

Juridical Implication of Falsification of Signature in Minutes of Deed of Notary Position (Study of the Supreme Court's Decision Number 1234 K / Pid / 2012)

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ABSTRACT

Problems in this study, first: how is the juridical implications forged the signatures on the minutes of the deed of the Notary on the Supreme Court judgment No. 1234 k / PID / 2012? Second, how is the legal effect of the Minuta Deed falsified by a notary? This study is normative, normative legal research. The study concluded, first: implications for the post of notary can be categorized into four (4) aspects namely,i) the implications of the engagement deed, ii) Aspects of the administrative office; iii) Professional Aspects of the Membership; vi), the criminal aspect. Second, as a result of the Law of Minuta certificates were forged by a Notary which resulted in deed only has the strength of evidence as the deed under hand, if the parties could prove the authentic act proficiency level in the trial court and resulted in the deed can be canceled and the strength of evidence as the deed under hand will not apply continuing involvement.

Keywords: Notary, forgery of signatures, Suspect

1. INTRODUCTION

The notary public official has a central role in upholding the law in Indonesia, because in addition to the large quantity of notaries, the notary is known to be an elite in Indonesia. Society still needs a writer as long as there is writing, especially to serve those who do not master writing. The intended author will act as a witness for those who need it. The writing is clear and trustworthy and states what is done by those who ask for help. This function of writing skills is the basis of what is today called the Notariat.¹

Notary is a respectable profession and is always related to morals and ethics when carrying out their duties. When carrying out their duties, the Notary / PPAT holds fast and upholds the dignity of his profession as an honorable position. Because sticking ethics to the notary profession is called a noble profession (*officium nobile*).²

¹ Soertardjo Soemoatmodjo, *Apakah Notaris Pejabat Pembuat akta Tanah Pejabat lelang*, Liberty, Yogyakarta, 1986, hlm.3.

² Abdul Ghofur Anshori, *Lembaga Kenotariatan Indonesia, Perspektif Hukum dan Etika*, UII Press, Yogyakarta, 2009 hlm.6.

The notary definition, contained in Article 1 paragraph 1 of Law Number 2 of 2014 concerning the Position of Notary that states "Notary Public is authorized to make an authentic deed and has other authorities as referred to in this law or based on other laws."³

Notary as a free human being and an important element in national development must be attached to the characteristics of humanism given its significant role in social traffic, the notary public as an authorized state official makes the deed more or less influential on the rights and obligations of the parties facing him, the existence Legalization of a notary is indeed very necessary to prove the existence of an act and certain rights and obligations.⁴

The notary public is also obliged according to the notary's code of ethics, namely service ethics to clients, as a notary public official can provide legal services to the public who need his services as well as possible, completing the deed until the registration stage at the district court and announcements in state court, if the client the person expressly stated that he would submit his management to the notary concerned and his client would fulfill the necessary conditions.⁵

The authentic deed essentially contains formal truth in accordance with what the parties told the Notary. However, the Notary has the obligation to ensure that what is contained in the Notarial Deed is truly understood and in accordance with the wishes of the parties, namely by reading it so that it becomes clear the contents of the Notary Deed, as well as providing access to information regarding the relevant laws and regulations for the parties to the deed (Yustianti & Roesli, 2018). Thus, the parties can determine freely to approve or disapprove the contents of the Notarial Deed to be signed. The signature on an authentic deed serves as a sign of agreement on the obligations attached to the deed.⁶

Minutes of deed can be said to be the life of a notary, in the minutory it contains the wishes of the parties or parties and at the end of the deed the signatures of the parties and the Notary Public are signed. Before the deed is signed, the Notary is obliged to read the contents of the deed so that the parties understand it. Even if it is not read, the parties must initial each deed.

A copy of the Deed is a verbatim copy of the entire deed and at the bottom of the deed is the phrase "given as an exact copy." It is intended for clients who request that the deed be made before a notary. Making a copy of the deed must be guided by the minutes of the deed. A copy of the deed comes after the minutes of the deed were made by a Notary. The definition of a copy of a deed is clarified in Article 1 number 9 of the UUJN, which is a verbatim copy of the entire deed and at the bottom of the copy of the deed the phrase "is given as a copy of the same sound". In the copy of the deed there is a Notary statement starting from the beginning of the deed and the end of the deed.

³ Pasal 1 ayat 1 Undang-Undang Republik Indonesia Nomor 2 Tahun 2014 Tentang Jabatan Notaris

⁴ Abdul Ghofur Anshori, *Op. Cit.*, Hlm 5.

⁵ Sudikno Mertokusumo, *Hukum Acara Perdata Indonesia*, Liberty, Yogyakarta, 1998, hlm 149.

⁶ www.fairuzelsaid.wordpress.com/cyber-law-tanda-tangan-digital/ diakses Sabtu 17 Mei 2020.

The beginning of the deed states that the parties have faced the Notary and at the end of the deed there is information about the minutes of the deed that has been signed completely and the copy is the same. The purpose of the same sound is a copy of the exact same contents as the minutes of the deed.⁷

The problem that arises is in the case which has received a decision from the Supreme Court of the Republic of Indonesia Number 1234 / K / PID / 2012 which makes the Notary and PPAT Ny. ENDANG MURNIATI, SH, a Notary in Sleman Regency who has been proven legally and convincingly guilty of committing a criminal act that is making the minutes of the deed by faking the challenge sign, where the complainant suffered a material loss due to the defendant's actions. This is reinforced by the evidence of the Minutes of the Criminalistic Laboratories Lab. 416 / DTF / IV / 2011 dated May 3, 2011 signed by Yayuk Murti Rahayu Bsc, Drs. Moh. Arief Buudiarto, and Budi Santoso, S.Sc. which concluded that the signature of Ir. Gregory Daryanto or the sign is a different signature in the deed of sales authorization number 51, selling power of attorney Number 52 and purchase agreement number 65. Based on the incident the notary Endang Murniati, SH, was sued by the Public Prosecutor with Article 263 paragraph 1 and Article 264 paragraph 1 of the Criminal Code (hereinafter referred to as the Criminal Code) on charges of making fake letters / documents.

Formulation of the problem

First, what is the juridical implication of falsifying signatures on the minutes of the deed against the position of the Notary Public on the decision of the Supreme Court Number 1234 k / PID / 2012? Second, how is the legal effect on the Minutes of Deed that was falsified by a notary?

Research purposes

This study aims to, first, find out the juridical implications of falsifying signatures on the Minutes of Deed on the Notary Position on the decision of the Supreme Court Number 1234 k / PID / 2012. Second, to find out the legal consequences of the Deed Minutes that were falsified by a notary.

⁷ Mulyoto, *Perjanjian (Teknik, cara membuat, dan hukum perjanjian yang harus dikuasai)*, Cakrawala Media, Yogyakarta, 2011, hlm. 8.

2. RESEARCH METHODS

This type of research is normative research, so that more than one research approach can be used.⁸ While the object of this research is "Juridical Implications of Falsification of Signature on Minutes of Deed of Notary Position." (Study of Supreme Court Decision Number 1234 K / Pid / 2012) ". While the research material collection is done by studying data that has a relationship with the problem, obtained from secondary data supported by primary data in the form of interviews with resource persons, secondary data is data obtained from library materials.⁹

3. RESEARCH RESULTS AND DISCUSSION

Juridical Implications of Falsification of Signals in the Minutes of Deed on the Position of Notary on the decision of the Supreme Court Number 1234 K / PID / 2012 Chronological in the Supreme Court Decision Number 1234 K / PID / 2012, Case that occurred in Yogyakarta, where the case between the defendant is Notary Ny. Endang Murniati, SH with Victim Witness namely Ir. Gregorius Daryanto, the case has obtained permanent legal force from the Supreme Court Number 1234 K / PID / 2012.

Whereas in the beginning of June 2004 the victim witness Ir. Gregorius Daryanto was contacted by telephone by witness Hendricus Mulyono telling that there was someone who was interested and wanted to buy witness' land owned by Ir. Gregorius Daryanto, then on June 5, 2004 Dra. Mawar Muria Rini (Defendant in a separate case) accompanied by witness Hendricus Mulyono and witness Edi Purwanto came to the witness' house Ir. Gregorius Daryanto with the intention to discuss the continuation of buying and selling land owned by witnesses Ir. Gregorius Daryanto, after the bargaining was finally agreed the land was sold, then Dra. Mawar Muria Rini is willing to pay in cash to witness Ir. Gregorius Daryanto while the rest of the payment will be paid by land swap Dra. Mawar Muria Rini, to follow up the sale and purchase by way of land swaps between witnesses Ir. Gregory Daryanto with Dra. Mawar Muria Rini, on June 10, 2004 around 11:00 WIB. witness Ir. Gregorius Daryanto along with witness Hendricus Mulyono came to the Defendant's Office of Notary / PPAT ENDANG MURNIATI, SH having his address at Jalan Colombo No. 2A Caturtunggal, Depok, Sleman, then at the Notary / PPAT Office met with Dra. Mawar Muria Rini and Defendant ENDANG MURNIATI, SH subsequently by Defendant ENDANG MURNIATI, SH explained to witness Ir. Gregory Daryanto and Dra. Mawar Muria Rini witnessed by Henricus Mulyono about the planned land swap between witnesses Ir. Gregory Daryanto with Dra. Mawar Muria Rini. Witness Ir. Gregory Daryanto was immediately asked by Defendant Endang Murniati, SH to sign a letter prepared by Defendant Endang Murniati, SH, but

⁸ Johnny Ibrahim, *Teori dan Metodologi Penelitian Normatif*, Bayumedia Publising, Malang, 2012, hlm. 300.

⁹ Soejono Soekanto, *Pengantar Penelitian Hukum*, UI-Press, Jakarta, 2009 , hlm. 51.

witness Ir. Gregory Daryanto at that time did not have time to read the entire contents of the letter. Thing This was carried out by witness Ir. Gregorius Daryanto because the witness believed the Defendant Notary / PPAT Endang Murniati, SH, that the letter the witness signed was a Bolt Exchange agreement, not a land purchase certificate and at the beginning of the witness arrival Ir. Gregory Daryanto who was accompanied by witness Hendricus Mulyono had heard what was said and asked by Defendant Endang Murniati, SH about the plan of land swaps between witnesses Ir. Gregory Daryanto and Dra. Mawar Muria Rini. The judge in the decision of the Supreme Court No. 1234 K / PID / 2012 believed to be guilty of committing the crime of "FORMING LETTERS IN THE FORM OF AUTHENTIC DICTIONS", such as forging signatures. Based on this category the Notary is subject to 4 kinds of Juridical Implications for the Notary Position.

Implications of Deed of Agreement

According to the author, the judge's conviction is indeed in accordance with what is in article 48 paragraph (1) of Law Number 2 of 2012 concerning the Position of Notary, that the contents of the deed are prohibited to be changed by: 1. Replaced; 2. Added; 3. Strikethrough; 4. Inserted; 5. Removed; and / or 6. Overwritten. Notary in this case can be considered as committing and committing a crime, because there is evidence of discrepancy between the signature in the deed and the original signature of one of the parties based on evidence of lab results, but in this case the judge does not see the issuance of the deed made by Notary Endang Murniati . SH .., entirely based on the depositor's statement, is a type of the parties' deed (Partij's deed), notary criminal liability arising from the decision is not in accordance with Law Number 30 of 2004 concerning Notary Position and Act Number 2 of 2014 amendment to Law Number 30 of 2004 concerning Notary Position.

Based on Article 1 number 7 of Law Number 30 Year concerning Position of Notary, Notary Deed is an authentic deed drawn up by or before a Notary, according to the form and procedure stipulated in the law. Notary deed in this case can be divided into two types / notarial deed types, namely:

Deed drawn up by a notary (official deed or official deed), that is, a deed made by a notary contains a description of the notary of an action taken on a condition seen or witnessed by a notary.

Deed that is made before a notary (Partij's deed), that is, a deed made before a notary contains a description of what is explained or told by the parties facing the notary.

Based on the above, a notary deed is a deed made by a notary as a means of proof, in making a deed, a notary must pay attention to these norms in addition to the code of ethics and other statutory provisions. then the author sees the sale and purchase deed No.65 and deed Sell No.51 and deed sell No. 52 is made based on all the statements and statements explained by the

parties, so that the deed is a deed made based on the willingness of the parties (Deed Partij), so that in making the deed a notary does not have any interest in the contents of the word made. Notary Endang Murniati, S.H .., makes the deed based on the information and statements received, so that all contents and material of the deed are the responsibility of the parties, in the Partij acte the notary does not need to prove the material truth of the statements of the parties.

According to Habib Adjie,¹⁰ proof of material (*materiele bewijskracht*), constitutes certainty about the material of a deed, that what is in the deed is a valid proof of the parties making the deed or those who get the rights and apply to the public, unless there is evidence to the contrary (*tegenbewijs*). Statements stated / contained in the official deed (or minutes), or statement or the parties given / submitted before the Notary (party deed) and the parties must be judged correct said which then poured / contained in the deed must be assessed as having correctly said, if it turns out that the statements / statements of the parties become incorrectly said, then it is the responsibility of the parties themselves. Notary apart from that kind of thing. Thus the contents of the notarial deed have certainty as to be true, becoming valid evidence for / between the parties and the heirs and the recipients of their rights.

The judge must see that in reality the Deed made by Notary Endang Murniati, S.H., is only based on statements, statements and made at the will or request of his client namely Ir. Gregory Daryanto. As a notary in this case only make it in the form that has been determined according to the law, and also the notary public is not a party to the deed, the name of the notary is included in the deed because of the law's order. With regard to the deed, there is no legal relationship anymore, because the deed can be canceled with the existence of proof of untrue to the deed and the strength of proof as the deed under the hand is no longer valid and there has been a decision of the court of the Supreme Court that already has permanent legal force. Aspects of the Position of Notary Administration

The notary in carrying out his duties after he reads the deed he should ask for the signature of the registrar because in the absence of a signer on the notary deed can express the notary, the possibility is always there, that a notary is facing a naughty client or (in the case of peace) one cannot overcoming aggravation and the client can always declare unable to write while in reality he is lying, if the notary is correct the person cannot sign the deed he can take his fingerprint and the notary mentions the reason that the user cannot write or is unable to affix his signature. Administrative sanctions can take the form of, written warnings, temporary dismissals, dismissal with respect and dismissal with disrespect.

¹⁰ Habib Adjie, *Menilai Pembuktian Akta Otentik*, <http://habibadjie.dosen.narotama.ac.id/files/2013/07/Menilai-Pembuktin-akta-Notaris.pdf>, dikases pada tanggal 17 Mei 2020.

Professional aspects of membership

According to the author, the legal implications that can arise from the decision of the Supreme Court Number 1234 K / PID / 2012 when viewed in terms of the profession of membership are as follows:

Criminal / criminal punishment to the Notary will have an impact on the reduction of public trust in the position of notary public, which can lead to legal uncertainty that affects the performance of a notary public.

Sanctions shown to the notary also constitute awareness, that the notary in carrying out his office duties has violated the provisions regarding the implementation of the office of the notary office as stated in the LawJN.

The application of criminal sanctions in court decisions that have obtained legal force which in a judgment ruling punishes a notary public to undergo certain criminal proceedings as the ruling shows criminal liability criminally against a notary who commits acts against the law as regulated in UUJN may be subject to sanctions what kind of crime is regulated in the criminal law (KUHP).

Criminal Aspects

In essence, sanctions are juridical instruments that are given if obligations or restrictions in the legal provisions are violated.¹¹ Disobedience or violation of an obligation is stated in the rule of law which results in an irregularity that is actually not desired by the relevant legal rule.

However, the Notary may make a mistake in making the deed. Errors that may occur, namely: 1. Mistyping on the copy of the Notary, in this case the error can be corrected by making a new copy that is the same as the original and only the same copy the new original has the same power as the original deed; 2. Notary deed form, in this case where the minutes of the meeting should be made but by the Notary made as a statement of the meeting; 3. Error notary deed contents, in this case regarding the statements of the parties facing the Notary, where when making the deed is considered correct but it turns out later to be incorrect.¹²

If there is a Notarial Deed at issue by the parties or interested parties, then to settle it must be based on the cancellation and cancellation of the Notary Deed as a perfect proof. Errors that occur in the deeds made by the Notary will be corrected by the judge when the notary deed is submitted to the court as evidence. In general, the deed is a signed letter, containing information about events or things that are the basis of an agreement. It can be said that the deed is a writing by

¹¹ Tatiek Sri Djamiati, dalam Habib Adjie, *Op.Cit.* hlm 90

¹² Mudofr Hadi, *Varia Peradilan Tahun VI Nomor 72, Pembatalan Isi Akta Notaris Dengan Putusan Hakim*, 1991, hlm. 142-143

which a legal action is stated. Such deeds are authentic and some are underhanded. The meaning of the word "sign" (Ondertekenen) ethymologically (the science of our origin) is easy to find, which is to give a sign (signed) under something, but in the practice of using these words, the definition written above is unsatisfactory and the daily use provide a more specific understanding, which may also be intended by lawmakers cannot be explained from the word "signature".

According to Hermin Hediati Koeswadji an act against the law in a criminal context or an act that is prohibited by law and threatened with crime has the following elements: a. Objective elements are elements that exist outside of humans which can be in the form of: 1) An act or act that is prohibited and threatened with criminal sanctions, such as falsifying letters, perjury, theft; 2) A certain effect which is prohibited and threatened with criminal sanctions by law, such as murder, ill-treatment; 3) Circumstances or things specifically prohibited and threatened with criminal sanctions by law, such as inciting, violating public decency. b. Subjective elements are elements found in human beings. Thus the punishment of a notary can only be done with restrictions if: 1) There is a legal action from the notary to the formal aspects of the deed which are deliberate, aware and conscious and planned, that the deed made before the notary or by a notary together (agreed) to be made the basis for committing a criminal offense; 2) There is a legal action from a notary in making a deed before or by a notary who if measured based on the Notary Position Act is not in accordance with the Amendment Law to the said Law and; 3) The notary action is not appropriate according to the authorized institution to judge a notary action, this is stated in the Notary Supervisory Board.¹³

The occurrence of criminal punishment against a Notary based on a deed made by or before a Notary Public as part of the performance of a notary's official duty or authority, without regard to the legal rules relating to the procedure for making a deed and only based on the provisions of the Criminal Code (KUHP) only, shows there has been a misunderstanding or interpretation of the position of the Notary while the authentic deed made by the Notary as evidence in the Civil Law. Criminal sanctions are *ultimum remedium*, which is the last remedy, if sanctions or efforts at other branches of law are not capable or deemed not effective. A notary is required to always take a careful or cautious attitude in addressing each case in his assignment, bearing in mind that a notary has professional capacity both theoretically and practically.

Based on an interview with a notary, Ety Ermawati as a notary in the city of Yogyakarta, that changes to the UUJN so that the notary can avoid violations / legal actions, it is necessary for the notary to be smart in reading the situation with anticipation by making a statement, that what faces properly the truth and at the time of the signing process should be witnessed by two

¹³ Habib Adjie, 2005, *Batasan Pemidanaan Notaris*, Jurnal Renvoi, Nomor 10-22 Tanggal 3 Maret, h1m. 123

witnesses. In practice it was found that legal actions carried out by notaries can actually qualify as a criminal act committed by a notary public. Aspects that are used as a limitation in terms of notary violations must be measured based on the Amendment Law on UUJN, meaning whether the deed committed by the Notary violates certain articles in the Amendment Law on UUJN that the deed concerned is in accordance with the Amendment Law on the UUJN, but if according to the investigator the act constitutes a criminal offense. Therefore, before carrying out further investigation, it should ask for the opinion of experts who know for certain about this matter, namely from the organization of the position of Notary. The threat of such sanctions is intended so that in carrying out their duties and positions, a Notary is required to be able to be responsible for themselves, clients and also to God Almighty.

Legal Consequences for the Minutes of Actions Falsified by a Notary Public. The Legal Impacts on the Minutes of Actions Falsified by a Notary.

One of the legal conditions of the agreement contained in Article 1320 of the Civil Code which contains the agreement of the parties, the ability to act, the existence of a certain thing that was agreed upon and the existence of a legal reason for the agreement. If a deed raises a criminal then the terms of the agreement are seen by the elements of the agreement contained therein. Legal experts such as Sudikno Mertokusuno, Mariam Darus, and J. J. Satrio agreed that the elements of the agreement consisted of essential elements, naturalia elements, and accidental elements.¹⁴ The first element is commonly referred to as the core part of the agreement, the second and third elements are called the non-core part of the agreement. The essential element is an absolute element that must be present for the agreement to occur, for the agreement to be valid and this is a legal condition of the agreement. So the four conditions in Article 1320 of the Civil Code constitute an essential element of the agreement. In other words, the essential nature of a treaty is the trait that determines that agreement is created (*constructieve oordeel*).

The naturalia element is an element that is commonly attached to an agreement, that is, an element that is not specifically agreed to in the agreement is secretly automatically considered to exist in the agreement. This element is inherited (*natuur*) or inherent on agreement. For example, the seller must guarantee hidden defects to the buyer. While the accidental element, means the element that must be contained or stated expressly in the agreement by the parties. For example if a dispute occurs, the parties have determined the chosen place. To prove a deed is valid or invalid in this study, the principle of presumption is valid. The principle of legal presumption

¹⁴ Kartini Muljadi dan Gunawan Widjaja, *Perikatan yang Labir dari Perjanjian*, (Jakarta: Raja Grafindo Persada, 2010), hlm. 84.

(Vermoeden Van Rechtmatigheid) or Presumptio Iustae Causa is the principle that considers a legal product to be valid before a court decision has permanent legal force that states it is invalid. With this principle, the authentic deed made by a Notary must be considered valid and binding on the parties before it can be proven the invalidity of the physical, formal and material aspects of the authentic deed.

In the provisions mentioned in Article 41 UUJN-P which states that if the Notary Public violates the provisions as referred to in Article 38, Article 39, and Article 40 of the UUJN-P, the deed only has the power of proof as a deed under the hand, then the notary deed only has the power of proof as a deed under the hand, but if the parties can prove the truth of the authentic deed in a trial in court and cause the deed can be canceled and the strength of proof as a deed under the hand will not apply again. Because the principle of legal presumption relates to a deed that can be canceled, it is an act that contains a defect that is not authorized by a Notary to make the deed physically, formally, materially and not in accordance with the legal rules regarding making a Notary Deed.

The legal consequences of an authentic deed made by a notary in a manner that violates the law causes an authentic deed to become a deed under the hand and the deed can be canceled in line with the theory of authority and the concept of legal protection. As stated in the theory of authority, the Notary in making an authentic deed is included in the attribution authority, based on the provisions of Article 15 paragraph (1) of the Amendment Law on UUJN. The occurrence of a legal consequence in the form of an authentic deed becomes a deed under the hand and the deed was canceled due to abuse of authority carried out by a Notary, in which the Notary in exercising his authority violated the provisions of the law resulting in losses to the parties and resulted in changes in the strength of the proof of the deed and the existence of cancellation of the authentic deed by the court.

4. CONCLUSION

First, the implications for notary positions can be categorized into four (4) aspects, i.e. the implications of the binding of the deed, Secondly the Aspects of the Administration positions; Third, the Professional Aspects of Membership; Fourth, criminal aspects; Secondly, due to the Law Against Minuta deed that was falsified by a Notary, which resulted in the deed only having the power of proof as a deed under the hand, if the parties can prove the truth of the authentic deed in the trial in court and result in the deed can be canceled and the power of proof as a deed under the hand will not apply again. Because the principle of legal presumption relates to a deed that can be canceled, it is an act containing a defect that is not authorized by a Notary to make the deed

outwardly, formally, materially and not in accordance with the legal rules regarding making a Notary Deed.

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