

LEGAL CONSEQUENCES OF NOTARIES PARTICIPATING IN FORGERY OF DOCUMENTS IN ORDER TO MAKE AUTHENTIC DEEDS

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ABSTRACT

This inquire about points to analyze the lawful results of legal officials who participate in falsifying documents to create authentic deeds. The investigate strategy is regulating. The source of lawful materials utilized is auxiliary legitimate materials. The approach utilized may be a statutory approach, Law Number 2 of 2014, an amendment to Law Number 30 of 2004 concerning the Position of Legal officials. The results of this research are the legal consequences of a Notary who creates fake documents to complete a deed, namely a Notary who is proven to have falsified documents to make a deed has violated the 2015 INI Banten Notary Code of Ethics Article 3 paragraph (4). Considering that an authentic deed is a perfect means of proof, forgery results in the deed becoming legally flawed and becoming a fraudulent deed. Secondly, there are three forms of ideal responsibility for the actions of a Notary who falsifies documents, namely criminal responsibility with elements of Articles 55 and 56 of the Criminal Code, civil responsibility with elements of Article 1365 of the Civil Code, and administrative responsibility in accordance with the authority of the Notary Honorary Council.

Keywords: Notary, Authentic deed, Document falsification, Responsibility

INTRODUCTION

A public accountant is characterized as a open official who has the specialist to create bona fide deeds and other specialists as alluded to in Law Number 2 of 2014 concerning amendments to Law Number 30 of 2004 concerning the Position of Public accountants, hereinafter alluded to as UUJN. Public accountants as open authorities are guided by UUJN. Based on the national legal system, a notary is a public official, namely a state organ that speaks to and acts for and on sake of the state in carrying out its obligations of giving administrations to the common open within the field of gracious law. The definition given by UUJN alludes to the obligations and specialists carried out by public accountants. This implies that a legal official has obligations as a open official and has the specialist to form bona fide deeds and other specialists directed by UUJN. Public accountant specialist can be found in Article 15 passage (1) UUJN. In this arrangement, it is expressed that the legal official has the specialist to form bona fide deeds with respect to deeds, understandings and arrangements required by statutory directions and/or which are craved by interested parties to be expressed in bona fide deeds, ensure certainty of the date of making the deed, store the deed, give grosses, duplicates and quotation of deeds, all this as long as the making of the deeds isn't moreover allotted or prohibited to other authorities or other individuals as decided by law (Abdul Ghofur, 2009: 14). The presence of a Notary/PPAT is exceptionally vital in people's lives, since a Notary/PPAT ensures lawful certainty to the community with respect to the making of bona fide deeds. To form this true deed, the administrations of a Notary/PPAT are required, so that the true deed can be acknowledged by all parties concerned and can have legitimate certainty (Priska Talitha Fatimah, 2020: 542).

The Law on Notary Positions has regulated the Authority of Notaries in Article 15 paragraph (1) UUJN which states the following things.

"Legal officials have the specialist to form true deeds with respect to all deeds, assentions and stipulations that are required by statutory controls and/or that are wanted by interested parties to be expressed in true deeds, ensure the certainty of the date of making the deed, store the deed, give grosses, duplicates and citations deed. All this as long as the deed isn't doled out or avoided to other authorities or other individuals as decided by law."

The errand of carrying out the office of a legal official is to deliver prove required by the parties for a specific lawful activity. The public accountant makes a deed at the ask of the parties. The legal official makes a deed based on prove, data or articulations of the parties expressed, clarified or appeared to the legal official. Different mistakes experienced by public accountants in making a deed can be caused by the public accountant himself. This could moreover be caused by the parties being untrustworthy in giving data or giving wrong data, causing misfortunes to one of the parties. In truth, it causes misfortunes to the public accountant who makes the understanding. This requires public accountants to be held responsible for their activities, within the form of gracious sanctions, regulatory sanctions, and criminal sanctions. This could allow rise to the presumption that it is conceivable that the notary beside the parties made a deed with the deliberate of carrying out an act that's not in agreement with appropriate controls. In the event that the Public accountant is demonstrated to have committed this act, it is required for him to be given sanctions.

FORMULATION OF THE PROBLEM

1. What are the lawful results of a Legal official who creates fake documents to complete a deed?
2. What is the ideal form of accountability for the actions of a Notary who falsifies documents?

RESEARCH METHODS

The sort of inquire about utilized in this investigate is doctrinal with a standardizing approach. The approach utilized could be a statutory approach, specifically Law Number 2 of 2014 with respect to corrections to Law Number 30 of 2004 concerning the Position of Legal officials. The legitimate materials utilized are auxiliary legitimate materials, the information investigation strategy utilized is subjective and the comes about of the examination are displayed in a clear way, from which answers to issues will be gotten and conclusions can be drawn on the answers to these issues.

DISCUSSION

What are the legal consequences of a Notary who creates fake documents to complete the deed?

The presence of a Notary/PPAT is exceptionally essential in people's lives, since a Notary/PPAT ensures lawful certainty to the community with respect to the making of true deeds. To create this true deed, the administrations of a Notary/PPAT are required, so that the true deed can be acknowledged by all parties concerned and can have legitimate certainty. The obligations and specialists of Public accountants have been affirmed in Article 15 of Law Number 30 of 2004 as takes after:

- (1) (1) The legal official has the specialist to create true deeds with respect to all deeds, understandings and arrangements required by statutory controls and/or which are craved by interested parties to be expressed in true deeds, ensure certainty of the date of making the deed, store the deed, give grosses, duplicates and citations of the deed, all this as long as the making of the deeds isn't too doled out or avoided to other authorities or other individuals as decided by law.
- (2) Notaries also have the authority to:
 1. Validate the signature and decide the certainty of the date of the letter beneath the hand by enlisting it in a uncommon book;
 2. Book records secretly by enlisting them in a uncommon book;
 3. Make duplicates of unique letters beneath your hand within the shape of duplicates containing depictions as written and portrayed within the letter concerned;
 4. Validate the reasonableness of the photocopy with the initial letter;
 5. Providing lawful counseling with respect to the making of deeds;
 6. Make deeds related to arrive;
 7. Make a deed of sell off minutes.

Based on the obligations and specialist of Public accountants as affirmed within the UUJN, (Habib Adjie, 2008: 78) separates them into three spaces of specialist, specifically common specialist (Article 15 passage 1 UUJN), extraordinary specialist (Article 15 paragraph 2 UUJN), specialist which can be decided afterward (Article 15 paragraph 3 UUJN). The reason of common specialist is the specialist to form deeds in common with restrictions as long as:

1. Other officials as determined by law are not excluded.
2. Concerning deeds that must be made or authorized to create bona fide deeds with respect to all activities, assentions and arrangements required by legitimate directions or wanted by the individual concerned.
3. Regarding the lawful subject (individual or legitimate substance) for whose advantage the deed was made or craved by the interested individual (Habib Adjie: *ibid*).

The 2015 INI Banten Public accountant Code of Morals too controls the commitments of Legal officials and other individuals (as long as the individual concerned carries out the position of Legal official) must:

1. Have great ethics, ethics and identity;
2. Respect and maintain the honor and nobility of the Notary's position;
3. Maintain and protect the honor of the Affiliation;
4. Behaving truly, autonomously, unbiasedly, reliable, intensive, full of obligation, based on statutory controls and the substance of the Notary's pledge of office;
5. Improving existing information and proficient aptitudes isn't constrained to lawful and notarial information;
6. Prioritize benefit to the interface of society and the State;
7. Providing administrations for making deeds and other specialists for destitute individuals without collecting an honorarium;
8. Determine one office at the residence which office is the as it were office for the Legal official concerned in carrying out his every day office obligations;
9. Install 1 (one) nameplate in front of/in the office environment with a choice of sizes, specifically 100 cm x 40 cm, 150 cm x 60 cm or 200 cm x 80 cm, containing: a. Full title and legitimate title; b. Date and number of the final Proclaim of arrangement as Legal official; c. House; d. Office address and telephone/fax number. The base of the nameplate is white with dark letters and the composing on the nameplate must be clear and simple to studied. Unless within the office environment it isn't conceivable to introduce the nameplate in address;
10. Attend, take after and effectively take an interest in exercises organized by the Affiliation;
11. Respect, comply, execute Affiliation Controls and Decisions;
12. Pay Affiliation contribution in an efficient way;
13. Paying condolence cash to assist the beneficiaries of a companion who kicked the bucket;
14. Implement and comply with all arrangements with respect to honorarium decided by the Affiliation;
15. Carrying out the position of Public accountant in his office, but for certain reasons;
16. Creating an climate of connection and harmony in carrying out office obligations and day by day exercises as well as treating colleagues well, regarding each other, regarding each other, making a difference each other and continuously attempting to build up communication and ties of fellowship;
17. Treating each client who comes well, does not separate between financial status and/or social status;

18. Make deeds inside sensible limits to actualize statutory directions, particularly the Law on Public accountant Positions and the Code of Morals.

In any case, in reality, indeed in spite of the fact that Legal officials in carrying out their positions have been controlled by UUJN and the Code of Morals, there are still numerous Public accountants who intentionally adulterate deeds, both within the substance of the deed and supporting records that will be utilized as a premise for making the deed, there are too those who misrepresent the signature of the individual display. Without realizing it, the Notary's actions in falsifying letters/documents made the deed he made into a private deed. An authentic deed made by a Notary is considered a perfect means of proof, meaning only one piece of evidence is sufficient as a basis for deciding the case, the authentic deed is considered to be true and the party arguing is burdened with proving the truth of their objection. According to Article 1869 of the Civil Code, an authentic deed can have its evidentiary power reduced or degraded from having perfect evidentiary power to only having the evidentiary power of being written privately.

An authentic deed has 3 (three) types of evidentiary power, namely: (Novia Dwi Cahyani Fauzal, 2021: 198)

1. "The quality of outside or outside prove is the formal prerequisites vital for a Notarial deed to be substantial as an true deed;
2. The quality of formal confirmation is the certainty that the occasions and truths specified within the deed were really carried out by the Legal official and will be clarified by the parties showing up;
3. The quality of fabric prove is the certainty that what is expressed within the deed is substantial prove that the parties who made the deed are those who have the rights and are substantial for the open unless there's confirmation to the opposite." if the open official who made the deed isn't authorized to form the deed or in the event that the deed is imperfect in frame.

Meanwhile, the words form in Article 1868 and Article 1869 of the Civil Code, in the author's opinion, are not form in the physical sense but form in the juridical sense, so that the definition of form in these Articles can be interpreted as a procedure for making authentic deeds. As is known, the laws or regulations determine the requirements that must be fulfilled in order for a deed to be called an authentic deed.

Forgery of documents is regulated in Chapter XII of Book II of the Criminal Code, the forms of which are:

1. Forgery of letters in standard shape or essential frame, which is additionally known as misrepresentation of letters in common, carries a greatest punishment of detainment of 6 (six) a long time. (Article 263):
2. Forgery of a letter is disturbed, the criminal disturbance is put on the sorts of letters, which concurring to their nature contain reasons for exacerbation. The sanctions forced are more serious, to be specific the danger of detainment for a greatest of 8 (eight) a long time. (Article 264):
3. Ordering to incorporate wrong data in an bona fide deed is an act which in reality gives data (almost something) to an official who makes the bona fide deed, which data is to be included within the bona fide deed made by the official who made the bona fide deed. The endorse forced may be a greatest detainment of 7 (seven) a long time (Article 266).

The ideal form of accountability for the Notary's actions in falsifying documents.

The obligation of a legal official as an open official for true deeds that are made and indicate criminal acts is very necessary, even though the realm of notary work is within the domain of gracious law and regulatory law as well as moral and ethical responsibilities, but for deeds that are made and indicate criminal acts, the notary must be criminally responsible. starting from examination in the investigation process to the evidentiary process at trial and implementing the judge's choice which has lasting lawful constrain.

1. This claim for responsibility arose since a dispute occurred regarding a deed that had been made fulfilling the elements of a criminal act including:
 - a. Human actions. Actions are actions and events that result from those actions. Moeljatno accepts that what is implied by human activities in criminal acts are behavior furthermore occasions that result from the behavior. He advance expressed that:

"In criminal law, there are positive and negative actions or behaviors. In terms of positive and negative behavior. In cases of positive behavior the defendant does something, whereas in cases of negative behavior a person does not do something that should be done. What is implied by behavior is physical demeanor, since not doing something cannot be included in this definition and what is included within the definition of behavior is constrained as it were to cognizant physical states of mind."
 - b. Fulfilling the definition of statutory directions, meaning that the rule of legitimacy applies, *nulum delictum nulla poena sine praevia lege poenali* (no act is denied and culpable by criminal law in the event that this can be not or has not been expressed within the statutory directions).
 - c. Is against the law.

Separated from the two components over, to be categorized as a criminal act it must too fulfill the third component, to be specific the component of being against the law, this component is an supreme component of a criminal act (Risa Hermawati, 2020: 165). "actus non facit reum nisi mens sit rea". It is incomprehensible for individuals to be held capable and rebuffed on the off chance that they have not done anything off-base. In any case, somebody who commits a criminal act may not fundamentally be rebuffed. Individuals who commit criminal acts will be rebuffed in case they have made a botch. The principle of criminal law states "there is no punishment if there is no mistake" (An act does not make an individual blameworthy unless the intellect is blameworthy or *actus non facit reum nisi mens sit rea*). To be criminally at risk, a Notary/PPAT must fulfill the taking after components:

- a. Committing a criminal act. In this case, a legal official is suspected of committing a criminal act which come about within the issuance of a notarial deed based on wrong data. Without a criminal act, it is inconceivable for a legal official to be held responsible beneath criminal law;
- b. Have the ability to be responsible. To be held accountable under criminal law, a notary must have the ability to take responsibility. As previously stated, one of the conditions for a mistake in the broadest sense is the ability to take

responsibility, which is essentially the mental state of the perpetrator, namely the mental state is such that it becomes the basis for justifying the imposition of a crime. This means that a person can be held responsible under criminal law if that person is deemed capable of responsibility. This provision also applies to notaries, meaning that a notary can be held criminally liable if he has the capacity to take responsibility, and if he has the will, has the aim and interest for the realization of the criminal act;

- c. With intent or negligence. A criminal act committed by a notary in the case of making a deed based on false information can be intentional or negligent. To be held criminally liable, a notary must have made a mistake, either intentionally or through negligence.
- d. There is no excuse for forgiveness. A notary can be held criminally liable if there is no excuse.

In connection with the Notary/PPAT having an obligation to serve the community, the criminal act was not committed alone, but there was the involvement of several parties. In criminal law, this is called inclusion which is regulated in Article 55 of the Criminal Code as a perpetrator and Article 56 of the Criminal Code as an accessory. Participation is two or more people committing a criminal act, or in other words, two or more people taking part in carrying out a criminal act.

2. Civil liability

This gracious risk can take the frame of repayment of costs, stipend or intrigued which can be claimed against the Notary/PPAT and must be based on a legitimate relationship between the Notary/PPAT and the parties who show up some time recently the Notary/PPAT, in the event that there's a party who feels impeded as a coordinate result of a deed Notary/PPAT, at that point the individual concerned can record a respectful claim against the Notary/PPAT. Notaries/PPATs who are not parties to the agreement laid out within the deed can as it were be sued civilly on the premise of illegal acts as directed in Article 1365 of the Gracious Code which states:

"Every act that violates the law, which causes loss to another person, requires the person whose fault it was to cause the loss, to compensate for the loss."

Paying attention to the provisions of Article 1365 of the Civil Code above, it contains the following elements:

- a. Acts that abuse the law; Abusing the law implies an act or activity of the culprit that violates/is against the law. Since 1919, there was a choice by the Dutch Incomparable Court within the case of Capture Cohen-Lindenbaum (HR 31 January 1919), which at that point extended the definition of against the law not as it were constrained to laws (composed law as it were) but too unwritten law, as takes after : Damaging the law, damaging the subjective rights of other individuals, opposite to the perpetrator's legitimate commitments, opposite to profound quality, opposite to the fitting demeanor of caution in society.
- b. There must be a mistake; There are 2 (two) errors, they may well be deliberateness or careless. Pondering implies there's mindfulness that a typical individual would know that the results of their activities will hurt other individuals, whereas carelessness implies there's an act of disregarding something that ought to be done, or not being cautious or cautious so that it causes hurt to other individuals.
- c. There must be harm done; Losses are divided into 2 (two), namely material and immaterial. Material losses are losses whose amount can be calculated. Immaterial losses, namely the amount cannot be calculated.
- d. There must be harm done; Losses are divided into 2 (two), namely material and immaterial. Material losses are losses whose amount can be calculated. Immaterial losses, namely the amount cannot be calculated.

3. Administrative responsibility

Administratively, the law authorization rebellious within the Public accountant Position Law incorporate preventive measures (supervision) and severe measures (inconvenience of sanctions). Preventive steps are taken through customary review of legal official conventions and conceivable infringement of the code of morals in carrying out the office of legal official. In the interim, severe steps are carried out through the inconvenience of sanctions by:

- a. The Territorial Supervisory Committee, within the frame of a verbal caution and written warning and has the proper to propose to the Central Supervisory Board brief rejection for (three) 3 months to (six) 6 months and dishonorable expulsion.
- b. The Central Supervisory Council, within the shape of brief rejection and has the correct to propose to the serve a dishonorable rejection.
- c. Minister, within the shape of dishonorable rejection and dishonorable rejection.

CONCLUSION

1. Notaries in carrying out their positions as open authorities who are given the specialist to create true deeds are controlled by Law Number 2 of 2004 as corrected by Law Number 2014. Public accountants who are proven to have distorted records to create deeds have damaged the 2015 INI Banten Public accountant Code of Morals Article 3 passage (4), to be specific Carrying on truly, freely, fair-mindedly, reliable, intensive, full of duty, based on statutory directions and the substance of the Notary's pledge of office. And a misrepresented deed comes about within the deed getting to be legitimately imperfect / corrupted.
2. Notaries who have been proven to have falsified documents must be held accountable for their actions. Criminal responsibility if it meets the elements contained in Article 55 and Article 56 of the Criminal Code, Civil responsibility if it meets the elements in Article 1365 of the Civil Code, Administrative responsibility in accordance with the authority of the Notary Honorary Council.

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