

Legal Protection For Notaries Against False Information Given By Participants In The Drafting of Authentic Deeds

Jane Maria Octavia^{1*}, Ana Silviana²

^{1,2} Faculty of Law, Universitas Diponegoro, Semarang, Indonesia.

@ :: janemariaoct8@gmail.com

Corresponding Author*



Abstract

Introduction: A problem that often occurs in connection with the implementation of the duties of a Notary is if there is a Notarial deed that is faulted by the parties, especially if the parties come to the Notary with false information or fake evidence.

Purposes of the Research: This research aims to analyze the validity of a notary's statement which is based on evidence that is declared to be fake and legal protection for notaries for fake statements.

Methods of the Research: This research uses normative legal research methods by looking for solutions and legal issues that arise, which will be achieved and then provide predictions. Legal approach and conceptual approach, with primary and secondary legal materials.

Results of the Research: Based on Supreme Court Decision Number 702/J/Sip/1973 dated September 5 1973, the Notary who recorded what was shown and conveyed by the person facing, there is no obligation for the notary to investigate materially. In this way, the Notary is not asked to be held responsible for losses incurred because the parties provided false information.

Keywords: Legal Protection; Notary; False Information.


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INTRODUCTION

Deeds are the strongest and most complete evidence that has an important part in every legal relationship in life in society. Both in various business relationships, activities in the banking sector, land, social activities, the need for written evidence in the form of authentic deeds is increasing along with the growing demand for legal certainty in various social relationships both in businesses involving large companies, and individuals. Authentic deeds clearly determine rights and obligations, guarantee legal certainty, legal protection, and are also expected to avoid disputes. Although in reality in the process of disputes it cannot be avoided, authentic deeds which are the strongest and most complete evidence can help in resolving cases quickly and efficiently.

An authentic deed essentially has formal truth in accordance with what the parties have informed the Notary. However, the Notary has an obligation to enter data that what is contained in the Notarial Deed has been truly understood and is in accordance with the wishes of the parties based on the law on the office of notary, namely by reading it so that the contents of the Notarial Deed become clear, and provide a way to information including

a way to related laws and regulations for the parties to be able to freely determine to agree or disagree with the contents of the Notarial Deed that they have signed.¹

A Notarial Deed is an agreement that binds the parties who make it, therefore the requirements for a valid agreement must be met. Article 1320 of the Civil Code which regulates the requirements for a valid agreement are: Subjective conditions, namely conditions relating to the subject who enters into an agreement or makes an agreement, which consist of an agreement and the capacity to act to carry out a legal act; and Objective conditions, namely conditions related to the agreement itself or related to the object that is made the legal act by the parties which consist of a certain thing and a prohibited reason.

In every agreement 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 or null and void as long as there is a request from certain people or stakeholders. This subjective condition is always overshadowed by the threat to be canceled by the interested parties. If it turns out that in the future the parties feel that there is something that violates the subjective conditions and/or there is no agreement that can bind the parties, then this can be resolved through a lawsuit which will be given a decision by the Court. If the objective conditions are not met, the agreement is null and void, without any request from the parties, then it can be concluded that it is considered never to have existed and bind anyone.²

Notarial Deeds that have been made as Private Deeds and/or the cancellation of Notarial Deeds by Court Decision, give consequences of legal responsibility for the Notary for the Deed that was cancelled. This is understandable, because it results in losses for the parties interested in the Deed so that the person concerned is not entitled to claim losses. The importance of the role of a notary in creating propriety and truth cannot be separated from the fact that between one party and another in carrying out legal relations to make an agreement, there is a balance of position. This cannot be separated from the knowledge of the community which still tends to be low in understanding the laws of the agreements they make. Notaries who are given the rights and authority by law to make deeds of the parties, are expected to be able to arbitrate the interests of the parties in order to make agreements that are in line with legal principles.

Notaries are in the realm of preventing legal problems through authentic deeds which are made as the most perfect evidence in Pengadilan. Moreover, Indonesian Notaries adhere to the Anglo Saxon Legal System which only acts as a ratifier of agreements, like America. However, Indonesian notaries are Continental Europeans who have the authority to provide legal advice and check whether the agreement made meets the correct terms of the agreement and without harming either party.

METHODS OF THE RESEARCH

In writing this research, the data analysis method used in this writing uses the Normative Juridical method, so that a comprehensive picture is obtained of the responsibilities of the

¹ Habib Adjie, *Hukum Notaris Indonesia Tafsir Tematik Terhadap Undang-Undang Nomor 30 Tahun 2004 Tentang Jabatan Notaris* (Bandung: Refika Aditama, 2008).

² Wulan Wiryantari Dewi and Ibrahim R, "Kekuatan Hukum Pelekatan Sidik Jari Penghadap Oleh Notaris Pada Minuta Akta," *Acta Comitas : Jurnal Hukum Kenotariatan* 5, no. 3 (2020): 436-45, <https://doi.org/10.24843/AC.2020.v05.i03.p01>.

parties who are proven to have falsified documents for the making of Notarial Deeds. Descriptive in nature, which is interpreted as a type of research that provides a complete and complete picture of a process that is a unit of analysis with the target to be achieved is to have systematically about the responsibility of Notaries for the cancellation of deeds made according to Law Number 2 of 2014 which is an amendment to Law Number 30 of 2004 concerning the Position of Notaries. Descriptive research provides an opportunity in this study to fully describe the process that is to be realized in answering the assumptions or research questions raised.

RESULTS AND DISCUSSION

A. Factors Influencing the Occurrence of False Information in the Making of Authentic Deeds Carried Out by the Applicant

A notary is a public official who is authorized to make authentic deeds regarding all agreements and determinations required by general regulations or which are desired by interested parties to be stated in an authentic deed.³ Legal experts also say that an authentic deed is a deed made by an official who is given the authority to do so by the authorities according to the provisions that have been set, either with or without the authorities according to the provisions that have been set, either with or without the assistance of interested parties, who records what is requested of the parties.⁴ In general, a deed is just a collection of signed letters but it contains information about events or things that are the basis of an agreement. In other words, it can be interpreted that a deed is a writing whose contents state a legal act.

The deed has an authentic nature because in making the deed the parties come before a notary, where according to the statutory regulations, the requirements for a valid agreement in Article 1320 of the Civil Code, which regulates the need for an agreement from both parties, the ability of both parties in making an agreement, the existence of a certain thing to be agreed upon, the agreement made does not conflict with a lawful power or does not conflict with statutory regulations.⁵

Article 1 of the Notary Law regulates the authenticity of a deed which has perfect proof, whoever is involved in the deed, as long as it cannot be proven otherwise by a court decision that has permanent legal force. Regarding the authenticity of a Notary deed, Soegondo Notodisojo further stated that in order to make an authentic deed, a person must have the position of a "Public Official". An authentic deed is referred to as a perfect deed because the deed is not only made based on applicable laws and regulations but also because it is made before a notary or authorized public official.⁶

³ Laurensius Arliman S, "Pemanggilan Notaris Dalam Rangka Penegakan Hukum Paska Perubahan Undang-Undang Jabatan Notaris," *Justitia et Pax* 32, no. 1 (2016): 1-15, <https://doi.org/10.24002/jep.v32i1.758>.

⁴ Valentine Phebe Mowoka, "Pelaksanaan Tanggung Jawab Notaris Terhadap Akta Yang Dibuatnya," *LEX ET SOCIETATIS* 2, no. 4 (2014): 59-67.

⁵ Retna Gumanti, "Syarat Sahnya Perjanjian (Ditinjau Dari KUHPerdara)," *Jurnal Pelangi Ilmu* 5, no. 01 (2012): 1-12, <https://ejurnal.ung.ac.id/index.php/JPI/article/view/900>.

⁶ Kunni Afifah, "Tanggung Jawab Dan Perlindungan Hukum Bagi Notaris Secara Perdata Terhadap Akta Yang Dibuatnya," *Lex Renaissance* 2, no. 1 (2017): 147-61.

An authentic deed is strong and full evidence that plays an important role in every legal relationship in people's lives.⁷ In various civil relations, the need for written evidence in the form of authentic deeds is increasing in line with the growing demand for legal certainty. Through authentic deeds that clearly determine rights and obligations, guarantee legal certainty, and at the same time it is hoped that they can also avoid disputes.

R. Sugandi in his explanation said that false information is information that is incorrect or contradicts the actual information.⁸ Regarding what is actually meant by false information. So if information is obtained that is false, if part of the information is not true even though this part has a meaning that is not so important, it cannot be thought of as an intention to provide false information.⁹ So in making a deed, there are factors that influence the making of an authentic deed based on a false letter or statement. First, the Notary's ignorance that the letter is false, because in making a deed, a notary must not be suspicious and must believe any information presented to him, therefore the Notary has the potential to not know the real truth of the information given by the parties who are facing him.¹⁰ Second, the party making the deed has bad faith, where intentionally one or both parties who want to make the deed make a fake letter and provide false information to the Notary which letter or false information is used as the basis for making an authentic deed. Third, the Notary ignores the principle of caution. The Notary ignores the principle of caution in this case meaning that the Notary does not introduce both parties based on the identities given to the parties who appear before the Notary, the Notary is not careful and not thorough in examining related documents, both subjects and objects that will later be included in the deed to be made by the Notary. Fourth, there is a conspiracy between the Notary and the interested party in making the deed, where the Notary cooperates to participate in including false information in the deed.¹¹

B. Notary's Responsibility for Deeds of Debt as Authentic Deeds Containing False Information

Notaries are considered by the public as officials from whom one can obtain reliable advice in the preparation of strong documents in a legal process. Public officials are officials appointed by the State to represent the general authority of the State in providing legal services to the public in the field of civil law in order to create certainty, order and legal protection. The form of Notary services to the public is in the form of making authentic deeds containing formal truths in accordance with the reasons notified by the parties who appear before the notary. So that notarial deeds can be used as evidence in a legal dispute.¹² Notarial deeds have the power in the field of criminal law as a result of the attitude of some notaries who make people doubt the material truth of the legal events stated in the deeds they have made, even though what was made is an authentic deed and according to the law

⁷ Rahmad Hendra, "Tanggungjawab Notaris Terhadap Akta Otentik Yang Penghadapnya Mempergunakan Identitas Palsu Di Kota Pekanbaru," *Jurnal Ilmu Hukum* 3, no. 1 (2012): 1–22, <https://doi.org/10.30652/jih.v3i01.1029>.

⁸ Justino Armando Mamujaja, "Penerapan Pasal 242 KuHPidana Terhadap Pemberian Keterangan Palsu Di Atas Sumpah," *Lex Crimen* 3, no. 2 (2014): 12–21, <https://ejournal.unsrat.ac.id/index.php/lexcrimen/article/view/4541>.

⁹ P.A.F Lamintang, *Dasar-Dasar Hukum Pidana Indonesia* (Bandung: Citra Adya Bakti, 2011).

¹⁰ Alda Mubarak, Sukirno, and Irawati, "Perlindungan Hukum Para Pihak Dalam Pembuatan Akta Notaris Yang Berstatus Tersangka," *Notarius* 13, no. 1 (2020): 22–36, <https://doi.org/10.14710/nts.v13i1.29159>.

¹¹ Desy Rositawati, I Made Arya, and Desak Putu Dewi Kasih, "Penyimpanan Protokol Notaris Secara Elektronik Dalam Kaitan Cyber Notary," *Acta Comitas : Jurnal Hukum Kenotariatan* 2, no. 2 (2017): 172–82.

¹² Mowoka, "Pelaksanaan Tanggung Jawab Notaris Terhadap Akta Yang Dibuatnya." *Op. Cit.*

is a valid evidence.¹³ This is because there are still many notarial deeds that are disputed by the parties or other third parties, so notaries are often drawn as co-defendants who are considered to have participated in carrying out or assisting or providing false information in the deed. Notarial deeds have formal power by being notified by the parties to the Notary. If the Notarial Deed later becomes problematic or causes losses to one of the parties in the deed, then in this case the Notary cannot be directly blamed or held accountable.

When the Notary has exercised his authority in accordance with the regulations that have been determined, the Notary cannot be held accountable. So that the notary has no obligation for all matters conveyed by the person appearing in the form of documents or words conveyed to the notary whether they are lies or not. So from here it is known that the obligation of the notary profession is only to record what is conveyed by the parties to be produced into a deed. So false information conveyed by the parties is the responsibility of the parties.¹⁴ It is known that the principle of caution is a very important thing to be considered by every profession. Moreover, in this case the notary profession has its own definition of the principle of caution. The notary profession has implemented the principle of caution, if in the process of making a deed it has been in accordance with applicable procedures, reading the deed to the parties, matching photocopies of documents with original documents, this is part of implementing the principle of caution.

In accordance with the provisions of the Supreme Court Decision Number 302 K/Sip/1973 dated September 5, 1973, which states that a Notary is only obliged to record what is stated and requested by the parties. So there is no obligation for a notary to investigate materially regarding matters stated by the parties to the Notary. The deed has perfect legal force so that it is called an authentic deed, so there is no need to prove the truth of the deed. If there are parties who doubt the truth of the deed, then they are the ones who must prove the untruth of the deed.¹⁵ In the judicial process, of course, a notarial deed has a perfect and binding nature, so that if an authentic deed is submitted as evidence, then it certainly directly fulfills the truth of its formal and material requirements and the opposing evidence presented in court does not reduce the value of the deed. Perfect and binding is what the judge must assess to be used as a basis for resolving disputed cases.¹⁶ So in requesting the accountability before there is a final court decision, the notarial deed must be said to be a valid and binding deed.¹⁷ So if there is false information provided by the parties appearing, in this case the Notary is not responsible nor can he be held accountable nor can he be held liable for any losses arising from the false information provided by the parties appearing.

However, if it is discovered that the notary is aware of the act of falsifying documents or information by the parties, of course indirectly the notary continues to work with the parties

¹³ P. A. F Lamintang and Theo Lamintang, *Delik-Delik Khusus Kejahatan Membahayakan Kepercayaan Umum Terhadap Surat, Alat Pembayaran, Alat Bukti, Dan Peradilan* (Jakarta: Sinar Grafika, 2009).

¹⁴ Nur Aini and Yoan Nursari Simanjuntak, "Tanggung Jawab Notaris Atas Keterangan Palsu Yang Disampaikan Penghadap Dalam Akta Pendirian Perseroan Terbatas," *Jurnal Komunikasi Hukum* 5, no. 2 (2019): 105-16.

¹⁵ Ni Made Lalita, Sri Devi, and I Ketut Westra, "Akibat Hukum Serta Sanksi Pemalsuan Yang Dilakukan Notaris Kepada Penghadap Ketika Pembuatan Akta Otentik," *Acta Comitas: Jurnal Hukum Kenotariatan* 6, no. 02 (2021): 248-58, <https://doi.org/10.24843/AC.2021.v06.i02.p03>.

¹⁶ Christin Sasauw, "Tinjauan Yuridis Tentang Kekuatan Mengikat Suatu Akta Notaris," *Lex Privatum* 3, no. 1 (2015): 98-109, <https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/7030>.

¹⁷ Anak Agung Deby Wulandari, "Tanggung Jawab Notaris Akibat Batalnya Akta Perjanjian Pengikatan Jual Beli Tanah Karena Cacat Hukum," *Acta Comitas: Jurnal Hukum Kenotariatan* 3, no. 3 (2018): 436-45, <https://doi.org/10.24843/AC.2018.v03.i03.p04>.

or the parties appearing to make the deed with the aim of benefiting only certain parties or parties appearing, so that this will cause losses to other parties appearing, then it must be proven in court.¹⁸ In accordance with the example explanation above, this Notary has been proven to have committed an act that violates the norms and ethics of the Notary profession, so that his mistake has fulfilled the elements of an act that is detrimental to the recipient and the Notary needs to be held accountable both civilly, criminally and administratively.

Civil liability is by imposing civil sanctions in the form of compensation for the injured party for the actions carried out by the Notary. However, previously the parties need to do several things, namely: (a) proving the existence of a loss; (b) There is a causal relationship between the loss suffered and the violation or negligence of the Notary; (c) The violation or negligence was caused by an error that can be accounted for by the Notary concerned.¹⁹ Administratively, there are 5 (five) types of sanctions that will be given if it is proven that the Notary has violated the provisions of the Notary Position Law, namely verbal warning, written warning, temporary dismissal, honorable dismissal and dishonorable dismissal, all of which apply in stages starting from Lisam's warning to dishonorable dismissal.

Different from criminal liability, this is because the Notary Law does not regulate matters related to criminal acts. Seeing the legal vacuum, criminal acts will be directed to the provisions of equivalent regulations in the form of the Criminal Code (KUHPidana). Where it is stipulated in Article 55 paragraph (1) of the Criminal Code, it can be used in the case of a notarial deed made using false data or information. If the notary knows that the data is false and the notary is still willing to make the deed, then the notary in question can be declared a medepeyer.²⁰ This has fulfilled the indication that the Notary is involved in falsifying data or information. If the use of false data or information to make a Notarial deed is intentional, then the Notary can be held accountable in accordance with Article 266 paragraph (2) of the Criminal Code which states "anyone who intentionally uses a false letter whose contents are falsified as if they were true and not falsified, if the falsification of the letter can cause losses", Furthermore, the Notary can be held criminally responsible in accordance with the provisions of Article 263 paragraph (2) "using false data provided by the person appearing as the basis for making an authentic deed".

Then, if the Notary is proven to have intentionally made a deed even though it is known that the data or information used is false, then in this condition the Notary concerned is obliged to take responsibility.²¹ The responsibility that needs to be borne is based on how big the elements of error are in relation to the deed that he made. It is mandatory to first check whether the Notary intentionally made an authentic deed with false data, or whether the information and data are purely based on the error of the person appearing.

CONCLUSION

An authentic deed based on a false document or statement is a deed made before a Notary where there are factors that influence the making of an authentic deed based on false

¹⁸ Dedy Pramono, "Kekuatan Pembuktian Akta Yang Dibuat Oleh Notaris Selaku Pejabat Umum Menurut Hukum Acara Perdata Di Indonesia," *Lex Jurnalica* 12, no. 3 (2015): 248-58.

¹⁹ Dewi and R, "Kekuatan Hukum Pelekatan Sidik Jari Penghadap Oleh Notaris Pada Minuta Akta." *Op. Cit.*

²⁰ Mitha Irza Noor El Islam, Sukirno, and Adya Paramita Prabandari, "Tanggungjawab Notaris Atas Akta Yang Dibuatnya Ditinjau Berdasarkan Hukum Pidana," *Notarius* 14, no. 2 (2021): 892-904, <https://doi.org/10.14710/nts.v14i2.43780>.

²¹ Kartini Siahaan, "Kedudukan Hukum Akta Notaris Sebagai Alat Bukti Pada Tindak Pidana Pemalsuan Surat Dalam Proses Peradilan Pidana," *Recital Review* 1, no. 2 (2019): 72-88, <https://online-journal.unja.ac.id/RR/article/view/7455>.

statements, of course there are indications of deliberate factors from the parties themselves or from the negligence of the Notary who does not pay attention to the principle of caution in making the deed. These factors include the Notary's ignorance that the letter is genuine, the party making the deed has good intentions, the Notary ignores the principle of caution, and there is a conspiracy between the Notary and the interested party. Based on the Supreme Court Decision Number 702/J/Sip/1973 dated September 5, 1973, the Notary who records what is shown and conveyed by the appearer, there is no obligation for the notary to investigate materially. Thus the Notary is not held accountable for losses incurred because the appearers provide false information, so that it is entirely the responsibility of the appearer. It is different if the Notary knows that the data provided as a process of making a deed is false, then the Notary can be held accountable both in Civil, Criminal, and Administrative.

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