

The Legal Consequences of the Forgive Deed Brought by the Prisoner to the Notary

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ABSTRACT

Notaries as one of the public officials who are vulnerable to disputes in the agrarian sector as a consequence of negligence in carrying out their duties and authorities. This research uses the method of juridical analysis of the norms and legal customs that exist in the community public and analytical descriptive of the responsibilities of a notary and court decisions. The results of the study indicate that there is negligence and unlawful behavior carried out by both an appearer and the notary himself. This can be seen in the Decision of the Supreme Court of the Republic of Indonesia, Supreme Court Decision No. 185 PK/Pid/2010, the Notary was sentenced based on Article 263 paragraph (1) of the Criminal Code (KUHP) Juncto Article 55 paragraph (1) to the- 1 The Criminal Code (KUHP), which imposes penalties on notaries for falsifying documents. In this case, the Notary as a State official and serving as law enforcement is dealing with the law for actions that he did not commit, as a result of the parties submitting the deed by bringing fake letters or documents. While the Notary argued that his party did not know that the documents received from his client were fake. So that, there is a void of legal norms in the Notary Position Act relating to legal protection and the responsibility of the Notary in making the deed based on data and information falsified by the parties. Therefore, it is necessary to have justice and legal certainty that can solve these problems.

Keywords: Notary, Land certificate, Legal protection

ABSTRAK

Notaris sebagai salah satu pejabat publik yang rentan terhadap timbulnya sengketa dalam bidang agraria sebagai konsekuensi dari kelalaian dalam menjalankan tugas dan wewenangnya. Penelitian ini menggunakan metode analisis yuridis terhadap norma serta adat hukum yang ada di dalam masyarakat serta deskriptif analitis terhadap tanggung jawab notaris serta putusan pengadilan. Hasil dari penelitian menunjukkan bahwa terdapat adanya kelalaian dan perilaku melawan hukum yang dilakukan baik dari seorang penghadap maupun notaris itu sendiri. Hal tersebut dapat dilihat pada Putusan Mahkamah Agung RI, Putusan Mahkamah Agung No 185 PK/Pid/2010, Notaris tersebut dijatuhi hukuman berdasarkan Pasal 263 ayat (1) Kitab Undang-Undang Hukum Pidana (KUHP) Juncto Pasal 55 ayat (1) ke-1 Kitab Undang-Undang Hukum Pidana (KUHP), yang menjatuhkan hukuman terhadap notaris sebagai perilaku pemalsuan dokumen. Dalam hal ini Notaris sebagai pejabat Negara dan bertugas sebagai penegakan hukum berhadapan dengan hukum atas tindakan yang tidak dilakukannya, akibat para pihak yang mengajukan akta dengan membawa surat-surat atau dokumen palsu. Sedangkan pihak Notaris berdalih bawa pihaknya tidak mengetahui bahwa dokumen yang diterima dari kliennya itu palsu. Sehingga timbul kekosongan norma hukum dalam Undang-Undang Jabatan Notaris yang berkaitan dengan perlindungan hukum dan tanggung jawab Notaris dalam pembuatan akta berdasarkan data dan informasi yang dipalsukan para pihak. Oleh karena itu maka perlu adanya keadilan serta kepastian hukum yang dapat menyelesaikan permasalahan tersebut.

Kata Kunci: Notaris; Akta Tanah; Perlindungan Hukum

INTRODUCTION

Notation has an important role in the correctness of making the deed brought by the appearer to him. In this case, the deed that already has the signatures of the parties can be used as evidence and as a basic right in starting an engagement. Deeds can be used as valid evidence in the evidentiary process because there are events involving the parties who own them (Asikin & Sh, 2019). The authority of a notary in making an authentic deed has been regulated in law as an effort to prevent and protect the legal certainty of the parties who make it (Ramadhani & Abduh, 2021). Making authentic deed aims to be used as evidence if there is a dispute or dispute between the parties which is carried out by making demands both civil and criminal. With a claim, a notary will indirectly be dragged into the problems caused by the deed he has made.

In various cases, there is often cooperation between the parties and a notary in falsifying the deed he made. And not a few of the negligence of a notary resulted in being dragged into the act of falsifying documents brought by the parties without his knowledge, resulting in criminal proceedings under the pretext of the negligence of a notary that harmed the parties listed in the deed. As a result, there is a report by the public against a notary who is considered to be collaborating with the parties in making the deed and falsifying documents. Therefore, it appears how the notary's responsibility for the deed he made even though there were fake documents given by the parties who appeared to him without knowing the truth of the document. In the case of the Supreme Court decision No. 185 PK/Pid/2010, a notary was sentenced to Article 263 paragraph (1) of the Criminal Code and Juncto Article 55 paragraph (1) in his act of making a false certificate with a state of awareness and knowledge of the actions he had committed with the parties. whose purpose is to falsify information from legitimate heirs. In this case, a notary has turned his back on his duties and functions and has violated the provisions contained in the notary law.

In addition to fake certificates from legal heirs, there are also cases involving notaries by falsifying buying and selling letters with the parties involved in it. It has been declared that it has no permanent legal force with the decision of the Supreme Court No. 1137/Pdt/2005 (Manuaba et al., 2018). The case illustrates that it seems as if the code of ethics and notary oath are not considered at all in committing acts against the law, therefore there needs to be strict action and sanctions against notaries who commit these crimes as an effort to maintain dignity and a deterrent effect as well as public trust on the existence and duties and functions of a notary (Elisabeth, 2016). However, an excuse appears in the case that the parties who brought the certificate to the notary turned out to be fake and were used as material for making the deed without first checking further about the condition of the certificate. Therefore, some people argue that in this case the notary as a state official and tasked with serving the needs of the community is faced with the law for actions that he did not do, due to the existence of fake certificates brought by the parties.

As a consequence, a notary has moral and material responsibility for the deed that has been made even though the party concerned has complied with the appropriate standard procedures and has been stipulated by law (El Rahman, 2021). With the existence of false information brought by the parties to the notary without knowing the truth, it is considered a void of norms against the responsibility of a notary to the deed he made due to the forgery brought by the parties against him. With the void of norms caused by the negligence of a notary, the writer needs to analyze more deeply how the notary's responsibility for the deed made due to his negligence in receiving the fake certificate brought by the parties.

RESEARCH METHOD

The research was conducted using a descriptive analysis approach that describes a criminal incident and the negligence of a notary in making the deed. Then it is studied further by analyzing the judge's decision on the case of document falsification carried out by a notary and the responsibility for the deed he has made.

RESULTS AND DISCUSSION

The Notary's Responsibilities to His Authority

The existence of a notary is inseparable from state provisions that must use an authentic deed as evidence that guarantees legal certainty for the owner so that his duties and functions are needed in serving the needs of the community (Borman, 2019). A notary is one of the state organs that has the authority to make authentic deeds as one of the evidences that is often used in the civil sector (Nasrudin, 2020). The position of a notary in society becomes very important when viewed from the point of view of providing legal certainty for the deed produced to the land owners or the parties who are conducting engagements and agreements. With this central position, some people consider notaries to be part of the elite group in the Republic of Indonesia. Socially, economically and politically the position of a notary has a higher position than ordinary people in general. Because its duties and functions use a trust system for the parties who are partners in carrying out their authority.

With the authority he carries, a notary becomes a legal profession that protects humanity so that it is considered one of the noble professions (Sudini, 2020). The deed produced by a notary gives rise to ownership and responsibility in terms of rights and obligations to the person who owns it. Therefore, the actions of a notary must be based on the applicable provisions and stated in the law that has been ratified by the government, namely the notary law (Anshori, 2009). The provisions that state the invalidity of an agreement if it is not made in writing, become a strong basis for the importance of the role of a notary in the needs of the community. This is stated in Article 1851 of the Civil Code. The power of proof of a notary can be distinguished from three things, namely outward proof, formal proof and material proof (Notodisuryo, 1993). These differences are characteristics that need to be considered for their use as an effort to prevent and utilize the deeds that have been made. A deed can be said to be legally valid if it fulfills the terms and conditions set by law. This is closely related to the term of office of a notary so that it can affect the validity of a deed or other legal assistance related to a notary. The notary's responsibilities are carried out if his term of office is still valid because if his term of office has ended all duties and authorities and responsibilities are no longer assigned to him and the deed he made is considered invalid (Sjaifurrachman & Adjie, 2011). In addition to the term of office in making a legal deed, a notary also has terms and conditions that must be met so that the existence of the deed made can be used and is legally valid.

In making a valid deed, apart from having to be attended by an appearer, two witnesses must also be present, because one witness cannot be said to be a witness and the deed made without the presence of a witness is invalid and has no permanent legal force. The limitation regarding the responsibilities of a notary is only in his position and mandate as a notary profession so that errors and omissions are considered as a crime if they enter the criminal realm in his position as a notary (Mikkelson, 2016).

Protection and Law Enforcement in the Negligence of a Notary

Indonesia as a state of law is obliged to protect every citizen of the country in order to get protection and peace because in essence the law requires peace (Borman, 2019). Criminal acts occur due to various factors so that the prevention process must also be systematic, both from a social perspective, as well as the law that is applied and used as a basis for enforcing and protecting the community (Manhart & Thalmann, 2015). Modernization produces various advanced ideas and new technologies. Technological advances have an impact on people's culture and mindset. Technology provides convenience for users to carry out a social activity. However, it should also be noted that technology is the most dangerous weapon if it is used as a tool to commit crimes.

Technology can be used to easily access documents and duplications that are difficult to distinguish between genuine and fake (Zhang & Ghorbani, 2020). This is related to the rise of cases of document falsification caused by the easy process of forgery used by unscrupulous elements and mafias who are involved in their field. In connection with this, it is necessary to adjust the law on acts of behavior that arise from new thoughts and criminal acts that can damage the order of social life. Making fake voices is often a weakness and point of negligence of law enforcement because it is difficult to distinguish between the contents of the original and fake letters. Document falsification is one of the starting points for the spread of organized crime whose perpetrators are professionals and experts in using technology.

In the law, counterfeiting is a criminal offense that harms the parties and causes the loss of property rights and legal ownership (Ramadhani, 2021). Furthermore, falsification is regulated in the Criminal Code which states that falsification is only in writing so that falsification of information or verbal statements is considered to have less legal force. In writing forgery, apart from changing the content of the text, it can also be done by falsifying the signature of the rightful owner or using a signature without the owner's permission. This has been further regulated in the Criminal Code Articles 263-276.

In the provisions of the notarial process there is an adage which discusses that every statement from the party who comes is considered true so that the lies committed by the parties are the responsibility of a notary as a consequence of negligence in accepting and carrying out his function as a notary official. The impact given is criminal sanctions and sanctions for the code of ethics for the position of a notary during his term of office has not been completed (Jalal et al., 2018).

This case can be used as an example of the need for thoroughness and prudence in the process of carrying out obligations as a notary. The agreement at the time of making a transaction should be used as an anticipation and shield by a notary if in the future it is stated that the information from the parties who come to him is a false statement and can harm various parties, one of which is the notary himself as the official making the deed which is considered valid by law.

CONCLUSION

Negligence causes forgery of documents or fake deeds, whether intentional or unintentional, can result in unlawful acts so that they have civil and criminal sanctions. So that the fake deed backfires for a notary as the official authorized to make it, but the existence of the deed can be canceled through a court process and a decision from a civil judge. So that in his decision a judge sees it as an omission or the evidence presented requires the deed to be canceled by law and frees a notary from all responsibility on the pretext that the certificate brought by the parties is a fake certificate and without the knowledge of the notary himself. However, if it is proven to have committed a criminal act or violated the code of ethics of the notary profession, it can result in sanctions against him as a notary. Acceptable sanctions begin with

verbal reprimand, in writing or even up to dismissal and sentencing, this is further discussed in Article 1365 of the Civil Code.

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