



Notary liability and protection for aggrieved parties in fraud (A case analysis in the perspective of duties and positions of Notary/PPAT)

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Abstract

This research highlights the legal responsibility for notaries and PPAT (Land Deed Making Officials) in fraud cases, using the theory of civil and criminal liability as well as the theory of legal protection for the aggrieved party. Through the examination of two court decisions, one of which resulted in the defendant being guilty and the other defendant being acquitted. This study emphasizes the importance of judge's discretion and standard of proof in determining the fault of a notary.

This study obtained the results that Notaries and PPAT must strictly comply with the code of ethics and legal procedures to avoid legal consequences, because mistakes or fraudulent actions can result in criminal, civil, and administrative sanctions. The court's decision in fraud cases involving notaries can differ based on evidence, legal interpretation, and application of the rules. This study shows that preventive legal protections (such as stricter regulations and increased public awareness) as well as repressive legal protections (criminal penalties and legal remedies through the courts) are essential to protect parties harmed by fraudulent notary actions. The suggestions from this study are the need to provide stricter supervision of Notaries/PPAT, compliance with professional ethics rules and consistency in legal decisions to ensure fairness and legal certainty in notary practice.

Keywords: Notary accountability, fraud, legal protection, public trust, court decision, authentic deed

Introduction

A deed is a signed letter, which contains the events, which are the basis of a right or covenant, which was made from the beginning with the intention of proof. According to Article 1868 of the Civil Code, a deed can be called authentic if it meets three elements, namely made in a form according to the provisions of the law, made by or in the presence of a Public Official, and the Public Officer must have authority in the place where the deed is made (Mertokusumo, 2006, p. 149).

Deeds can be divided into authentic deeds and deeds under hand. The difference between the two deeds lies in the process of making the deed. If the authentic deed is made by a notary, then the deed under hand is a deed deliberately made by the parties for proof without the assistance of an official who made the deed.

Unlawful acts are active and passive. Active, in the sense of committing acts that cause harm to the parties. While passive, in the sense of not doing an act that is a must, so that the other party suffers losses.

The Notary is administratively responsible for the deeds he makes. Administrative sanctions based on Law Number 2 of 2014, namely verbal warnings; written warnings; temporary suspension; respectful dismissal; dishonorable dismissal (Law Number 2 of 2014 concerning Notary Positions).

The supervision carried out on notaries is carried out by the government, in this case the Minister of Law and Human Rights of the Republic of

Indonesia because it is under the authority of the Minister of Law and Human Rights of the Republic of Indonesia. In addition, there is also a notary professional organization, namely the Indonesian Notary Association (INI) which functions to establish and enforce the Notary Code of Ethics. In the case of this Notary Code of Ethics, it applies to all notaries in Indonesia.

Notaries and PPAT have the possibility of being entangled in the law, not only because of internal ones that come from within themselves, such as carelessness, not complying with procedures, not carrying out professional ethics and so on. In addition, internal factors such as public morals where Notaries and PPAT are faced with fake documents even though the documents contain legal consequences for their owners. In this case, when harming the parties interested in the deed, the Notary can be prosecuted criminally or civilly. The criminal penalty imposed is by imposing criminal penalties and criminal sanctions, civilly it is providing compensation to the aggrieved parties.

In practice, problems regarding the creation of authentic deeds can occur due to negligence and/or lack of precision/carelessness, even mistakes that are deliberately committed or by the notary himself in making deeds, one of which is by forging deeds or deliberately committing criminal acts of fraud so that the deeds they make are degraded in their evidentiary power or null and void.

The Denpasar District Court Decision 1460/Pid.B/2019/PN DPS is an example of a case where a notary is proven guilty of committing a criminal act of fraud by paying attention to the legal facts that have been regulated in Article 378 of the Criminal Code so that it fulfills the element of whose goods, with the intention of benefiting oneself or others unlawfully, using a false name or false dignity. By trickery, or a series of lies, to move others to hand over something to them, or to give debts or write off receivables. If the Notary is proven guilty at the time of making the deed, there will be many parties who will be harmed. For these losses, the Notary must be responsible for receiving sanctions given both civil and criminal.

However, in the process of deepening cases related to fraud committed by notaries, there is a Court Decision stating that the notary was proven innocent of committing the crime, for

example in the Sleman District Court Decision Number 63/Pid.B/2020/PN SMN.

The notary, who is based in the Yogyakarta area, is a suspect in the case of fraud and forgery of the Authentic Deed and was charged with violating three alternative charges, namely the first alternative charge of Article 378 jo. Article 55 paragraph (1) 1st of the Criminal Code (Fraud committed together with other defendants), the second alternative indictment Article 266 jo. Article 55 paragraph (1) 1st of the Criminal Code (act of inserting false information into the deed) and the third alternative indictment of Article 264 of the Criminal Code (making a false authentic deed). Amar stated that the indictment could not be proven. Based on the facts of the trial, the Notary defendant was declared not guilty, so he was acquitted of all charges demanded by the public prosecutor, because according to the facts of the trial, no evidence of fraud was found.

In the previous research by (Kunni Afifah, 2017) entitled Responsibility and Legal Protection for Notaries Civilly for the Deed they made has similarities, namely lies in the theory used. However, in this study, this study analyzes more deeply related to the civil and criminal responsibility of notaries for the deeds they make and legal protection for the aggrieved parties so that they can examine from 2 perspectives of decision cases that have different results of judges' determinations. In this type of research, a type of case study research is used.

Based on the background that has been described above, the author is interested in analyzing more deeply and describing it into the formulation of the problem, namely how the accountability of Notary/PPAT and legal protection for the parties who are harmed in the crime of fraud in the perspective of the duties and positions of Notary/PPAT and what is the judge's consideration in deciding the case in Decision Number 1460/Pid.B/2019/PN.

DPS and Decision Number 63/Pid.B/2020/PN.SMN have reflected the principle of legal protection.

Methods

The approach used by the author in this legal research is the statute approach on the basis of studying legal issues to find solutions to the legal issues raised in this legal research. In addition, another approach used is the conceptual approach, which is to proceed from the views and doctrines that develop in legal science, by studying the views and doctrines in legal science, researchers find ideas that give birth to legal concepts, legal concepts, and legal principles that are relevant to the issue at hand. An understanding of these views and doctrines is a basis for researchers in building a legal argument in solving the issue under study (Marzuki, 2014).

Result and Discussion

Based on the two similar cases above, there is a difference in the results of the decision, namely in decision Number 63/Pid.B/2020/PN. The panel of judges gave a verdict of pure free verdict

(Vrijspraak) against the notary defendant based on several pieces of evidence that had been submitted and in decision Number 1460/Pid.B/2019/PN. DPS PPAT was proven guilty of committing a criminal act of fraud resulting in legal implications arising from the Court Decision when

viewed from the profession of the Notary/PPAT position, namely:

1. Criminal imposition of a penalty on a Notary/PPAT will have an impact on the reduced level of public trust, causing legal uncertainty.
2. The sanctions addressed to Notaries / PPAT are a form of responsibility for violating the provisions regarding the duties of the position and the code of ethics of Notaries / PPAT.
3. The criminal sanctions that have been obtained from the verdict show that the Notary/PPAT must be responsible for what he has done and be given punishment in accordance with the provisions of the applicable law (KUHAP, KUHP, UUJN, UU Basic Agrarian Basic Regulations Law).

In the case in the decision of the Denpasar District Court number 1460/Pid.b/2019/PN Dps, it can be associated with the provisions of article 1320 of the Civil Code, regarding the agreement of those who bind them, in the Deed of Sale and Purchase Agreement No.4 dated May 9, 2014, Deed of Sale and Purchase Agreement No.13 dated September 16, 2014, Deed of Sale and Purchase Agreement No.15 dated September 16, 2014, the occurrence of the agreement on which the deeds were made was not legally given by Susilowati Go. This is because, according to Subekti, agreement means that the parties who make the agreement must agree, agree, or agree on the main matters of the agreement, meaning that what is desired by one party, is also wanted by the other party reciprocatingly. The agreement must be given freely, meaning that the agreement takes place without any coercion, mistake and fraud Invalid source specified.

The act of PPAT Ni Ketut Alit Astari against the object of the purchase and sale dispute between Tugiman and Susilowati Go commits tricks or a series of lies, moves others to hand over something to him or to give debts or write off receivables with the intention of benefiting himself, namely or another person obtains a property or a sum of money or a reward in any form from another person or other party against their rights, as elements of Article 378 of the Criminal Code. The Defendant Ni Ketut Alit Astari, SH is legally and convincingly proven guilty of committing the crime of "Fraud", imposing a sentence on the Defendant Ni Ketut Alit Astari, SH therefore with a prison sentence of 2 (two) years and 6 (six) months,

Stipulating the Defendant to be detained.

So that in the case of the Denpasar District Court Decision number 1460/Pid.b/2019/PN Dps, PPAT Ni Ketut Alit Astari must be criminally responsible because in the trial he has been proven guilty and able to be responsible, then both must be sentenced to a criminal sentence commensurate with their guilt.

In addition, there is also a similar case related to fraud, but in this decision the Notary was declared not legally and convincingly proven guilty of committing the Crime of "Fraud", namely in the decision of the Sleman District Court Number 63/Pid.B/2020/PN. SMN.

The notary defendant was charged with benefiting another person in the amount of Rp.17,000,000,000- (seventeen billion rupiah); as a result of the actions of the codefendant Nora Laksono, the reporting witness felt aggrieved. The loss of ownership rights of 11 (eleven) plots of land which the reporting witness then reported to the Yogyakarta Police for

further processing. For the alleged criminal act against him, the Notary was charged by the Public Prosecutor with 3 (three) alternative charges, namely Article 378 of the Criminal Code jo. Article 55 paragraph (1) to 1 of the Criminal Code, Article 266 paragraph (2) of the Criminal Code jo. Article 55 paragraph (1) to 1 of the Criminal Code, Article 264 of the Criminal Code.

The actions taken by Notary Tri Agus Heryono S.H do not reflect the provisions of Article 16 paragraph (1) of Law Number 30 of 2004 concerning the Notary Position as amended by Law Number 2 of 2014, which states "that in carrying out his position, Notaries are obliged to act trustfully, honestly, thoroughly, independently, impartially, and safeguard the interests of related parties in legal acts". In addition, Notaries can be subject to sanctions for reimbursement of costs, compensation and interest contained in the following articles, including Article 44 and Article 48.

Based on the above articles, the aggrieved parties can demand reimbursement of costs, compensation, and interest to the Notary concerned in making the deed. In addition to violating the articles mentioned above, the Notary concerned in the case mentioned above also violated Article 16 letter m which contains "Reading the Deed in front of the witness in the presence of at least 2 (two) witnesses, or 4 (four) witnesses specifically for the making of a will deed under hand, and signed at the same time by the witness, witness, and Notary".

According to Hans Kelsen in his theory of legal responsibility, a person is said to be legally responsible for a certain act when the person commits the opposite act. Traditionally, there are two types of liability, namely (1) based *on fault*. Mistakes made by the Notary in Decision Number 63/Pid.B/2020/PN. SMN, namely the Notary, entered the IPT Registration

Number obtained from a fake IPT application letter into the Deed, while the actual management of IPT was free of charge and the reporting witness admitted that he had never applied for a land use permit (IPT) at the Sleman Regency Government Licensing Service Office. With a trick that had been arranged so neatly, the defendant Tri Agus Heryono, SH bin Ruyono Sumowidigdo as a Notary/PPAT issued 2 (two) blank receipts, one sheet was handed over to the witness Intan Rahayu Nur Hidayah and the other sheet was handed over to Nora Laksono Binti Go Sek Lak alias Nora after which the defendant Tri Agus Heryono, SH bin Ruyono Sumowidigdo as the Notary asked the witness Intan Rahayu Nur Hidayah and Nora Laksono Binti Go Sek Lak alias Nora to write on each receipt by dictating according to the words of the defendant Tri Agus Heryono SH bin Ruyono Sumowidigdo as a Notary. So with this allegation, the Notary was charged with violating Article 378 of the Criminal Code jo. Article 55 paragraph (1) to 1 of the Criminal Code, namely fraud committed jointly with other defendants, namely the buyer of the object of dispute and Article 264 of the Criminal Code, the Notary is charged with making a fake authentic deed. However, in the Decision, the Notary was proven not to have committed a criminal act of fraud.

Absolute responsibility. In the above case, the Defendant Tri Agus Heryono, SH bin Ruyono Sumowidigdo as a Notary at least in another place that is still included in the jurisdiction of the Sleman District Court, forged an official certificate of evidence (authentic deed), who committed,

who ordered to do or who participated in committing an act with the intention of benefiting himself or others unlawfully, by using a false name or false dignity, by deception, or a series of lies, to induce others to hand over something to him,

Through decision Number 63/Pid.B/2020/PN. The panel of judges gave a verdict of pure free verdict (Vrijspraak) against the notary defendant. The free verdict cannot be separated from the evidence and proof in front of the trial. If it is associated with the theory of responsibility based on the Law, the Notary is not sentenced to criminal or civil sanctions.

Based on the two similar cases above, there is a difference in the results of the decision, namely in decision Number 63/Pid.B/2020/PN. The panel of judges gave a verdict of pure free verdict

(Vrijspraak) against the notary defendant based on several pieces of evidence that had been submitted and in decision Number 1460/Pid.B/2019/PN. DPS PPAT was proven guilty of committing a criminal act of fraud resulting in legal implications arising from the Court Decision when viewed from the profession of the Notary/PPAT position, namely:

1. Criminal imposition of a penalty on a Notary/PPAT will have an impact on the reduced level of public trust, causing legal uncertainty.
2. The sanctions addressed to Notaries / PPAT are a form of responsibility for violating the provisions regarding the duties of the position and the code of ethics of Notaries / PPAT.
3. The criminal sanctions that have been obtained from the verdict show that the Notary/PPAT must be responsible for what he has done and be given punishment in accordance with the provisions of the applicable law (KUHAP, KUHP, UUJN, UU Basic Agrarian Basic Regulations Law).

Based on the District Court Decision Number 1460/Pid.B/2019/PN. Denpasar, who stated against PPAT Ni Ketut Alit Astari, was legally guilty of deliberately committing a criminal act of fraud in making a sale and purchase deed between Tugiman (the seller) and Susilowati Go (the buyer) by committing tricks or a series of lies, moving others to hand over something to him or to give a debt or write off a receivable with the intention of benefiting himself or others to obtain a property or a certain amount of money or rewards of any kind from another person or other party against rights. The act of PPAT Ni Ketut Alit Astari has been legally guilty of deliberately committing a criminal act of fraud in violation of the provisions of Article 378 of the Criminal Code.

The legal consequences of the actions of PPAT Ni Ketut Alit Astari together with Tugiman as a seller deliberately committed a criminal act of fraud, Legal protection for parties aggrieved by PPAT officials committing fraudulent acts in the sale and purchase of land is associated with the theory of legal protection by Philpus M Handjon including 2 (two) things, namely the first is preventive legal protection, that Tugiman as a house seller is only based on a photocopy of the certificate of ownership in the name of another person and on the grounds that the original certificate is still at PPAT Ni Ketut Alit Astari. If Susilowati Go's understanding and legal awareness are qualified so that it is not easy to believe and know the legal consequences if buying a house

on the basis of a photocopy of the certificate of ownership, it can end in a dispute.

The protection of repressive law, that it has declared and decided against PPAT Ni Ketut Alit Astari is legally guilty of deliberately committing a criminal act of fraud against Susilowati Go as a home buyer based on the provisions of Article 378 of the Criminal Code. Against PPAT, Ni Ketut Alit Astari was subject to a criminal sanction of imprisonment for 2 (two) years and 6 (six) months in a correctional institution.

Another legal remedy that can be taken by Susilowati Go who suffers losses due to the sale and purchase of the house, can file a lawsuit, namely a lawsuit for the cancellation of the sale and purchase deed, because the agreement made violates the subjective conditions in Article 1320 of the Civil Code paragraphs (1) and (2).

In this case, the parties to the agreement, namely Tugiman and Susilowati Go, are persons who have grown up and are not under custody. So that they are capable of doing a legal act. Related to the conditions that have been agreed upon by the parties regarding the purchase and sale transaction of two plots of land in Badung Regency. Buying and selling is not a legal act prohibited by law. Therefore, the fourth condition of the validity of the agreement is fulfilled.

The deed that has been made by PPAT Ni Ketut Alit Astari is null and void so that it returns to the original state as if there was no sale and purchase agreement on the grounds that the objective conditions are not met, namely certain things in this case Tugiman as a seller does not have the right to sell land that does not belong to him and in making the sale and purchase deed on the basis of photocopying the certificate of ownership in the name of another person, where PPAT Ni Ketut Alit Astari previously also knew about this and still made the sale and purchase deed.

The lawsuit for compensation against PPAT Ni Ketut Alit Astari is based on making a sale and purchase deed where it was previously known that the object of sale and purchase was not the right or property of the seller and the basis for making the sale and purchase deed based on a photocopy of another person's ownership certificate which resulted in harm to Susilowati Go as a buyer. The losses referred to here are in terms of tax payments, PPAT services, name change fees, Zone fees of Rp. 218,650,000- (two hundred and eighteen million six hundred and fifty thousand rupiah) received by PPAT Ni Ketut Alit Astari.

Based on the explanation of jurisprudence above, the legal protection of Susilowati Go must be reflected in the running of the law, the legal process and the consequences of the implementation or enforcement of the law. This can be seen from the diversity of relationships that occur in society. Relations between communities give birth to laws that regulate and protect the interests of each community.

In court decision Number 63/Pid.B/2020/PN Smm, the Notary was declared not legally and convincingly proven guilty of committing the Crime of "Fraud". According to the indictment, the defendant's actions have benefited the defendant himself in the amount of Rp. 40,000,000 (forty million rupiah) which comes from the money transferred for the management of IPT, while the actual management of IPT is free of charge and the reporting witness admitted that he never applied for a land use permit (IPT) at the Sleman Regency Government Licensing Service Office.

Furthermore, the defendant notary was charged with having benefited another person in the amount of

Rp.17,000,000,000- (seventeen billion rupiah); as a result of the defendant's actions with Nora Laksono, the reporting witness suffered losses for the loss of ownership rights of 11 (eleven) plots of land, which the reporting witness then reported to the DIY Police for further processing. On the alleged criminal acts against him.

In the process of making a debt and receivables agreement, some Notaries refused to make a debt and receivables agreement on the grounds that the position of the certificate was still a guarantee at the Bank. Nora is still looking for a Notary who is willing to make the debt agreement, then after Nora Laksono finds a Notary who is willing to be the defendant Tri Agus Heryono, Nora expressed her intention to make a debt and receivables agreement but as if there was a sale and purchase by making a sale and purchase agreement. Furthermore, witness Suhartinah believed the words and promises of the defendant Tri Agus Heryono, SH bin Ruyono Sumowidigdo as a Notary and witness Suhartinah also believed in the words and promises of Nora Laksono Binti Go Sek Lak alias Nora who had provided a loan of Rp.6,000,000,000,- (six billion rupiah) as mentioned above so that the witness Suhartinah became moved to hand over the ownership rights of 11 (eleven) plots of land that had been certified by making a sale and purchase agreement along with a power of attorney to sell it.

Repressive legal protection, a form of legal protection for Suhartinah's witnesses due to the crime of fraud in buying and selling engagements which resulted in 14 (fourteen) certificates that became collateral for property rights on behalf of other people who caused material losses, the Government provided space and means to carry out legal remedies such as criminal prosecutions and civil lawsuits to the District Court to obtain legal protection from law enforcement officials as representatives from the government. As it is known that a lawsuit has been filed with the District Court Number 63/Pid.B/2020/PN Smm The Panel of Judges in this case cannot be a protection for the aggrieved party, namely witness Suhartinah because the defendant is not proven guilty, based on the explanation above, the protection provided to the aggrieved party due to the defendant's actions is in the form of preventive legal protection. This can be seen from the diversity of relationships that occur in society. Relations between communities give birth to laws that regulate and protect the interests of each community. With the diversity of legal relationships, members of the community need rules that can ensure balance so that in these relationships there are no legal chaos in society.

According to Law Number 48 of 2009 concerning Judicial Power, Number 157 of 2009 Article 5 explains that judges as law enforcers are tasked with examining, adjudicating and deciding a case submitted to them. In order to achieve justice, the panel of judges in deciding a case in court, especially criminal cases, must be based on relevant regulations as a law enforcer.

Judges are prohibited from rejecting cases submitted to him, because this is related to the judge's code of ethics. If a case submitted to the judge contains elements of norm emptiness or ambiguity of norms, then the judge is authorized to adjudicate and decide the case by exploring and finding new laws or laws that are appropriate to be applied to the case. Based on the verdict, there are three types of judges' decisions in criminal acts, namely Free Verdicts, Loose Verdicts, and Criminal Verdicts.

In this regard, the judge's consideration of the defendant Ni Ketut Alit Astari, in the Denpasar District Court Decision Number 1460/Pid.B/2019/PN Dps. In this case, the Panel of Judges gave a verdict to impose a criminal sentence on the defendant NI KETUT ALIT ASTARI, SH therefore with a prison sentence of 2 (two) years and 6 (six) months because the defendant legally and convincingly (Article 193 paragraph (1) of the Criminal Code) has committed the crime of Fraud, as stipulated in Article 378 of the Criminal Code.

Regarding the court decision Number 1460/Pid.B/2019/PN Dps from the information provided by the witnesses, clues were obtained whose conclusion was that a criminal act of fraud had occurred and this can be proven from the statements given by witnesses and defendants that there was a match between one incident and another (Article 188 paragraph (1) of the Criminal Code). So, in this case there are 3 (three) valid pieces of evidence as stipulated in Article 184 of the Criminal Code, namely witness statements, instructions and statements of the defendant, then from these three pieces of evidence, the Panel of Judges also obtained confidence that it is true that the defendant Ni Ketut Alit Astari is guilty of committing a criminal act of fraud.

The elements in the indictment can be explained well by the Public Prosecutor by combining these elements with the material acts (facts) committed by the defendant (Article 143 paragraph (2) letter b of the Criminal Code) and the facts at the trial prove that the defendant really committed a criminal act as stipulated in Article 378 of the Criminal Code with the presence of witnesses, defendants and evidence attached to the verdict. The evidence presented at the trial was then confiscated to be destroyed with the aim that the evidence could no longer be used to commit a criminal act (Article 194 paragraph (1) of the Criminal Code).

The District Court's Decision Number 63/Pid.B/2020/PN.SMN that the Defendant can be declared to have committed the criminal act charged against him by taking into account the aforementioned legal facts considering first the first alternative indictment as stipulated in Article 378 of the Criminal Code jo. Article 55 paragraph (1) to 1 of the Criminal Code, which meets the elements of Whose goods, that based on the above, the Judge is of the opinion that there is no *error in persona* in the Public Prosecutor's indictment, so that the element of "whose goods" has been fulfilled.

Considering, that "deception" is an act that can be witnessed by others either accompanied by or not accompanied by a speech, which by that action gives rise to a belief in something or hope for others while what is meant is a "series of lies".

Considering, that every element of intentionality in the formulation of a criminal act is always aimed at the element behind it or in other words, the element behind the word "intentionally" is always covered by the element of intentionality, in which case the intention is aimed at the element of

- a. Using authentic deeds, as if the contents are in accordance with the truth.
- b. The use of the deed can cause losses. That in the use of the authentic deed here, the Defendant must consciously wish to use or use the authentic deed as if its contents are in accordance with the truth, and the Defendant must also know, understand and be aware of

the consequences arising from his actions, which may cause losses.

Considering, that in the indictment submitted at the trial, the defendant was charged with having malicious intent to make Deeds whose clauses were not in accordance with the actual legal events that occurred by preparing administrative data and lying words, committing tricks to persuade the witness Suhartinah to change the debt and receivables agreement into a sale and purchase agreement to the detriment of the witness Suhartinah;

Considering, that after the Panel examined the evidence submitted at the trial, based on the facts revealed at the trial as the testimony of the witness Nora Laksono, the witness Suwarno, the witness Supriyono, the witness Aziz Zamkarim and the witness Rodyyah and the witness Lehan Junaedi when connected with the evidence of the inheritance letter, the IPT letter and the deeds as well as the decision of the civil case No. 53/Pdt.G/2014/PN.Smn dated January 19, 2015 jo. Appeal Decision No. 68/PDT/2015/PT YYK dated October 08 2015 jo. Cassation Decision No: 2385 K/PDT/2016 dated December 14, 2016.

The plea of the Defendant's Legal Counsel that the Public Prosecutor could not prove the existence of the debt and receivables agreement in question and did not comprehensively consider the relationship of witnesses and the evidence submitted at the trial so that a statement submitted by the witness could then immediately negate a legal event, while the witness Suhartinah and the witness Intan Rahayu Nur Hidayah nor the witness Retno Yuliasuti and the witness Yusa Tri Indra Putra could not show other evidence that supports his statement; From the testimony of the 2 (two) witnesses when they later studied the decision of the civil case No. 53/Pdt.G/2014/PN. Smn dated January 19, 2015 jo. Appeal Decision No. 68/PDT/2015/PT YYK dated October 08, 2015 jo. Cassation Decision No: 2385 K/PDT/2016 dated December 14, 2016, both the subject and object and the postulates submitted are identical and appropriate where in the Cassation decision dated December 14, 2016 it is still won by the witness Nora Laksono as the Defendant and against the object of the dispute has been executed by the Sleman District Court, then for all the deeds that are involved in the case, if it is associated with the testimony of the witnesses above, there has been a conformity that it turns out that it is true that there has been a sale and purchase between witness Suhartinah and witness Nora Laksono, not debts and receivables as referred to in the indictment.

Regarding this element, the Panel of Judges does not need to consider it further because Article 55 paragraph (1) of the Criminal Code is incidental with the main article, namely Article 378 of the Criminal Code;

Considering, that because the first alternative charge that has been considered is not proven, the Panel of Judges considers the second alternative charge as stipulated in Article 266 paragraph (2) of the Criminal Code jo. Article 55 paragraph (1) to 1 of the Criminal Code, whose elements include 'whose goods', 'deliberately uses an authentic deed containing false information as if the contents are correct and its use may cause harm.'

Considering, that based on these considerations, according to the Panel of Judges, the element of "deliberately using an authentic deed containing false information as if the content is true which may cause losses is "not fulfilled".

Considering that the element of "deliberately using an authentic deed containing false information as if the contents are correct which may cause harm" is not fulfilled, the Panel of Judges does not need to consider it further because Article 55 paragraph (1) of the Criminal Code is *accessoir* with its main article, namely Article 266 paragraph (2) of the Criminal Code;

Considering, that because one of the elements of Article 266 paragraph (2) of the Criminal Code is not fulfilled, the Defendant must be declared not legally and convincingly proven to have committed a criminal act as charged in the second alternative indictment so that the Defendant must be acquitted of the charge.

Considering, that since the second alternative charge that has been considered is not proven, the Panel of Judges considers the third alternative charge as stipulated in Article 264 paragraph (1) 1 of the Criminal Code, whose elements are 'whose goods' against this element have similarities with the second alternative charge as described above, the Panel of Judges *mutatis mutandis* adopts the legal considerations on the first charge, So that the element of "whose goods" has been fulfilled.

Falsifying Letters Against Authentic Deeds that if what is meant by the forged letter is the file in the Land Use Permit (IPT) brought by the witness Aziz Zamkarim to take care of the application for a land use permit (IPT) at the Sleman Regency Government Licensing Service Office, this according to the Assembly as stipulated in this indictment the letter in question is not an official letter made by the authorized Public Official, but only in the form of a complete letter to take care of the IPT and for that, the element of "forging authentic deeds" is not fulfilled".

Considering, that because one of the elements of Article 264 paragraph (1) 1 of the Criminal Code is not fulfilled, the Defendant must be declared not legally and convincingly proven to have committed a criminal act as charged in the third alternative indictment so that the Defendant must be acquitted of the charge.

After the author reads and studies the case above, the author analyzes and explains the judge's considerations in deciding the case of Decision Number 63/Pid.B/2020/PN. SMN and Decision Number 1460/Pid.B/2019/PN. The DPS on the two verdicts has two different statements, the first is declared guilty and the second is declared innocent, so the author analyzes through the most important stage in the examination at trial, namely proof. Proof aims to obtain certainty that an event/fact proposed actually occurred, in order to obtain a correct and fair judge's decision. The judge cannot make a decision before it is clear to him that the event/fact actually happened, that is, it is proven to be true, so that there is a legal relationship between the parties.

Based on the facts through evidence at the trial, the Notary defendant was declared not guilty, so he was acquitted of all charges by the public prosecutor. The prosecutor could not prove the elements charged and it was proven in court that the buying and selling in the case was legal. Decision Number 63/Pid.B/2020/PN Smm, the panel of judges gave a pure free verdict against the notary defendant.

HIR and the Criminal Procedure Code, as well as the old and new *Nederland se Strafvordering*, all adhere to the theory of proof based on the law negatively (*negatief wettelijk bewijs theorie*). This can be inferred from the reading of Article 183 of the Criminal Procedure Code or Article 294 paragraph (2) of the HIR, namely: "The judge

shall not impose a criminal sentence on a person unless with at least two valid pieces of evidence he obtains confidence that a criminal act really occurred and that the defendant is guilty of committing it".

Conclusion

Notaries and PPAT must strictly adhere to the code of ethics and legal procedures to avoid legal consequences, as mistakes or fraudulent actions can result in criminal, civil, and administrative sanctions. A guilty verdict against a notary can reduce public trust in the profession and create legal uncertainty in contractual agreements.

The court's decision in fraud cases involving notaries can differ based on evidence, legal interpretation, and application of the rules. Preventive legal protections (such as stricter regulations and increased public awareness) as well as repressive legal protections (criminal penalties and legal remedies through the courts) are essential to protect parties aggrieved by fraudulent notary actions. Emphasizing the need for stricter supervision, compliance with professional ethics, and consistency in legal decisions to ensure fairness and legal certainty in notary practice.

Reference

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Legislative Provisions

1. Kitab Undang-Undang Hukum Perdata (KUHPerdata)
2. Kitab Undang-Undang Hukum Acara Pidana (KUHAP)
3. Undang-Undang Pokok-Pokok Hukum Agraria
4. Undang-Undang Nomor 48 Tahun 2009 tentang Kekuasaan Kehakiman
5. Putusan Nomor 1460/Pid.B/2021/PN. DPS
6. Putusan Nomor 63/Pid.B/2019/PN SMN
7. Undang-Undang Nomor 30 Tahun 2004 tentang Jabatan Notaris sebagaimana telah diubah dengan Undang-Undang Nomor 2 Tahun 2014 tentang Perubahan atas Undang-Undang Nomor 30 Tahun 2004 tentang Jabatan Notaris.