkan melakukan pemalsuan surat. Hal tersebut dapat menimbulkan akibat hukum yang merugikan bagi para pihak terkait maupun Pihak Ketiga. Apabila hal tersebut terjadi, Notaris dapat dipersalahkan dan dimintakan ganti kerugian oleh pihak-pihak yang merasa dirugikan serta menimbulkan konsekuensi berupa tanggung jawab Notaris. Penelitian ini akan memfokuskan pembahasan terkait kewenangan pembuatan akta Notaris dan tanggung jawab Notaris dalam hal terbukti melakukan tindak pidana pemalsuan akta autentik. Penelitian ini juga akan membahas konsekuensi hukum yang dapat dikenakan pada Notaris dengan menganalisis Putusan Pengadilan Negeri Sleman Nomor 196/Pid.B/2018/PN.Smn. Metode penelitian yang digunakan adalah pendekatan yuridis-normatif, dengan meneliti asas dan unsur yang terkandung dalam Peraturan Jabatan dan Etika Notaris serta Kitab Undang-Undang Hukum Pidana. Hasil dari penelitian ini menunjukkan bahwa keabsahan dari suatu akta yang dibuat oleh Notaris tanpa memenuhi syarat formil maupun syarat materiil adalah batal demi hukum dan dianggap tidak pernah lahir serta salinan akta yang dikeluarkan merupakan perbuatan pemalsuan surat. Konsekuensi bagi Notaris yang terbukti melakukan perbuatan tersebut dapat berupa sanksi administrasi serta dapat diancam dengan sanksi pidana berdasarkan ketentuan Pasal 264 ayat (1) Kitab Undang-Undang Hukum Pidana..

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I. INTRODUCTION

As one of the noble professions or *Nobile Officium*, Notaries are not only bound by personal responsibility in carrying out the duties of their posts. This is because notaries are tasked with serving the public regarding matters related to the making of authentic deeds as valid evidence of the occurrence of a legal act. The task gives rise to the responsibility of the Notary toward the wider community. The authority and duties of a Notary to serve the community are contained in Article 1 number 1 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary ("UUJN-P") which reads:

"A notary is a general officer who is authorized to make authentic deeds and has other powers as referred to in this Act or under any other law." (Undang-Undang Perubahan Atas Undang-Undang Nomor 30 Tahun 2004 Tentang Jabatan Notaris Nomor 2 Tahun 2014, Pasal 1 Angka 1)

Then, Article 1868 of the Civil Code defines an authentic deed as "a deed which in the form prescribed by law, is made by or in the presence of the public servants who are in power for it in the place where the deed is made." (R. Subekti, 2004) Although notaries are given authority in the provisions of laws and regulations to make authentic deeds, there are still restrictions that must be followed and respected by notaries in carrying out their professional duties. The making of authentic deeds has a purpose, one of which is the interest of proof in a legal dispute, which is expected to create legal certainty for the community. Therefore, in making an authentic deed, the Notary must carry out its obligation to "act trustworthy, honest, thorough, independent, impartial, and safeguard the interests of the parties involved in the legal act." (English, n.d.) In addition to these obligations, notaries are also required to:

"... read the Deed before the appellant in attendance by at least 2 (two) witnesses, or 4 (four) witnesses specifically for the making of the Deed of will under the hand, and signed at that time by the appellant, witness, and Notary..." (Undang-Undang Perubahan Atas Undang-Undang Nomor 30 Tahun 2004 Tentang Jabatan Notaris, 2014)

The obligation of the Notary to read the deed in the presence of the presenter and witnesses is aimed at ensuring legal certainty and whether or not the authentic deed is made. A deed must also be signed by the appellant, witnesses and Notary at that moment by looking at each other in order to ensure the correctness of the signed affixed. (I Wayan Arya Kurniawan, 2018).

In addition to the above obligations, the Notary is also required to "issue a Grosse Deed, a Copy of the Deed or a Citation of the Deed under the Minuta Deed" (Undang-Undang Perubahan Atas Undang-Undang Nomor 30 Tahun 2004 Tentang Jabatan Notaris, Ps. 16 Ayat (1) Huruf d., n.d.), "which may only be granted, shown or notified to "persons of direct interest in the Deed, heirs, or persons acquiring rights, unless otherwise provided by law." (Undang-Undang Perubahan Atas Undang-Undang Nomor 30 Tahun 2004 Tentang Jabatan Notaris Huruf d., n.d.) Not only referring to laws and regulations, notaries in carrying out their professional duties must also adhere to the Notary Code of Ethics which applies the principles of implementing positions and notary ethics. (in

Purwaningsih, 2016) In the Notary Code of Ethics, obligations, prohibitions, sanctions and application of the Notary code of ethics are regulated.

Apart from the various forms of regulations and guidelines that a Notary must uphold, in practice several cases are found relating to negligence or crimes committed by a Notary. As is the case in the Decision of the Sleman District Court No. 196/Pid.B/2018/PN.Smn, where a Notary (Notary X – identity disguised) commits a criminal act of forgery of authentic deeds. The beginning of the case was the creation of three Deeds of Power of Attorney for The Transfer of Assets from Parties A and B to Party C at the request of Party D. Party D was later discovered that they were no longer authorized to act as attorneys for Parties A and B because both had already revoked their power of attorney before the deed was made.

In addition, *the making of deeds also does not meet the provisions contained in the UUJN-P. This is evidenced by the actions of Notary X who made the deeds without being signed by the parties. But later, Notary X issued copies of the three unsigned deeds. This then causes legal consequences that harm Parties A and B. Relating to the actions of Notary X*, in addition to administrative sanctions and civil sanctions, Notary X can also be subject to criminal sanctions if it is declared legally and convincingly proven to have committed a criminal act of forgery of letters, namely the Deed of Power of Attorney for The Transfer of Assets. This is because, if a Notary commits an act, either because of his negligence or because of intentional, which causes harm to others, then the Notary can be declared to have committed an unlawful act and can be subject to sanctions in accordance with those stipulated in the statutory provisions, in this case the Criminal Code (“**KUHP**”).

Based on the above background, this article in this case will discuss the validity of deeds made by Notary X that are not in accordance with the provisions of the laws and regulations. In addition, this article will also discuss the responsibility of Notary X for his actions related to the criminal act of forgery of letters by analyzing the Decision of the Sleman District Court Number 196 / Pid.B / 2018 / PN.Smn, then the formulation of the problem that will be discussed in this study is How the validity of the authentic deed made and the Copy issued by Notary X in the Decision of the Sleman District Court Number 196 / Pid.B / 2018 / PN.Smn and How the responsibility of the notary in the event that it is proven committing the criminal act of forgery of authentic deeds in the Decision of the Sleman District Court No. 196/Pid.B/2018/PN.Smn?

II. RESEARCH METHOD

This research is a legal research that aims to study a legal symptom in order to strive to create a solution to the problem in the symptom in question. This research uses a normative form of juridical research conducted by examining library materials or secondary data. The type of data used in this study is secondary data through literature tracing. The purpose of this study is to analyze the validity of the authentic deeds made as well as copies issued by Notary X in the Sleman District Court Decision Number 196 / Pid.B / 2018 / PN.Smn and Analyze the responsibility of notaries in the event that they are proven to have committed a criminal act of forgery of authentic deeds in the Decision of the Sleman District Court Number 196 / Pid.B / 2018 / PN.Smn

III. RESULT AND DISCUSSION

1. Notary and Notarial Deeds Under the Notary Position Law

[Notary as a general official in carrying out the duties of his office, has several authorities contained in Law Number 30 of 2004 concerning the Position of Notary ("UUJN") as amended by UUJN-P, which clearly stipulates that Notaries are authorized to make authentic deeds.(Undang-Undang Perubahan Atas Undang-Undang Nomor 30 Tahun 2004 Tentang Jabatan Notaris Nomor 2 Tahun 2014, Pasal 1 Angka 1, 2014) In addition, notaries also have several other authorities, which are contained in Article 15 paragraphs (1) to (3) of the UUJN-P. A deed to be declared an authentic deed must meet the following requirements:

- a. "the deed must be made in the form prescribed by law, so that if it does not meet the prescribed requirements, it will lose its authenticity, so that it has only the power as an underhand deed;"
- b. the deed must be made by (*door*) or in the presence (*ten overstaan*) of a general official; and
- c. "the general officer or before whom the deed is made, shall have the authority to make the deed."(R. Subekti, 2004)

In addition, in order for an authentic deed to carry out its function as a proof of the occurrence of a legal act, the authentic deed must have several powers, including:

- a. The Power of Outward Proof, that is, the ability of the deed itself to prove its validity as an authentic deed;
- b. Power of Formal Evidence, namely the power of proof based on whether or not the statement of the parties to the Notary is correct and then confirmed in the authentic deed;
- c. Strength of Material Evidence, namely the strength of evidence related to the correctness or not of the contents of the signed deed. (Vivien Pomantow, 2018)

Not only that, to be able to become a deed that has perfect evidentiary power, it must meet the formal and material requirements so that the correctness of the contents in the deed becomes perfect and binding on the parties concerned.(Kunni Afifah, 2017) Notarial Deeds themselves are divided into two groups, namely the *Partij Deed (Party Deed)* and the *Relaas Deed (Official Deed)*. *Partij Deed* is a deed that contains the information of the interceptors who come before the Notary, where the information is then contended by the Notary into an authentic deed.(alwesius, 2021a) Examples of The *Partij Deed* include the Deed of Marriage Agreement, The Deed of Lease, The Deed of Power of Attorney, and several other deeds. Meanwhile, what is meant by *the Relaas Deed* is a deed made by a Notary based on a situation that is seen or witnessed by the Notary himself in carrying out his position as a Notary. (alwesius, 2021b) Deeds categorized as *Deeds of Relaas* include the Minutes of the General Meeting of Shareholders and the Minutes of Lottery.

In the Decision of the Sleman District Court Number 196/Pid.B/2018/PN.Smn, it is known that Notary X made three Deeds of Power of Attorney for The Transfer of Assets from Parties A and B to Party C. Requests for deed making are made by Party D who acts as the attorney for Parties A and B by submitting documents related to the purpose of making the deed. Notary X made the three deeds under numbers 12, 13 and 14 without knowing the will of Party D who submitted the request for the making of the deed. Notary X in making the three deeds also does not meet the provisions for making deeds regulated in UUJN or UUJN-P, which requires the parties to be present before the Notary to then be read the deed by the Notary in front of the Parties and witnesses to be subsequently signed by the Parties, witnesses and Notaries at that time also.

Furthermore, through the judgment, it is known that the Parties were not present at the time of making the deed, either Party D as the power of attorney of Party A and B as the Power of Attorney or Party C as the Power of Attorney. The absence of the parties creates uncertainty regarding whether or not an agreement is reached from both parties. In the absence of certainty of the achievement of an agreement relating to the deed and the absence of the Parties to listen to the reading and signing of the deed, it shows that there is no certainty of the contents and signatures of the deed. Not only that, in the facts of the trial, it is known that Party D is no longer the attorney of Parties A and B, so it is not legal to represent the acts for and on behalf of Parties A and B. Then Notary X also issued a

copy of the aforementioned deed received by Party D to be used as evidence of the legal act of transfer of assets from Parties A and B to Party C. Moreover, Parties A and B do not know and want the legal action of transferring these assets, thus causing losses to them.

Based on the chronology mentioned above and related to the provisions of laws and regulations, especially UUJN and UUJN-P, there are several important points, including:

- a. The making of the deed does not comply with the provisions of Article 39 paragraph (2) of the UUJN-P, which requires that the Notary know the interceptors or may be introduced to him by two identifying witnesses or by two other interceptors. In the judgment, it was found that Notary X did not know one of the interceptors, namely Party C as the Beneficiary, so That Notary X did not know the identity, proficiency and authority or not of Party C to carry out these legal actions. This can cause legal consequences that are detrimental to the Parties or Third Parties and can cause losses, both material and immaterial
- b. Notary X violates the provisions of Article 16 paragraph (1) letter m of uujn-P which requires that every notarial deed be read before the interceptors and witnesses, as long as it is not requested otherwise by the interceptors. Then immediately at that very moment, the deed was signed by the appellants, witnesses and Notaries, as stipulated in Article 44 paragraph (1) of the UUJN-P. These two things are important points in making deeds that are interrelated with each other. Reading is a way to ensure that what is stated in the deed is true and has been in accordance with the will of the presenters. While the signing can determine the authenticity of the deed. These two things were not done by Notary X because at the time of making the deed there was not a single present present;
- c. Notary X issued a copy of the Deed of Transfer of Assets made. As previously explained, issuing a copy of the deed based on the minuta of the deed is one of the obligations of the Notary regulated in Article 16 paragraph (1) letter d of the UUJN-P. However, notary X should postpone issuing a copy of the deed considering the non-fulfillment of the conditions for making the deed regulated in UUJN and UUJN-P.

Based on the foregoing, the three Deeds of Power of Attorney for Asset Transfer made by Notary X are considered to have never been born because they did not meet the conditions for making the deed and the copy of the deed issued by Notary X was a fake deed.

2. Consequences of Forgery of Authentic Deeds against Deeds and Notaries

Regardless of the suitability and accuracy of the application of the provisions of the laws and regulations carried out by the Notary, there are notaries who violate these provisions so as to cause a violation. Notary violations can be intentional misconduct (*dolus*) or due to negligence (*culpa*). Intentional misconduct (*dolus*) is a deliberately committed act aimed at inflicting harm on others. Meanwhile, negligence (*culpa*) is an act in which the impact of the act has been known to cause harm to others. (Putu Adi Purnomo Djingga Wijaya & A.A. Andi Prajitno, 2018) Violations committed by a Notary for his willfulness or negligence for his carelessness in making an authentic deed are categorized as unlawful acts and therefore the perpetrator deserves to be given the burden of indemnifying. (Annisa Setyaningsih, 2020) As is known through the Decision of the Sleman District Court Number 196 / Pid.B / 2018 / PN.Smn, Notary X was proven legally and convincingly guilty of committing the criminal act of forgery of authentic letters. As for what is meant by the criminal act of forgery of letters contained in Article 263 paragraph (1) of the Criminal Code which reads:

"whoever makes improperly or forges a letter which may give rise to something right, bond or discharge of debt, or which is intended as evidence of something, with the intent to use or instruct others to use the letter as if its contents were true and not forged, is threatened, if such use may cause harm, for forgery of the letter, with imprisonment for a term of six years." (Moeljatno, 1976a)

Furthermore, in Article 264 subsection (1) that "in the case of forgery of a letter, it shall be punished for a term of eight years, if the act is committed regarding an authentic letter." (Moeljatno, 1976b) To be able to declare a person proven to have committed a criminal act, it must first be fulfilled the elements of the criminal act itself. The elements referred to and linked to the chronology based on the Decision of the Sleman District Court Number 196/Pid.B/2018/PN.Smn are as follows:(Lamintang & Franciscus Theojunior Lamintang, 2014)

a. It's a Human Deed

The aforementioned case shows that there is an event arising from the actions of Notary X who acts as if the deed he made is correct, so that this element has been fulfilled;

b. Comply with the Formulation of Laws and Regulations

This element means that a person cannot be convicted if the mistakes committed have not been formulated as a violation in any legislation. However, the act of Notary X, namely the forgery of letters, has been regulated in the Criminal Code, so that this element has been fulfilled;

c. Unlawful

Both in terms of the aspect of actions (*actus reus*) and the aspects of batik attitudes (*mens rea*), the actions of Notary X have been contrary to laws and regulations, so that his actions can be declared as unlawful acts. For this reason, this element has been fulfilled.

Furthermore, based on the teachings of criminal law, a person must be able to take responsibility for being to blame. When referring to the identity of Notary X in the Decision of the Sleman District Court Number 196 / Pid.B / 2018 / PN.Smn, Notary X has been able to age to perform legal acts and is physically and spiritually healthy, not under guardianship or in a state of compulsion.

In the above judgment, the Panel of Judges adjudicated that Notary X was validly and conclusively proven guilty of committing the criminal act of forgery of authentic letters regulated in Article 264 paragraph (1) of the Criminal Code. The elements of Article 264 paragraph (1) of the Criminal Code are as follows: (Adami Chazawi & Ardi Ferdian, 2014).

a) Element of Whoever

This element is related to legal subjects who are proven to have committed criminal acts and are able to take responsibility for their actions. With regard to this element, Notary X based on the facts of the trial is known to be the truth of his identity and has been legally capable and physically and spiritually healthy, neither under guardianship nor in a state of compulsion, so that this element has been fulfilled;

b) Elements of Making or Forging Letters

This element was stated to be satisfied by the facts of the trial through the testimony of witnesses of the clerk of the notary X's office which proved that the three deeds made were never challenged by the parties;

c) Element of Whoever

This element is related to legal subjects who are proven to have committed criminal acts and are able to take responsibility for their actions. With regard to this element, Notary X based on the facts of the trial is known to be the truth of his identity and has been legally capable and physically and spiritually healthy, neither under guardianship nor in a state of compulsion, so that this element has been fulfilled;

d) Elements of Making or Forging Letters This element was stated to be satisfied by the facts of the trial through the testimony of witnesses of the employees of the Notary X office which proved that the three deeds made were never challenged by the parties;

e) Elements to the Authentic Deed

This element has been fulfilled because the deed made by Notary X is a deed made by an authorized official;

f) Such Usage Element May Cause Losses

This element is declared fulfilled as evidenced by the emergence of material losses suffered by Parties A and B as owners of assets devolved through a deed made by Notary X.

Thus, all elements of Article 264 paragraph (1) of the Criminal Code have been fulfilled so that Notary X can be declared validly and conclusively proven guilty of committing the criminal act of forging authentic letters. The author in this case agrees with the decision of the Panel of Judges who found Notary X guilty and sentenced him to imprisonment for 1 (one) year as reads the Decision of the Sleman District Court Number 196 / Pid.B / 2018 / PN.Smn because the application of the law has been in accordance.

Not only that, based on the above decision, it is known that Notary X has caused large material losses to Parties A and B, namely approximately IDR 6,000,000,000.00 (six billion rupiah) as a result of the creation of three Deeds of Power of Attorney for Asset Transfer. In addition to material losses, the actions of Notary X also cause immaterial losses to Parties A and B by losing comfort in life, time, energy and fear of losing property. All three deeds have violated the provisions of Article 16 paragraph (1) letter d *jo.* Article 16 paragraph (1) letter m *jo.* Article 39 subsection (2) *jo.* Article 44 paragraph (1) uujn-P, so that Parties A and B can ask notary X for compensation, as stipulated in Article 1365 of the Civil Code, which reads:

“Any act that violates the law and brings harm to others, obliges the person who caused the loss because of his fault to compensate for the loss.”(Kitab Undang-Undang Hukum Perdata, n.d.)

Given that the act of Notary X has been proven to be an unlawful act as stated earlier and has caused harm to others, thus, the act of Notary X meets the provisions of Article 1365 of the Civil Code, so that he can be asked for compensation as a form of liability for his actions. In addition to criminal and civil sanctions, Notaries who commit violations may also be subject to administrative sanctions.

Basically, administrative sanctions are applied gradually and tiered, but Notaries can also be directly imposed severe administrative sanctions in the event that they are proven to have committed gross violations of their obligations or prohibitions on their position as stipulated in the provisions of laws and regulations.(Etheldreda Tikatama Ayutiar & Widodo Suryandono, 2020) Considering that Notary X has violated the provisions of Article 16 paragraph (1) letter d *jo.* Article 16 paragraph (1) letter m *jo.* Article 39 subsection (2) *jo.* Article 44 paragraph (1) of uujn-P and has been proven to be valid and convincing to commit the crime of forgery of authentic deeds as stipulated in Article 264 paragraph (1) of the Criminal Code with a criminal threat of more than 5 (five) years, then Notary X can be imposed administrative sanctions in the form of dismissal with disrespect, in accordance with the provisions of Article 16 paragraph (11) letter d of UUJN-P. In accordance with the provisions of Article 13 of the UUJN, it is stipulated that the minister, in this case the Minister of Law and Human Rights of the Republic of Indonesia, can dismiss a Notary with disrespect for being sentenced to imprisonment based on a court decision that has obtained permanent legal force for committing a criminal act that is threatened with imprisonment of 5 (five) years or more. Thus, the sanction of dismissal with disrespect is the right decision considering that the criminal threat of criminal acts committed by Notary X is above 5 (five) years and Notary X has been proven to be valid and convincing to commit the crime of forgery of authentic deeds as decided by the Panel of Judges of the Sleman District Court in a judgment that has permanent legal force.

IV. CONCLUSION

Notaries in carrying out their duties of office must adhere to laws and regulations, especially UUJN and UUJN-P as well as the Notary Code of Ethics. Notaries must always be meticulous and careful not to cause mistakes, considering that notaries are in charge of serving the public as General Officers by making deeds. Making deeds that are not in accordance with the requirements, both formal and material, as specified in the provisions of the laws and regulations can be classified as violations committed by a Notary. If the Notary is proven to have lawfully done this and caused losses to other parties, then the Notary can be held accountable for his actions and subject to sanctions based on the provisions of the applicable laws and regulations and the Notary Code of Ethics.

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