

Legal Protection Against Notaries Due to Interceptors Who Provide False Information in the Minuta of the Deed of Sale and Purchase (Study of High Court Decision Number 99/PID/2020/PT. BDG)

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ABSTRACT

The notary in carrying out his office has the authority to make authentic deeds by listening to the will of the parties to be contended into a deed. Authentic deeds have the function of being perfect evidence regarding the information and facts contained therein. However, in practice, problems often arise where the presenter gives false information to the notary. This is certainly detrimental to the notary and has a legal impact regarding the proof of authentic deeds made by the notary. The purpose of writing this journal is to analyze the legal protection of notaries who are harmed due to false information provided by the interceptor. The method used in writing scientific journals is normative juridical, namely literature law research by examining literature materials or secondary data.

ABSTRAK

Notaris dalam menjalankan jabatannya memiliki kewenangan untuk membuat akta autentik dengan mendengarkan kehendak para pihak untuk dikonstantirkan kedalam suatu akta. Akta autentik memiliki fungsi sebagai alat bukti yang sempurna mengenai informasi dan fakta-fakta yang terkandung di dalamnya. Namun, pada prakteknya seringkali timbul permasalahan dimana penghadap memberikan keterangan palsu kepada notaris. Hal tersebut tentu merugikan notaris dan memberikan dampak hukum terkait pembuktian akta autentik yang dibuat oleh notaris. Tujuan penulisan jurnal ini adalah untuk menganalisis perlindungan hukum terhadap notaris yang dirugikan akibat keterangan palsu yang diberikan oleh penghadap. Metode yang digunakan dalam penulisan jurnal ilmiah adalah yuridis normatif yaitu penelitian hukum kepustakaan dengan mengkaji bahan kepustakaan atau data sekunder.

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I. INTRODUCTION

Notaries in carrying out their profession are often in contact with the public to provide legal services and counseling related to the civil sector, especially regarding the making of authentic deeds. The main authority of a notary in making authentic deeds is regulated in the provisions of the Notary Position Law (hereinafter referred to as UUJN), namely the notary's authority regarding all deeds, agreements and determinations in terms of making authentic deeds required by laws and regulations and / or desired by the interested to be stated in authentic deeds, guaranteeing certainty of the date of making deeds, storing deeds, giving grosse, copies and quotations of deeds, all of which are so long as the making of the deed is not so assigning or excluded to other officers or other persons

designated by law.(Undang-Undang Nomor 2 Tahun 2014 Tentang Perubahan Atas Undang-Undang Nomor 30 Tahun 2004 Tentang Jabatan Notaris, n.d.-a)

Thus, as long as it relates to making authentic deeds, the notary has the right and authority in making it. Authentic Deeds serve as evidence that has perfect evidentiary power. This is stated in the provisions of article 1870 of the Civil Code, namely:(Kitab Undang-Undang Hukum Perdata, n.d.)

“An authentic deed gives between the parties and their heirs or persons to whom they are entitled, a perfect proof of what is contained therein”.

The obligation that must be considered by a Notary in carrying out his profession is the obligation to be neutral and maintain the interests of the parties, as stipulated in the provisions of Article 16 paragraph (1) letter a UUN, namely the Notary has the obligation to act trustworthy, honest, thorough, independent, impartial and maintain the interests of related parties in legal actions.(Undang-Undang Nomor 2 Tahun 2014 Tentang Perubahan Atas Undang-Undang Nomor 30 Tahun 2004 Tentang Jabatan Notaris, n.d.-a) The phrase impartial means that the notary must be able to put the parties in a neutral position and neither party is in a dominant position. In practice, there is often a problem where the interceptor provides false information or information when presenting his will to a notary with the aim of obtaining benefits for one of the parties. This will have a legal impact in the form of losses to other parties in the deed, and result in the degradation of the evidentiary power of the authentic deed. Notaries are also often the aggrieved party because they can be entangled in various legal problems both in the criminal and/or civil fields.

The legal problem related to the authority of the notary in making the deed that the author highlighted is the existence of an element of false information stated by one of the parties to the notary when making an authentic deed, so that there is a need for legal protection against the notary. Therefore, these legal issues become the basis for the author to further examine the legal protection of notaries due to the interceptor providing false information in the minuta of the sale and purchase deed (High Court Decision Study Number: 99 / PID / 2020 / PT BDG).

The above decision contains legal problems regarding the forgery of ownership of the object of sale and purchase in the form of a certificate of property rights located in Cilengkrang village, Ujung Berung District, Bandung Regency covering an area of 6100 square meters. The case started when Mrs. ES as the defendant was the rightful owner of a piece of land with title No. 573/Cilengkrang. Then there were several legal actions in the form of buying and selling, so that currently the owner of the object is the heir of Mr. HUS. On March 5, 1994, there was a division of the territory so that the object of property rights entered the area of palasari village, Bandung city and resulted in the certificate of property rights changed to number 175. The problem arose when Mrs. ES learned of the information that the area located in the environment of the object of sale and purchase experienced an increase in the selling price of the land so that a desire to resell the object of sale and purchase arose which was not her right to make a profit.

On December 12, 2015, **Mrs. ES** came to the bandung city police station to make a loss certificate for SHM number 573/Cilengkrang by giving false information in front of the investigator so that a certificate of loss was issued number: B/SKTLK/41730/XII2015/SPKT. The certificate of loss was used by Mrs. ES to apply for registration of the creation of a replacement SHM for an object that was not her right and caused legal consequences in the form of the issuance of a replacement SHM registration receipt in the name of **Mrs. E.S**. In 2017, Mrs. E.S wanted to sell the object that was not her right to **Mr. D.A** through a Notary/PPAT TAC. Departing from the above problems, the author assesses the need for legal protection for notaries who are harmed due to the element of false information provided by one of the parties which can result in notaries being entangled in various legal problems.

Based on the description of the problem above, the author raised this case with the title: "Legal Protection against Notaries Due to Interceptors Who Provide False Information in the Minuta of the Deed of Sale and Purchase. (Study of High Court Decision Number 99/PID/2020/PT. BDG)". Based

on the background description of the problem that has been previously presented, the main points are as follows, namely: How is the legal protection against notaries who are harmed due to the interceptor providing false information and How are the Juridical Implications of Notarial Deeds Containing False Information Elements?

II. RESEARCH METHOD

The method used in this research is normative juridical, namely literature law research by examining literature materials or secondary data based on the hierarchy of laws and regulations and other norms that apply in society. Normative research, also known as doctrinal research, is research whose object of study is in the form of statutory documents and library materials. This research is a juridical study of the application of legal rules in the regulations contained in the High Court Decision Number 99 / PID / 2020 / PT. BDG. This study is to analyze the legal protection against notaries who are harmed due to false information provided by the interceptor.

III. RESULT AND DISCUSSION

1. Legal protection against notaries who are harmed by the interceptor who provides false information

In essence, Indonesian law provides limits on the authority to act on a profession that functions as a form of legal protection for a particular profession. These restrictions are also applied to the notary profession as a form of reminder that in carrying out his position the notary must not violate the provisions that have been regulated in the UUJN. In practice, there are often problems where the interceptor comes to a notary to make an authentic deed, but the interceptor gives false information as in the High Court Decision Study Number: 99 / PID / 2020 / PT BDG. The case in the high court decision discusses one of the parties who provided false information and evidence in the form of a certificate of property rights which is not his right to carry out legal actions in the form of buying and selling before a notary so as to involve the notary in a legal matter. Notaries are often considered as parties involved and cooperate to commit an unlawful act.

The provisions of Article 242 of the Criminal Code (KUHP) stipulate that the so-called act of forgery of letters (deeds) or false information is an act by giving information on oath or deliberately providing false information on oath, either verbally, personally or by his power of attorney specially appointed for it. (Kitab Undang-Undang Hukum Pidana, n.d.) Quoting the Hoge Raad ruling on June 25, 1928, Soenarto Soerodibroto said that a certificate is said to be false if part of the information is not true, and it can be estimated that it was deliberately given in providing false information. (R. Soenarto Soerodibroto, 2014) Furthermore, the conditions for an act to be considered as false information are as follows: (R. Soenarto Soerodibroto, 2014) A statutory provision that requires a statement under oath or that has legal consequences; His misrepresentation and willfulness were shown to his falsehood.

Thus, it can be concluded that false information is an act done deliberately to obtain unilateral profits that result in losses to other parties. Notaries in carrying out their profession as general officials need protection and guarantees to avoid the occurrence of things that can harm the interests of the notary. In carrying out his office the notary is protected by the Honorary Assembly of Notaries. The Notary Honorary Assembly is a body that has the authority to carry out a guidance on notaries and the obligation to provide legal protection regarding all legal processes related to the investigation of notaries. (Peraturan Menteri Hukum Dan Hak Asasi Manusia Republik Indonesia Nomor 17 Tahun 2021 Tentang Tugas Dan Fungsi, Syarat Dan Tata Cara Pengangkatan Dan Pemberhentian, Struktur Organisasi, Tata Kerja Dan Anggaran Majelis Kehormatan Notaris, n.d.) In addition to being protected by a body called the Honorary Notary Assembly, legal protection of notaries is also regulated in the provisions of article 66 paragraph (1) of the UUJN, which is as follows: (Undang-Undang Nomor 2

Tahun 2014 Tentang Perubahan Atas Undang-Undang Nomor 30 Tahun 2004 Tentang Jabatan Notaris, n.d.-b)

“For the purposes of judicial proceedings, investigators, public appointees, or judges with the approval of an honorary notary panel, authorized: Take a photocopy of the minuta deed and/or letters attached to the minuta deed or notarial protocol in the notary's deposit; and Calling a notary to be present in an examination relating to a notarial deed or protocol that is in the notary's custody.”

Article 66 of the UUJN is a form of protection for notaries in carrying out their positions. The establishment of a supervisory body in the form of an Honorary Notary Assembly serves as a legal umbrella for the notary profession who is harmed due to false information provided by the interceptor by making a summons and examination of the notary before the judicial process and investigation by the competent authorities. Basically, the law provides limitations on the liability of a profession so that not all losses incurred on a notary product can be charged or become the responsibility of a notary. Therefore, as long as the notary has performed his duties in accordance with the authority in the code of ethics and lawjn, the notary should get legal protection if there is a legal problem caused by the interceptor who provides false information in the deed.

The general explanation of UUJN Number 30 of 2014 concerning the Position of Notary explains that authentic deeds basically contain formal truths in accordance with what the parties tell the notary. Therefore, the notary only plays a role in making authentic deeds in accordance with the information provided by the parties. Then, the notary confirms the will of the parties into a deed according to what happened, what the parties saw and experienced in the deed.(Afifah, 2017) The types of responsibilities of a notary as a general officer in carrying out his profession related to making deeds are as follows:(Anshori, 2009)

- a. Civil liability of the notary. The notary is responsible for the material correctness of the deed, in case of unlawful acts. Unlawful acts are divided into 2 (two properties), namely active and passive. An active unlawful act means that the act done causes harm to the other party, while a passive unlawful act means that if the parties perform an undisputed legal act, it will cause harm to the other party. Unlawful acts are not only acts that violate the provisions of the law but also the propriety, decency or rights of others that cause losses.
- b. Criminal liability of the notary. Criminal acts refer to the context of notarial acts as general officials in carrying out their profession, not in the context of individuals as citizens in general.
- c. The responsibility of the notary is based on the rules of the notary position.
- d. The responsibility of the notary in carrying out the duties of his position based on the notary's code of ethics.

Sjaifurrachman in his book says that what is called the truth of the notary in the making of a notarial deed is everything that is stated in the notarial deed that corresponds to what the notary explains, while the truth of the information can only be ascertained between the parties concerned. Legal protection against notaries who are harmed due to the interceptor who provides false information based on the information above if it is connected with the High Court Decision Number 99 / PID / 2020 / PT. Bd, Notary/PPAT TAC should have received legal protection from the Notary Supervisory Panel as stipulated in the provisions of Article 66 paragraph (1) of the UUJN for the mistake of one of the interceptors who gave false information on land objects that were not his rights to be sold to other parties, because the error did not come from a Notary/PPAT TAC, and the Notary/PPAT TAC had exercised his authority by taking into account the formal conditions in making an authentic deed with basing everything that is contained in an authentic deed based on false information and documents provided by the accuser, i.e. **Mrs. E.S.**

2. Juridical implications of notarial deeds of sale and purchase containing elements of false information

An authentic deed is the work of a notary who serves as a perfect proof for the parties in carrying out legal actions before a notary. The authority of the notary in making authentic deeds is regulated in

the provisions of article 15 paragraph (1) of the UUJN where the notary is authorized to make authentic deeds regarding all deeds, agreements and determinations required by law at the request of the interceptors. The definition of an authentic deed according to uujn is a deed made by or before a notary according to the form and procedure stipulated in the UUJN.(Undang-Undang Republik Indonesia Nomor 2 Tahun 2014 Tentang Perubahan Atas Undang-Undang Nomor 30 Tahun 2004 Tentang Jabatan Notaris, n.d.) Meanwhile, the definition of an authentic deed in the Civil Code has a meaning in the form of a deed made in the form prescribed by law, by and or before the General Officer who is authorized to do so at the place where the deed is made. So it can be concluded that an authentic deed is a legal product issued by an authorized notary regarding the information submitted by the interceptor to be condensed into an authentic deed.

Based on the form, the deed is divided into 2, namely the Party Deed (Partij Deed) and the Minutes Deed (Relaas Deed). Partij Deed is a deed made before a Notary. A Notarial Deed may contain information told by the respondent about legal acts committed by other parties before a Notary.(G.H.S Lumban Tobing, 1996) The information obtained by the Notary from the information told by the parties is then translated into an authentic deed. While the Deed of Relaas is a Deed made by a Notary, meaning that the Notary makes observations of an event or legal act, compiles minutes, reads and signs the deed with witnesses, and informs the reason why the deed cannot sign the deed.(Herlien Budiono, 2013)

Authentic deeds serve as perfect evidence for the parties. Based on its evidentiary power, the deed is divided into 2, namely the authentic deed and the underhand deed. An authentic deed has perfect evidentiary power, meaning that the deed need not be interpreted or proved other than as to everything written in the deed.(Adjie, 2008) Meanwhile, a new underhand deed has the power of proof if the signatures contained therein are recognized by the parties interested in making the deed. One of the characteristics of a deed is the presence of a signature, as stipulated in the provisions of Article 1869 of the Civil Code, namely:(Kitab Undang-Undang Hukum Perdata, n.d.)

“a deed which is due to incompetence or incompetence of the employee referred to above, or because of a defect in its form, cannot be treated as an authentic deed, but has the force as a handwriting if signed by the parties.”

The phrase signing serves as a form of agreement of the parties to the deed to give a distinctive distinguishing feature or mark to a deed. In practice the notary can make mistakes or omissions in carrying out his duties. Mudofir Hadi in his book stated that errors that may occur when the notary carries out his duties, namely:(Hadi, 1991)

- a. “Typo in the Copy of the notarial deed, so that the notary has the obligation to correct and issue a new copy;
- b. Error in the form of the notarial deed, where there is an error regarding the form of the deed should have been made the deed of minutes of the meeting, but the notary made the deed of statement of the decision of the meeting;
- c. Error in the content of the notarial deed, in this case regarding the content of the information of the interceptor who is incorrect.”

The notarial deed essentially contains the legal actions of the parties in the form of an agreement. A covenant is an act in which one or more persons bind themselves to one or more other persons.(“Kitab Undang-Undang Hukum Perdata,” 2004) R Wirjono Projodikoro gave the definition of an agreement, which is a legal relationship regarding property between two parties, where one party promises to do or not to make a promise while the other party demands its implementation.(Prodjodikoro, 1982) The problem in the High Court Decision Number: 99 / PID / 2020 / PT BDG focuses on the forgery of objects that are not its right in carrying out legal actions in the form of buying and selling and providing false information into notarial deeds. In that case, one of the interceptors, namely **Mrs. E.S.** gave false information and letters / documents to the notary so that a sale and purchase deed was issued containing elements of false information.

Buying and selling is regulated in the provisions of the Civil Code, which is an agreement between 2 (two) or more parties to bind each other, where the one party binds himself to hand over a treasury and the other party pays the agreed price. ("Kitab Undang-Undang Hukum Perdata," 2004) From the definition of buying and selling in the Civil Code, it can be concluded that a sale and purchase agreement occurs when the parties agree on the price and goods to be agreed. The law of the treaty governs the terms of validity of the agreement, namely: ("Kitab Undang-Undang Hukum Perdata," 2004) Agreement of the parties; Proficiency in making an engagement; A certain thing; Causa halal.

The first condition and the second condition are subjective conditions, that is, conditions relating to the subject or the parties to the deed. Non-fulfillment of subjective conditions results in the agreement being revocable. While the third and fourth conditions are objective conditions, meaning that non-fulfillment of objective conditions results in a null and void agreement. The law of treaties recognizes the principle of consensualism, that is, agreements are born when the parties agree to bind each other. In addition to consensualism, the process of transferring rights through a sale and purchase agreement must meet the principles of light and cash. Terang means that the sale and purchase is carried out in front of the authorized official in this case a Notary / PPAT, while the phrase cash has the meaning that the legal action in the form of buying and selling has been carried out in full in accordance with the price agreed upon by both parties.

In the High Court Decision Number: 99/PID/2020/PT BDG, the conditions for the validity of the agreement were not fulfilled. Therefore, the non-fulfillment of the conditions in Article 1320 of the Civil Code, namely:

a. Agreed those who bind themselves

The word agree means that the parties to the agreement have agreed to their respective wills without any coercion, error, fraud and abuse of circumstances. In the above high court ruling, the word agree was born out of an element of fraud. **Mrs. ES** as the accused had ill intentions to resell the land which was not her right to **Mr. DA** after learning of the development of high sale prices in the area where the land was located. Deception shows an element of deceit and willfulness to benefit and enrich oneself. Article 1321 of the Civil Code provides that an agreement has no force if it is obtained by coercion or fraud.

b. A lawful cause

Article 1335 of the Civil Code provides that an agreement without cause, or that has been made for a false or prohibited cause, has no force. Furthermore, Article 1337 of the Civil Code stipulates that what is meant by lawful causes is that the content of the agreement must not conflict with law, public order, and decency. The understanding that it must not be contrary to the law has the understanding that the law is to protect the public interest, so that if it is violated it can endanger the interests of society in general. (Rusli, 1996) In the case of the high court decision, it can be said that the act of falsifying information in the agreement carried out by **Mrs. E.S** is contrary to law, decency and public order. This was reflected when he came to the Bandung police station and provided false information so that a Fake Loss Report Letter Number: B / SKTLK / 41730 / XII2015 / SPKT was issued regarding the loss of Property Rights Certificate Number 573 which became the basis for the issuance of a new certificate and the birth of a legal act in the form of buying and selling objects in the form of land that was not his right before a TAC Notary by entering false information or information into the notarial deed.

Non-fulfillment of subjective conditions results in the agreement being revocable. An agreement may be cancelled if one of the parties to the agreement is in an emergency or forced position while the opposing party is in the dominant position and abuses the circumstances in making the agreement. This is seen from the bad faith committed by **Mrs. ES** as the defendant to carry out a ruse in the form of reselling the object of sale and purchase in the form of SHM number 573/Cilengkrang which is not her own to **Mr. D.A** to reap unilateral profits by giving false information before a Notary/PPAT **TAC**. Abuse of circumstances is one of the defects in the word agree due to the presence of elements of coercion, misrepresentation and deception. (Rusli, 1996) In the case of a high

court decision, the objective conditions in the agreement are not fulfilled so that it has the effect of a null and void agreement, meaning that the agreement is considered to have never existed. (Syahrani, 2006)

The juridical implication of a sale and purchase deed made before a TAC Notary containing elements of false information remains an authentic deed as long as the notary meets the formal requirements for making the deed, because the notary does not have the authority to investigate the veracity of the information provided by the parties. The notary simply confirms what the parties put forward into a deed. However, if the notary participates in making mistakes by cooperating with the dominant party and committing negligence so that formal conditions are not met in making the deed, it causes the authentic deed to be degraded so that it only has the power of proof as a deed under the hands of.

IV. CONCLUSION

Notaries in carrying out their duties and positions should get legal protection to avoid everything that can harm the interests of the notary if they are harmed by false information stated by the interceptor in the notary product in the form of an authentic deed. The legal protection of notaries is regulated in the provisions of article 66 paragraph (1) of the UUJN and is protected by a body called the Notary Supervisory Board. The protection provided by the Notary Supervisory Panel is protection by making summonses and examinations of notaries before the judicial process and investigation by the competent authority. The truth regarding the notarial deed is limited to the truthfulness of the information that the appellants put forward to the notary at the time of making the authentic deed.

The juridical implication of a sale and purchase deed made before a Notary containing elements of false information remains an authentic deed as long as the notary meets the formal requirements for making the deed. However, if the notary participates in making mistakes and commits omissions that cause the non-fulfillment of formal conditions in making the deed, it causes the authentic deed to be degraded so that it only has the power of proof as a deed under the hands of. Therefore, although the notary in carrying out his duties is only formally responsible, namely regarding matters stated by the parties, the notary should still pay attention and *verify* the identity of the interceptor to find out whether the facing party has the authority to act in the deed and *verify the documents provided to prevent the occurrence of things that can harm the parties to the deed and notary*. In essence, a notary cannot be spared from legal problems arising from the deeds he made. Therefore, in carrying out his position, the notary must pay attention to the principle of prudence and obey the rules in the UUJN and the Notary Code of Ethics.

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