

The Validity of the Power of Attorney Based on the Parties' Forgive Documents



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ABSTRACT: Notaries as officials have the authority to make authentic deeds as well as other authorities as regulated in Law Number 2 of 2014 concerning Notary Position Regulations. Notaries are responsible for what is witnessed, seen, and also carried out by the notary himself as a public official who carries out his position. This research is a normative research with a descriptive analytical approach to legislation. The purpose of this research is to examine and further analyze the validity of the notarial deed made based on forged documents by the appearers. The results of the study indicate that the making of a Power of Attorney based on a forged document is null and void and the Notary is not responsible if the appearers provide false documents because the notary is not obliged to investigate materially about everything presented by the appearers.

KEYWORDS: Power of Attorney, Notary, Fake Documents.

I. INTRODUCTION

A notary is a public official appointed by law in making an authentic deed and at the same time a notary is an extension of the government. In carrying out the position of a notary, he must be able to behave professionally and comply with laws and regulations and uphold the notary code of ethics. The notary as a public official is required to be responsible for the deed he made, namely legal responsibility and moral responsibility. The deed made by a notary can be a legal basis for the status of property, rights and obligations of a person. Mistakes in the deed that have been made by a notary can cause a person's rights to be revoked or someone's burden of an obligation to be revoked, therefore the notary in carrying out his duties must comply with the various provisions stipulated in the Law on Notary Positions. The task of carrying out the position of a notary is to make the evidence needed by the parties for a certain legal action. Notary makes a deed at the request of the parties. Notary makes a deed based on evidence, statement or statement of the parties stated, explained or shown to the notary. Notaries also play a role in providing legal advice to parties related to existing problems.

Whatever advice the notary gives to the parties which is then poured into the deed in question, it remains as the wishes and statements of the parties. Not as a statement or notary statement. Notary makes a deed based on evidence, statement or statement of the parties stated, explained or shown to the notary. Notaries also play a role in providing legal advice to parties related to existing problems. Whatever advice the notary gives to the parties which is then poured into the deed in question, it remains as the wishes and statements of the parties. Not as a statement or notary statement. Notary makes a deed based on evidence, statement or statement of the parties stated, explained or shown to the notary. Notaries also play a role in providing legal advice to parties related to existing problems. Whatever advice the notary gives to the parties which is then poured into the deed in question, it remains as the wishes and statements of the parties. Not as a statement or notary statement. Then it remains as the wishes and information of the parties.

Authentic deeds are made because they are required by laws and regulations to establish certainty, order, and legal protection. In addition, an authentic deed is made by or before a Notary, not only because it is required by laws and regulations, but because it is desired by interested parties to ensure the rights and obligations of the parties for the sake of certainty, order, as well as legal protection for interested parties and at the same time to protect the rights and obligations of the parties concerned. Society as a whole. This is intended so that the community who acts as an opponent in carrying out legal actions obtains a basis to be used as a strong evidence. On this basis, a Notary can carry out his duties and authorities in carrying out his position. 4 2021

Notaries as ordinary people, in carrying out their duties, may make mistakes or violations intentionally or unintentionally. Notaries who are proven to have violated the obligations and prohibitions of Notaries as regulated in Articles 16 and 17 of the UUJN, can be given sanctions in the form of civil sanctions, administrative sanctions, and code of ethics sanctions or criminal sanctions. Regarding criminal provisions there are no regulations in the UUJN but the responsibility of a Notary related to crime is imposed if the Notary commits a criminal act. UUJN only regulates sanctions for violations committed by Notaries against UUJN. The sanctions can be in the form of a deed made by a Notary that does not have authentic power or only has the power of an

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underhand deed. In this case, it does not mean that the Notary is free from the law or cannot be punished or is immune from the law. A Notary can be punished if it can be proven in court that the Notary intentionally or unintentionally together with the parties/appearers made a deed with the intent and purpose only to benefit certain parties or appearers or harm others. If this is proven, the Notary must be punished. Therefore, only Notaries who are not professional in carrying out their duties, when making a deed for the benefit of certain parties with the intention of harming certain parties or to commit an act that violates the law.

In practice, it is often found, if there is a notary deed that is disputed by the parties or other third parties, the notary is often withdrawn as a party who participates in committing or assisting in committing a criminal act, namely intentionally providing opportunities or means in a criminal act of fraud. In this case, the notary intentionally or unintentionally, together with the parties or appearers, to make a deed with the intent and purpose of benefiting only certain parties or appearers or harming other appearers must be proven in court. Notary deed made according to the will of the interested parties to ensure or guarantee the rights and obligations of the parties, certainty, order and legal protection of the parties. The notary deed essentially contains the formal truth in accordance with what the parties have notified the public official (notary). The notary is obliged to include in the deed what has really been understood in accordance with the wishes of the parties and to read to the parties the contents of the deed. The statement or statement of the parties by the Notary is stated in the Notary deed.

One example of a case that brought a Notary into the criminal realm occurred in Sentence Supreme Court Number 20 PK/PID/2020 dragging the notary into the criminal realm who was charged with intentionally providing opportunities, facilities or information for falsifying letters against the deed of power to the parties in the form of documents that are no longer valid in the power of attorney to sell number 03 dated November 4, 2014. The notary makes a deed of power of attorney to sell which both parties agree for binding land payments by deleting the receivables belonging to Mahendro (Witness/Victim) which is with Gunawan Priambodo (Witness/Suspect). Gunawan Priambodo (witness/suspect) sold the land with the certificate of Hak Guna Bangunan 7062/Kelurahan Benoa on behalf of PT. The nuances of Bali Utama by bringing documents in the form of a Sale and Purchase Binding Agreement (PPJB) No. 30 dated November 20, 2012 between Witness Gunawan Priambodo and PT. The nuances of Bali Utama and Deed of Power of Attorney No. 31 dated November 20, 2012 where the power of attorney has been revoked and a copy of the deed should be returned to the Notary who made the deed of power of attorney to sell containing that PT. Nuansa Bali Utama authorized Gunawan Priambodo to sell a plot of land with an area of 4179 m² with HGB: 6327/ Benoa from original area/ global area of 6063 m² on behalf of PT. Main Balinese nuance.

The causes of the problems referred to above can arise indirectly due to the negligence of the Notary, can also arise indirectly due to fraud by the parties. If the cause of the problem arises due to the negligence of the Notary not meeting the applicable provisions, the deed only has the power of proof as an underhand deed, or becomes null and void, which can be a reason for the parties to ask for compensation from the Notary, in the event that the cause of the problem arises as a result of dishonesty of the parties regarding the correctness of the material requirements as the basis for making the deed resulted in the deed being null and void.

II. METHOD

This type of research is a normative legal research. In this study, based on Peter Mahmud Mazuki, legal research was conducted to provide arguments, theories or new concepts as perceptions in solving the problems faced. Therefore, legal research is a process to find the rule of law, legal principles, as well as legal doctrines. Normative legal research is also known as doctrinal research. Research by conveying judgments and legal decisions that have occurred in accordance with legal norms. The approach used is a descriptive analytical approach to legislation.

III. DISCUSSION

Validity of Notary Deed Made Based on False Documents

The life of a developing community requires legal certainty in traffic agreements that occur in society. Legal certainty can be obtained from written evidence that has perfect evidentiary power. In general, the legal evidence or those recognized by law consist of: a) Written evidence; b) Witnesses; c) Allegations; d) Recognition; e) Oath. The proof in writing is done with an authentic deed or with a deed under the hand. Both authentic deeds and private deeds are made with the aim of being used as evidence. The main difference between the two types of deed is in the evidentiary value, the authentic deed has perfect proof but the private deed has the power of proof as long as the parties/participants acknowledge it or there is no denial from one of the parties, if the parties admit it, then the deed under the hand has perfect proof as an authentic deed, if one of the parties does not admit it, the burden of proof is handed over to the party who denies the deed and the assessment of the denial of the evidence is submitted to the judge.

According to Sudikno Mertokusumo, a Notary deed as an authentic deed has the power of outward (*Uitwendige Bewijskracht*), Formal (*Formele Bewijskracht*) and Material (*Materiele Bewijskracht*) evidence. The value of outward proof is a form of the ability of the deed itself to prove its validity as an authentic deed (*acta publica probant sese ipsa*). If it is seen from the outside (its birth) as an authentic deed and in accordance with the legal rules that have been determined regarding the terms of an authentic deed, then the deed is valid as an authentic deed, until it is proven otherwise, that is until there is proof that the deed is not an authentic deed.

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outwardly authentic deed. According to Habib Adjie, in this case the burden of proof is the existence of parties who deny the authenticity of the notary deed. Parameters to determine the Notary deed as an authentic deed, namely the signature of the Notary concerned, both in the Minutes and Copies and the beginning of the deed (starting from the title) to the end of the deed. Outwardly it does not need to be contradicted with other evidence. If someone judges that a Notary deed does not meet the requirements as a word, then the person concerned must prove that the deed is not outwardly an authentic deed. Habib Adjie further stated that the denial or denial that outwardly a Notary deed is an authentic deed, not an authentic deed, then the assessment of evidence must be based on the requirements of the Notary deed as an authentic deed. This kind of proof must be done through a lawsuit to the court. The plaintiff must be able to prove that outwardly the deed that is the object of the lawsuit is not a notary deed.

Regarding the value of formal proof, the notary deed must convey certainty that an event and fact in the deed has been properly carried out by the notary or explained by the party who comes before the time stated in the deed in accordance with the procedures specified in the making of the deed. Formally to prove the truth and certainty about the day, date, month, year, time (time) when appearing, and the parties who came before the court, the initials and signatures of the parties/appearances, witnesses and notaries, as well as to prove what has been seen, witnessed, heard by the Notary and recorded the information given by the appearers/parties. If there are parties who deny the formal proof of the deed, it must be carried out with a lawsuit to the general court.

The value of material evidence is certainty about the material of a deed, that what is written on the deed is valid evidence against the parties who made the deed or those who have rights and applies to the public, unless there is evidence for the party who made the deed. The statement or statement contained in the official deed (or official report) or information or the parties given/delivered before a Notary (deed of party) and the parties must be judged to have correctly stated it which is then stated and contained in a valid deed as a truth or Every person who appears before a Notary whose statement is then poured out and included in the deed must be judged to have spoken the truth. If the statements or statements of the presenters are incorrect, say, then it is the responsibility of the parties themselves. If you want to prove the material aspect of the deed, then the person concerned must be able to prove that the Notary did not explain or state the truth in the deed (official deed), or the parties who have said correctly said (in the presence of a Notary) have not said correctly, and must reverse evidence is carried out to refute the material aspects of the notary deed.

The three points above represent the perfection of the notary deed as an authentic deed and whoever is bound by the deed. If it can be proven in a court trial, that one of these aspects is not true, then the deed under the hand or the deed is degraded in its proving power as a deed which has the power of proof as an underhand deed. Both private deed evidence and authentic deed both must fulfill the formulation regarding the validity of an agreement based on Article 1320 BW and based on Article 1338 BW the agreement is materially binding on the parties who make it as an agreement that must be fulfilled by the parties. In contract law there are certain legal consequences if the subjective and objective conditions are not met. If the subjective conditions are not met, the agreement can be canceled (*vernietigbaar*) as long as there is a request by certain people or interested parties. Meanwhile, if the objective conditions are not met, then the agreement is null and void (*nietig*), without the need for a request from the parties, thus the agreement is considered to never exist and does not bind anyone.

According to Peter Mahmud Marzuki, an agreement that is absolutely void can also occur, if an agreement made is not fulfilled, even though the law has determined that the legal act must be made in a predetermined way or contrary to decency or public order. Because the agreement is considered non-existent, then there is no longer any basis for the parties to sue each other or sue in any way and form. Notary deed as a product of a public official, then the assessment of the notary deed must be carried out on the basis of a valid presumption (*vermoeden van Rechtmatigheid*) or *presumptio iustae causa*. This principle can be used to evaluate a Notary deed, that is, a Notary deed must be considered valid until a party declares that the deed is invalid. To declare or judge that the deed is invalid, it must be carried out by a lawsuit to the general court. As long as and as long as the lawsuit continues until a court decision has permanent legal force, the Notary deed remains valid and binding on the parties or anyone with an interest in the deed. In a lawsuit to declare the Notary deed invalid, it must be proven the invalidity of the external, formal, and material aspects of the Notary deed.

The principle of valid presumption This relates to a deed that can be canceled, which is an act containing defects, namely the notary's authority to make an external, formal, material deed, and is not in accordance with the legal rules regarding the making of a notary deed. This legal presumption principle applies provided that the notarial deed has never been submitted for cancellation by the interested party to the general (state) court and there has been a general court decision that has permanent legal force or the notary deed has no evidentiary power as an underhand deed. or not null and void or not canceled by the parties themselves. Thus, the application of the principle of legal presumption for a Notary deed is limited if the provisions as mentioned above are met. According to Hatta Isnaini Wahyu Utomo, the main basis in making a notarial deed is that there must be a desire or will and a request from the parties. If the parties wish does not exist, then the notary will not make the intended deed. The appearers come to the notary so that their legal actions or actions are formulated into an authentic deed in accordance with the authority of the notary, then the notary makes a deed at the request or desire of the appearers. The appearers come with their own awareness and express

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their wishes before a notary, which is then poured into the form of a notarial deed according to the applicable law, and it is impossible for a notary to make a deed without a request from anyone.

As described above, the Notary only formulates the will of the parties to the deed. A Notary Deed is an agreement between the parties that binds them to make it, therefore the legal requirements of an agreement must be fulfilled. Article 1320 BW which regulates the conditions for the validity of the agreement, there are subjective conditions, namely conditions relating to the subject who enters into or makes an agreement, which consists of an agreement and being able to act to carry out a legal act, and objective conditions, namely conditions relating to the agreement itself or relating to an object that is made into a legal act by the parties, which consists of a certain thing and a cause that is not prohibited. The conditions for the validity of the agreement are embodied in a notarial deed. Subjective requirements are included in the beginning of the deed and objective requirements are included in the body of the deed as the contents of the deed. Thus, if at the beginning of the deed, especially the terms of the parties appearing before a Notary do not meet the subjective requirements, then at the request of a certain person the deed can be cancelled. If the contents of the deed do not meet the objective requirements, then the deed is null and void.

The authentic deed made before a Notary is based on the wishes/intentions of the parties. The notary only confirms and formulates in the deed what the parties have explained based on the agreement that has been made by the parties themselves. In making the deed, it is also possible that the appearer will come using false evidence or provide false information to the Notary. As mentioned above, the making of a Notary deed is also subject to the law of the agreement. The existence of false information or evidence provided by the parties to the Notary can be categorized as a bad faith which results in the violation of the objective conditions of the agreement, which is a permissible cause. This condition can result in the Notary deed being null and void.

Notary Accountability Against Deed Containing False Documents

Based on the provisions in Article 16 paragraph (1) of the UUJN, namely the notary in carrying out his position is obliged to act trustworthy, honest, thorough, independent, impartial, and protect the interests of the parties involved in legal actions. Notary in carrying out his duties, if proven to have committed a violation, or act against the law, the notary may be subject to sanctions in the form of civil, administrative and ethical sanctions for the position of a notary. Sanctions contained in UUJN in Article 84. Based on Article 84 a notary can be said to have committed a violation if in carrying out his duties his position is not in accordance with his obligations. In UUJN there is no article that stipulates that a notary has an obligation to carry out a deeper investigation into the material truth brought by the appearers to a notary. This is also emphasized in the Jurisprudence of the Supreme Court Decision Number 702k/Sip/1973 which says the function of a Notary is to only record or write what is desired and stated by the parties who appear, there is no obligation given to the notary to investigate materially stated by the parties or facing. This means that everyone who appears before the notary is considered correct in relation to the information he submitted to the notary. This means that a lie or false statement given by the appearers which is then poured by a notary into a deed will be the responsibility of the parties appearing, therefore related to the power of attorney to sell made by a notary cannot be said to intentionally provide opportunities, means or statement of falsification of letters, because the notary has carried out his duties as regulated in Article 15 paragraph (1) of the UUJN.

The notary has the authority to guarantee the certainty of the date of making the deed. The date in question is the date the deed was inaugurated. Other powers granted to a notary are the authority to keep the deed, provide copies and quotations of the deed and make a grosse deed, which is one of the copies of the deed for debt acknowledgment which has executorial power such as a judge's decision. Notaries who are human beings also do not escape from negligence or mistakes in making the deed, if the error occurs either due to intentional or error or negligence, then the notary can be asked for responsibility both in terms of criminal, civil or administrative law. Notary administrative sanctions are given based on the provisions of Article 85 UUJN which can be imposed in the form of: (1) verbal warning, (2) written warning, (3) temporary dismissal, (4) Dismissal with honor, (5) dismissal with disrespect.

The responsibility of the Notary in the crime against the deed made is not regulated in the UUJN, but the responsibility of the Notary is criminally imposed if the Notary commits a criminal act. One of these criminal provisions is regulated in Article 263 of the Criminal Code. According to its substance in Article 263 paragraph 1 it has two elements, namely (1) objective elements consisting of (a) making fake letters, (b) falsifying letters, (c) being able to issue a right, which can be issuing an agreement / engagement, which can be used as evidence for something. (2) subjective elements, namely (a) to use or use the letter as if it were genuine and not fake, (b) the use and use of the letter may cause harm.

The results of the author's analysis that the Notary in the case of the Supreme Court's Decision Number 20/PK/PID/2020 did not help the defendants to assist the false deed that harmed the plaintiff. Viewed from the subject (perpetrator) side, it means that when the notary's actions in making an authentic deed do not carry out the existing provisions, it is not automatically concerned, namely the notary cannot be held accountable, because the notary only records what was conveyed by the parties to be poured into the deed. Documents that are no longer valid or fake by the parties will be the responsibility of the parties themselves. So what can be accounted for by a notary is if the fraud comes from the notary himself.

CONCLUSIONS

Notary deed is a formulation of the agreement of the parties that have binding power for them to make it, therefore the legal requirements of an agreement must be fulfilled. A Notary deed made based on false evidence violates the objective conditions of the agreement regarding a lawful cause so that a Notary deed based on false evidence is null and void. The form of the notary's responsibility in the event of a fake document made by the parties in the making of the deed. Based on the Law on Notary Positions Number 2 of 2014, namely Articles 15, 16, and 17 concerning the Authorities, Obligations and Prohibitions of Notaries. So the notary is not responsible for fake documents and false information made by the parties or the appearers. Because basically in carrying out his position a Notary is subject to the laws and regulations. Notaries can only prove that they are not materially responsible.

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