ABSTRACT

Notaries have the authority to construct an authentic deed based on the Article 1 No. 1 and Article 15 paragraph 1 of Notary Position Law. A notarial deed must be made in the type and procedure in Notary Position Law. An authentic deed is written evidence that contains circumstances, events, or legal actions held to guarantee legal certainty. One of the notary’s obligations is to understand the deed before the appearers, attended by at least two witnesses. A deed that a notary does not read out does not comply with the procedures for making a deed stipulated in Notary Position Law/Substitute-Notary Position Law and does not fulfill the elements of “verliden”/inauguration so that the proof power as an authentic deed is lost. However, it still has a force of law as a private deed. A notarial deed containing false information can cause harm to interested parties and violate Article 263 and 264 of Criminal Code due to falsifying an authentic deed and is sentenced to 8 years in prison. Whereas in civil law, a notarial deed made with a false statement violates Article 1320 and 1335 of Civil Code, which demands that the deed constructed based on false or forged reasons will be unacceptable and invalid by law (nietgebaarheid), can be canceled, and the strength of evidence becomes a private deed. A notary does not read a notarial deed made with a false statement before the appearer. The existence of a coercion element in signing the deed no longer has perfect legal force as an authentic deed. This is because it has been declared a legal defect, so the deed is declared unacceptable and invalid by law. Therefore, the validity of deed cancellation is retroactive from the time the deed made.

Keywords: Notary, falsification, deed, criminal, civil

INTRODUCTION

A notary is a public official whose authority is obtained directly from the state. This authority comes from the law, namely Article 1 of Notary Position Law and Article 1868 of Civil Code. A notary is defined as a public official authorized by attribution created and granted by the Notary Position Law.¹

Notary has the power to make authentic deeds. An authentic deed is written evidence containing circumstances, events, or legal actions held in order to guarantee legal certainty. The role of a notary is preventive to prevent legal problems from occurring. Because of this role, a notary must be a party with no interest in an agreement so its existence can mediate the interests of the parties and direct the parties to make an appropriate contract. Therefore, a deed made by a notary must be ideal so as not to harm the parties to the agreement.

A sale and purchase agreement is one of the contracts regulated by Civil Code. This agreement is an contract where one party agrees to deliver goods and the other party pays the promised cost.²

A sale and purchase agreement shall be deemed to have been concluded at the time when the goods and price are agreed upon, even before delivery of the goods. In real estate sale and purchase agreement, clear and cash principles apply to the transfer of rights. Clear means that the sale and purchase should be made in the existence of an authorized public official. Cash means that the sale and purchase should be salaried in cash.³ However, in sales contracts where payment is not made in cash, the parties may be bound by a condition of sale that can be completed in the existence of a prior notary.

Every deed contains the beginning or head of deed, body of deed, and closing of deed should be contained in accordance with the requirements of Article 38 of Law Number 2 of 2014 regarding Amendments to Law No. 30 of 2004 regarding the Substitute-Notary Position Law.

The body of the deed must contains the complete name, birth’s place and date, nationality, occupation, position, appearer’s residence and/or the person they represent. The provisions for appearers in the notarial deed are regulated in Article 39 of Substitute-Notary Position Law and are at least 18 years old or married or capable of performing legal acts. The appearer should be introduced to 2 (two) identifying witnesses, or known by the notary at least 18 years old or married or capable of performing legal acts. The introduction is expressly stated in a deed.

A case in Supreme Court Decision No. 154 K/Pdt/2016, a Deed of the Sale and Purchase Binding Agreement constructed by Zainuddin Thohir, S.H. S.H., as notary or Defendant II was written that Defendant II as notary faced or Mrs. Umuchlisun faced Defendant II on Friday, 20 May 2011 at 10.30 WIB. Meanwhile, Mrs. Umuchlisun, the wife of the Defendant, died before the deed was made.

Basically the parties are given the free will to make agreements in any type as long as they do not have a conflict with laws and regulations and comply with the terms of the contract listed in Article 1320 of Civil Code, which consists⁴ of the

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agreements from who bind themselves are capable of making an agreement, a certain object, and a lawful cause. A person agrees to be bound by the contract if there is no mistake, fraud or coercion in the process.\textsuperscript{5}

In carrying out their position, according to Article 16, paragraph 1 letter m of Substitute-Notary Position Law, a notary obliges to understand the deed before the appearers in the attendance of at least 2 witnesses, or 4 witnesses specifically for contracting the will private deeds, and marked at that time by the witnesses, appearers, and notaries. A notary does not read the deed to the appearers if the appearer wants it because he wants to read it himself; the appearers have read, and known, and understood the content of the deed. This must be said on the deed cover and on each page of the minutes of the deed original by the witnesses, appearers and notaries.\textsuperscript{6}

However, in the Supreme Court Decision Number 154 K/Pdt/2016, on May 20, 2011, Plaintiff was forced by Andri Setiadi as Defendant I and was believed by the Notary, Defendant II, so that Plaintiff believed that Defendant II as a notary would not abuse the Deed of Sale and Purchase Binding Agreement what he has constructed. Also, Plaintiff signed the Deed of Sale and Purchase Binding Agreement without the contents being read out by Defendant II, so he did not know the intents and purposes of the deed. In addition, in comparing the written deed, it was stated that those who appeared before the notary were people who had died before the deed was made. The drafting of a deed containing false information and the contents of the Deed of Sale and Purchase Binding Agreement not read out by the notary without a request from the appearer was an issue that needed to be discussed regarding the Deed of Sale and Purchase Binding Agreement validity constructed by Defendant II. The existence of coercion against one of the appearers and the non-reading of the deed by the notary is a problem that deserves further study.

**RESEARCH METHODS**

In accordance with the problems in this study, the kind of legal research being conducted was normative juridical research to analyze notarial deeds that did not read to appearers as well as comparisons with false statements using case references from the Supreme Court Decision Number 154 K/Pdt/2016 based on relevant laws or regulations, both written in books and laws decided by the judge through the court process. The approach was descriptive analytical. Descriptive aimed to collect data systematically, factually and accurately on a problem based on laws, regulations, and applicable legal norms.\textsuperscript{7}

**DISCUSSION**

1. **Legal Consequences of Notarial Deed not being Read Out before the Appearers**

If a statutory regulation is stated that an authentic deed must prove an act or agreement. This means that the act or agreement should be proved by a deed made by or before the notary and other officials who are also authorized or as the sole authority authorized for that.\textsuperscript{8}

The notary to the deed made has responsibility both legally, morally and ethically to the state or government, society, the parties concerned in the deed, as well as professional organizations so that becoming a notary must be of high quality and always increase knowledge, understanding and deepening of various knowledge and always comply with notaries’ code of ethics.

Notary’s authority are generally regulated in Article 15 paragraph 1 of SubstituteNotary Position Law. Notary has the power to construct authentic deeds concerning all acts, stipulations and agreements that are needed by law or regulations and/or that an interested party wishes to be recorded in the authentic deeds. We hold deeds and provide deed glosses, copies, and citations. All this unless the deed is also assigned or excluded to any other public official or other person as provided by law.

The authority of a notary in making authentic deeds only exists if it is desired or requested by interested parties, whether in making "partij akten" or "relaas akten". The notary is not authorized to construct deeds in the field of public law; notary’s authority is limited to making private or civil law deeds.

Authority is the right of an individual to carry out certain actions with certain limitations where other individuals recognize these actions.\textsuperscript{9} Likewise, the authority possessed by a Notary is limited by three types, namely:\textsuperscript{10}

a. The notary authorizes insofar as it concerns a deed regarding the material/content/type. The deed material constructed by a notary must come from the law. In other words, each type of authority must be found in its description in the rule of law. Notary’s authority has been regulated in Article 15 Substitute-Notary Position Law, and/or if it is regulated in other laws that become the material or type of notary's authority. Thus, if the notary takes action other than as stipulated in the legislation, the notary does not have authority over the deed because it is limited by material.

b. The notary authorizes if it concerns place (locus/loci) where deeds are made. Each notary has an area of office. A notary is only authorized to construct authentic deeds within the territory of his office. This is regulated in Article 17 paragraph (1) letter (a), that notaries are forbidden from performing their place outside the office area.

c. Notary’s authority is limited by time (temporis). Usually, laws and regulations provide limits or deadlines for an official to use his authority. If the time limit has passed, it is no longer the authority of the notary.

\textsuperscript{5} Ibid, Ps 1324


\textsuperscript{8} G.H.S LumbanTobing, *PeraturanJabatanNotaris, cet 3*, Erlangga, Jakarta: 1996, hlm. 34

\textsuperscript{9} Ridwan HR, *Hukum Administrasi Negara*, 2006, Jakarta, Raja Grafindo Persada, Hlm. 105

\textsuperscript{10} Habib Adjie, RusdiantoSusung, *Tafsir, Penjelasan, dan KomentaratasUndang-UndangJabatanNotaris*, RefikaAditama, Bandung, 2020, hlm. 234
Every right and authority must have an obligation that must be carried out. Responsibility is also born because of obligations. Obligations are a must that must be carried out/fulfilled. If an obligation is not carried out/fulfilled, legal responsibility and legal liability will be born.

Notary obligations are regulated in Article 16 of Substitute-Notary Position Law. One of the notary's obligations is to have the deed read out in secret before the maker, in the existence of at least two witnesses or four special witnesses, for the purpose of making a will, and signed by the appearer, witnesses and notaries. The appearers don't have to read the document if they don't want it read aloud to them because they know and understand what it is about by reading it. This is mentioned in the deed cover and on each page of Minutes of the Deed initialed by appearers, witnesses and notaries. This stipulation excludes the reading of the deed head, comparisons, brief and clear reason of the main deed, and the closing of the deed. If this provision is not met, the deed simply has a proof power as the deed before the hand. Reading by the notary is part of the "verlijden".11

The reading of the deed before the appearer by the notary has benefits for the notary. Based on experience in notary practice according to Tan Thong Kie are as follows:

a. At the last moment in formalizing (verlijden) the deed, the author is still allowed to correct his own mistakes, which are not seen before. Now and then, a fatal or embarrassing mistake is found;

b. The appearers are given the opportunity to ask what is unclear to them. The author in practice has faced a variety of customers, namely illiterate, simple, highly educated and sharp-minded. All the appearers from all groups who are curious do listen to the reading carefully, but there are also those who hand over everything to the notary while covering their eyes with a handkerchief so that it will not be known that he is sleeping, but there are also people who stop the reading to ask questions;

c. In order to give the appearers and notary the opportunity at the end moment, before the deed has been official with their signatures, witnesses and notary to reconsider, ask questions, and, if necessary, change the sound of the deed.12

Reading deed is an element of "verlijden" as in the Civil Code, Article 1868, which means compiling, signing and reading the deed.13 A part of the deed that should still be read out even though the parties understand its contents is the deed head, comparisons, justification of main deed clearly and briefly, and closing of deed. Thus, if notary does not fulfill this in the process for constructing the deed, then the deed is degraded in its evidentiary power as a private deed in accordance with UUJN provisions.

In the Supreme Court Decision case No. 154 K/Pdt/2016, a Deed of Sale and Purchase Binding Agreement No. 42 constructed by Defendant II was not read to Plaintiff as the appearer before the deed was signed. Thus, Deed of Sale and Purchase Binding Agreement Number 42 did not fulfill the "verlijden" element, and the strength of proof as an authentic deed was lost. However, it still had the force of law as a private deed.

By still having the force of law as a private deed, it is possible that the deed, which the notary does not read out, can still carry out all the legal consequences if no one feels disadvantaged because of deed.

2. Legal Consequences and Responsibilities of Notary for a Deed made with a False Statement

Deeds constructed by or before the notaries are authentic deeds that can be used as a legal basis for a person's properties, obligations and rights. Authentic deeds are defined as a deed constructed in the type and procedure determined by law and drawn up by or before authorized public officials as stipulated in a law as well.

Authentic deed provides perfect evidence, which means that an authentic deed does not require additional evidence. It is a binding and perfect evidence.

Authentic deed has 3 evidentiary powers, namely external evidentiary strength, formal evidentiary strength, and material evidentiary strength. External evidentiary strength is an authentic deed that can prove itself without any explanation from other people. Formal evidentiary strength is formally true and binds the parties, heirs and other parties who receive their rights. Material evidentiary strength is the contents of an authentic deed guaranteed to be true. This is because those who make and compose are public officials based on the statutory regulations. Material truth binds the parties, heirs and other parties who receive their rights.

False in making the notarial deed result in the imposition of obligations or the revocation of rights on someone. If a notary in doing his duties is proved to have committed violations, then notary might be subject to sanction, both civil sanction, criminal sanction and Notary Code of Ethics.

Every profession must have legal responsibilities, as well as the notary profession. According to Lanny Kusumawati, a notary in doing his position has two forms of legal responsibility, namely;14

a. Civil legal responsibility occurs when a notary breaks a promise as stipulated in Article 1234 of Civil Code or acts towards a law as predetermined in Article 1365. Also, these errors result in losses to the client or other parties.

b. Criminal law responsibility occurs when a notary has committed the legal acts forbidden by law or committed an unlawful act either intentionally or negligently, which may result in loss to the client or other parties.

Legal consequences of a notarial deed constructed against the law cause the deed to be degraded into the private deeds. A deed be able to be canceled per theory of authority and the concept of legal protection. Notary's authority in making an authentic deed is an attribution authority based on the requirements of Article 15 paragraph of SubstituteNotary Position Law. The evaluation of each notarial deed is carried out on the principle of legal presumption (presumptio iustae causa), which means that the deed is measured valid until a party states that the deed is invalid.

11 Ibid. hlm. 201
In the Supreme Court Decision case No. 154 K/Pdt/2016, Deed of Sale and Purchase Binding Agreement Number 42 on 20 May 2011 by Defendant 2 contained information that was not in accordance with reality. In the comparison of the deed, it was written that Plaintiff was Defendant 1 as the second party and the first party was Mrs. Umulchlisun, who was the wife of Plaintiff and died on 13 December 2006, or before the deed was made. This was proven by the Plaintiff, Mr. Parlan, with the Death Certificate of an Indonesian Citizen Number 150/JT/17553/12/06 issued on 13 December 2006.

After the judge decides on a notarial deed with permanent legal force, a notarial deed made with a false statement is not read out before the appearer by a notary. The existence of a coercion element in signing the deed no longer has perfect legal force as an authentic deed. This is because it has been declared as a legal defect, so the deed is declared null and void by law. Therefore, the validity of deed cancellation is retroactive from the time the deed made.

2.1. NOTARY RESPONSIBILITIES IN CIVIL LAW

An agreement is an instrument used by parties interested in binding themselves to each other to fulfill each party’s rights and obligations. One of the main beliefs in the agreement is the freedom of contract principle, namely, the parties can determine their own interests in the agreement. The basis of this principle is Article 1338, paragraph 1 of Civil Code, that all agreements constructed legally concern as laws for persons who construct them.

The agreement validity must meet the elements of the legal terms of the agreement regulated in Article 1320 of Civil Code. The legal requirements for an agreement include four things, namely the party agreements who bind themselves and their capability of the parties to construct the agreement or carry out certain legal actions, as a subjective requirement, then the agreement relates to a certain subject and is based on a legal cause/does not violate the law, as an objective requirement.

If an agreement does not fulfill one of the subjective condition, it will affect the invalid agreement, and one of the parties may be asked to cancel it.15 The aggrieved party can ask the judge to cancel the agreement through a court process. Meanwhile, if an agreement does not fulfill the purpose elements, the agreement is unacceptable and invalid and is deemed without asking for an annulment from the court.16

The cancellation (nietig) regulated in the Civil Code is divided into 2 (two) categories, namely can be canceled (vernietigbaarheid) if it violates the requirements of Article 1320 paragraph (1) regarding the agreement of those who join and there is no valid agreement if the will is defective (wilsbrek). In the Civil Code, three things become cancellation of agreements based on defects of will, namely oversight (dovaling), coercion (dwang) and fraud (bedrog). It violates paragraph 1320 (2) concerning contractual competence. Canceled by law (neitigbaarheid) occurs if it violates the requirements of Article 1320, paragraph 3 of Civil Code concerning a certain subject. A certain subject means that the agreement object should be certain. A can be determined means that an item can be traded and determined clearly, and does not violate or violate the provisions of Civil Code Article 1320 concerning a lawful effect. A lawful effect is made based on valid reasons and justified by the law and does not break the requirements concerning the agreement’s contents.

The notary can be held responsible if an mistake has been constructed, and can be proven for the error regarding 1. date, day and year facing; 2. time facing; 3. the signature planned on the minutes of deed.

Civil sanctions for notaries violating the Act’s provisions have been regulated in the Substitute-Notary Position Law, Notary Position Law and Civil Code. Article 84 of the Notary Position Law demands that a party who experience a loss can be reason to demand refund of costs, reimbursement and interest from a notary. Article 1365 of Civil Code demands that any unlawful action that affects harm to another person needs the someone who compensates for the loss due to the fault of issuing the loss. Then, the elements in the article are the existence of unlawful acts, there should be an error, a loss incurred, and a relationship between the act and the loss.

Article 41 of the Substitute-Notary Position Law provides civil sanctions for notaries who commit unlawful acts or violations of Article 38, 39 and 40. Notarial deeds will be degraded into private deeds. Also, the aggrieved parties may command repayment of costs, reimbursement and interest from a notary.

2.2. NOTARY RESPONSIBILITIES IN CRIMINAL LAW

Criminal responsibility is imposed on a person who is suspected of being committed a offense proven guilty. Error is the central point of the concept of criminal responsibility. Therefore, the well-known adage “no criminal without fault” becomes “no criminal responsibility without fault”. It means a person can only be held criminally responsible for a crime committed if that person has a fault.17

A notary may be summoned to be present at the test of the criminal case if the deed made by notary affect harm to other interested parties. Regulation of the Ministry of Law and Human Rights No. 7 of 2016 concerning the Notary Honorary Council, Article 27 states that the Notary Honorary Council approves public prosecutor, investigators, or judges for the advantage of interested parties. Regulation of the Ministry of Law and H


c. There is a denial of the validity of the signature of one or more parties,

d. There are allegations of reductions or additions to the minutes of the deed,

e. There is an allegation that the notary delayed the date (antidatum). 18

In the practice of notary position, the articles in the Criminal Code that often ensnare notaries include, Article 55 concerning participation in committing a crime, Article 231 concerning assisting perpetrators to commit crimes, Articles 263 and Article 264 concerning making fake letters, Article 266 concerning giving false statements in authentic deed, Article 372 on embezzlement, Article 378 on fraud, and Article 385 on selling, exchanging or encumbering with creditverband (Mortgage Deed) on land that has not been certified.

This research examines the crime committed by a notary related to making false documents, Criminal Code in Article 263. Unlike Criminal Code in Article 263, a notary is charged with Article 266 if the notary does not know or accidentally enters false information in the deed. Whereas, in Article 263 of Criminal Code, the notary consciously and knowingly or intentionally enters fake information in a deed.

The elements in Article 263, paragraph 1 of Criminal Code, if it is associated with the case of the Supreme Court Decision Number 154K/Pdt/2016, is the first concerning the legal subject in the crime of forged letters is "whosoever." This refers to the perpetrators of crimes that can be committed by anyone without exception, including carried out by a notary when referring to the case.

Meanwhile, the criminal act committed is to make a false or falsified letter that give increase to rights, agreements or debt aid, or is intended as proof of something. The next element is to utilize or arrange other letters as if the contents are true and not false. Counterfeiting the letter causes losses, and the criminal act of forging the above letter is punishable by imprisonment for 6 (six) years.

Then, it is further regulated in Article 264 that forged letter is liable to be punished by a highest sentence of 8 years if it is done against the authentic deeds.

The reading of Article 263 paragraph 1 of Criminal Code above is "...rights, agreements or debt aid, or those intended as proof of something..." words or indicate an alternative to the things generated by the existence of the forgery of letters. In this case, Deed of Sale and Purchase Binding Agreement made by Defendant II resulted in the emergence of a right. After the Deed of Sale and Purchase Binding Agreement is made, which is not read out to the appearers and witnesses and comparisons containing false statements, the deed is used as the basis for constructing the Deed of Sale and Purchase Agreement Number 34/2011, which is made before Defendant III, as Land Deed Official. Then, based on the Deed of Sale and Purchase Agreement, Defendant I apply for the return of the title to the Freehold Title Number 114 in the name of the Plaintiff’s wife, Mrs. Umulchlisun, to the National Land Agency of Special Capital Region of East Jakarta. Thus, on December 20, 2011, Freehold Title has changed to become the property of Defendant I.

CONCLUSION

1. If a notary are not reading out a deed, then the deed does not comply with the procedure for making a deed stipulated in the Notary Position Law/Substitute-Notary Position Law and does not fulfill the element of "verlijden") inauguration so that the proof power as an authentic deed is lost. However, it still has the force of law as a private deed. A notary does not read a notarial deed made with a false statement before the appearer. The existence of a coercion element in signing the deed no longer has perfect legal power as an authentic deed. This is because it has been declared a legal fault, so the deed is declared unacceptable and invalid by law. Therefore, the deed cancellation validity is retroactive from the time the deed made.

2. A notarial deed containing false information can cause harm to interested parties and violate Article 263 and 264 of Criminal Code due to falsify the authentic deeds and is sentenced to 8 years in prison. Whereas in civil law, a notarial deed made with a false statement violates Article 1320 and 1335 of Civil Code, which stipulates that a deed constructed based on forged or false reasons will be unacceptable and invalid by law (nitiegbaarheid).

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