



Legal protection against notary on false identity data submitted by the confrontant for deed making

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Abstract

Notary is a public official and an office of trust. Based on this, the Notary is obliged to guarantee the certainty of the contents of the deed for the face or client. However, it is inevitable that the Notary may be used as a tool to commit a criminal offense by the confronter, one of which is by providing a false identity in making a deed. The consequence that can be received by the Notary towards such matters is that the Notary can become a defendant or co-defendant in the lawsuit of the aggrieved party. The research method used in this writing is normative legal research. This research is important to ensure the legal certainty of notaries when faced with such problems. Notaries must be protected because of their obligation to maintain the good name and dignity of their office. The protection is in the form of the right of renunciation which is the right of the Notary.

Keywords: Fake Identity, legal protection, notary

Introduction

Notary is a public official authorized to make authentic deeds and has other authorities as referred to in the Notary Position Law or other laws. The authentic deed in question is a deed whose proof is perfect. Therefore, in carrying out his position, a notary is obliged to act trustworthy, honest, careful, independent, impartial, and safeguard the interests of the parties involved in legal acts. In addition, in carrying out their position, notaries must always apply the precautionary principle. The principle of prudence in the exercise of the office of notary has a very broad meaning. Notaries are required to be careful and meticulous in making authentic deeds so as not to cause harm to the confronters, other parties, and notaries themselves. Notaries must also be careful in paying attention to the editorial in the deed so as not to be used as material for claims by other parties because they feel disadvantaged by the deed made by the Notary.

Efforts to implement the precautionary principle that must be carried out in making a deed are: (a) The parties introduce themselves in accordance with the identity they show to the Notary; (b) The Notary asks, listens, and scrutinizes the purpose and wishes or will of the parties by means of interviews or questions and answers; (c) The Notary examines the evidence of letters brought by the parties relating to the wishes or will of the parties; (e) The Notary fulfills all administrative techniques for making deeds to fulfill the wishes or will of the parties; (d) The notary provides advice and makes a deed outline to fulfill the wishes or will of the parties; (e) The notary fulfills all administrative techniques for making Notarial deeds, such as reading, signing, providing copies and filing for the minutes; (f) The notary performs other obligations related to the implementation of the duties of the Notary position (Widhasani et al., 2022). What is no less important is the correctness of the personal data of the faces in making the deed.

The truthfulness of the identity of the confronter is very important in maintaining the quality of the notary so as not to be used as a tool in a criminal act of an irresponsible

confronter. Therefore, it is very important for the notary to see whether the identity submitted from the confrontation is true or not even though the Notary does not have more capacity to look at the aspect of the truth of what is given by the confrontation. If the notary feels that the identity provided by the confronter is incorrect or odd, the notary must ask in more detail or can reject the confronter's request if it is felt that one day the deed made by the notary will be problematic.

Based on his position to make authentic deeds, making Notary is often used as a tool for the confrontation. According to Habib Adjie, Notaries are often charged with crimes with articles in the Criminal Code, namely, (1) Making fake / falsified letters and using fake / falsified letters (Article 263 paragraph (1) and (2) of the Criminal Code) (2) Committing forgery of authentic deeds (Article 264 of the Criminal Code) (3) Ordering to include false information in authentic deeds (Article 266 of the Criminal Code) (4) Committing, ordering to commit, participating in committing (Article 55 Jo. Article 263 paragraph (1) and (2) of the Criminal Code or Article 264 or Article 266 of the Criminal Code) (5) Assisting in the production of forged and/or falsified documents and using forged/falsified documents (Article 56 paragraph (1) and (2) Jo. Article 263 Paragraphs (1) and (2) of the Criminal Code or Article 264 or Article 266 of the Criminal Code) (Adjie, n.d.).

The above-mentioned penalties cannot be directly imposed on the Notary on the presumption of innocence. Criminalized Notaries are often only co-defendants because they make authentic deeds that make the plaintiffs and defendants litigants. However, it is not necessarily due to the Notary but rather the confrontants who provide false identities. Therefore, there is a need for legal protection for notaries so that they are not used as a place for other parties to make a criminal offense.

This can be supported by the Decision of the Supreme Court of the Republic of Indonesia Number 702 K / Sip / 1973, dated September 5, 1973 which states, "Judex factie in its ruling canceled the notarial deed, this is unjustified, because the function of the notary is only to record / write down

what is desired and stated by the parties who appear before the notary. There is no obligation for the notary to investigate materially what (matters) are stated by the confronter before the Notary." Based on the jurisprudence, the juridical character of Notary and Notarial deed are, (1) Notarial deed cannot be canceled (2) The function of Notary is only to record (write down) what is desired and stated by the parties facing the Notary. (3) There is no obligation for the Notary to investigate materially what is stated by the confronter (Adjie, 2014).

Therefore, the protection of notaries is very important. Hadjon (1987) explains the principle of legal protection, that the government's actions are based on and sourced from the concept of recognition and protection of human rights because historically, the birth of the concept of recognition and protection of human rights was directed towards restrictions and laying down the obligations of society and government. M. Hadjon divides protection into 2 (two), namely: (1) Preventive Legal Protection Means, legal subjects are given the opportunity to submit objections or opinions before a government decision. The aim is to prevent disputes from occurring. (2) Means of Repressive Legal Protection, a form of legal protection which focuses more on dispute resolution.

This research will provide answers to the legal protection of Notaries if there are confrontants who provide false identities. Previous studies have only discussed the extent of false information provided by the confronter but there has been no research that discusses the false identity provided by the confronter. Thus, the author sees that it also needs to be discussed because it is related to the position of Notary as a position of trust.

The focus of this research is to see how legal protection is given to the Notary due to the false identity given to the confronter for making an authentic deed. Every deed must contain the beginning of the deed, the body of the deed, and the end of the deed. One of the most important elements in the body of the deed is the content of the deed, one of which contains the full name, place and date of birth, nationality, occupation, position, residence of the confronters and/or the person they represent (which is usually called a comparition). Comparition is closely related to the identity given by the confronter. Therefore, if the identity of the confronter is false then the deed can be relegated to a deed under the hand, so that the perfect proof will be lost. In addition, the Notary can be sued or become a co-defendant of the fake deed. In order to protect the Notary, it is necessary to protect his/her position and self.

Research methods

This research uses normative legal research. According to Peter Mahmud Marzuki, normative legal research is a process of finding legal rules, legal principles, and legal doctrines to answer the legal questions at hand. The approach method used in this research is a statutory approach. The primary legal material used comes from Legislation, specifically Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Offices. Secondary legal materials used are from journals, books, previous research, and other reading sources related to the legal issues under study.

Results and discussion

The Precautionary Principle for the Position of Notary on False Identity Data of the Facilitator

Notaries must apply the principle of prudence to avoid unwanted things. The principle of prudence is also reflected in Article 16 paragraph (1) letter a of the UUJN (Undang-Undang Nomor 2 Tahun 2014 tentang Perubahan atas Undang-Undang Nomor 30 Tahun 2004 tentang Jabatan Notaris, 2014), which states that Notaries are obliged to act trustworthy, honest, careful, independent, impartial, and safeguard the interests of parties involved in legal acts.

The form of the precautionary principle that can be implemented by Notaries in the process of making deeds can be in the form of several stages (Amanda, 2022). The first stage is that the Notary must recognize the identity of the face. Before making a deed, the Notary must see the identity of the faces. Before entering the identity of the confronters into a deed, the Notary is obliged to request the documents or letters needed to be stated in the deed (Derika, n.d.). The Notary must also match the photo of the owner of the Identity with the original, namely the confrontant. Then the Notary verifies carefully the data of the subject and object of the confrontation. The purpose of verifying is to check the subject data of the parties whether they are authorized and capable or not in carrying out legal acts, such as whether the party acting is at least 18 years old, capable, or married according to Article 39 paragraph 1 letter a UUJN (Manuaba, Ida Bagus Paramaningrat et al., 2018). Then the Notary provides a grace period in working on the deed. In working on a deed in order to produce a good deed, the notary should provide a grace period in the process of making the deed so that it is not rushed and can work carefully and thoroughly so as not to cause errors in the notarial deed. Furthermore, notaries must act carefully, carefully, and thoroughly in the process of making deeds. This action is reflected in the process of making a deed, which must pay attention to the editorial because in its implementation it is often disputed on the basis that it is unclear or causes interpretation. Then to fulfill all the requirements in making a deed, Notary must fulfill the formal requirements and material requirements of making a notarial deed based on the Notary Position Law, the provisions regarding formal requirements in making a deed are regulated in Article 38 of the Amendment to the Notary Position Law (UUJN-P), while the material requirements that must be met in making an authentic deed are regulated in Article 1320 of the Civil Code. If in the making of the deed there is an indication of Money Laundering in Transactions at the Notary, the Notary must report it to the authorities. If the Notary does not report, it will have an impact on the deed he made which turns into invalid. In addition, the Notary can also be given administrative sanctions (Adryani, 2023).

Protection to Notary on False Identity Data Submitted by the Notary for Deed Making

The duty of a Notary in general is to make authentic deeds and other deeds that have been mandated by laws and regulations. Every deed made by a Notary has perfect evidentiary power. Its perfect nature makes the judge not need other evidence in a proof. Thus, in making a deed a notary must be able to apply the principle of prudence in order to avoid mistakes that harm other parties. The making of the authentic deed in question can be in the form of a

deed of articles of association or deed of establishment (for example, the deed of establishment of business entities) and a deed of agreement (for example, a deed of binding sale and purchase, a deed of lease, a property separation agreement, and so on).

The strength of the deed is very important. The strength of the deed contains 3 (three) aspects that must be considered (Adjie, 2009), first the outward evidentiary power (*uitwendige bewijskracht*), where this evidentiary value must be seen outwardly and does not need to be contradicted by other evidence. The validity or presumption of an authentic deed until proven otherwise (Andayani, 2021). Second, the formal evidentiary power (*formeel bewijskracht*), the Notarial Deed must provide certainty that an event in the deed was actually carried out by the Notary or described by the parties who appeared at the time stated in the deed. If in the formal aspect that is contested by the parties, it must be proven against the deed (Septianingsih et al., 2020). Finally, the strength of material evidence (*materiele bewijskracht*), the information or statements set forth or contained in the official deed or the information of the parties given or submitted before the Notary and the parties must be considered correct. If there is a statement or information from the confronters that is false or not true, it will be the responsibility of the parties themselves. So that the contents of the deed have certainty.

As for the authentic deed itself, it is defined as a deed whose evidentiary aspects are in line with the crimes that can occur. According to R. Tresna, forgery can be done in 2 (two) ways (Tresna, 1959), namely material forgery, material forgery which means changing an object, sign, brand, currency or writing that was originally original, changed in such a way that it has another nature. In other words, the letter or writing in its form is completely false from the beginning. This material forgery is often carried out by people with the intention of using or making other people use the forged object as the original object. Intellectual forgery can also be carried out, meaning that forgery is carried out by changing the information or statement contained in a letter or writing so that it does not match the actual facts. In intellectual forgery, the form of the letter or writing is original from the beginning, but the content or what is explained or stated in the letter or writing is not in accordance with the actual facts (Anjas Asmara Siregar, 2017).

The principle of caution of the Notary in carrying out his position to make an authentic deed is very important because it is regulated by regulations, one of which is based on Article 1871 of the Civil Code which stipulates that, "If an authentic deed, in whatever form, is suspected of being false, its execution may be suspended according to the provisions of the Civil Procedure Regulations". Therefore, the interests of the parties in a deed will be hampered if the Notary does not apply the principle of prudence in carrying out his/her position (Amanda, 2022). The right of denial is a right that must be fulfilled because it is a right that must be given to Notary for his important and dignified position. According to Van Bemmelen, there are 3 grounds for being able to demand the use of this right of denial, namely: (a) A very close family relationship; (b) Danger of being subject to criminal law (c) Position, work and official secrets (Widhasani et al., 2022). In relation to number (c), the use of the right of renunciation can be given to Notary due to his position, work, and the secret of his office. This is reflected

in one of the Notary's obligations in Article 16 paragraph (1) letter f of the Notary Position Law which states that, Notaries have an obligation to keep confidential everything regarding the Deed they make and all information obtained for the purpose of making the Deed in accordance with their oath or promise of office, unless the law determines otherwise. The purpose of the Notary to keep everything related to the Deed and other letters confidential is to protect the interests of all parties related to the Deed.

However, in practice, many Notaries are still negligent of such matters. Thus, the Notary is often used as a tool by the confronter to commit a criminal offense. Therefore, there is a need for legal protection of the Notary for his duties and positions, to protect his position, as well as to protect his good name to remain trusted by clients in his capacity to make deeds. The protection of notaries can be reflected in the granting of special rights such as the right of recusal and the legal protection of the obligation of recusal as a means of legal protection against notaries, especially from criminal proceedings. The Right of Ingkar is a person who is tried to file an objection with reasons against the judge who will hear the case (Poerwadarminta, 2007). Meanwhile, according to A. Kohar, the right of denial is a consequence of the obligation to keep something known (Kohar, 1984). The legal protection of the Notary with the right of denial granted by the law is manifested in the Notary's right to refuse or the right to request to be released as a witness. The rejection is not only limited to what is contained in the deed made by the Notary, but all facts related to the deed (Widhasani et al., 2022).

In addition, legal protection for Notaries can also be provided by legislation (Andriana et al., 2022), namely by the procedure for taking deed minutes and summoning Notaries, according to Article 66 of the UUJN which consists of the Right of Notary Ingkar as stipulated in Article 170 of the Criminal Procedure Code, Article 19019 number 3 of the Civil Code, Article 146 paragraph (1) number 3 of the HIR, Article 277 HIR, and Article 4 of the UDHR and Article 16 paragraph (1) letter e of the UJUN. Then the protection of the Supreme Court Decision Number: 702K/SIP/1973, Jurisprudence which can be used as a basis for consideration of several cases related to criminal acts faced by notaries, which in this case states that a notary functions only to record / write down what is desired and stated by the parties who appear before the notary.

In addition to the above protection, according to Nurul Aina, there is also legal protection for Notaries normatively provided by the applicable laws and regulations, namely (Aina, 2016) with the establishment of the Notary Supervisory Assembly, the supervisory assembly is a form of anticipation of Notaries if they carry out their positions without being guided by regulations. The involvement of the supervisory assembly functions if there are parties who make the deed into the problem (Trizza et al., 2022). Then with the Extraordinary Congress in Banten, on May 28, 2015 (code of ethics), the Notary Code of Ethics is a moral rule determined by the association and must also be fulfilled by members of the association (Perubahan Kode Etik Notaris, n.d.). The code of ethics is also one of the guidelines for notaries in carrying out their positions which also regulates the supervision of notaries. The purpose of the supervision is so that notaries comply with the requirements and carry out their duties in accordance with

the provisions of the applicable laws and regulations and the Notary Code of Ethics in order to safeguard the interests of the general public (Yustica et al., 2019). Then with the memorandum of understanding between the Indonesian National Police and the Indonesian Notary Association Number 01/MOU/PP-INI/V/2006 concerning Development and Improvement of Professionalism in the field of Law Enforcement and Regulation of the Minister of Law and Human Rights Number 7 of 2016 concerning the Notary Honor Council.

As a public official, a Notary must always maintain the good name of himself, the office, and the association. Daru Purwoningsih (Imania et al., 2020) said that there are many important things to provide legal protection to Notaries, namely to maintain the dignity of their office, including when giving testimony and processing in examinations and trials, then to keep the deed information confidential in order to protect the interests of the parties involved in the deed, and to maintain the minutes or letters attached to the deed minutes, as well as the Notary protocol in its storage.

In addition, Hadjon explained the principle of legal protection, that the government's actions are based and sourced from the concept of recognition and protection of human rights because historically, the birth of the concept of recognition and protection of human rights was directed towards restrictions and laying down the obligations of society and government. When viewed from the means of protection, Philipus M. Hadjon divides protection into 2 (two), namely (Asri, 2018), namely the means of preventive legal protection, legal subjects are given the opportunity to submit objections or opinions before a government decision. The aim is to prevent disputes. Then the means of repressive legal protection, a form of legal protection which focuses more on dispute resolution.

The legal protection provided by the Notary related to the false identity of the confrontant according to the theory of legal protection by Philipus M. Hadjon has fulfilled legal protection because the Notary can reject the confrontant if the Notary feels that the confrontant provides a false identity. The impact on the deed if the confronter provides a false identity makes the power of the deed will be under the hand or null and void (Desya Qotrannadha, 2023). However, currently there are many cases that make Notary a co-defendant of the crime made by the confronter against the deed he made. Therefore, legal protection for Notaries against dispute resolution in court must be considered and maximized so that Notaries can maintain the dignity and dignity of their position and person. One of the legal protections is the right of renunciation granted by the laws and regulations to the Notary.

Conclusions

When carrying out their duties and positions, Notaries must adhere to the laws and regulations, especially the Notary Position Law and the Code of Ethics. In order to avoid avoidable things, the Notary must apply prudence. One form of prudence is for the Notary to recognize the identity of the face. In practice, there are still many Notaries who neglect to see the authenticity of the confronting personal data. Thus, the Notary is often used as a tool to commit criminal offenses. Therefore, there is a need for legal protection for Notaries for their duties and positions, to protect their positions, and to protect their good name so that they are still trusted by clients in their capacity to make deeds. Legal

protection for Notaries can be provided by laws and regulations, namely regarding the procedures for taking deed minutes and summoning Notaries, according to Article 66 of the UUIJN, the Right of Ingkar Notaris as stipulated in Article 170 of the Criminal Procedure Code; Article 19019 number 3 of the Civil Code; Article 146 paragraph (1) number 3 of the HIR; Article 277 HIR; Article 4 of the UDHN; and Article 16 paragraph (1) letter e of the UUIJN, as well as Supreme Court Decision Number: 702K/SIP/1973, Jurisprudence that can be used as a basis for consideration of several cases related to criminal acts faced by notaries, which in this case states that a notary functions only to record / write down what is desired and stated by the parties who appear before the notary.

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