

Notary's Responsibility towards the Difference Found in the Content of Original Deed and Its Copy Given to Parties

by Rembrandt -

Submission date: 11-Nov-2019 12:11PM (UTC+0800)

Submission ID: 1211200538

File name: 1099-3158-1-PB.pdf (567.78K)

Word count: 4648

Character count: 22860



Notary's Responsibility towards the Difference Found in the Content of Original Deed and Its Copy Given to Parties

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<http://dx.doi.org/10.18415/ijmmu.v6i5.1099>

Abstract

Notary is a general official who has authority to make authentic deed and other authorities as stipulated in Law Number 2 of 2014 regarding Amendment of Law Number 30 of 2004 regarding Notary Position. As a general official who has authority to make deed, a notary must be able to provide legal certainty to the community and must be responsible for the deed that he makes. However, a notary is also a human who can make mistakes like the difference found in the original deed content and the copy that has been given to other parties. The researcher is interested in writing a thesis regarding Notary's Responsibility towards the Difference found in the Original Deed Content and the Copy that has been given to Parties. The research method used in the problem approach is by judicial-normative approach method which means a research that emphasizes on the use of legal norms in written form and supported by interview results with the resource people and informants. Based on the discussion result of this writing, it can be concluded that: Practically, a notary is also possible to make fraud in making deed, so that what is written in the deed is not in line with what is actually expected to be shown in the deed. Therefore, a notary on his action can be asked for his responsibility based on administrative, civil, and criminal aspects based on the prevailing laws.

Keywords: Notary; Authentic Deed; Original Deed; Copy of Deed

Introduction

The Republic of Indonesia as a law-based state based on *Pancasila* (Five Principles) and 1945 Constitution of the Republic of Indonesia guarantees certainty, order, and protection of law referring to truth and justice. To guarantee certainty, order, and protection of law, it needs authentic written proving tool regarding condition, event, or legal actions conducted through particular position.¹ Notary is a particular position in which notary is a general official who is hired and fired, in this case, by the Minister of Justice and Human Rights of the Republic of Indonesia. The general official meant here is the official who has responsibility related to public interest.

¹Considerant of letter b and c in Law Number 2 of 2012 regarding Amendment of Law Number 30 of 2004 regarding Notary Position.

As a general official who has authority to make authentic deed, a notary must be able to provide legal certainty to community that indeed utilizes the service of a notary. The authorities of a notary according to Article 15 sub-section (1) in Law on Deputy Notary Position are making authentic deed regarding all action, contract, and provision that are required by laws and/or expected by interested parties, to be stated in the authentic deed; guaranteeing date certainty of deed making; keeping the deed; giving original deed, copy and excerpt of deed, as long as the deed making is not assigned or excepted to the official or other people set by laws.

Through authentic deed, a notary must be able to provide legal certainty to community who demands for the service from a Notary himself. The notary deed in Article 1 number in Law on Deputy Notary Position mentions "Notary Deed is authentic deed made by or before the notary according to form and procedure set in this law". The deed made by notary is the authentic deed which has perfect proving power which its law power is different from the privately made deed. The privately made deed is the deed made by the interested parties without the assistance of the general official. Besides, authentic deed is the notary product that is highly needed by community for the sake of making a legal certainty.²

The making of notary deeds both Official Deed or party deed; the base or the fundamental in making notary deed is there must be a willingness (*wilsvorming*) and request from the parties. If the willingness and the request from the parties are not there, the notary will not make any deed. To fulfill the willingness and the request from the parties, the notary is able to give suggestion by still referring to the legal regulation. When the notary's suggestion is followed by the parties and shown in the notary deed, it still must be based on the willingness and the request of the parties. The suggestion or the notary's opinion or deed content is the parties' actions not the notary's action.³ Therefore, a notary is demanded to be able to describe sentences to be sentences that have legal value in line with the willingness and the request of the parties.

However, a notary is also a human who can make mistakes. In the practice, it is frequent when the deed has been circulated, the parties and the notary themselves find mistakes in the deed. The mistakes meant here, for example, are the technical mistakes that can lead to the difference in the original deed content and the copy of deed that have been given to the parties.

One of the cases occurring is the assumption of criminal action done by a notary namely AW domiciled in Cianjur in which referring to the Decision Number 259/Pid.B/2015/PN.Cjr dated in January 21, 2016, the notary namely AW is proven legally and convincing that he has violated the regulation Number 263 sub-section (1) of Criminal Code.

The case occurred in May 3, 1993. The notary named AW made a certificate of Inheritance Rights Number: 2 dated May 3, 1993 on the request of the appellants. However, there was one of the heirs whose name was not mentioned in the Inheritance Rights. Therefore, in 2009, exactly in May 26, 2009, the notary made deed copy of inheritance rights certificate number: 2 dated May 3, 1993 on the request of one of the heirs whose name was not mentioned in the deed because he asked why his name was not in the deed of inheritance rights certificate Number: 2 dated May 3, 1993 as one of the heirs who also had rights to conduct legal actions on collective wealth. In the copy, in fact, the notary namely AW put content which was different from the copy made in May 26, 2009 with the authentic content of inheritance rights certificate number: 2 dated 3-5-1993.

Besides, another case is also found specifically the Decision of Supreme Court Number 1003K/PID/2015 on the case occurring in March in 2011 in which the defendant namely NS who made draft of cooperation contract shown in the Original Deed Number 149. When the draft of cooperation

²Andi.A.A.Prajitno. *What and Who is Notary in Indonesia?*. Surabaya:Citra Aditya Bakti,2010, p.51

³Habib Adjie. *Administrative & Civil Sanction towards Notary as Public Official*, Refika Aditama, Bandung:2013, p.57.

contract is made by the defendant, in fact, a mistake was found. Therefore, the First Party, Daniel Freddy Sinambela, directly called the defendant and stated that in Article 7 of original deed draft had a mistake. After the draft of original deed was fixed, the defendant directly made Original Deed Number 149, with the content of Article 7 that has been changed based on the request of witness namely Daniel Freddy Sinambela and in March 30, 2011, the Original Deed Number 149 was eventually signed by both parties. However, the defendant did not give the copy of original deed number 149 yet to the witness Daniel Freddy Sinambela under the reason the copy of deed is not made yet.

In the process of civil assembly in District Court of Pekanbaru, in the agende of proving, each party shows certificate proof to the Panel of Judges, in fact, the copy of notary's deed Number 149 dated March 30, 2011, owned by witnesses Bonar Saragih and Mangapul Hutahaeen in this case act as the Second Party, and the draft of original deed Number 149 owned by witness Daniel Freddy Sinambela have difference in Article 4, 6, and 9. Some articles have difference on the presence of scratch and the omission of sentence "oppressed", and re-typed with manual typing machine, and there is also an article removed without being known by the witness Daniel Freddy Sinambela as the first party.

Based on the cases aforementioned, it certainly does not position the notary as the only one party who must be blamed in the difference found in the original deed content and the copy that have been given to the parties.

Research Method

To obtain a discussion in line with what is in the objective of arranging analysis material, the researcher will use judicial-normative approach method which means a research that emphasizes on written legal norms and supported by interview results with the resource people and informants. This research is descriptive-analytic which means describing or explaining the research object completely and objectively that has relation with the problems. To obtain data needed in this legal research, data collection techniques are done by as follows: Library Research and Interview.

The Processing and the Data Analysis Technique are done by editing and coding. Editing is a process of re-researching towards notes, documents, and information collected by the data searchers that are expected to be able to improve the quality of reliability on the data analyzed. In addition, coding is the phase after doing editing that will be given particular codes to determine relevant or needed data. Data analysis used is qualitative meaning the description towards the analyzed data based on regulations and the experts' opinions and the data are explained with sentences, interpreted, and concluded as in line with the problems discussed.

Results and Discussion

Notary's Responsibility towards the Difference Found in the Original Deed and the Copy that have been Given to Parties

Because the copy of deed is the copy of original deed except the final copy of deed must be completed with a phrase as a copy which has same content and there must be a notary's signature only who makes the deed. Thus, if the copy of deed has different content with the original deed, then deed can

be considered as not fulfilling material requirement from a notary's deed and can be stated null and void by judge.

Regarding to the notary's responsibility towards the difference found in the content of original deed and the copy of deed that have been given to the parties, the consequences can be in form of: Administrative, Civil, Criminal.

Legal Consequence towards the Difference Found in the Content of Original Deed and the Copy of Deed that have been Given to Parties

1. Case based on the Decision of District Court of Cianjur Number 59/Pid.B/2015/PN.Cjr

It discusses about the legal consequence on the difference found in the content of original deed and the copy of deed that have been given to the parties. For example, the notion of criminal action done by Notary AW domiciled in Cianjur, in which in the Decision Number: 259/Pid.B/2015/PN.Cjr dated January 21, 2016. The Panel of Judges of District Court of Cianjur punished Notary AW by sending to jail for 1 (one) year because the Notary AW was proven legally and convincing to violate the provision of Article 263 sub-section (1).

The case occurred in May 3, 1993. The notary named AW made a certificate of Inheritance Rights Number: 2 dated 3-5-1993 on the request of the appellants. However, there was one of the heirs whose name was not mentioned in the Inheritance Rights. Therefore, in 2009, exactly in May 26, 2009, the notary made deed copy of inheritance rights certificate number: 2 dated May 3, 1993 on the request of one of the heirs whose name was not mentioned in the deed because he asked why his name was not in the deed of inheritance rights certificate Number: 2 dated May 3, 1993 as one of the heirs who also had rights to conduct legal actions on collective wealth. In the copy, in fact, the notary namely AW put content which was different from the copy made in May 26, 2009 with the authentic content of inheritance rights certificate number: 2 dated 3-5-1993.

After investigating and researching carefully the evidences given by the parties and based on the legal facts, the defendant is accused by the Public Prosecutor with single indictment as set in Article 263 Sub-section (1) in Criminal Code in which its elements are provided as follows:

- a. Whoever
- b. Makes counterfeit certificate or counterfeits a certificate that can lead to rights, relations, or debt exemption or intended as evidences of a case
- c. With the intention to use or to commande other people to use the certificate as if its content is true and not counterfeit, the person will be accused if the use can lead to harm.

Because all elements of Article 263 sub-section (1) are fulfilled, the defendant is proven legally and convincing to commit criminal action as accused in the single indictment. Furthermore, based on the Court Decision Number 259/Pid.B/2015/PN.Cjr, dated January 21, 2016, the Notary AW was proven legally and convincing to commit criminal action of "Certificate Counterfeit" as in the single indictment Article 263 sub-section (1) in Criminal Code.

Based on the above elements and based on the judge's consideration, it shows that all case formula is proven that the Notary AW is proven legally and convincing to commit criminal action based on Article 263 sub-section (1) in Criminal Code. Based on the consideration, the Panel of Judges make some decisions which are shown as follows:

- a. Stating the Notary AW is proven legally in committing criminal action of "Certificate Counterfeit" as in the single indictment in Article 263 sub-section (1) in Criminal Code.
- b. Giving punishment to the defendant by sending to jail for 1 (one) year.
- c. Determining the criminal action should not be performed except in the future there is a judge decision that determines others caused by the convict that has committed criminal action before trial period for 2 (two) years recently.
- d. Determining evidences in form of:
 - 1) Copy of Inheritance Rights Certificate Number 2 dated May 26, 2019, is returned to the witness Tan Sin Joeh also known as Yusuf Joenaedi.
 - 2) Copy of Inheritance Rights Certificate Number 2 dated May 3, 1993.
 - 3) Copy of State Administrative Court Decision Number 80/G/2008/PTUN-Bdg
 - 4) Copy of Court Districty of Cianjur Number 36/Pdt.G/2008/PN.Cj
 Remained attached in this case document.
- e. Burdening to the defendant to pay case fee amounted to IDR 5.000,- (five thousands rupiah).
The criminal action above is there because the notary AW has violated formal aspects in making authentic deed. The aspects are:
 - a. The certainty of day, date, month, year, and time of appellant.
 - b. The parties (people) who come to the notary.
 - c. The signature of appellant.
 - d. The copy of deed is in line with the original deed.
 - e. The copy of deed is there without making original deed.
 - f. The original deed is not signed completely, but the original deed is issued.⁴

2. Case Based on Decision of Supreme Court Number 1003K/PID/2015

In the other case regarding the occurrence of the difference found in the content of original deed and the copy of deed that have been given to the parties, for example, like the Decision of Supreme Court Number 1003K/PID/2015, the defendant makes a change towards the Articles 4, 6, 7, and 9.

Beginning in March 2011, PT. Bonita Indah was invited to join a bid of procuring 210 (two hundreds and ten) car units without drivers that will be rented to PT. Chevron Pasifik Indonesia. After getting the invitation, the witness namely Daniel Freddy Sinambela as the Director of PT. Bonita Indah directly conducted a meeting to make a cooperation with the witnesses namely Bonar Saragih and Mangapul Hutahaean to join the bid in Chevron and finally, the agreement between the witness Danie Freddy Sinambela, the witness Bonar Saragih, and the witness Mangapul Hatahaean was done in the Notary Office of Defendant Neni Sanitra, SH., MKn in Nankal Tuanku Tambusai Street, Pekanbaru, in which the witness Danie Freddy Sinambela, the witness Bonar Saragih, and the witness Mangapul Hatahaean in the meeting explained the intention and the objective to join the bid of procurement in Chevron. From the meeting result, the defendant made a draft of cooperation contract (Original Deed Number 149).

After the draft of cooperation contract was finally made by the defendant, the defendant gave the draft to the witness Daniel Freddy Sinambela as the First Party and the witness Bonar Saragih and the witness Mangapul Hutahaean as the Second Party, to be red and to be understood. Afterwards, the witnesses brought the draft home and when the witness Daniel Freddy Sinambela red and learned the draft of cooperation contract, in fact, in the Article 7, it was mentioned that the party that gets fee service reward in form of 4 (four) car units at the end of the work and fee in form of money amounted to IDR 5.000.000,00 (five millions rupiah) per month is the Second Party, whereas it should be the First Party, so that the witness Daniel Freddy Sinambela directly called the defendant and stated that there was a mistake

⁴ Habib Adjie (II), *Op. Cit.*, p.21

in the draft of original deed Number and asked the defendant to re-check it. It should be the first party that got the fee in form of money and 4 (four) car units and at that time, the defendant stated that the mistake was done in typing the draft of original deed number 149, then the witness Daniel Freddy Sinambela directly called the defendant to fix the sentence of the Second Party to be the First Party, and for the sentence change in the Article 7. It also has been told and agreed by the witnesses Bonar Saragih and Mangapul Hutahaean as the Second Party.

After the draft of original deed Number 149 was fixed, the defendant directly made original deed Number 149 with the content of the Article 7 that has been changed as the request of the witness Daniel Freddy Sinambela and in March 30, 2011, the Original Deed Number.149 was finally signed by the witness Daniel Freddy Sinambela (the First Party), the witness Bonar Saragih and the witness Mangapul Hutahaean (the Second Party), but the defendant did not give the copy of original deed Number 149 yet to the witness Daniel Freddy Sinambela, with the reason that the copy of deed was not made yet. In fact, without being known by the witness Daniel Freddy Sinambela as the First Party, in Article 4, Article 6, and Article 9 which initially mentioned the First Party and it has been changed to the Second Party in which the defendant commanded the witness Febriani Eka Putri to change by way of the First Party in Article 4, 6, and 9 was removed by using eraser and it was re-typed by using manual typing machine to be the Second Party and the reason of the change was that the defendant did to adjust to the change in the Article 7 in which in fact the change in the Article 7 was done by the defendant by using typing machine. Besides, the defendant also made scratch in the Article 6.

Regarding to this, it was visible that the defendant made changes in Original Deed Number 149 which were not in line with the regulation set in Law Number 2 of 2014 regarding the Amendment of Law Number 30 of 2004 regarding Notary Position in the Article 48, 49, 50 and 51 so that the copy of Notary Deed was made and by referring to the original deed that has been fixed, it was not in accordance with the procedures or by incorrect way, thus, the copy is considered illegal.

In terms of the defendant's action, the witness Danie Freddy Sinambela as the Director of PT. Bonita Indah has filed a complaint of the defendant to the Notary Regional Representative Committee and the trial has been conducted by decision stating that the blower complaint of Daniel Freddy Sinambela can be accepted; punishing the defendant Neni Sanitra, SH., MKn with written warning because she has removed, pasted, and changed it with others towards the Article 4,6,7 and 9 of Deed Number 149 dated March 30, 2011, so that the defendant was claimed guilty to violate the Article 48 sub-section (1) of Law Number 2 of 2014 regarding the Amendment of Law Number 30 of 2004 regarding Notary Position which is: the Deed Content shall not be changed or added, both in form of paste, insertion, scratching, or omission, and change it with others.

Consequently, regarding to the things done by the defendant, violation is done in the Article 48 sub-section (1) of Law Number 2 of 2014 regarding the Amendment of Law Number 30 of 2004 regarding Notary Position causing the occurrence of difference found in the contect of original deed and its copy, based on criminal aspect, the notary is also responsible for the deed he makes. However, regarding to the notary's responsibilities based on criminal aspect, it is not set in Law Number 2 of 2014 regarding Amendment of Law 30 of 2004 regarding Notary Position. Therefore, Article 264 sub-section (1) of Criminal Code is prevailed. The elements of Article 264 sub-section (1) have similarities with the Article 263 sub-section (1). The differences are in the object of the counterfeit.

The elements in Article t 263 sub-section (1) and sub-section (2) are as follows:

- (1) Objective elements consisting of:
 - a) Making counterfeit certificate;
 - b) Counterfeiting certificate;

- c) That can issue a right, that can issue a contract, that can be used in order to be evidence of a case.

(2) Subjective elements comprising of:

- a) To utilize or to use the certificate is as if original and not counterfeit
- b) The use of the certificate can lead to harm.

Besides, the substances of Article 264 sub-section (1) are:

(1) All elements both objective and subjective in Article 263

(2) Special objecting elements (alternative) in form of particular certificates object are:

- a) Authentic deed
- b) Debt certificate from a state or its part of from a general institution
- c) Share certificate or debt from a company, organization, or enterprise
- d) Marketable securities, the dividend proof or interest from one of certificates explained in two or three or evidences issued as the substitutes of the certificates.

If the parties in the deed perceive to face the notary and sign the deed before the notary is true, but in fact, the deed is not in line with the reality, the related parties conduct action against the law in the deed. In this relation, it needs proof from the harmful parties in the notary's deed. If it is categorized as a criminal action, the notary can be classified as committing criminal action on Article 263, 264, 266 jo 55 or 56 in Criminal Code.

Regarding to this, the position of notary deed is as the perfect proof both in prosecution and investigation in the court. The notary deed is used as the proof in the process done by the prosecutor. In order that having perfect proving power, all procedures of making authentic deed must be in accordance with Law on Deputy Notary Position. If there is a procedure that is not fulfilled and it can be proven, the deed nature can be changed to be privately made deed.

Conclusion

Based on the result of discussion and research done by the writer, the conclusions are as follows:

1. The notary responsibilities towards the difference found in the content of notary deed and the copy of deed that have been given to the parties, in the Decision of District Court of Cianjur Number 259/Pid.B/2015/PN.Cjr, the notary is responsible based on criminal aspect because he/she is proven legally and convincing to commit criminal action of "Certificate Counterfeit" as stipulated in the Article 263 sub-section (1) in Criminal Code which is by jail for 1 (one) year. On the other hand, in the Decision of Supreme Court Number 1003K/PID/2015, the notary is also responsible based on criminal aspect because having proven legally and convincing to commit criminal action of "Authentic Certificate Counterfeit" as set in the Article 264 sub-section (1) in Criminal Code which is by jail for 1 (one) year.
2. The legal consequence towards the difference found in the content of notary deed and the copy of deed that have been given to the parties, in the Decision of District Court of Cianjur Number 259/Pid.B/2015/PN.Cjr to the notary is the punishment in form of jail, while to the deed, the deed becomes the proving power as privately made deed. Besides, in the case of the Supreme Court Decision Number 1003K/PID/2015 towards the notary is also the punishment in form of jail for 1 (one) year, and to the deed, the deed can be null.

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