

The Notary Responsibility for the Development of Deeds that Contains False Data in the Agreement

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Abstract

Notary deed as authentic becomes the strongest and most complete evidence, and has an important role in every legal relationship in people's lives. Therefore, the existence of a notary deed is expected to provide legal certainty and legal protection for the community. However, in practice, it was later discovered that the deed made by a notary contained false data provided by the parties in the deed. Thus, the purpose of writing this scientific article is to analyze how the notary's responsibility is in making a deed with false data and the legal consequences of a deed containing false data. This research is classified as a normative research type supported by secondary data whose data collection is carried out by the library research method and the data obtained from the research results are processed by qualitative methods. The results of this study indicate that if the Notary has fulfilled all the provisions in making a Notary deed correctly, then the Notary deed made based on false data, the Notary cannot be held legally responsible. However, Notaries still need to be careful and uphold the code of ethics of the Notary profession in carrying out their duties and positions. Furthermore, the deed made by a Notary containing falsified data due to the party's error resulted in the deed being null and void.

Keywords

notary deed; notary responsibilities; false data



I. Introduction

Agreements are not a new thing in social life. In living their lives, people often make agreements either orally or in writing. Contract law in Indonesia has the principle of freedom of contract, meaning that everyone has the freedom to make and determine the contents of an agreement, as long as the agreement is made legally and does not violate public order, morality and the law.

Evidence in Indonesian Civil Law can be in the form of a deed which is included in the category of written evidence. Deed is writing that is deliberately made to serve as evidence of an event which is then signed (Alwesius, 2019). The difference lies in the strength of the proof where the authentic deed has perfect evidentiary power for the parties making the agreement, meaning that the existence of the authentic deed is sufficient to prove an event or legal act without the need for other evidence. Meanwhile, a private deed only has perfect evidentiary power if the signature on the deed is recognized by the party concerned (Kitab Undang-Undang Hukum Perdata, 2006).

Many people today choose to put their agreement in the form of an authentic deed. This is due to the nature of the authentic deed which has perfect evidentiary power so that it can

guarantee legal certainty for the parties in the event of a dispute over an agreement in the future.

Article 1868 of the Civil Code (KUH Perdata) stipulates that an authentic deed is a deed made in a form determined by law by or before a public official authorized for that at the place where the deed was made. One of the public officials who are authorized by law to make an authentic deed is a notary.

Article 15 of Law Number 2 of 2014 concerning Amendments to the Law on Notary Positions states that a Notary has the following:

- (1) Authorities concerned to be stated in an authentic deed, guaranteeing the certainty of the date of making the deed, keeping the deed, providing grosse, copies and excerpts of the deed, all of this as long as the making of the deed is not assigned or excluded to other officials stipulated by law.
- (2) In addition to the authority as referred to in paragraph (1), the Notary is also authorized to:
 - a. Authorize signatures and determine the certainty of the date of the letter under the hand by registering it in a special book; Elucidation: This provision is the legalization of private deeds made by individuals or by parties on paper with sufficient stamp duty by way of registration in a special book provided by a Notary.
 - b. Book letters under the hand by registering in a special book;
 - c. Make copies of the original underhand letters in the form of copies containing descriptions as written and described in the letter concerned;
 - d. Validating the compatibility of the photocopy with the original letter;
 - e. Provide legal counseling in connection with the making of the deed;
 - f. Make a deed related to land; or
 - g. Make a deed of auction minutes

With the authority he has mentioned above, the Notary must be fully responsible for all the products of the deed he made, namely by ensuring that the Notary has carried out his duties and positions in accordance with the applicable legal rules, so that the deed he makes is authentic and avoid problems in the future. Therefore, according to Article 65 of the UUJN and Article 3 of the Code of Ethics of the Indonesian Notary Association (INI), a Notary must always be thorough and careful in carrying out his duties as a Notary.

In practice, Notaries are often involved in legal cases as witnesses and suspects because of the Notary's mistakes in making the deed due to the Notary's own mistakes or errors caused by the parties in providing false letters/documents or statements to the Notary, or it could be due to an agreement between Notary with the parties to do something outside what has been determined by law.

According to his experience and observations, Yanuar stated that there are seven things related to Notary deeds that often lead to the Police:

1. Deeds made with the parties do not face each other. The notary makes the deed even though he knows that the parties are not facing each other or are not present, i.e. one or both parties are not present at the time of making the deed. Parties who feel aggrieved will usually report a Notary.
2. Identity data from one of the parties in the deed is considered incorrect or is considered to provide false information.
3. Data about the object of the agreement does not match the actual facts. Therefore, it is assumed that one of the parties provided false information. The notary is dragged as the party making the deed of agreement.
4. The data provided by one or both parties is incorrect, so that the issued Notary deed is considered a fake deed. The trap commonly used is entering false data into an authentic

deed or falsifying documents.

5. There are two deeds circulating among the parties, which have the same number and date but different contents. "This often happens, the number, date, and title are the same, but in one deed there is only one person, and in the other there are two persons. These two deeds are in circulation, so that the disputing parties are questioned.
6. The signature of one of the parties in the minutes was forged. This could happen because the making of the deed was pressed for time, and one of the parties was not in place. There may also have been an intentional attempt to forge a signature.
7. The speaker uses another person's identity. The notary does not necessarily know personally the person who comes before him. Notaries are not in a position to trace a person's track record, let alone to ensure that the identity in the official identity document of the appearer is true or false.

Notary errors or omissions in making the deed can not only harm the parties, but can also harm themselves. Thus, the author is interested in analyzing the responsibility that must be given by the Notary who makes the deed containing the false data of the parties to the agreement and what are the legal consequences of the Notary deed containing the false data. From the description above, the author makes this writing with the title Notary Responsibility for Making Deeds Containing False Data of Parties in the Agreement.

c. Problem Formulation

1. What is the responsibility of a Notary in making a deed with false data?
2. What are the legal consequences of a deed containing false data?

d. Purpose of Writing

The purpose of this paper is to analyze the responsibilities of a Notary in making a deed with false data and the legal consequences of a deed containing false data.

II. Research Methods

The research method used in this paper is normative legal research, namely the law is conceptualized as stated in legislation or rules or norms which are human guidelines for behavior (Amiruddin, 2017). This research was conducted by document study using secondary data in the form of primary, secondary, and tertiary legal materials. Primary legal materials consisting of the Civil Code, Law Number 30 of 2004 concerning Notary Positions, Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Positions and the Code of Ethics of Notary Associations Indonesia. The secondary legal materials used are books, theses, scientific journals, or articles related to the Notary's Responsibilities to the Making of Sale and Purchase Binding Agreements Containing False Data of Parties to the Agreement and the tertiary material used is the Big Indonesian Dictionary (KBBI), law dictionaries, and the internet. All of these legal materials were collected using the library research method. Then the data obtained from the results of this search were analyzed and written descriptively and qualitatively.

III. Discussion

3.1 Notary Deed as Authentic Deed

The law gives the Notary the main authority to make an authentic deed. A Notary Deed which is an authentic deed, apart from having perfect evidentiary power, it also has the character of being the fullest and strongest evidence that covers the value of material, formal,

and outward proof of power. Thus, a Notary is created to guarantee legal certainty for the parties.

According to article 1868 of the Civil Code, a deed is declared authentic when it meets the following requirements:

- a. The deed must be made by or before a public official
- b. The deed must be made in the form determined by law
- c. Public officials by or in the presence of whom the deed was made must have the authority to do so.

Notary deeds must be made by or before a Notary. B.N. Marbun, determines that: "Notary is a public official who is the only one authorized to make authentic deeds regarding all actions, agreements and regulations that must be carried out by a general rule or desired by those concerned to be stated in an authentic deed, guaranteeing the certainty of date, keeping the deeds, and providing copies and quotations thereof, all of it so far the making of the deeds is not assigned or excluded to other public officials" (Marbun & Anwar in Hulu, 2020). Formally the establishment of the foundation must be with a notarial deed (Subiyanto, 2020). Then, the form of a Notary deed must be in accordance with what is specified in Article 38 of the UUJN, namely that every Notary deed must consist of the beginning of the deed or the head of the deed, the body of the deed and the end or closing of the deed. The beginning of the deed contains:

- a. Title of deed
- b. Deed number,
- c. Hour, day month and year
- d. Full name and domicile of the Notary

Body deed contains:

- a. Full name, place and date of birth, nationality, occupation, position, position, residence of the appearers and/or the person they represent,
- b. Information on the position of acting in the presence,
- c. Contents of the Deed which is the will and the wishes of the interested parties, and
- d. The full name, place and date of birth, as well as the occupation, position, position, and residence of each identifying witness.

The closing of the deed must contain:

- a. A description of the reading of the deed
- b. A description of the signing and the place of signing or translation of the deed if there is
- c. The full name, place and date of birth, occupation, position, position, and residence of each witness
- d. In the making of the Deed or description of the changes that can be in the form of additions, deletions, or replacements as well as the number of changes

Finally, the requirements that must be met by a Notary deed as an authentic deed are made by or before a Notary who is authorized for that purpose, namely as follows:

- a. Authority related to "Place"

Notaries must be authorized in accordance with the place where the deed was made. Article 18 UUJN has determined that a Notary has a domicile in a regency/city area with an office area covering the entire province from his place of domicile. For example, Notary B is domiciled in the city of Bogor, so the area of his office is the entire province of West Java. In this regard, Notaries are prohibited from carrying out their duties and positions outside their area of office.

- b. Authority related to "Time"

The Notary has the authority when the deed is made, not when the Notary has not taken the oath or is not made when the Notary is on leave or dismissed with honor or disrespect, or for other reasons.

c. Authority relating to "Persons"

Notaries must have the authority for whose interests the deed was made. Not allowed for yourself, the wife or husband of a Notary or people who have a family relationship with a Notary either upwards or sideways to the third degree.

d. The authority related to the "Deed"

Notary must be authorized to make a deed requested by the parties, not the authority of another public official.

All of the above conditions must be met cumulatively. If one of the conditions is not met, the Notary deed will be relegated to a deed which only has the power of proof under the hand as long as it is signed by the parties.

Notaries also need to pay attention to and fulfill material and formal requirements in making a deed. Habib Adjie mentions in his book *Civil and Administrative Sanctions against Notaries as Public Officials*, in order for a Notary deed to be declared valid, there are two things that must be fulfilled: First, the Notary has the authority to make a deed according to the wishes of the parties. Second, outwardly, formally, and materially, it is in accordance with the legal rules regarding the making of a notary deed (Philipus, 2021).

External requirements mean that the notary deed must be signed by the notary as an authorized public official. Furthermore, the material requirements, the Notary deed must meet the requirements for the validity of the agreement as stated in Article 1320 of the Civil Code which consists of an agreement between the parties, the ability to enter into an agreement, certain matters and lawful causes.

Agreement means that the parties mutually agree on the contents of the agreement without any oversight, coercion, and fraud from anyone. Meanwhile, the ability to act means that the parties to the agreement are those who are authorized to enter into the agreement, for example those who are over 18 (eighteen) years old or who are married, or another example is the board of directors in terms of representing a PT to enter into an agreement. Then, certain things mean that in the agreement there are objects that are agreed upon which at least the type can be determined and are goods that can be traded. Finally, the lawful cause is the content of the agreement itself which describes the goals to be achieved by the parties. Article 1337 of the Civil Code stipulates that the contents of the agreement must not conflict with the law, morality and public order.

The four conditions for the validity of the agreement are classified into 2 (two) namely subjective conditions and objective conditions. Subjective conditions consist of the agreement and skills of the parties. Objective conditions consist of certain things and lawful causes. Subjective terms, meaning the conditions relating to the parties who make the agreement, while the objective terms of the agreement regulate what the object of the agreement must be in accordance with the applicable laws and regulations. There are 2 (two) acceptable consequences if the conditions for the validity of the agreement are not fulfilled, namely:

- a. Can be canceled (*Vernietigbaarheid*), namely if it violates the subjective conditions of the agreement: agreement or skill.
- b. Cancel by law (*Neitigbaarheid*) i.e. if it violates the objective conditions of the agreement: certain things or lawful causes.

Furthermore, the formal requirements for making a Notary deed consist of:

- a. Made before or by a Notary
- b. Attended by the parties. The parties together come before the Notary to declare his will to have a deed made
- c. Both parties are known by the Notary. This means that based on the identity cards shown by the parties to the Notary, the Notary believes that the parties are correct according to the identities shown to him.

- d. In making the deed, two witnesses must be
- e. The Notary reads the deed in front of the witnesses and the
- f. deed is signed by all parties, namely the appearers (parties), witnesses, translators (if any) and the notary
- g. Include confirmation of reading, translation and signing at the closing of the deed

All of these must be fulfilled, otherwise the deed can be declared invalid. However, to be declared or judged that the deed is invalid, it must go through a lawsuit to the general court and obtain a decision from the court that has permanent legal force that the deed is invalid. As long as the lawsuit is still ongoing, the deed is still considered valid and binding for the parties or anyone with an interest in the deed.

3.2 Responsibilities of a Notary in Making a Deed with False Data

The Notary Deed is divided into 2 (two) groups, namely the deed made before a Notary or the Party Deed/Partij Deed (Partij Akten) and the deed made by the Notary, known as the Official Deed/Deed Relaa (Ambttelijke Akten). GHS Lumban Tobing explained that the Deed of Parties contains a description of the statements or actions of the parties submitted before a Notary to be confirmed and set forth in the form of a Notary deed (Tobing, 1983). Deed of business entity (establishment of PT, Foundation, cooperative, firm, CV, etc.), etc., which contains and records all events or actions based on what is seen, heard, and felt on the implementation of the meeting or event covered. The testimony is then stated in an authentic deed. Example: Minutes of the GMS of PT, deed of registration of boedel, deed of lottery. In this paper, we will specifically discuss the Deed of Parties.

GHS Lumban Tobing (1983) states that the party deed authentically guarantees the following:

- a. Date of deed
- b. Signatures in the deed
- c. Identity of the people present
- d. What is stated in the deed is in accordance with what was explained by the appearers to the Notary to be included in the deed the deed, while the truth of the statements themselves are only certain between the parties concerned.

Thus, as an authentic deed, a Notary deed must guarantee the truth of the contents of the deed and the parties to the deed are required to comply with every content described in a deed. If in the future it is found that the Notary deed contains falsified data, it must be investigated further, whether the problem is caused by the Notary's error or the fault of the parties. Different causes will lead to different responsibilities. If it turns out that the falsification of the data was caused by a Notary, the Notary may be subject to criminal liability, namely the falsification of a letter:

- a. Article 263 paragraph (1) of the Criminal Code (Criminal Code)

Whoever makes a fake letter or falsifies a letter, which can issue a right, an agreement (obligation) or a debt relief, or which may be used as a statement for an act, with the intention of using or ordering other people to use the documents as if they were genuine and not falsified, then if using them could result in a loss, the sentence for falsification of the documents shall be punishable by a maximum imprisonment of six years.

- b. Article 264 paragraph (1) number 1 of the Criminal Code

Forgery of letters is punishable by a maximum imprisonment of eight years, if it is carried out against:

- 1. Authentic Deeds

Criminal sanctions can be imposed if the Notary has the ability to be responsible, there is no reason for the elimination of errors and the Notary's actions fulfill The elements of the crime of falsifying letters are as follows:

- a. When falsifying the letter, it must be with the intention of using or ordering other people to use the letter as if it were original and not falsified
- b. The word "can" means that it is not necessary for the loss to actually exist, just that the possibility of the loss is sufficient
- c. Those punished according to this article are not only falsified, but also intentionally use a forged letter. Deliberately means that the person who uses it must know for sure that the letter he is using is fake. If he does not know about it, he is not punished. It is considered "using" for example handing over the letter to another person who must use it further or submitting the letter at a place where the letter must be needed
- d. Likewise, the act must be able to cause losses other hand, if the Notary has carried out all his duties and responsibilities in making the deed correctly, but it is found that in the future it contains false data due to the parties, then the Notary cannot be criminally prosecuted for the error, except The notary is proven to know that the data brought to him is false. Because, basically, notaries only relate, record/record in writing and authentically the legal actions of the parties in the deed. Information and data provided by the parties to the Notary such as identity cards (KTP/Passport), KK, and other supporting data are considered valid, so that they are then poured into the deed.

Notaries are not obliged to further investigate the veracity of the data of parties who appear before them. The information provided by the parties to the Notary is fully the responsibility of the parties. The Notary Deed does not provide a guarantee that the parties "said the truth" but guarantees that the parties "speak correctly" as stated in their deed of agreement. However, a Notary as a public official must always carry out his duties and positions with the principle of prudence and act in a trustworthy, honest, thorough, independent, impartial manner and safeguard the interests of the parties involved in legal actions.

3.3 Law against Deed with False Data

Article 1869 of the Civil Code determines that a deed is relegated to a private deed if 1) the deed is made by a public official who is not authorized to do so, 2) the inability of the public official concerned and 3) there is a defect in the form of a deed. Thus, if in carrying out his position, the making of a Notary deed turns out to be based on false data provided by the parties but the Notary has fulfilled all the procedures and conditions regulated by UUJN, then the formality of the elements has been fulfilled so that the authenticity of the deed is not lost. However, materially the deed has violated the legal provisions of the agreement in Article 1320 of the Civil Code, where the validity of the agreement includes the following 4 things:

- a. The agreement of the parties to bind themselves
- b. The ability of the parties to make an agreement/perform certain legal actions
- c. Certain things that are the object of the agreement
- d. Halal cause / does not violate the law, decency and public order.

If false data in making a deed is in the form of the identities of the parties, what happens is a violation of the subjective requirement, namely an agreement because the act can be classified as an act of fraud as stipulated in Article 1321 of the Civil Code. As a result, the deed can be canceled with a court decision first and then the parties make an agreement to cancel the deed. This is because, basically, a notary deed has a legal presumption principle or what is known as presumption *iustae causa*, which means that a deed made by a notary must be considered valid and binding on both parties in accordance with what is written in the deed until a court decision with permanent legal force refutes and refute the deed (Amrizakar, 2020).

If the fake data in the deed is supporting data in certain legal actions, for example in the sale and purchase of land, the data shown is a fake land certificate, then the deed has violated the objective conditions of the agreement, namely a lawful cause. As a result, the deed becomes null and void or is deemed to have never existed before without the need for a judge's decision or the decision of a government agency to cancel partly or completely as a result of that stipulation. In line with Pieter Latumeten's statement, in his book *Juridical Deeds of Notaries in Concrete Legal Events and their Legal Implications*, the loss of the authenticity of a Notary's deed can have various consequences for the parties concerned.

- a. The legal actions contained therein are also void, this occurs in legal actions which by law are required to be stated in an authentic deed, for example the Deed of Establishment of a Limited Liability Company
- b. This occurs in legal actions that are not required by law to be stated in an authentic deed, but the parties want their legal actions to be proven by an authentic deed, so that a strong evidence can be obtained.
- c. The deed still has authenticity (the Notary deed is void). The legal action contained therein is null and void. This happens if the terms of the agreement are not fulfilled or there is a basic defect of the rights that are the object of the agreement. For example, buying and selling is done on the basis of false evidence.

IV. Conclusion

In carrying out his position, the Notary deed made based on data (false letters/documents) the Notary cannot be held legally responsible as long as the making of the deed has been carried out in accordance with the procedures and procedures regulated in UUJN and does not violate the Notary's code of ethics. This is because the Notary is not obliged and authorized to examine more deeply the data (letters/documents) that are included by the parties who appear before him, as long as the Notary considers the document to be valid. However, Notaries still need to be careful and uphold the code of ethics of the Notary profession in carrying out their duties and positions. Furthermore, the deed made by a Notary containing falsified data due to the party's error resulted in the deed being null and void.

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