



The implications of notarial deed made by the notary with suspect status

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Abstract

Notary as a public officials has authority to make authentic deed, he has important role in society because the deed is required as perfect evidence. The notary profession is trusty position that has liability. However, practically in field a notary has done some violations. This study describes the power evidence of notarial deed that made when they are suspect.

Many criminal cases related with notary profession make them to has liability over the deed that they made. The results of this study are a notary as suspect remains allowed to make deed, and it will be authentic deed and be perfect evidence when it is made under the notary law. A notary can't make a deed when the notary be arrested and has fixed sentence (inkracht).

Keywords: notary, authentic deed, suspect

1. Introduction

Today, notary services is highly required in supporting various implementation of activities in the civil field. Article 1 paragraph (1) of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Position (hereinafter will be written UUJN) states that Notaries are public officials who are authorized to make authentic deeds, and have other authorities as referred to in this law or based on other laws.

The philosophical basis of the Law on Notary Position No. 2 of 2014 hereinafter referred to as UUJN is the realization of legal certainty, order and protection of law with core truth and justice. Through the deed he made, the Notary must be able to provide legal certainty to the community ^[1]. It is expected through the authentic deed can assure legal certainty, order and protection and minimized disputes. If occurs a dispute, the deed can be a written evidence, most strong, meet the requirement then give real support in dispute settlement for society that need. In running him duty, the notary must to be a profesional man with a noble personality based on always carrying out their duties in accordance with applicable laws and regulations while at the same time upholding the code of ethics of the Notary profession as a sign that must be obeyed

Public trust in the Notary is also a public trust in the deed he made, which is why Notary position often referred to trust position. Government trust as an agency that appoints and terminates the Notary as well as the public's trust in Notary service. The increasing need for Notary services makes the Notary profession even more important, this is supported by the existence of legislation in the Notary field which is expected to provide a role in the Notary profession association. Basically the notary institution is one of the institutions in the community that arises because of the need for association, which requires the existence of legal evidence for them ^[2]. Because the notary institution is an institution that is needed by the community in making

evidence for them in the form of an authentic deed, this is where the notary profession is needed.

As a public official, a Notary is required to be responsible for the deed he has made. If the deed made turns out contains a dispute then this can be questioned, whether this deed is the fault of the Notary or the fault of the parties. If the notary deed contains a legal defect that occurs due to the mistake of the Notary both because of his negligence and because of Notary intent, the Notary must provide responsibility ^[3].

The notary's liability is closely related to the duties and authorities and morality both as a person and as a public official. The notary may make a mistake or fault in carrying out his duties and position as a notary and if in this case a notary is proven to make a mistake and cause harm to the parties concerned with the deed, the notary can be prosecuted in civil or criminal suit. If the notary is proven to have made a mistake in making a deed and / or in carrying out his or her duties and position as a Notary, then the suspect can be made in a criminal offense. Based on the description above, it is interesting to discuss and study more deeply about the power of evidence of Notary Deed Made by a Notary with Suspected Status.

2. The implications of notarial deed that made by the notary with suspect status

2.1 Power of evidence the notarial deed

A notary is public officials that only has authority to make an authentic deed concerning an action, deal, or stipulation that required by law for stipulating in an authentic deed, assure the date, keep the deed and provide grosse, copies and excerpts, all during the making of the deed by a general rule are also not assigned or excluded to officials or others.

Notary is a public officials that has authority to make an authentic deed and other authorities under the law ^[4].

The authentic deed commonly covers formal facts according to information of the parties to notary.

¹ H. Salim HS. dan H. Abdullah, *Perancangan Kontrak dan MOU*, (Jakarta: Sinar Grafika, 2007), hal. 101-102.

² Abintoro Prakoso, *Etika Profesi Hukum* (LaksBang Justitia 2015), hal 135.

³ Habib Adjie (a), *Hukum Notaris di Indonesia, Tafsir Tematik Terhadap Undang-Undang Nomor 30. Tahun 2004 Tentang Jabatan Notaris* (Bandung: Rafika Aditama, 2008), hal. 24.

⁴ G.H.S. Lumban Tobing, *Peraturan Jabatan Notaris*, (Jakarta: Erlangga, 1999), hal. 51.

Even the notary has duty to state that what containing in the deed truly understood and according to the parties willing which is by read it then the contains is clear and gives access concerning the information including access concerning statutory provision related for the signers in running his position, impartiality and independency.

G.H.S. Lumban Tobing states

“A deed made by notary is a deed containing “relaas” and describes authentically an action taken or condition that seen or witnessed by the notary himself, in running his position as a notary. Deed that is made in such a way and contains a description of what was seen and witnessed and experienced was called a deed made "by" (door) Notary (as a public official). However, the Notarial Deed may also contain a "story" of what happened because of an act carried out by another party to the Notary in carrying out his position and for the purpose for which the other party intentionally came before the Notary and gave that statement or did the act before the Notary, so that the statement or deed is notified by a notary in an authentic deed. Such deeds are called deeds made in front of the notary (*ten overstaan*).”^[5]

There are 2 types/groups of notarial deed, as follows^[6]:

1. Deed draw up by (door) notary, known by term “Relaas Deed” or “Official Record”.
2. Deed made in front of notary, known by term “Akta pihak” atau “akta parti”.

To be called an Authentic Deed, it must be in accordance with the guidelines contained in the Notary Position Act, which consists of^[7]:

1. The beginning of the deed or the head of the deed, which contains:

- a. Title of deed;
- b. Deed number;
- c. Hours, days, dates, months and years;
- d. Full name and domicile of the Notary who made the deed

2. The deed body, contains

- a. Full name, place and date of birth, nationality, occupation, position, incumbency, residence of the parties and / or people who represent them;
- b. Information regarding the position of the respondent;
- c. The contents of the deed which is the will and desire of the parties concerned; and
- d. Full name, place and date of birth, and occupation, position, position and place of residence of each identifying witness.

3. End or closing the deed, contains

- a. A description of the reading the deed as referred to in Article 16 paragraph (1) letter m or Article 16 paragraph (7) of Law Number 2 of 2014: Reading the deed in front of the parties is attended by at least 2 (two) witnesses and signed at that time also by the parties, witnesses, and notaries (Article 16 paragraph m UUJN). The reading the deed as referred to in paragraph (1) letter m is not required if the parties that the deed is not read because the registrant has read it himself, knows and

understands its contents provided that it is stated in the deed closing as well as on every page of the minutes of the deed signed by the parties and Notaries (Article 16 paragraph 7 UUJN)

- b. A description of the signature and place of signing or translation of the deed if any;
- a. Full name, place and date of birth, occupation, position, incumbency and residence of each witness of the deed; and
1. Description of the absence of changes that occur in the making of the deed or a description of the changes that can be in the form of additions, deletions, or replacements.

Notary Deed as evidence has power of perfect evidence, if all the provisions of the procedure for making the deed are fulfilled. If there is a procedure that is not fulfilled, and the procedure that is not fulfilled can be proven, then the deed by a court process can be declared as a deed that has power of evidence as a deed underhand. If it has been like that, then the value of the evidence is submitted to the judge. Deed made by a Notary Public is an authentic deed that has power of perfect evidence by fulfilling the provisions of Article 16 Letter M of the Notary Position Law that the Notary Public is required to read the Deed in front of the parties, attended by at least 2 (two) witnesses, or 4 (four) special witnesses for the making of a will in the hands, and signed at the same time by the parties, witnesses, and notaries^[8]. In addition, the automatic deed has power of perfect evidence by fulfilling the provisions of Article 1868 of the Civil Code and fulfilling the authenticity requirements of the deed, which is compiled, read and signed. The certainty of the deed date must also be guaranteed.

2.2 Legal Presumption in notarial deed assessment

Notary Deed as a product of a public official, the assesment of Notary Deed must be carried out with the principle of legal presumption (*vermoeden van rechtmatigheid*) or the presumption of *iustae causa*^[9]. This principle can be used to assess a notarial deed, which is where the notary deed is considered valid until there is a party that states the deed is invalid. To declare or assess the deed is invalid must be filed with a general court. During and as long as the lawsuit runs until there is a court decision that has permanent legal force (*inkracht*), then the notarial deed shall remain binding on the parties or anyone with an interest in the deed^[10]. By applying the principle of legal presumption for notarial deed, the provisions mentioned in Article 84 of the UUJN affirm if the Notary violates (does not) the provisions referred to in Article 16 paragraph (1) letter m, Article 38, Article 39, Article 40 concerned only has the power of evidence as a deed underhand is no longer needed, then the cancellation of a notarial deed can only be canceled or null and void by law.

3. The deed made by a notary in suspected position

Notary is a profession and also as a public official. The authority of a public official is obtained directly from the highest authority, from the state,^[11] and therefore in carrying

1999), hal. 51.

⁶ Habib Adjie (b), *Sekilas Dunia Notaris dan PPAT Indonesia (Kumpulan Tulisan)*, cet. 1, (Bandung: CV. Mandar Maju, 2009), hal.45.

⁷ Habib Adjie (a), *Op. Cit.*, hal. 45.

⁸ Indonesia, *Undang-Undang Jabatan Notaris*, UU No. 2 Tahun 2014, LN No. 3 Tahun 2014, TLN No. 5491

⁹ Philipus M. Hadjon, *Pemerintah Menurut Hukum (Wet-en Rechmatig Bestuur)*, cet., 1, (Surabaya: Yuridika, 1993), hal. 5.

¹⁰ Habib Adjie (c), *Op. Cit.*, hal 79-80

¹¹ Freddy Haris, *Notaris Indonesia* (Jakarta 2017), hal 45.

out his position, a Notary has the authority to make an authentic deed regarding all deeds, agreements and stipulations required by statutory regulations and / or desired by the interested parties to be stated in authentic deed. The notary public is authorized to make the deed, then the notary is obliged to account for it in accordance with Article 38 of the UUJN, which is the responsibility of the Notary at the beginning of the deed or head of the deed and at the end of the deed or closing the deed. At the beginning of the deed written about the title of the deed, the deed number, the time, and the full name and place, and at the end of the deed or closing the deed is also the responsibility of the notary, because at the end of this deed contains about the description of the deed reading as Article 16 paragraph (1) letter m or Article 16 paragraph (7)

As it is known that the quantity of notaries is very high, therefore it is possible for violations of the deed making and the duties and positions. Internal and external pressures from the environment and weak self-defense are the cause of most notary persons today who easily fall into not ideal notary practices that reduce the essence of overall and dignity as a public official. The UUJN regulates that when a Notary in carrying out his duties and positions is proven to have committed a notary violation, he may be subject to sanctions or be subject to sanctions in the form of civil, administrative or criminal sanctions. relating to the profession of Notary, so the Notary must be able to take responsibility for the authentic deed made and indicate a criminal act. Every act that violates the law must naturally through a process of investigation, research and trial as well as other legal processes, both civil and criminal.

Related with such matters, these problems often fall into criminal law. This legal dispute certainly does not only have implications for the Notary who made the deed, but it can also have implications for the deed itself. Notaries who break the law and carry out their positions intentionally or due to negligence can not be calm anymore. Parties who have loss can make a complaint to the Notary Supervisory Board and the Police. If the Notary neglects his duties and nobility of his dignity and violates Law Number 2 of 2014 concerning the Notary Position and other applicable laws and regulations, the Supervisory Board may act decisively to impose sanctions. It is also possible for the relevant Notary to be sued in court, both in civil and criminal cases

Legal actions contained in a notarial deed may contain juridical defects, which may result in the cancellation of the deed and notary liability both from the UUJN, Civil Law and Criminal Law^[12]. In UUJN stipulated that when a Notary in carrying out his / her office duties is proven to have committed a violation, the Notary may be subject to sanction in the form of civil sanction, administration, and the code of ethics of Notary position, and the sanctions have been regulated in such a way, in UUJN and the Notary Position Code of Ethics. A criminal sanction is an ultimatum remedium that is a last attempt, if the sanction or efforts at other branches of law do not work or are deemed not effective^[13]

However, both UUJN and the Notary Code of Ethics do not regulate criminal sanctions against Notaries, because Law

Number 2 of 2014 concerning Notary Position does not regulate criminal sanctions, so in the event of a criminal violation against a Notary may be subject to criminal sanctions contained in the Criminal Code, with a note that the punishment of the Notary can be carried out with the following limitations:

1. There is a legal action by the Notary on the physical, formal and material aspects of the deed that are intentional, full of awareness and conviction, and it is planned that the deed to be made in front of the Notary or by the Notary with the parties (agree) are used as a basis for committing a criminal offense.
2. There is a legal action by a Notary in making a deed before or by a Notary who if measured according to UUJN is not in accordance with UUJN.
3. The Notary action is also inappropriate according to the authorized institution to evaluate Notary actions, in this case the Supervisory Board.

Imposition of criminal sanctions against Notaries can be carried out as long as the limits are violated, meaning that in addition to fulfilling the formulation of the violations mentioned in the Law, the Notary Code of Ethics must also fulfill the formulations stated in the Criminal Code.

If the desire and knowledge of the suspect or one of them above turns out to be unable to prove them, then there is automatically no reason for them to declare the defendant to have been proven to have intentionally committed the criminal act intended in the criminal provisions stipulated in Article 266 paragraph (1) Criminal Code, and the judge must give a verdict "acquitted" from lawsuits or free from lawsuits for the defendant.

The principle of presumption of innocence, this principle we encounter in the general explanation of item 3 letter c of the Criminal Procedure Code. This principle has also been formulated in article 8 of the Basic Law on Judicial Power No. 14 of 1970 which reads: "Everyone who has been suspected, arrested, detained, prosecuted and confronted before a court hearing, must be presumed innocent until a court ruling states his guilt and obtained permanent legal force".

For example, cases disputed in court involving a notary as a suspect will be described as follows:

1. Case of Notary R. Soeharto, S.H. The criminal case committed by Notary R. Soeharto, SH has been decided in the Supreme Court's Cassation Decision Number 385 K / Pid / 2006 April 18, 2007. In the Supreme Court judge's appeal cassation ruling stated that the Defendant: R. SOEHARTO, S.H. has not been proven legally and convincingly guilty of committing a criminal offense alleged in the Primair and Subsidair. He acquitted from the charges of Primair and the Subsidair. Restore the Defendant's rights in his ability, position, incumbency and dignity^[14].
2. Case of Notary Gerardine Supasiah, S.H. Criminal case committed by Notary Gerardine Supasiah, S.H. has been decided in the Supreme Court's Cassation Decision Number 2468 K / Pid / 2006 dated July 18, 2007. In the Supreme Court judge's appeal ruling stated that the

¹² Pieter E. Latumeten, *Cacat Yuridis Akta Notaris Dalam Peristiwa Hukum Konkrit dan Implikasi Hukumnya*, (Jakarta: Tuma Press, 2011), hal. 79.

¹³ Habib Adjie (a), *Op. Cit.*, hal 123-124.

¹⁴ Putusan Kasasi Mahkamah Agung Nomor 385 K/Pid/2006 tanggal 18 April 2007.

Defendant was still acquitted, the case fee was charged to the State ^[15].

Concerning with the status of a notary who becomes a suspect, that the notary carries out his duties based on his authority, and his decree appoints him as a notary. As long as he has the authority and the decision letter is not revoked, the notary will still be authorized to carry out his position and can still make the deed. In the Law on the authority of a notary whose status as a suspect is not regulated. In UUJN the situation where a notary is not authorized (onbevoegd) in making an authentic deed, there are:

1. Before the Notary takes an oath / appointment as a Notary (Article 7 UUJN)
2. as Notary is suspended (suspension)
3. as Notary leave
4. as the Notary was detained / imprisoned, Article 9 of the 2014 UUJN states that the Notary was temporarily dismissed from his position because:
 - a. In the bankruptcy process or postponement of debt payment obligations
 - b. Under remission
 - c. Commit disgraceful deeds
 - d. Violating the obligations and prohibitions of office.
 - e. Still in detention ^[16].

In accordance with article 9 letter e, it is not possible that a Notary performs his duties and positions when he is in detention, meaning that if a Notary has been determined as a suspect but there is no termination letter and permission to carry out his duties are revoked, the notary can still make a deed. The suspect means that a notary has been reported to the authorities. But in this case it does not directly give or determine the notary suspect status, there must first be a report from the public. A Notary who has been legally as a suspect cannot be dismissed as a Notary, because it is still in process and there is no permanent legal decision (inkracht) for his case.

Based on above sentences, it can be said that the deed drawn up by a Notary with suspected status is an authentic deed as long as it meets the deed authenticity requirements, drawn up, read and signed. The certainty of the date must also be guaranteed. Deed made by a Notary whose status as a suspect still has power of perfect evidence by fulfilling the provisions of Article 1868 of the Civil Code and fulfilling the provisions of Article 16 paragraph (1) m, that is, a Notary is obliged to read the deed in the presence of the person at least 2 (two) witnesses and signed at the same time by the parties, witnesses, and notaries. And in accordance with what is described above that a notary can be canceled as a suspect or acquitted. Then the status of the suspect does not necessarily cause a Notary to be dismissed from his position and the deed he made becomes null and void.

Thus the status determination of a suspect notary did not change the deed legality he made. So the deed can still be used as perfect evidence power.

4. Conclusions

The deed made by a notary who has a suspect status is an authentic deed as long as it meets the requirements for

authenticity of the deed, which is drawn up, read and signed. The certainty of the date must also be guaranteed. Deed made by a Notary whose status as a suspect still has perfect evidence power by fulfilling the provisions of Article 1868 of the Civil Code and fulfilling the provisions of Article 16 paragraph (1) letter m, which means that a Notary is obliged to read the deed in the presence of the person at least 2 (two) witnesses and signed at the same time by the parties, witnesses, and notaries. Thus the status of a suspect notary did not change deed legality he made. So the deed can still be used as perfect evidence power. The deed drawn up by a notary in his status as a suspect is an authentic deed that is legally binding on the parties or anyone who has an interest in the deed until a party declares the deed to be invalid. And the Notary as a suspect is not necessarily guilty and must uphold the presumption of innocence. Whether or not a person is determined after a court decision has a definite legal force.

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11. *Undang-Undang Jabatan Notaris, UU No. 2 Tahun 2014, LN No. 3 Tahun 2014, TLN No. 5491*.

¹⁵ Putusan Kasasi Mahkamah Agung Nomor 2468 K/Pid/2006 tanggal 18 Juli 2007.

¹⁶ Indonesia, *Undang-Undang Jabatan Notaris*, UU No. 2 Tahun 2014, LN No. 3 Tahun 2014, TLN No. 5491