


## Degradation of notarial deeds in criminal cases (analysis of Sidoarjo district court decision number: 862/Pid.B/2019/PN Sda)

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Article Info	ABSTRACT
<b>Keywords:</b> Notary, Authentic Deed, Criminal Offense, Forgery	This study aims to determine the legal consequences of misuse of notary authority to make deeds. Notaries in carrying out the duties of their office must be careful and careful in making deeds, so that the deeds they make are not legally defective because they must be accountable to the general public and so as not to harm others. This research uses a conceptual approach and a legal approach. Using a conceptual approach, researchers refer to legal principles related to the concept of the state of letters in the case of forgery of letters. The legal approach is carried out by reviewing related laws and regulations. This research is analytical in nature that studies the purpose of law, the values of justice, the truth of the rule of law, legal concepts and legal norms according to the position of deeds in relation to the implementation of the duties of unscrupulous authentic deed makers . The results of this study conclude that the criteria for a notary deed to become an authentic deed have been regulated in the law, so that Notaries who are officials who are authorized to make authentic deeds must always pay attention to the procedures for making deeds in accordance with applicable laws. When the deed loses its evidentiary power, it can be relegated to a deed under hand, or become invalid or become null and void. So the Notary Public must be responsible for his negligence in exercising his authority. If the authentic deed in its making is a legal defect caused solely by the fault of the Notary and then the deed in Court is declared inauthentic, or invalid, or becomes null and void or relegated to a deed under hand, then the Notary must be concerned be liable for the error caused by the forgery of the deed.
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### INTRODUCTION

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 has truth and justice as its core. To guarantee, certainty and legal protection, authentic written evidence regarding the situation is needed. , events, or legal actions carried out through certain positions.

In the lives of Indonesian society itself At the moment burdened a lot with business and administration civil law which must be documented in the form of an authentic deed in

order deed law the own legality And strength proof. Making documents law or deed the, service Notary Public Which skilled, thoroughness and professionalism are needed.

The Notary profession has been widely known since before Indonesia became independent in the 17th century. The role of Notaries in the Indonesian legal system is to assist the general public in matters relating to civil law, especially in producing evidence of legal acts or events. Notaries and the documents they produce, called deeds, can be seen as a means of the state to guarantee legal certainty and protect public interests.

The notary's position as a functionary in society is still respected today. A Notary is usually considered an official from whom one can obtain reliable advice. Everything he writes and determines (constantir) is true, he is a strong document maker in a legal process. A notary is a public official who can provide services to the community and is responsible for ensuring legal certainty in the community based on his authority in making authentic deeds, this is in accordance with the words of Article 1 paragraph (1) of Law of the Republic of Indonesia Number 4 of 2014 amendment Based on Law Number 30 of 2004 concerning the position of Notary:

"A notary is a public official who has the authority to issue authentic deeds and other authorities as regulated in this law."

When carrying out his office, he must be in sync using Law no. 30/2004 in conjunction with Law no. 2/2014 In Article 15 Paragraph (1) of Law no. 2/2014, namely that the Notary has the authority to make authentic Deeds regarding all acts , agreements and stipulations required by statutory regulations and / or desired by those who have an interest in being stated in the authentic Deed, claim certainty without making the Deed, keep the Deed, store the grosse , copy & extract the Deed, all of this as long as the making of the Deed is not also assigned or excluded to another official or other person as determined by law

Because of its authority to make authentic deeds, the authentic deeds that are made have an important role in creating legal certainty in every legal relationship. The notary must ensure that a notarial deed can be valid as an authentic deed in accordance with Article 1868 of the Civil Code. An authentic deed is the strongest and most complete evidence in every case related to the Notarial deed. It is certain that a Notarial deed must be in accordance with having 3 types of valid evidentiary power, namely external, formal and material evidentiary power. This means that the deed provides between the parties a perfect proof of what was done/stated, the strength of the evidence is such that it is attached to the deed itself so that it does not need to be proven further and for the judge it is "mandatory/necessary evidence."

The Law on the Position of Notary is a comprehensive reform and reorganization in one law which regulates the position of Notary so that a legal unification can be created that applies to all residents in the territory of the Republic of Indonesia. Notaries are parties regulated in the Law on Notary Positions, and also people who need Notary services. One example of the reforms made in the law relates to the responsibility of Notaries in carrying

out their official duties in making authentic deeds, in the event of violating the articles in the Law on the Position of Notaries.

Liability for Notaries arises because of mistakes made in carrying out their official duties and these mistakes cause losses to people who use their services. As a consequence, the Notary, in carrying out his office and with his authority to make authentic deeds, must be responsible, if there are deviations and/or violations of the requirements for making the deed, which will result in the invalidity of the deed made by the Notary.

Authentic deed becomes the strongest and most complete evidence has a crucial role at every interaction rule on people's lives where on \_ various kinds business interactions, activities in the fields of banking, land, social activities, etc., requires written verification in the form of authentic deeds, growing demands for regulatory certainty on various kinds economic and social interactions, both in regional, national and global levels . Authentic deed can clearly select the rights and obligations of the parties and guarantee the certainty of the rules and at the same time necessary Also concurrency can be avoided and despite concurrency earlier non- can be avoided, in the process of resolving concurrency earlier, the authentic deed is the strongest and most comprehensive form of written evidence that makes a concrete contribution to resolving cases cheaply and quickly

If an authentic deed is legally flawed in its preparation solely due to an error on the part of the Notary and then the deed is declared by the Court to be inauthentic, or invalid, or declared null and void by law or downgraded to a private deed, or declared a forgery, then the Notary concerned must be held accountable for errors caused by his carelessness.

A notary as a public official has full responsibility for every deed he makes, especially if in the future the deed is disputed in court and contains legal defects, then it should be questioned. In a deed that is in dispute or contains legal defects, it must also be known whether there is an element of genuine error on the part of the Notary, or whether there was an error on the part of the parties in providing information and other supporting documents.

Civil proceedings regarding defects in a deed so that it is canceled by a judge, the Notary is often brought to court as a "Defendant or Co-Defendant". This is a forced measure because in notarial deeds, especially partij deeds, which then become evidence for civil cases. Notaries are not involved and are even prohibited by law from being involved in legal acts as explained in the notarial deed that is formalized.

The Notary's involvement is limited to formulating the legal actions of the parties into the deed and then formalizing the deed. The force to place the Notary as a "Defendant or Co-Defendant" is an effort to get the Notary to talk about his deed which is now evidence in the judicial process.

Notary negligence is not a result of the Notary's carelessness The main thing is to cancel the Notarial deed through a court decision. Apart from the Notary's mistakes and negligence, the Notary's deed can also be canceled It can be caused by errors and negligence on both parties as well one of the parties causes the existence or emergence of a subpoena based on one of the parties to the deed

Within the scope of their activities, notaries are also obliged to report to the public regarding their work. The presence of notaries is intended to meet the needs of the public who require legal documents (deeds) in the field of civil law, so that notaries have responsibility for the information needed for services to the public. And if it turns out that the deed was not made in accordance with applicable law, then the community can file an appeal to court to collect fees, losses and interest from the notary. This is a form of notary responsibility before the community.

A notarial deed that contains a fake number is invalid and has evidentiary value, so it becomes a private deed and this deed can be canceled by the court because it does not fulfill the terms of the agreement in question. Legal consequences for the parties: A third party can ask the court to cancel the deed. There are no legal consequences for the notary because the notary is only formally responsible for his actions. Claims based on the above documents are considered valid until dismissed by a court. The author suggests that notaries be more careful and always make a copy of the identity of those present so that it becomes a notary's record.

For example, the misuse of Notaries in their authority to make deeds can be found in the case at the Sidoarjo District Court with Decision Number: 862/Pid.B/2019/PN Sda which is the material for analysis in this research. In this case it is known that the Panel of Judges has decided that Notary Diyah Ekasari was charged with forgery of an authentic deed. That the deed issued by the Notary is the Deed of Transfer of Land and Letters Number 11 to Number 22 dated 28 December 2000, a copy of which was signed and issued by the Notary on 28 December 2000 as a Derivative Deed. Meanwhile, there were facts at trial, that the deeds were never found and the minutes of the deeds were never recorded in the Notary's Repertory book.

That the defendant, by making the Deed of Transfer of Land and Power of Attorney Numbers 11 to Number 22 dated 28 December 2000, knew and consciously intended that his act of falsifying and making a fake document was carried out in order to use the letter as if its contents were true, so that the Deed was made by defendant to use the Deed as if its contents were true. These deeds were used to submit the process for issuing parcel maps to the Sidoarjo Regency Land Office so that the defendant's actions could harm third parties.

The defendant's actions as mentioned above constitute a criminal act as regulated and threatened in Article 264 paragraph (1) in conjunction with Article 55 paragraph (1) of the Criminal Code concerning forgery of letters so that in court decision Number Sidoarjo with Decision Number: 862/Pid.B/2019/PN Sda The judicial panel decided that the Notary was charged with "Forgery of Authentic Deeds" and was sentenced to 1 (one) year and 6 months in prison.

### **Formulation Of The Problem**

Based on the description above, the problem formulation in this research is:

- a. Can the deed made by the defendant be categorized as an authentic deed?
- b. What is the notary's responsibility if the deed he makes does not meet the criteria for being an authentic deed?

## METHODS

The research used by researchers is normative legal research, namely the process of finding legal rules, legal principles or legal doctrine to develop new facts, theories or concepts as guidelines for solving problems. This research uses secondary data sources, namely: data that supports information or supports the completeness of primary data obtained from libraries and the author's personal library collection carried out by means of library or literature studies.

## RESULT AND DISCUSSION

### Notarial deed as an authentic deed

According to A.Plito, a deed is a signed letter, made to be used as evidence, and to be used by the person for whose purposes the letter was made. According to Sudikno Mertokusumo, a deed is a signed letter containing the events that form the basis of a right or obligation.

Meanwhile, the explanation of the Authentic Deed itself is written in Article 1868 of the Civil Code ("Civil Code") which reads: " An authentic deed is a deed made in the form determined by law by or in the presence of a public official. authorized to do so at the place where the deed was made." The public official referred to in the article is a notary. The authority of a Notary in making authentic deeds has been stated in Article 1 paragraph 1 of the Notary's Position Law which states emphatically that " Notary is a public official who has the authority to make authentic deeds and other authorities as intended in this Law." This means that the authority to make authentic deeds is given to the Notary.

So, in principle, the validity of a Notarial deed includes the form of contents, the authority of the official who makes it, and its making must also meet the requirements specified in the applicable laws and regulations. Thus, if a deed does not meet these requirements, it cannot be categorized as an authentic deed, and its evidentiary power is also very weak.

Article 38 UUJN explains the form of a deed and the function of a Notarial deed in particular, these provisions are the conditions that must be fulfilled as a Notarial deed. When connected with the provisions of Article 1868 of the Civil Code which is the source of the authenticity of the notarial deed and also the legality of the existence of the Notarial deed

Authentic deeds must fulfill the requirements in Article 38 UUJN and Article 1868 of the Civil Code, they are cumulative or must cover everything. The deeds that are made, even though signed by the parties, do not meet the requirements, so the deed cannot be treated as an authentic deed, it only has the force of a private deed.

The juridical character of a notarial deed, namely:

1. Notarial deeds must be made in the form determined by law (UUJN/UUJN-P)
2. A Notarial Deed is made at the request of the parties and not the notary's wishes.
3. Even though the notarial deed contains the name of the notary, in this case the notary does not have the status of a party together with the parties or persons whose names are listed in the deed.

4. Has perfect evidentiary power. Anyone is bound by a notarial deed and cannot interpret anything other than what is stated in the deed.
5. Cancellation of the binding force of a notarial deed can only be done with the agreement of the parties whose names are listed in the deed. If someone disagrees, the party who disagrees must submit a request to the general court so that the deed in question is no longer binding for certain reasons that can be proven.

According to the general opinion adopted, every authentic deed as well as a notarial deed has 3 (three) evidentiary powers, namely:

1. The Power of External Proof (Uitwengedige Bewijskracht)

These are the formal requirements that must be fulfilled so that a Notarial Deed can be valid as an authentic deed in accordance with Article 1868 of the Civil Code.

2. The Power of Formal Proof (formale bewijskrach )

This means that the deed proves the truth of what was witnessed, seen, heard and done by the Notary as a public official in carrying out his office, the deed guarantees the truth regarding the certainty of the date, the signature contained in a deed, the identity of the person appearing, the place where the deed is made.

3. Strength of material evidence (matriele bewijskracht)

Certainty that what is stated in the deed is valid evidence for the party who made the deed or those who received the rights and is valid for the public, unless there is material proof.

So, in principle, the validity of a Notarial deed includes the form, content, authority of the official who makes it, and its making must also meet the requirements specified in the applicable laws and regulations. Thus, if a deed does not meet these requirements, it cannot be categorized as an authentic deed, and its evidentiary strength is also very weak.

An authentic deed essentially contains formal evidence in accordance with what the parties explained to the notary. The notary must ensure that the party facing the deed truly understands the contents of the deed by reading the deed to the parties, including providing access to information and access to laws and regulations that have implications for the party making the deed so that the parties can freely conclude whether to agree or not. do not agree with the contents of the deed that has been explained. In Roman law the word "deed" is expressed as *gesta* or *instrumenta forencia*, also expressed as *publica monumenta* or *acta publica*. These deeds are made by a public official or *publicae personae*.

Based on its form, an authentic deed has three forms of evidentiary power, including:

1. The power of proof of birth (*uitwendige bewijskracht*).

A manuscript that appears to be an authentic manuscript and meets the requirements specified for such manuscripts is considered to be an authentic manuscript until proven otherwise. Therefore, the burden of proof is placed on the person who denies its authenticity. The signature of the existing official is considered to be correct. Both legal science and judicial practice agree that the evidentiary power of this authentic deed applies to everyone and is not limited to parties who have an interest in the contents of the document. As we will find out later, the power of proof of birth like this is not possessed by a private certificate. As a means of evidence, the power of evidence is the specialty of an

authentic deed.

2. The power of formal proof (formele bewijskracht).

In the formal sense, an authentic deed proves the truth of what the public official saw, heard and did. Therefore, what must be considered correct is the date of the deed, the place where the deed was made, the correctness of the signature affixed under it and for each person it is considered correct that the person signing it has explained everything written on the signature but it is clear that the strength of this proof does not include things that cannot be captured by the official's five senses or that he cannot judge. In a sale and purchase deed, for example, for each person it is considered certain that the parties have explained that they have entered into a sale and purchase agreement and the official has explained that A and B were the ones who signed the deed and that the deed was made on that date. What is certain is that the official has truly stated in the deed that he has seen, heard and carried out what is written in the deed. If this is in doubt or there is an unclear redaction (text), interpretation is required.

3. The power of material evidence (material bewijskracht).

The strength of material evidence includes that the contents of the statement are considered true for the person who made the statement, while for other parties the strength of the evidence is independent. So, for a notarial deed to have authentic force, it must fulfill at least three conditions:

These three conditions are stated in Article 1868 of the Civil Code, namely:

1. The deed must be made by or in the presence of a public official
2. The deed must be made in the form determined by the Law
3. Public officials must have the authority to make the notarial deed.

Furthermore, in the Sidoarjo District Court Decision Number: 862/Pid.B/2019/PN Sda, there was a Notary's incompatibility in making the deed which was not in accordance with statutory regulations. Defendant Dyah Nuswantari Kekapsari, there was a deviation in his authority to make deeds so that the deed issued was declared fake by the court, that the charges were proven according to the facts at trial, namely that Dyah Nuswantari Ekapsari had been proven to have committed "forgery in the form of authentic deeds".

In the facts at the trial, initially witness Reny Susteyo as Director of PT. Dian Fortuna Erisindo, who is the heir of the late H. Iskandar as Director of PT. Dian Fortuna Erisindo who was in office at that time, which at that time was PT. Dian Fortuna Erisindo has collaborated with Puskopkar Jatim to collaborate in providing housing

Furthermore, in 2008 witness Reny Susetyo together with witness Umi Kalsum (as a freelancer) went to the Sidoarjo Regency Land Office to register a field map so that it would be issued in the name of PT. Dian Fortuna Erisino, according to BPN, there was a lack of files, namely proof of ownership from witness Reny Susteyo, Director of PT. Dian Fortuna Erisindo. This is where they first contacted the defendant as a Notary to request that a Deed of Release of Land Rights and a Power of Attorney be drawn up for the purpose of publishing a map of the plot. Finally, the defendant as a Notary in Sidoarjo Regency complied with the wishes of these parties by issuing a deed with a retroactive date.

The following deeds issued based on the court decision are the Deed of Relinquishment of Land Rights and the Deed of Power of Attorney respectively written number 11 - 20 dated 28 December 2000, even though in reality the deed was issued on 28 December 2008. It is clear that the deed was not made according to existing facts and has lost the formal requirements for an authentic deed where the deed must guarantee the certainty of the date of the deed so that the deed is not in accordance with Article 1868 of the Civil Code concerning the requirements for the validity of an authentic deed.

In this case, the notarial deed should be required to have clarity according to a law, where when it is made the notary must explain to the person being drafted the notary must explain to the party regarding the certainty regarding the person appearing/facing party, day, date, month, year, o'clock (time), as well as the initials and signatures of the presenters/parties, witnesses and notaries. Apart from that, the notary also validates the evidence or supporting documents provided by the parties.

So, in the Court Decision the Notary is proven to be legally convinced of the criminal act of falsifying a deed with a party who appears to be the party appearing, but that party will cause the notary to be dragged into legal problems. If the notary does not deviate from UUJN provisions and always upholds the code of ethics, and will not support any of the parties to interfere, a deed will be issued that contains elements of a criminal act or is formally defective. So, the panel of judges stated that the Notary had violated Article 264 of the Criminal Code concerning forgery of authentic deeds with a criminal penalty of 1 year and 6 months in prison.

Based on these facts, the Deed made by a Notary is not an authentic deed because its form, content and preparation do not meet the requirements specified in the statutory regulations, even though it is signed by the parties, it does not meet the requirements, so the deed cannot be treated as an authentic deed as stated in Article 1868 of the Civil Code. And only valid as a deed or letter under the hand. So, according to the author, the judge's indictment is not appropriate, because from the start the deed was not an authentic deed, the judge's indictment should have referred to Article 263 of the Criminal Code:

1. an agreement (obligation) or a debt relief, or which may be used as information for an action, with the intention of using or ordering someone else to use the documents as if the documents were genuine and not falsified, then if you use them it could result in a loss. convicted of forgery of documents, with a maximum prison sentence of six years.
2. With the same punishment, anyone who deliberately uses a fake or forged letter as if the letter were genuine and not falsified, if the use can cause harm.

From the explanation regarding article 263 of the Criminal Code above, it can be seen that if someone falsifies documents, they can be imprisoned for a maximum of six years.

### **Notary's Liability In The Event The Deed Done Does Not Meet The Criteria For An Authentic Deed**

According to the Big Indonesian Dictionary (KBBI), responsibility is the obligation to bear everything, if anything happens, you can be sued, blamed and sued. In the legal dictionary, responsibility is an obligation for someone to carry out what is required of them.



According to law, responsibility is a consequence of the consequences of a person's freedom regarding his actions which are related to ethics or morals in carrying out an action. Furthermore, according to the Quarterly Point, accountability must have a basis, namely the thing that gives rise to a legal right for a person to sue another person as well as the thing that gives rise to another person's legal obligation to provide accountability.

The responsibilities of a Notary as a public official who is given the authority to make authentic deeds are regulated in the provisions of Article 15 paragraph (1) UUJN which reads:

"Notaries have the authority to make authentic deeds regarding all deeds, agreements and provisions required by statutory regulations and/or which are desired by interested parties to be expressed in the form of authentic deeds, guarantee certainty regarding the date of making the deed, store the deed, provide grosses, copies and "quotes of all deeds as long as the deeds are made are not assigned or excluded to other officials or other people as determined by law."

This means that the Notary is authorized by law to express all acts, agreements and stipulations desired by the party or parties who deliberately come before the Notary to consolidate the information in an authentic deed, and so that the deed he makes has complete evidentiary power. and has validity. Notaries are required to comply with all the provisions of the Notary Position and other regulations. A notary is not just a scribe, but the Notary needs to assess whether what the person wants to state in an authentic deed does not conflict with the UUJN and applicable legal regulations. The obligation to know and understand the terms of authenticity, validity and reasons for the invalidity of a Notarial deed, is very important to preventively avoid legal defects and Notarial deeds which can result in loss of authenticity and invalidation of the Notarial deed, which can be detrimental to the interests of the public, especially parties - interested party.

Talking about the Notary's negligence in exercising his authority in making a deed so that the notarial deed loses the authenticity of the deed, or in court is declared inauthentic, or invalid, or becomes null and void or is graded into a private deed, then the Notary concerned must be held liable for the error. caused by his carelessness.

Notary's liability in the event that the deed made does not meet the criteria for an authentic deed found in the Sidoarjo court decision with Decision Number: 862/Pid.B/2019/PN Sda that the deeds issued by the defendant as Notary based on the court decision, have consequences detrimental to a third party, which in this case is Puskopkar Jatim, because the land belongs to Puskopkar Jatim and can change hands to PT. Dian Fortuna Ersindo, in other words, negligence in exercising the Notary's authority in making the deed, resulted in the seizure of land belonging to the East Java Puskopkar so that the East Java Puskopkar became the party that suffered the greatest loss.

In the UUJN it is regulated that a Notary who is carrying out his duties and position is proven to have committed a violation, the Notary can be subject to or be given sanctions in the form of civil and administrative sanctions, but the UUJN does not regulate criminal

sanctions contained in the Criminal Code, with the note that punishment of the Notary can be carried out by limitations are:

1. There is legal action from the Notary regarding the external, formal and material aspects of the deed that is deliberate, full of awareness and conviction, and it is planned that the deed that will be made before the Notary or by the Notary together (in agreement) with the presenters will be used as a basis for committing a criminal act.
2. There are legal actions from Notaries who make deeds in front of or by a Notary which, if measured based on the UUJN, is not in accordance with the UUJN.
3. The Notary's actions are also inappropriate according to the agency authorized to assess the actions of a Notarial deed, in this case the Notary Supervisory Board.

The imposition of criminal sanctions against a Notary can be carried out as long as the aforementioned limitations are violated, meaning that apart from fulfilling the violation formulation stated in the UUJN, the Notary's Code of Ethics must also fulfill the formulation stated in the Criminal Code.

Notaries who commit violations are not immediately punished, Article 7 paragraph (2) reads: "Notaries who violate the provisions may be subject to sanctions in the form of: written warning; temporary dismissal; honorable dismissal; or dishonorable dismissal." Notaries who violate these provisions will be given the opportunity, if the notary who violates continues to repeat the same violation, the Honorary Board and the Supervisory Council each have the right to carry out their own examination if there are individual notaries who commit violations. Notaries who knowingly violate the code of ethics can be subject to sanctions and can harm the parties and the notary himself.

Based on the explanation put forward and based on the Sidoarjo court decision with Decision Number: 862/Pid.B/2019/PN Sda, it turns out that Notaries as public officials can also be subject to criminal charges, both based on the articles regarding forgery of documents and other articles that related to his duties as a Notary.

## CONCLUSION

The criteria for a Notarial Deed to be an authentic deed have been regulated in law, so that the Notary who is an official who has the authority to make an authentic deed must always pay attention to the procedures for making the deed in accordance with the applicable laws. Notaries are considered to understand and carry out their obligations to make authentic deeds that have perfect proof, where there is the strength of external proof, formal proof and material proof. When the deed loses its evidentiary power, the deed can be graded into a private deed, or become invalid, or become null and void by law. So, the Notary must be responsible for his negligence in carrying out his authority. If an authentic deed is legally flawed in its preparation which is solely caused by an error on the part of the Notary and then the deed in court is declared inauthentic, or invalid, or becomes null and void or is graded into a private deed, then the Notary concerned must be held liable for mistakes caused by his lies.

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