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THE LEGAL CONSEQUENCES TOWARD THE DIFFERENCES OF MINUTES OF DEED AND DEED COPIES ISSUED BY THE NOTARY

(Verdict Study Number 1/ Pdt.G/2020/Pn.Snt)

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ABSTRACT

The Republic of Indonesia as a legal state based on Pancasila and the 1945 Constitution of the Republic of Indonesia guarantees certainty, order, and legal protection which are based on truth and justice; to ensure certainty, order, and legal protection. So that it takes written evidence that is authentic about the circumstances, events, or legal actions held through a certain position. As a public official who is authorized to make an authentic deed, a notary must be able to provide legal certainty to the society that uses the services of a notary. The method used is legal research. The authority of a notary according to Law number 2 of 2014 about the position of a notary Article 15 paragraph 1 is to make an authentic deed regarding all acts, agreements and provision required by laws and regulations and desired by the interested parties, to be stated in an authentic deed, guaranteeing the certainty of the deed making date, keeping deeds, providing Grosse, deed copies and quotations, all as long as the making of the deed is not assigned or excluded to officials or other people stipulated by law. Not only authority that must be considered by the notary in carrying out his duties and positions, but there is one of the obligations of the notary as state in article 16 paragraph 1 letter d of the Notary Position Act that the notary is obliged to issue Grosse Deed, Deed copies or quotation based on minutes of deed.

Keywords: *Notary, Minutes of Deed, Deed Copies.*

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INTRODUCTION

Law is a rule in which the function is to protect human interests. The more number of people, the more its demands and benefits, so that the society's demands for legal certainty in every implementation of interests are also increasing. The Republic of Indonesia as a state of law based on Pancasila and the Constitution of the Republic of Indonesia in 1945 guarantees certainty, order, and protection of the law, which is based on truth and justice. To ensure the certainty, order, and protection of the law. So it takes a written evidence that is authentic about the circumstances, events, or legal actions held through certain positions.

Notary is a public official, who is appointed and dismissed by a general authority that is the Minister of Law and Human Rights. Public official here means an official who has duties related to the public necessities. Every society needs someone whose statements are reliable and trustworthy, whose signature and seal provide strong assurance and evidence, an expert who is impartial and an adviser who is impeccable in making an agreement that can protect him in the days to come.¹

In the Article 1 point 1 of Law Number 2 of 2014 concerning amendments to Constitution number 30 of 2004 about the position of a notary, a notary is a public official authorized to make authentic deeds and other authorities as referred to this Constitution. According to article 1868 of the code of the civil law, an authentic deed is a deed which in the form determined by Law, is made in front of the public officials who are authorized for it and at the place where the deed was made.

Democracy is something that is universal, because in general modern countries classify themselves as countries that uphold democracy, even though the implementation mechanisms, both involving political infrastructure and supra political structure, differ from one another, this is more due to differences in life views. from each country. The modern constitutional state always has a nationalist or national background and tends to be democratic.² Therefore, the existence of political parties in a country needs to be strengthened its institutionalization in order to realize government and democratic political life.³ As a public official who is authorized to make authentic deeds, a notary should be able to provide legal certainty to the societies who use the services of a notary. Notary authority according to Article 15 paragraph 1 of the Notary's function Act is to make authentic deeds regarding all acts, agreements, and provisions required by laws and regulations desired by the interested parties, to be stated in an authentic deed, to guarantee the certainty of the date of making deeds, to save deeds, to provide Grosse, deeds copies

¹ Tan Thong Kie, *Studi Notariat & Serba-Serbi Praktek Notaris* (Jakarta, 2011).

² Eka N.A.M Sihombing, Penerimaan "Parliamentary Threshold" dan Kaitannya dengan Hak Asasi Manusia, *Jurnal Konstitusi*, Vol. 1, No. 1, Juni (2009), p. 26-27.

³ Abdul Hakim Siagian. Extension Of The Constitutional Court Authority In The Dissolution Of Corrupted Political Parties. *Nomoi Law Review*. Vol. 1. No. 1. (May, 2020).

and quotations. All of these are done as long as the deeds making is not assigned or excluded to officials or other people stipulated by constitution.

The notary authority as referred to the Article 15 of the Notary's Function Act with his profession as an authentic deeds maker accompanied by the rapid and dynamic development of society needs has increased the intensity and complexity, law relations which of course need certainty, order, and legal protection which are cored in the truth and justice. In understanding the authenticity requirements and the causes of cancellation of a notary deed, it is important to prevent preventively any juridical defects of notary deeds that can cause the loss of authenticity and the cancellation of notary deeds, as well as to make it easier for every notary in making notary deeds in accordance with Notary's Function Acts and other applicable legal rules.⁴

Notaries are charged with great responsibility for every action taken related to their work which is regarding the making of authentic deeds. His responsibility is not only when the deeds are made, but also as long as the deeds made by a notary are used by the parties, hence the notary must always be ready to be responsible on the authenticity of the deeds he made. Besides, a notary is also responsible for the correctness of the deeds he made so it will not cause harm to one of the parties who came before him. Therefore, a notary is required to be careful and thorough in making authentic deeds to every party that come to him, so the deeds made by the notary will not cause any harm in which in the future can lead to the cancellation of either part or all of the deed contents.

Soekanto in Hadita (2020) Power has a very important role because it can determine the fate of millions of people. Both the bad power must always be measured by its usefulness to achieve a goal that has been determined or realized by the community first.⁵ Notary deed is an authentic deed made by or before a notary according to the form and procedure stipulated in the Constitution. The deed by the notary has perfect evidentiary power whose legal force is different from the underhand deed. Underhand deed is a deed made by the interested parties themselves without any help from public officials. While the authentic deed is notary product needed by the society for the sake of legal certainty.⁶

⁴ Peter E. Latumeten, *Cacat Yuridis Akta Notaris Dalam Peristiwa Hukum Konkrit Dan Implikasi Hukumnya* (Jakarta: Tuma Press, 2011).

⁵ Cynthia Hadita, Regional Autonomy Political Politics Of Regional Liability Reports To Regional Representatives In The Implementation Of Local Government, *Nomoi Law Review*, Volume 1, Issue 1, May 2020, p. 92.

⁶ Andi.A.A.Prajitno, *Apa Dan Siapa Notaris Di Indonesia* (Surabaya: Citra Aditya Bakti, 2010).

There are two types of general opinion regarding the validity of authentic deed. They are:⁷

1. Official deed (ambtelijke acte or verbal acte)

Official deed is a deed made by an official who is authorized to do so in which the official explains what he saw and what he did, so the initiative does not come from the person whose name mentioned in the deed. The characteristic of official deed is the absence of comparison and the notary is fully responsible for the making of this deed.

2. Deed of party or appearer (partij acte)

Deed made before an official who is authorized to do so is a deed made based on order of the interested parties. The characteristic of this deed is that there is a comparison of statement which mentions about the authority of the parties to carry out legal actions contained in the deed. For example: deed of parties or appearer, sale and purchase, lease, establishment of a limited liability company, cooperative or foundation, debt acknowledgment, and so on.

In the making of notary deeds both official and party deeds, the basic foundation and the main aspect of doing that is there must be the willingness or the wilsvorming as well as a request from every party. Otherwise, the notary will not make the deed as to fulfill the request from every party.

Adjie in Asmadi “The background to the existence of notary is to assist the public in providing reliable information, with signatures and stamps that can provide strong guarantees and evidence, and moreover, which is independent or does not favor one of the parties in the deed. The notary is authorized by government and not a few legal actions must be carried out using the services of a notary to certify or be said with an authentic deed. Notary profession is one of the professions that demands a balance of the three forms of human intelligence (Intellectual, Emotional and Spiritual). A notary public as a provider of legal advice to the public may not be able to carry out their duties if they do not have strong legal knowledge (intellectual intelligence). According to Habib Adjie, a Notary is a public officer that has the characteristics of being a profession, meaning that the notary profession law is a unification in the field of notary profession regulation, so that the only rule of law in the form of laws governing notary profession in Indonesia, so that all matters relating to notary in Indonesia must refer to notary law regulation. The notary profession is an institution created by the State. Placing a Notary Public as a position is a field of work or assignment that is

⁷ Sjaifurrachman, *Aspek Pertanggung Jawaban Notaris Dalam Pembuatan Akta* (Bandung: Mandar Maju, 2011).

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intentionally made by the legal rules of particular needs and functions (certain authorities) and is of a continuous nature as a permanent work.⁸

A notary can give suggestion by sticking to the rule of law. When the notary's suggestion is accepted by every party and is stated in the notary deed, it is still the wishes and requests from every party, not the suggestion or opinion of the notary. And the content of the deed is about the action of every party not the action of the notary.⁹ Therefore, a notary is demanded to be able to string words into a series of sentence that have legal value in accordance with the wishes and requests of the parties.

In the article 16 paragraph 1 letter A of the Notary's Function Act, it is explained that in carrying out their positions, notaries are obliged to act trustworthily, honestly, thoroughly, independently, impartially, and protect the interests of the parties involved in legal actions. After all, a notary is a person who never makes any mistakes. Practically, the notary himself believes that the notary has made a mistake. A mistake that can cause differences between the content of minute deed and deed copies that have been issued by the notary himself.

Notaries are not authorized to correct errors in minuta that contain errors in the contents of the deed or that contain the meaning of subtansi, for example in the minuta deed there is forgetfulness to include a Decree of the Minister of Law and Human Rights and Notaries make news of the event correcting the error by adding it in the Decree.¹⁰

Not only the authority that must be considered by the notary in carrying out his duties and positions, but also the obligations of the notary which is stated in Article 16 Paragraph 1 Letter D of the Notary's Function Act. The obligations are that a notary is obliged to issue Grosse Deed, deed copies as well as deed quotations based on minutes of deed.

Deed copies are the derivatives of the minutes of the deed. The definition of deed copies is more completely regulated in Article 1 number 9 of the Notary's Function Act. It explains that a deed copy is the copy of words by words of all deeds and at the bottom of the deed copy is a phrase "given as a copy with the same content". The definition of "minutes" deed or "minuta" is the original deed signed by the appearers, witnesses, and notaries. It is stored in the notary's archive (not the copy, quotation, and Grosse).¹¹ So that, if the deed copies are not exactly the same as the minutes of the deed, it can cause harm to the notary himself as well as to the disputing parties.

⁸ Erwin Asmadi. Legal Action Against Of Notary Supervisory Board Decision. *Nomoi Law Review*. Vol. 1. No. 1. (May, 2020).

⁹ Adjie Habib, *Hukum Notaris Indonesia* (Bandung: Refika Aditama, 2014).

¹⁰ *Ibid.*

¹¹ R Soegondo Notodisoerjo, *Hukum Notariat Di Indonesia* (Jakarta: Raja Grafindo Persada, 1993).

This research is focused on the Decision Letter of Sengeti District Court Class II Number 1/Pdt.G/2020/PN.Snt. Whereas, agreement deed for shop house Number 28 made by YP as the notary, was declared null and void by the Panel of judges at the Sengeti District Court, with decision letter number 1/Pdt.G/2020/PN.Snt. And the reason of the consideration stated by the panel of judges of the Sengeti high court is that there were differences of the deed for shop house number 28 made by YP as the notary from the deed copies held by the defendant and the plaintiff which has the potential to result in losses. Initially, the plaintiff did not know at all about the differences between the minutes of the deed and the deed copies. The plaintiff just knew about the differences after a debate among the interested parties who constructed the shop house, because the plaintiff strongly believed that the defendant YP as the notary would act correctly and professionally.

Against the claim of the default, the Panel of Judges at the Sengeti District Court cancelled the agreement deed of shop house number 28 made by YP as the notary and toward the default lawsuit has been decided to have permanent legal force or *Inkracht*.

Thus, in the implementation of the precautionary principle for notaries in carrying out their duties, notaries are required to carry out deed properly and correctly. It means that the deed must fulfill the legal will and requests of the interested parties. Because of their position, notaries are also required to produce quality deeds, and the notaries must explain to the interested parties about the truth of the content and the procedures of the deed he made. So that, it has positive impact and everyone will admit that the notary deed has perfect evidence.¹²

METHOD

This research is a descriptive analytical, a research that describes or depicts facts and conditions or visible symptoms, and aims to describe or depict facts related to finding the meaning of legal term contained in laws and regulations, so that the researcher can obtain new meaning of legal terms and test its actuality by analyzing the application of the rule of law.¹³ To obtain a discussion in accordance with what is contained in the purpose of preparing the analytical material; in this paper the researcher uses a normative juridical approach.

DISCUSSION

The Legal Consequences of the Deed Made Before a Notary towards The Difference between the Minutes of the Deed and the Deed Copies.

¹² Denny Saputra, "Prinsip Kehati-Hatian Bagi Notaris/PPAT Dalam Menjalankan Tupoksinya Dalam Upaya Pencegahan Kriminalisasi Berdasarkan Kode Etik" 3 (4AD).

¹³ Zainuddin Ali, *Metode Penelitian Hukum* (Jakarta: Sinar Grafika, 2009).

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Notaries are also mentioned as public officials because they have the duty of carrying out part of the state's power in private law especially to make authentic deeds. In making a patij deed or *relas deed*, the notary must be responsible for the deed he made it has a perfect proof or in other words there is no need for other proof because the deed is authentic it is in accordance with article 1868 of the book of civil law mentioning the authentic deed is a deed made in the form of law and made before a Notary, where the deed was made.

Notaries must know and understand regulations for both the notary and the interested parties to make a deed applicable in Indonesia. So that at the time of making the deed, the deed has definite or perfect legal force. But practically, of course not everything goes according to the wishes because there is possibility that a notary makes a mistake when making a deed.

The word notary comes from the word *note literaria* is a sign of writing or character used to write or describe the expression of the sentence conveyed by the source. The sign or character in question is a sign used in quick writing or stenography.¹⁴

The definition is the "minutes of deed" is the original deed signed by the appearer, witnesses, and notary which is stored in the notary's archive. So it is not the copy, quotation or deed *Grosse*.¹⁵ Deed Quotation or copy can also be referred to the derivatives of some words, so it is somehow an incomplete derivative. The quotation is taken from part of the minutes of deed and is carried out according to the client's request on which part that needs to be quoted. In the deed and at the end of the deed, there must be a quote from the minutes of the deed placed in the contents of the deed, and at the end of the written deed is given as a copy.¹⁶

Every deed made in the form of minutes of deed, a notary is authorized as well as obliged to issue the copies, quotation, deed *Grosse* and to show the content of the deed to those who are directly interested in the deed without limitation on the number of copies, quotations of the deed except for *Grosse deed* with the statement of "for the sake of justice based on the almighty god". A notary can only issue 1 (one) *Grosse* of the first deed to those who are directly interested in the deed, while for the second *Grosse* and so forth of the deed are for those who are directly interested in the deed.

In this regard, especially about the sentences based on the minutes and given as a copy of the same content in the formulation of the article, the notary must issue a copy after the minutes of the deed are made and the content of the copy must be the same as the content of the minutes of the deed without being reduced or added, except at the end

¹⁴ G.H.S. Lumban Tobing, *Peraturan Jabatan Notaris*, Erlangga (Jakarta: Erlangga, 1980).

¹⁵ Notodisoerjo, *Hukum Notariat Di Indonesia*.

¹⁶ Habib, *Hukum Notaris Indonesia*.

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of the deed copies, there must be a phrase as a copy with exactly the same content and there only be signature of the notary who made the deed.

As mentioned above, if the copy of the deed does not sound the same as the minutes of the deed, then the deed does not meet the material requirements of a notarial deed and can be declared null and void by the judge. This is because the copy of the deed is also an authentic deed that is mandatorily issued by a notary to the interested parties and can be used as evidence for the concerned parties, while the minutes of the deed which is the original deed must be kept by the notary as a notary protocol. Considering the analysis above, if a public official, in this case is a notary, makes a deed copy which sounds differently from the minutes of the deed, the notary has gone out of his authority. The discrepancy in the content of the deed copy and the minutes of the deed is one of the consequences of the authenticity loss of the deed or the cancellation of a notary deed.

The dissimilarity sound between the minutes of the deed and the copy of the deed can reduce the value of the authentic deed proof in the formal aspect, because what is contained in the deed is valid evidence against the parties who made the deed or the parties who get the rights in the deed and is applicable to the public, unless there is a contrast evidence. The remarks stated in the deed or submitted before a notary by the parties must be judged to be true. So that the contents of the notary deed have certainty as true, can be used as legal evidence for the parties and the heirs as well as the parties who receive the rights to the deed.

The dissimilarity sound between the minutes of the deed and the copy of the deed can reduce the value of the authentic deed proof in the formal aspect, because what is contained in the deed is valid evidence against the parties who made the deed or the parties who get the rights in the deed and is applicable to the public.

The discrepancy in the sound of the copy of the deed and the minutes of the deed is one of the consequences of the loss of the authenticity of the deed or the cancellation of a notary deed. This can have various consequences for interested parties, they are:¹⁷

1. The loss of the authenticity of the deed or notary deed is also canceled, and the legal actions contained in the deed are also canceled. This is a legal act which is required by the constitution in an authentic deed.
2. The loss of the authenticity of the deed but the notary deed is not canceled, and the legal action contained in the deed is not canceled. This happens to legal actions that are not required by the constitution to be contained in an authentic deed, but the parties want their legal actions to be proven by an authentic deed, so that strong evidence can be obtained.

¹⁷ Irfan Fachrudin, "Kedudukan Notaris Dan Akta-Aktanya Dalam Sengketa Tata Usaha Negara," *Varia Peradilan* 122 (1994): 148.

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3. The deed will still have authenticity, the notary deed is canceled and the legal actions contained in the deed is canceled. This happens if the agreement requirements are not fulfilled or there is basic right defect which becomes the object of the agreement.

Whereas the reasons for the consideration stated by the Panel Judges of the High Court in their decision are declared null and void for the sake of agreement deed law for building No. 28 at Notary and PPAT YP dated November 14, 2012. The reasons were that it turned out between the deed of agreement for building No. 28 at the notary and PPAT YP dated November 14, 2012 which is held by the defendants and held by the plaintiffs, was found sentences or description differences contained in the deed. So there was no similarity between the two of them and those differences potentially cause losses on the defendants side.

There were found content differences between the minutes of the deed and the deed copies. So that the differences occurred between those contents can cause the position of the deed invalid and do not have perfect evidentiary power. This is because the making of the deed is not accordance with the procedures that have been regulated in Notary's function act. In this case, every party can cancel the content of the deed by making cancelation deed in the notary's office or submit the lawsuit to the court.

CONCLUSION

From the legal consequences of a deed made before a notary toward the occurrence of the differences in the minutes of the deed with the deed copies can be concluded that the legal consequences carried out by the notary toward the legal actions he did were carelessness during the formation of the deed. The notary made a mistake and it caused the content differences between the minutes of the deed and the deed copies. The legal consequences of negligence committed by a notary is that the deed can be considered to be null and void and the notary deed is degraded into an underhand deed which has absolutely no legal force in terms of perfect proof so that the deed can be canceled or destroyed. The relation with the verdict is must to relevant with the implementation.

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