

Authentic Deed of Notary That Carries Criminal Charges

Liliana Tedjosaputro

Lecturer at Faculty of Law, 17 Agustus 1945 Semarang University

Email: liliana.tedjo@gmail.com

Abstract--Deed of Notary as evidence of the existence of a legal act. In Indonesia there are two position which is a Notary who makes Deed of Notary and a Land Deed Official who makes Land Deeds (PPAT). PPAT is the only positions that exist in the world, namely in Indonesia. The writing method used is normative juridical. The formulation of the problem, Why the Deed of Notary can be threatened with falsification ? Making the minuta of the deed by Notary if a page is given and there is a renvooi that is too long then in "salinan" changes in the minuta with the contents not the same as in the minuta. Changes in the pages and contents that are different caused accidentally, are considered forgery in article 264 of the Criminal Code.

Keywords: deed of notary, crime, renvooi

I. INTRODUCTION

Notary is a public officer who make evidence in the form of an authentic deed and deed of Notary which is used as evidence of the existence of a legal act that is used in the business world and are needed in the Civil Court as proof of authenticity.

Around the world, Notary is known but in Indonesia, it was known to have positions for Notary and PPAT (Land Deed Officer), so the only one in the world that have positions of PPAT other than Notary is in Indonesia.

Both officials which are Notary and PPAT create authentic deed for evidence. PPAT make the deeds relating to the land while Notary make the deeds of others, as assigned by the Act.

The purpose of research is not to equalize deed of Notary with deed of PPAT because different rules that govern them, so the creation of minutes should not be given page numbering because they would create forgery between minutes and copy with changing of the page numbering and content in a copy especially if the renvooi is too long.

Why deed of Notary can be subjected to forgery in accordance with Article 264 Book of the Criminal Justice Act?

II. RESEARCH METHOD

Writing method used is the juridical normative that use secondary data as the main data and primary data as supporting data. Secondary data sources used include the official documents, books, research results in the form of reports, and so on obtained by literature study.

III. FINDINGS AND DISCUSSION

Authentic deed

Authentic deed that created by Notary is subject to Civil Code (Burgerlijk Wetboek), Regulation Notary (Reglement op het Notaris ambt in Indonesie), Law No: 30 of 2004 concerning Notary, Law of the Republic of Indonesia number: 2 of 2014 on Amendments to the Law No: 30 of 2004 concerning Notary and other related laws and regulations. Authentic deed, by definition:

The first condition that must be fulfilled is that the authentic deed must be made in the form prescribed by law. The word "form" here is a translation from the Dutch word *Vorm* and not interpreted as round shape, oval shape, long shape, and so on, but its creation must comply with the legislation, in particular Regulation Notary.

A second condition is the requirement of making an authentic deed in the presence of or by public officials (openbaar ambtenaar). The word "before" indicates that the certificate was created at the request of a person, while deed made "by" public officials because of an incident, investigation, decision and so on (minutes of meetings, protest notes etc.).

The third condition is that officials must be authorized for that purpose where the certificate is issued. Authorized (bevoegd) in this particular case is relating to: 1) Title and kind deed made; 2) Day and the date of manufacture of the deed; and 3) Where the deed is made.[1]

Notary creates authentic deed in the form prescribed by law in accordance with Article 1868 of Civil Code in the form of minutes which is the original deed stored in the notary protocols that should not be issued by the notary in accordance with Article 35 Regulation Notary.

Minutes referred to in the article are saved (in the protocol) by notary and where the notary gave *grosse*, copy or quote; so it's the opposite of "brevet", which means given in the original (in originali). Compared with article 31 Regulation Notary, in which the article "minutes" has the meaning of "original deed". In exceptional cases, the original (originali) can be given to interested parties.

Thus the provision in the first paragraph of Article 35 of the Regulation Notary must be interpreted that the original should not be made to be issued or in other words the original was made with the intention to be recorded by a notary. So "minutes" in this case has the meaning of "an act that is made to be in a notarial protocol"[2]

Notary issued or give to the person concerned, heirs or the person who got the power in the form of copy of the deed. Copy of the deed is a copy of the words from the

entire contents of a deed which have the same content with minutes deed signed by the parties and the Notary. This copy is also signed by a Notary concerned.[3]

Minutes deed / deed contents are prohibited to be changed as in replaced, added, dropped, erased or written overlap.

Article 32 Regulation Notary can be noted:

- that all changes and additions (words / numbers, etc.) contained in a deed of notary must be written in the edge of the related deed, commonly called "renvooi";
- that every renvooi is only valid if it is signed (in practice it is mostly initialed) (approved / goedgekeurd) by all attendee, the witnesses and the notary;
- that if changes or additions that are too long to be written on the edge of the deed, the writing is done at the end of the deed before closing, pointing to the page and the line in question; and
- that when renvooi it is not done per above, the changes and additions were considered worthless (canceled).

What is meant by the word "change" mentioned above is the replacement of the word and so on which is crossed. Since the birth of Reglemen until now, the article still reads the same (intact). Article 33 Regulation Notary: This articlesay that, would among other things to prevent (avoid) the occurrence of forgery ex article 263 of Criminal Code.

Article 33 contains a prohibition in deed or in renvooi mentioned in Article 32 above to make change or addition of words or letters (and numbers) or strikethrough or delete / remove and replace / supplement it with another, with the cancellation of words or letters (also numbers) which are written as a replacement / insertion and addition.

Also from the beginning, this article have not experienced any changes.[4] Minutes change in the deed done and valid if marked with ratification by attendee, witnesses and Notary. Changes made without pointing to the changes cause a change to be canceled, this causes the deed will only has power as a private deed and can be made as the reason for the wrong party to demand reimbursement of damages and interest to the Notary.

Whether there is change or no change should always be written also on the closing of the deed with sanctions if it is not done then the deed only becomes private deed and the wrong party can demand reimbursement of damages and interest to the Notary.

In respect of the renvooi, when minutes was given page numbering, then the contents and page numbering will be different then there is falsification of certificates in accordance with article 264 of Criminal Code. Notary actions mentioned above will be caught in criminal law article 264 of Criminal Code.

Deed of PPAT (Land Deed Officer)

PPAT subject to the Indonesian Government Regulation Number: 37 of 1998 on the Land Deed Officer

Rules and Regulation of the Government of the Republic of Indonesia number: 24 of 2016.

PPAT is a public officer who is authorized to make authentic deeds regarding legal acts concerning land rights or ownership on apartments (Article 1, paragraph 1 PP 24/2016) with the main task to implement part of the land registration activities with a deed as evidence of the legal acts concerning land rights and ownership on apartments that include sale and purchase, exchange, donation, existence into the company (inbrenng), Entitlement Commons, giving right of use to freehold land, giving Encumbrance.

Those deed of PPAT were created in original form of two (2) copies of the same content and given page numbering or sheet numbering, examples: the first sheet or the first page and so on in every page specified by the Minister, namely: 1) The first sheet kept by PPAT concerned; 2) The second sheet is used for the registration process to the Office land; and 3) The concerned parties may be given a copy of it;

Job of Notary and PPAT is to make the evidence but if the Notary and PPAT is not disciplined and never read the legislation, it will lead to carelessness and ignorance and can be tangled with criminal law.

Notaries in education always only stressed in the civil law, however in the present era which is the globalization, the Notary also need to know more about era development with the existence of industrial revolution.

The era of the Industrial Revolution 4.0 cause a shift in the millennial world which is a challenge for all parties, including the legal profession that need creativity to respond to existing problems.

The era of the Industrial Revolution 4.0 was marked by patterns of Digital economy, Artificial Intelligence (AI), Big Data, Robotics, which had a significant impact on the legal field.

On January 21, 2019, Japan in anticipation of the Industrial Revolution 4.0 have Society 5.0 which is Humanism in Society 5.0, people take advantage of:

- 1) Internet of Things
- 2) Big Data
- 3) Artificial Intelligence (AI)
- 4) Robot
- 5) Sharing Economy

The center of human civilization with technological basis focuses on humanism which is human civilization that collaborate with the physical, digital and biological include spiritual aspects. Notary that responsive to change / shift towards industrial revolution will put the changes in the profession and will not be afraid that he/she will be replaced by robots every time robot was used.

IV. CONCLUSION

Deed of Notary is referred to as the authentic deed because its shape is determined by the Law of the Republic of Indonesia Number 2 of 2014 concerning the

Amendment to Law Number: 30 of 2004 concerning Notary profession.

Deed of PPAT subject to government regulation of the Republic of Indonesia number: 37 of 1998 on the Land Deed Officer Rules and Regulation of the Government of the Republic of Indonesia number: 24 of 2016. PPAT primary duty is to carry out some activities on registration of land with a deed as evidence of the legal acts concerning land rights and ownership on apartments.

If the deed of Notary follows the deed of PPAT which only made in 2 copies and one of the two copies is called minutes, then there can be a criminal entanglement as the deed of notary was first made and namedas minutes is being given to the parties or the attendee is a copy which word by word is the same as minutes. It can happen when the minutes was given page numbering and use renvoi that are too long or too much where the page numbering on a copy of the deed is not equal to that of the minutes of the deed.

This is where the case of criminal fraud can exist unnoticed by the notary because usually the Notary which is also the PPAT, they do not realize there are changes to the contents and page numbering of the deed because they are copying deed of PPAT, whose created in 2 copies, so that the Notary must be careful to make the copy.

REFERENCES

- [1] Thong Kie, Tan, *Studi Notariat dan Serba-Serbi Praktek Notaris*, PT. Ichtar Baru Van Hoeve, Jakarta, 1994, p. 214-215.
- [2] Lumban Tobing, GHS, *Peraturan Jabatan Notaris*, Erlangga, Jakarta, 1983, p. 230.
- [3] Tedjosaputro, Liliana, *Notary Law and Its Relevance in Public Life*, CV. Agung, Semarang, 2019, p. 68.
- [4] Andasmita, Komar, *Notary I*, Wells Bandung, Bandung, 1981, p.114-115.
- [5] *Ars Notariatus XXXVIII*, 1988, Notariaat En 150 Jaar BW, Stichting Tot Bevordering Der Notariele Wetenschap, Kluwer - Deventer Amsterdam.
- [6] Melis J.C.H bewerkt door Santen, A.H.M.& Waaijer, B.C.M., 1991
- [7] Soepadmo, Djoko, 1996, *Undang-Undang Republik Indonesia Nomer 4 Tahun 1996 Tentang Undang-Undang Hak Tanggungan atas Tanah dengan Komentar tentang Sejarahnya-Pengertiannya beserta Contoh-Contoh Akta yang berkaitan*, PT.Bina Ilmu, Surabaya