

Legal Responsibility for Notaries for Deeds of Agreement Made Privately on Blank Forms

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Abstract

The issue that arises then is whether the agreement can be accepted in positive law. The problem in this journal discusses how the Notary's Responsibility for the Deed of Agreement through blank forms and How the Legal Protection for the injured party is for the Deed that is canceled, which aims to gain an understanding regarding the validity of the Deed of Agreement. The method used is Normative Jurisprudence, Conceptual Approach Type, Using Data Collection Methods with Literature studies related to Laws and Regulations, and the Research Specifications used are Descriptive Techniques that focus on solving legal problems and events. The results of this study explain that the Notary's responsibility in making a deed of agreement through blank forms is very large, including civil, criminal, and administrative responsibilities. Legal protection for parties to a deed of agreement that is canceled by law is based on the principle of justice and legal certainty guaranteed by statutory regulations.

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1. INTRODUCTION

The life of society today requires legal certainty, among others, in the public service sector, considering the increasing or developing needs of the community itself for the existence of a service. The role of Notaries in the service sector is to serve the community in the civil field, especially in the creation of authentic deeds and private deeds. The notary institution is one of the social institutions in Indonesia. According to G.H.S Lumban Tobing, "this institution arose from a need in human interaction that requires the existence of evidence regarding civil legal relations with what happens between them or humans."

This is where the importance of the notary profession lies. Notaries are authorized by law to create an absolute means of proof. This means that what is contained in an authentic deed is essentially considered true. In carrying out their profession, notaries refer not only to the UUJN and amendments to the UUJN, but also to the professional code of ethics established by the Indonesian Notary Association.

An authentic deed is a deed made by an authorized official. For this reason, the authorities, according to established provisions, either with or without assistance from interested parties, record what is requested, including the statement of an official explaining what was done or seen in his presence. A private deed is a deed that is not made by and in the presence of a public official authorized to make it. According to Article 1874 of the Civil Code, private deeds are made by the parties themselves without the assistance of public officials. For example, receipts, debt agreements, household documents and so on. A recognized private deed, in terms of evidentiary power, is almost the same as an authentic

deed, the difference is in the external evidentiary power, which is not possessed by a private deed. A private deed can be made in such a way based on the agreement of the parties and importantly, the date can be made at any time, unlike an authentic deed that must be made by an authorized official.

Soetardjo Soemoatmodjo stated that community rights, especially those related to civil matters, must receive legal protection. These rights are used in behavioral activities as legal actions. When related to the role of a notary as a public official who makes authentic deeds, then if these actions carried out by the community are made with an authentic deed, legal protection will be guaranteed, because the deed can be used as evidence of the existence of a particular legal act. (Soetardjo Soemoatmodjo, 1986)

An authentic deed is a written form created to serve as evidence in the event of an event and is signed. A deed has two important functions, namely a formal function (*formality of cause*) and the function of evidence (*proof case*). Formal function means that for completeness and perfection, not for the validity of a legal act, a deed must be made. The function of evidence that the deed was made at the time of proof at a later date, the written nature of an agreement in the form of a deed does not make the agreement valid, but only so that it can be used as evidence in the future. An agreement has been made with Defendant Johan regarding the agreement to build a shophouse with a Certificate of Ownership Number 207/Muara Kumpeh located on Jalan Raya, Kasang Pudak Village, Kumpeh Ulu District, Muara Jambi Regency. The agreement is stated in a Deed of Agreement made at Notary & PPAT Yeni Pujihartini, S.H., M.Kn as Defendant II, then the Plaintiffs were asked by the Defendant to come to the Office of Defendant II to sign a blank paper which at that time was said by Defendant II to be used for the purposes of the Build Share Shophouse agreement.

There were several things that according to the Plaintiffs were not in accordance with what was agreed upon, then Defendant I submitted a copy of the Deed of Building Agreement for the Shophouses and after reading the contents of the Agreement in the Deed, the Plaintiffs realized that there were several things stated in the deed that were not in accordance with what was agreed upon by the Plaintiffs with Defendant I previously. A total of 3 (three) shophouses were written as (4) shophouses.

Defendant I did not carry out the construction of the shophouse (ruko) in accordance with the contents of the agreement. Where in Article 3 (three) of the Deed of Agreement Number 28 states "The second party will hand over the shophouse part belonging to the first party to the party as soon as possible after the construction of the shophouse (ruko) is completed, no later than within a period of 30 (thirty) months, from the date this deed was signed." The deadline for Defendant I to hand over the shophouse (ruko) to the Plaintiffs is the latest, but until the specified time Defendant I has not completed the shophouse and has not been able to hand over the shophouse (ruko) to the Plaintiffs.

On September 24, 2015, the Plaintiffs filed a breach of contract lawsuit to the Sengeti District Court and during the lawsuit, Defendant I stopped carrying out physical work on the object of the case and the parties' legal counsel also continued to try to resolve it through deliberation outside the court, but had not yet obtained a peace result, until the Plaintiffs withdrew the lawsuit with the aim of resolving it through discussions outside the court. The agreement was stated in a Deed of Agreement made at Notary & PPAT Yeni Pujihartini, S.H., M.Kn as Defendant II, then the Plaintiffs were asked by the Defendant to come to the Office of Defendant II to sign a blank paper which at that time was said by Defendant II to be used for the purposes of the Build for Shophouse agreement.

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On September 24, 2015, the Plaintiffs filed a lawsuit for breach of contract with the Sengeti District Court and during the lawsuit, Defendant I stopped carrying out physical work on the object of the case and the parties' legal counsel also continued to try to resolve the matter through deliberation outside the court, but had not yet reached a settlement, until the Plaintiffs withdrew the lawsuit with the aim of resolving it through discussions outside the court.

A notary as a public official has the authority to make a deed that must be in accordance with the UUN which is authorized to make authentic deeds can be burdened with responsibility for his actions. In terms of legal protection for the injured party, the Civil Code provides a legal basis for filing a lawsuit for unlawful acts or breach of contract against the party who misuses the contents of a deed signed using a blank form. Article 1365 of the Civil Code stipulates that every act that violates the law and causes harm to another person requires the perpetrator to compensate for the loss. Thus, the injured party can claim compensation for losses caused by changes to the contents of the deed. (Abdul Ghofur Anshori, 2009).

In this increasingly advanced era, the role of notaries is increasingly needed by the community, one of which is in making agreements. This is related to the need for strong evidence, if a dispute arises between the parties in the future. Therefore, in carrying out their duties, notaries provide their services based on the provisions of laws and regulations. If a notary is negligent or intentionally allows the creation of a deed with a blank form without adequate explanation to the parties appearing, the notary can be subject to sanctions in accordance with Article 16 paragraph (1) Number 2 of 2014.

Based on what is known above, a notary as a public official has the authority to make a deed that must be in accordance with the Notary Law and the notary code of ethics. Furthermore, a notary as a public official (*openbaar ambtenaar*) who is authorized to make a deed underhand can be burdened with responsibility for his actions related to his work in making the deed. There is deviant behavior by certain notaries who misuse the creation of a deed signed by the appearer on a blank form.

2. RESEARCH METHOD

The research method used is Normative Juridical to produce useful results. This normative juridical method is combined with literature related to the problem being studied, and prioritizes analysis using applicable laws and regulations as an important basis for analyzing legal issues.¹ Secondary data sources, such as books, articles, and legal journals. This research aims to understand the relevant legal context and interpret existing provisions. The approaches used in this research are a conceptual approach through a doctrinal perspective, as well as a statutory approach, which analyzes laws and regulations

¹Peter Mahmud Marzuki, *Legal Research* (Jakarta: Kencana, 2007).

that correlate and relate legally to the problem under study.²The author's data collection method uses a literature study related to the object and cites references including Legislation, Journals, Books, Articles and the Internet. The data analysis method used is a qualitative analysis sourced from legislation, expert views, legal concepts and theories as well as an understanding of the results of the analysis itself.

3. RESEARCH RESULTS AND DISCUSSION

3.1. Notary's Legal Responsibility for Signing a Deed of Agreement with a Blank Form

The definition of responsibility according to the Big Indonesian Dictionary is the state of being obliged to bear everything if unexpected things happen and can be sued. According to legal provisions, responsibility is a result of the consequences of a person's freedom regarding his actions related to ethics or morals in carrying out an action. (Soekidjo Notoatmojo, 2010) From the above definition, responsibility is a person's ability to demonstrate personal qualities to carry out his work. Associated with Notaries, where moral responsibility is based on the obligations contained in Article 16 paragraph (1) Number 2 of 2014 concerning the Notary Law that:

- I. In carrying out his/her duties, a Notary is obliged to:
 - a. Act in a trustworthy, honest, thorough, independent, impartial manner and protect the interests of the parties involved in legal actions;
 - b. Make a Deed in the form of a Deed Minute and store it as part of the Notary Protocol;
 - c. affixing letters and documents as well as fingerprints facing the Minutes of the Act;
 - d. Issued Grosse act, Copy Acts, or Collection of Acts based on Minutes of Acts; and provide services in accordance with the provisions of this Law, unless there is a reason to refuse it;
 - f. Keep secret everything regarding the Deed he/she makes and all information obtained for the purpose of making the Deed in accordance with the oath/promise of office, unless the law determines otherwise;
 - g. Binding the Acts he made in 1 (one) month into a book containing no more than 50 (fifty) Acts, and if the total number of Acts cannot be contained in one book, the Acts can be bound into more than one book, and note the number of Minutes of the Acts, the month, and the year of their creation on the cover of each book;
 - h. Make a list of the Deed of protest against non-payment or non-receipt of securities;
 - i. making a list of Acts related to wills according to the order of time of Act making every month;
 - j. Send a list of deeds as referred to in letter i or a list of nil relating to wills to the center for the list of wills at the ministry which organizes government affairs in the legal sector within 5 (five) days in the first week of each following month;
 - k. record in the repertory the date of sending the list of wills at the end of each month;
 - l. Have a stamp containing the national emblem of the Republic of Indonesia and in the space surrounding it is written the name, position, and location of the person in question;
 - m. Read the Deed in front of the person appearing in the presence of at least 2 (two) witnesses, or 4 (four) witnesses specifically for the making of a private Deed of Will, and signed at that time by the person appearing, witnesses and Notary; and
 - n. Accepting internships for prospective notaries

²Aan Efendi and Dyah Othorina Susanti, *Legal Research* (Jakarta: Sinar Grafika, 2018).

With the rules above, if the obligation is violated, there are sanctions that have been arranged in Article 16 paragraph (11), (12), and (13) of the UUJN, which are:

- II. Notaries who violate the provisions as referred to in paragraph (1) letters a to l may be subject to sanctions in the form of:
 - 1. Written warning;
 - 2. Temporary suspension;
 - 3. Honorable discharge; or
 - 4. Dishonorable discharge.
- III. Apart from being subject to sanctions as referred to in paragraph (11), violations of the provisions of Article 16 paragraph (1) letter j can be a reason for the party suffering losses to demand reimbursement of costs, compensation and interest from the Notary.
- IV. Notaries who violate the provisions as referred to in paragraph (1) letter n may be subject to sanctions in the form of a written warning.

The notary's responsibility in creating agreements using blank forms is a crucial issue in notarial law. A blank form is a document that has not been filled in with data, but is signed by the parties and then completed by the notary or another party. This practice often raises potential legal, legality, and professionalism issues, as mandated by Law Number 30 of 2004 concerning the Position of Notary, as amended by Law Number 2 of 2014.

In the context of notarial responsibility, blank forms have the potential to reduce the authentic value of a deed due to the presence of elements that do not comply with formal provisions. A notary acts as an official authorized to make authentic deeds, and in carrying out their duties, they are required to act independently, honestly, and professionally in accordance with Article 16 of the Notary Law. This states that a notary is fully responsible for a deed they make, both in terms of the validity of the procedure and the truth of the substance stated in the deed.

Article 38 of Law Number 2 of 2014 states that every deed must consist of an initial part, contents, and closing of the deed which contains a description of the reading of the deed and its signing in the presence of the relevant parties. In the case of using a blank form, if it does not comply with these provisions, the deed only has the power as a private deed, which clearly contradicts Article 41 of the Notary Law which requires the creation of deeds authentically.

A notary's liability in cases of using blank forms can include civil, criminal, and administrative liability. Civilly, a notary can be sued under Article 1365 of the Civil Code concerning unlawful acts if the action is detrimental to one of the parties to the agreement. From a criminal perspective, falsifying data on blank forms can be subject to criminal sanctions in accordance with Article 263 of the Criminal Code, which regulates document falsification.

Furthermore, notaries found to have violated procedures for creating authentic deeds using blank forms may be subject to administrative sanctions. Article 85 of the Notary Supervisory Board (UUJN) explains that the Notary Supervisory Board has the authority to impose sanctions. This demonstrates that notaries have a significant obligation to ensure the accuracy and validity of the documents they create. A common example of cases involving blank forms is when notaries fail to ensure the material accuracy of data later entered by another party. In this case, notaries are not only morally and professionally responsible but also legally liable. This responsibility includes any losses suffered by parties who feel disadvantaged due to the use of blank forms in creating deeds.

In general, the practice of using blank forms poses a significant risk to the credibility of notaries and the integrity of the deeds they produce. Notaries must ensure that every deed is prepared in accordance with statutory procedures, including the requirement to verify the accuracy of the data and ensure all parties understand the contents of the deed before signing. Notaries are also required to refuse to prepare a deed if there is any non-compliance with these provisions.

3.2. Legal Protection for parties who are harmed by a cancelled Deed of Agreement

Legal protection is defined as a form of government legal action or deed granted to legal subjects in accordance with their rights and obligations implemented based on positive law in Indonesia. Legal protection arises from the existence of a legal relationship. A legal relationship is an interaction between legal subjects that has legal relevance or has legal consequences (the emergence of rights and obligations). Law is one of the systems in society supported by norms that are deliberately and consciously created to maintain social order and also to create justice and raise public awareness. Law is required to realize basic values in the form of justice, usefulness/benefit and legal certainty.

Legal Protection can also be interpreted as all efforts made consciously by every person or government institution, private sector which aims to secure, control and fulfill the welfare of life in accordance with existing human rights. In principle, legal protection does not differentiate between men and women, the state government system as stated in the explanation of the 1945 Constitution, among others, states the principle "Indonesia is a state based on law (*rechtstaaf*) and the government is based on the constitutional system (basic law)", the main element of the rule of law is the recognition & protection of "fundamental rights".

Thomas Hobbes stated that the law has the power to protect or save lives and interests. This power, according to him, comes from a strong state that can enforce the law on its citizens. (Habib Adjie, 2009). Furthermore, Philipus M. Hadjon, in contrast, emphasizes legal protection for society in relation to the relationship between society and the government. Legal protection for the people as the government consists of two things, namely: (Philipus M. Hadjon, 1987)

- a. Preventive Legal Protection is a form of legal protection where the people are given the opportunity to submit objections or opinions before a government decision takes definitive form.
- b. Repressive Legal Protection is a form of legal protection which is more often applied in dispute resolution.

Associated with the party who suffered a loss due to a deed made by a Notary, which was later declared null and void by the court, based on the concept of preventive legal protection the party has the right to claim compensation. The claim for compensation is based on a breach of contract or unlawful act, and in terms of repressive protection the injured parties receive protection in accordance with the court's decision after the dispute. The Notary in carrying out his duties and authority in making a deed of agreement in accordance with formal requirements does not have an obligation to be responsible, but responsibility is carried out if he carries out an act that is not permitted by law.

Legal protection for parties aggrieved by a revoked deed is a measure provided by the legal system to ensure justice and legal certainty. An authentic deed is a very strong form of evidence in civil law, as explained in Law Number 2 of 2014. This protection is important because a revoked deed can have a direct impact on parties who have relied on the deed as valid for a legal act. The definition of legal protection is all efforts made

consciously by every individual or government or private institution aimed at securing, controlling, and fulfilling the welfare of life in accordance with existing human rights as regulated in Law Number 39 of 1999 concerning Human Rights. In other words, legal protection is a depiction of the function of law, namely the concept where law can provide justice, order, benefit, and peace.

Therefore, Notaries are required to comply with the provisions stipulated in the UUJN. If a legally flawed deed is created, which is then declared inauthentic, and is not fulfilled, resulting in the deed being held underhand or declared null and void by law, then this incident is contrary to the obligations of a Notary.

The state provides a sense of security to the public, a form of service provided through legal protection. Each official has a product within their authority, and this remains valid even after the official leaves office. If anyone feels aggrieved by these products, they can file a lawsuit with the State Administrative Court, alleging the subject of the lawsuit.

The annulment of a deed can occur through a court decision following a lawsuit filed by the aggrieved party. In this context, Article 1365 of the Civil Code stipulates that any unlawful act that results in losses must be compensated by the guilty party. This also applies to the annulment of a deed, where procedural or substantial errors can be used as grounds for holding the parties involved accountable, including the notary if found guilty.

Legal protection for the injured party can be achieved through two main channels: civil and criminal. In the civil realm, the injured party can file a lawsuit for breach of contract or unlawful acts, depending on the context of the case. If it is proven that the deed was canceled due to the negligence of the notary or related parties, they will be entitled to compensation, in accordance with Article 1243 of the Civil Code. Conversely, if there is an element of intent or fraud, the injured party can also file a criminal complaint. In addition to filing a lawsuit, the injured party can also file a complaint with the Notary Supervisory Board, which functions to monitor and follow up on violations committed by notaries in carrying out their duties. If a notary is proven to have violated the law, the Notary Supervisory Board can impose administrative sanctions ranging from written warnings to temporary or dishonorable dismissal. Furthermore, Article 84 of the UUJN also provides provisions for the injured party to claim compensation, interest, and other costs as compensation for losses suffered due to errors in the preparation of the deed.

Legal protection for injured parties is also strengthened by the existence of the Notary Honorary Council, which plays a role in assessing and granting approval to legal actions involving notaries in the judicial process. The Notary Honorary Council was established with the aim of protecting the notary profession while still safeguarding the interests of the public who require legal certainty. Based on preventive legal protection, a deed of agreement made by a notary becomes a private deed due to the notary's error that does not comply with the provisions, then the injured party can be entitled to receive compensation.

Repressive legal protection related to the authenticity of the deed of agreement made by a Notary is that the party can submit a request for compensation as reflected in the case of Supreme Court Decision Number 1995 K / Pdt / 2017 dated October 19, 2017 in conjunction with the Jambi High Court Decision Number 65 / Pdt / 2016 / PT JMB with the result of the decision making the deed of agreement null and void. A Notary is a public official who is authorized to make a deed must be in accordance with the existing facts and must comply with the applicable regulations, even though the deed made is based on the wishes and desires of the parties, but the Notary must still

see the evidence that what the parties say is appropriate and appropriate and must be present in every process of making and signing the deed he made.

4. CONCLUSION

The legal consequences of proven signature forgery in the Deed of Sale and Purchase issued by the Land Deed Making Officer for Deed of Sale and Purchase No. 112/2007 of 2007, deed of sale and purchase No. 165/2007 of 2007, Deed of Sale and Purchase No. 37/2007 "Returned to BPN Padang City" and Certificate of Ownership No. 2106 "Returned to Retnowati". This shows that the consequences that occur due to the forgery of signatures in the agreement, namely in the Deed of Sale and Purchase and Certificate of Ownership are "null and void". This is guided by the requirements for the validity of an agreement in Article 1320 of the Civil Code which states that an agreement is said to be valid if it is based on the agreement of the parties, competent, a certain matter and a lawful cause. In this case, there was a falsification of the agreement of the parties regarding the issuance of a new Certificate and Deed of Sale and Purchase, based on this, it is appropriate to interpret the agreement that has occurred as null and void because the subjective conditions in the valid conditions of the agreement were not fulfilled. The consequence of being null and void is that Deed of Sale and Purchase No. 112/2007 of 2007, Deed of Sale and Purchase No. 165/2007 of 2007, Deed of Sale and Purchase No. 37/2007 are considered null and void and are considered to not exist or never occurred from the beginning.

The obligation of the Land Deed Making Officer to act in an orderly, careful and conscious manner or to apply the principle of caution in carrying out his duties is regulated in Article 34 paragraph (1) of the Regulation of the Head of the National Land Agency Number 1 of 2006. In the process of making a Sale and Purchase Deed, the Land Deed Making Officer should pay attention to Article 16 paragraph (1) letter a of the Notary Law. However, in reality, the Land Deed Making Officer ignored the procedures that had been regulated in the process of making AJB No. 112/2007, AJB No. 165/2007 and AJB No. 37/2007 where in reality there was falsification of signatures in the sale and purchase deed and it was found that the reporting witness had never met directly with the Land Deed Making Officer.

In this case, the Land Deed Making Officer did not introduce the parties based on their identity, did not ask, listen and examine the wishes or desires of the parties and did not examine the documentary evidence related to the wishes or desires of the parties as stated in the Sale and Purchase Deed. The actions carried out by the Land Deed Making Officer made an agreement that was made invalid and declared null and void by law because it did not fulfill the elements of agreement and lawful cause, this happened because the Land Deed Making Officer did not apply the principle of caution in the process of making the Sale and Purchase Deed by the parties.

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