

Legal Consequences of Forgery of Authentic Deeds on the Legal Validity of the Deed

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ABSTRACT

In the context of law enforcement, a notary is a public official who works in the legal industry and contributes to societal legal certainty. According to Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary, a notary is a state organ authorized by the state (hence abbreviated as UUJN). There is legal confusion for notaries in the event that they make mistakes in the performance of their responsibilities and authorities due to the overlap between the application of criminal law governed in the Penal Code (KUHP) and the UUJN. According to UUJN, a notary may face civil, administrative, or ethical code of the notary profession sanctions if they violate the law while performing their duties. The purpose of this study is to comprehend and clarify the legal ramifications of authentic deed forging on the deed's legal validity as well as the criminal responsibility of notaries who engage in this practice. This study employed a normative, legislative, and conceptual approach as its methodology. The findings of this study suggest that the legal ramifications of forging authentic deeds on their legal validity are as follows: if a prerequisite for the deed's creation is not fulfilled, it will lose its uniqueness and be deemed legally defective, meaning it will be deemed invalid and have no valid probative value.

Keywords: authentic, forgery crime, notary

ABSTRAK

Dalam konteks penegakan hukum, notaris adalah pejabat publik yang bekerja di industri hukum dan berkontribusi terhadap kepastian hukum masyarakat. Menurut Undang-Undang Nomor 2 Tahun 2014 tentang Perubahan atas Undang-Undang Nomor 30 Tahun 2004 tentang Jabatan Notaris, notaris adalah organ negara yang disahkan oleh negara (maka disingkat UUJN). Adanya kebingungan hukum bagi notaris dalam hal melakukan kesalahan dalam pelaksanaan tanggung jawab dan wewenangnya akibat tumpang tindih antara penerapan hukum pidana yang diatur dalam Kitab Undang-Undang Hukum Pidana (KUHP) dan UUJN. Menurut UUJN, seorang notaris dapat menghadapi sanksi perdata, administrasi, atau etika profesi notaris jika melanggar hukum saat menjalankan tugasnya. Tujuan dari penelitian ini adalah untuk memahami dan mengklarifikasi konsekuensi hukum dari pemalsuan akta otentik pada keabsahan hukum akta serta tanggung jawab pidana notaris yang terlibat dalam praktik ini. Penelitian ini menggunakan pendekatan normatif, legislatif, dan konseptual sebagai metodologinya. Hasil penelitian ini menunjukkan bahwa konsekuensi hukum pemalsuan akta otentik atas keabsahan hukumnya adalah sebagai berikut: jika prasyarat pembuatan akta tidak terpenuhi, maka akan kehilangan keunikannya dan dianggap cacat secara hukum, artinya akan dianggap tidak sah dan tidak memiliki nilai pembuktian yang sah.

Kata Kunci: kejahatan pemalsuan, notaris, otentik

Introduction

In the context of law enforcement, a notary is a public official who practices law and has a responsibility to establish legal certainty for the community. A public official is a person who maintains a position of power, is chosen and removed by the government, and has the

responsibility to represent the interests of the people in the community in the area of civil law. Thus, according to the requirements of Law No. 2 of 2014 respecting Amendments to Law Number 30 of 2004 concerning Notary Offices (henceforth referred to as UUJN), the state authorizes notaries as state organs, to perform a genuine act. The notary's duty is preventive in nature, meaning that the presence of a legitimate deed, which is ideal evidence and evidential power and can really help resolve conflicts in the future, prevents legal issues from arising. Written documentation in the form of a genuine deed constitutes the most significant role that a notary plays in people's legal relationships (Sri Devi & Westra, 2021).

A deed is a document that is created specifically to be used as proof; it is referred to as an authentic deed or Notary deed if it is executed in front of a notary (Sri Devi & Westra, 2021). Notary deeds are created when a party directly interacts with the notary, taking on a leading role in the process until the deed is considered valid. Nevertheless, the deed may be revoked or declared void if these requirements are not satisfied. Article 1868 of the Civil Code (henceforth abbreviated as KUHPer) defines an authentic deed as one that is made in the legally specified form, either before or by public workers who are allowed to do so in the location where the deed is made (Aryanib, 2020). According to UUJN regulations, a notary may face civil or administrative sanctions or be subject to a code of ethics specific to the notary position if they carry out their duties in a way that violates the law. The Notary Supervisory Council organization has the authority to impose penalties on notaries, but there is no information regarding criminal sanctions in the UUJN's Code of Ethics for the Notary Position profession. This is how these sanctions have been regulated both historically and currently. This needs to be questioned if the notary's deed turns out to contain a dispute down the road. On the other hand, the notary must assume moral and legal responsibility if the deed they produced or issued has legal flaws because of their own actions, negligence, or other faults. Of course, this has to be demonstrated first (Muhammad Widowaty & Raharjo, 2019).

The risk of valid deeds being falsified greatly increases the likelihood of a notary violating the provisions of Article 16 of the UUJN governing the obligations of notaries in performing their jobs. As stated in Article 16 paragraph (1), notaries who fail to act in a trustworthy, honest, and protective manner toward the parties involved in legal actions that could harm one of the parties are deemed to have falsified authentic deeds, a violation of Article 264 of the Criminal Code. If it is established that notaries forged genuine deeds, they could face penalties under Article 264 of the Criminal Code. It is evident from the way in which Article 264 of the Criminal Code is formulated that the different kinds of documents are what make document forgery more serious. There are some letters with more confidence in the veracity of their contents that are the subject of criminal activity. Compared to other or regular letters, these letters are more truthful. The increased level of confidence in the veracity of the contents of these kinds of letters is what intensifies the criminal threat (Purwaningsih, 2019). A notary called Endah Sri Wahyuni, S.H., M.Kn was found guilty of forging valid deeds, according to Constitutional Court Decision Number 933 K/Pid/2023. Article 264, paragraph 1 of the Criminal Code was broken by the notary's actions. The judge determined that notary Endah Sri Wahyuni, S.H., M.Kn. had committed the crime of forging authentic deeds, and imposed a sentence of three years and six months on the offender, in violation of Article 264 paragraph 1 of the Criminal Code. The author is interested in talking about and examining the "Legal Consequences of Forgery of Authentic Deeds on the Legal Validity of the Deed" in relation to this.

Methods Research

This study employs the normative approach method, which starts with a review of pertinent laws and regulations related to the issue under investigation. Stated differently, this study examines the law from a normative perspective.

Results and Discussion

If a Notarial deed has been purposefully manipulated or contains elements of forgery, it will not be legally legitimate and will not meet the subjective standards. Notarial deeds may be deemed voidable (*vernietigbaar*) if they fail to meet the requirements outlined in KUH Perdata Article 1320 paragraphs (1) and (2), specifically the ability to form an engagement (*de bekwaamheid omeene verbintenis aan te gaan*) and the agreement to bind themselves. An agreement is implied when two or more people mutually express their wishes to come to a decision or when one side says something is "suitable" or in line with the wishes of the other. The parties' stated will need not necessarily be spoken explicitly; it may be shown by actions or other indicators of the parties' intentions. An agreement is the result of the parties' will expressed in two components: an offer and an acceptance. An offer is a declaration of intent that includes a request to enter into an agreement (*aanbod; offerte; offer*). On the other hand, acceptance (*aanvaarding; acceptatie; acceptantie*) is a declaration of consent from the one making the offer. (Mertokusumo, 2009)

The ability to carry out legal acts is referred to as the capacity to generate an obligation (*de bekwaamheid omeene verbintenis aan te gaan*) in Article 1320 paragraph 2 of KUHPer. The ability to act legally on one's own and bind oneself without becoming untouchable is known as capacity to act legally. The following criteria are typically used to gauge a person's ability to carry out legal actions: *Rechpersoon* (legal entity), measured from the perspective of authority (*bevoegdheid*); *Person* (personal), measured from the standard of maturity (*meerderjarig*). Specifically, capability has to do with having the authority to act in addition to simply not being old enough to act legally. "This authority to act includes, for example: For himself/herself, as a power of attorney, as a substitute power of attorney, a spouse who requires the consent of the spouse, in his/her position (Private Legal Entity) or in his/her position (Public Legal Entity), as a Guardian, as a Guardian, as a Curator, as a Liquidator, as a Parent who exercises power for his/her minor biological child" (Arlingga, 2017).

In public law, authority and power are synonymous, albeit they are rarely used interchangeably. Though not in theory, there are distinctions between power and authority when examined closely. "Formal power" is another term for authority, which is obtained and bestowed by legislation. In contrast, power is limited to a specific aspect of authority. Being in a position of authority is having the ability to command and impose compliance. In this context, government authority is defined as the capacity to enact laws that are beneficial to citizens and to establish legal connections between the government and the latter. In the meantime, Bagir Manan makes the following argument: "In legal terminology, authority differs from power (*macht*). Power is merely the ability to do or not do something. Authority can also be understood in terms of rights and obligations (*rechten and plichten*) in a legal environment.

According to the description of authority provided above, an individual who holds a Notary practice license interpretively possesses the attributive authority necessary to create notarial deeds. Thus, every deed executed by a certified notary public may be valid legally, both conceptually and practically. An authentic deed is only considered valid if there are no procedural errors or violations; another criterion is that it must be executed in compliance with the deed-making method. Notarial deeds are genuine deeds with legal power since they are backed up by deed minutes, which are state laws maintained by notaries, making the loss of valid deeds extremely unlikely. Furthermore, someone will verify the facts if someone

disputes the veracity or contents of a genuine deed. In the event that the confronter's deed is destroyed or lost, the Notary, acting as the state's agent, nevertheless retains possession of the archive (Akhmad, 2019). When a process for creating notarial deeds violates the UUJN's core requirements for notaries' authority to create authentic deeds and Article 1320 paragraphs 3 and 4 of the KUHP which are objective requirements for creating an agreement, specifically regarding a particular matter and a permissible cause or causa the notarial deeds are deemed null and void (*niegtigheid van rechtswege*).

Conclusions

Forgery of authentic deeds causes the deed to lose its authenticity and is considered legally defective, resulting in the deed not having valid evidentiary power and being considered invalid. Tighten supervision of notary practices and ensure strict law enforcement against deed forgery cases to maintain the integrity of the notary profession. Provide continuous education and training to notaries on the importance of maintaining integrity and honesty in carrying out their duties.

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