

Analysis of the Notary's Principle of Prudence in Making Deeds to Avoid Occurrence of False Information in Making a Deed of Inheritance Information (Case Study on Court Decision Number 121/PID/2017/PT.DKI)

Eva Dwijayanti

Faculty of Law, Universitas Islam Sultan Agung, Semarang, Indonesia, E-mail: dwijyantieva@gmail.com

Abstract. *Notaries in carrying out their honorable duties and positions are required to be careful and consistent in implementing them in accordance with the Laws and Regulations in the field of Notary based on professionalism and good faith. The Principle of Notary Care in carrying out their position to make Authentic Deeds is one of the most important principles that must be applied or implemented by Notaries. so that there are no errors or legal defects in making authentic deeds, because the deeds made by Notaries must be accounted for to the public. The method used in this study is Normative Legal Research and, The approach method used in this study includes several approaches, namely; 1). Statutory Approach, 2). Conceptual Approach, 3). Analytical Approach, The types and sources of data contained in this study use Secondary data. Secondary data consists of three legal materials, namely: 1) primary legal materials, 2) secondary legal materials and 3) tertiary legal materials, The method of data collection in this study uses a literature study conducted on legal materials, Data analysis in this study is prescriptive. The results of this study obtained the following conclusions: 1). To prevent criminalization of the application of the Notary's Principle of Caution in recognizing the identity of the person appearing, it is necessary to seek the truth to minimize the possibility of problems in the future. Provide legal counseling on the Legal Consequences if the person appearing provides false information. 2). The legal consequences for Notaries who do not apply the Principle of Caution in recognizing the persons appearing by looking at their legal actions first, if the error comes from the persons appearing, the deed can be degraded to a deed under hand. If the error is from the Notary, the Notary will be sanctioned.*

Keywords: *Deed; False; Information; Inheritance.*

1. Introduction

Notary is a public official who is authorized to make authentic deeds and other authorities as referred to in UUJN. The application of the Notary's Principle of Caution in carrying out his/her position to make Authentic Deeds is very important because based on Article 1871 of the Civil Code it is regulated that: "If an authentic deed, in any form, is suspected of being fake, then its implementation can be suspended according to the provisions of the Civil Procedure Regulations". Thus, the interests of the parties in the Notarial Deed will be hampered if the Notary does not apply the Principle of Caution in carrying out his/her position.

The role of a Notary as a service provider who has an honorable position in society. In principle, the Notary's service to clients is based on a horizontal-contractual relationship pattern, meaning that it is a process of buying and selling services between the Notary and the client. This situation was previously considered unethical, but now in its development it cannot be denied that Notary services are considered as a commodity of sale and purchase that has economic value. In addition, the Notary-client relationship really needs honesty. The client's honesty value is the most basic value in supporting the success of the Notary's performance in making the deeds entrusted to him. Trust contains elements of honesty, justice and truth.

A person can use the services of a Notary by asking for a marriage contract to be made, as well as in daily life/activities such as establishing a business entity, a sale and purchase agreement, exchange, credit agreement, and so on. Even a person who will make a will before dying pours his last will in a will deed made before a Notary. Likewise in relation to someone who has died, then a problem arises regarding something he left behind (the existence of one or more people left behind, hereinafter referred to as heirs/heirs and the existence of assets left behind, hereinafter referred to as inheritance/inheritance).¹

The problem raised in this study is the existence of false information from one of the heirs, regarding the making of a certificate of inheritance made by the heir, witnessed by 2 (two) witnesses. In the Supreme Court Cassation Decision NUMBER 121 / PID / 2017 / PT.DKI which shows that there are heirs who provide false information or provide information that does not correspond to the actual reality, so that there are heirs whose names are not listed in the certificate of inheritance or there are heirs who do not sign the certificate of inheritance which can hinder the making of a certificate of

¹Jahja Santoso, 2003, Notary's Liability in Making Inheritance Statements. Thesis, Master of Notary, Airlangga University, Surabaya, p. 2-3.

inheritance, so that it does not guarantee legal certainty and legal protection for the heirs.²

The principle of caution is one of the most important principles that must be applied or implemented by a Notary in carrying out his/her duties. A Notary in carrying out his/her honorable duties is required to be thorough or careful, all of which are consistent in implementing laws and regulations in the field of notary based on professionalism and good faith.

Notaries also have full responsibility for every deed they make, especially if later the deed is disputed in court and contains legal defects, then it is worth questioning. In the deed that is disputed or contains legal defects, it must also be known whether there is an element of pure error from the Notary, or an error from the parties in providing information and other supporting documents.³

2. Research Methods

This type of research uses Normative legal research, namely legal research that uses Secondary Data sources, namely data that can be obtained through legal materials in the library. The Approach Method used in this study is 2) Statutory Approach, 2) Conceptual Approach, 3) Analytical Approach. The types and sources of data contained in this study use Secondary data, and secondary Data sources consist of three legal materials, namely: Primary legal materials, secondary legal materials, tertiary legal materials. The data collection method in this study uses the Literature Study data technique for legal materials, both primary legal materials, secondary legal materials, tertiary legal materials and non-legal materials. The data analysis carried out in this study is Prescriptive, namely the nature of the analysis that provides arguments for the results of the research that has been carried out.

3. Result and Discussion

3.1. Implementation of the Notary's Principle of Caution as a Public Official in Making Deeds of Inheritance Information to Avoid False Information in the Distribution of Inheritance Assets

The principle of prudence is one of the most important principles that must be applied or implemented by a Notary in carrying out his/her duties as a

²Heressa Delfiyanti, and Ade Saptomo, 2022, Legal Responsibility of the Provider of False Information in Making a Deed of Inheritance Information Case Study of the Supreme Court of the Republic of Indonesia's Cassation Decision Number 121 K/Pid/2017, Journal of Law & Notary Student Affairs Vol 1, No. 02, p. 476-477

³Zuliana Maro Batubara, 2011, Legal Analysis of the Cancellation of Notarial Deeds (Case Study at the Medan District Court), Thesis, USU Faculty of Law, Medan, p. 18.

public official. It is very important for a Notary in carrying out his/her duties and position to implement the Principle of Prudence in the process of making authentic deeds, considering the frequent legal problems with authentic deeds made by Notaries because there are parties who commit crimes such as providing fake letters and false information into the deeds made by Notaries. So to prevent crimes that can lead Notaries to be involved in legal problems, it is necessary to re-regulate the Notary Law regarding guidelines and demands for Notaries to act more carefully, thoroughly and cautiously in the process of making authentic deeds.

In carrying out their duties and positions, it is very important for Notaries to implement the Principle of Caution in the process of making authentic deeds, to prevent crimes that can lead Notaries to be involved in legal problems, it is necessary to regulate this again in the Notary Law regarding guidelines and demands for Notaries to act more carefully, precisely and cautiously in the process of making authentic deeds.⁴

The forms of the Principle of Prudence that can be implemented by a Notary in the process of making a deed include: Identifying the Identity of the Applicant, Carefully verifying the data of the subject and object of the Applicant, Providing a grace period in the process of making a perfect deed, Acting carefully, precisely and thoroughly in the process of making a perfect deed, Fulfilling all the technical requirements for making a perfect Notarial deed, Reporting to the authorities if there is an indication of Money Laundering in Transactions at the Notary.⁵Forms of the Prudentiality Principle such as this must be implemented by Notaries so that later Notaries can prevent legal problems arising against authentic deeds that they make in the future. In order to avoid all risks in the form of sanctions or cancellation of authentic deeds, in the process of making authentic deeds before a Notary, the Notary and the parties must implement the Prudential Principle in a more careful manner and have good faith in making authentic deeds and comply with applicable legal provisions and based on morals and ethics.

Implementation of the Notary's Principle of Caution in Knowing the Applicants begins with Providing Legal Counseling and Legal Education to the applicants. Pouring out the wishes of the applicants in an authentic deed, in making the deed must not conflict with applicable regulations, all requirements must be met by the applicants, then must be examined,

⁴Ida Bagus Paramaningrat Manuaba, 2017, Notary's Principle of Prudence in Making Authentic Deeds, Thesis, Master of Notary Program, Faculty of Law, Udayana University, p. 61.

⁵Bella Okladea Amanda, 2022, The Principle of Notary's Prudence in Making a Perfect Deed, Law Journal Vol. 4 No. 1, Page 232.

checked, checking documents with related agencies. Checking documents directly online to the government agency system. Such as in the case of checking the Population Identity Card through the online system of the Population and Civil Registry Service. Asking and directly matching the truth of biodata, such as the date and address on the Population Identity Card to the applicants.

One way to apply the Principle of Caution in recognizing the appearers. If the person appearing is not the person appearing according to the Resident Identity Card, then it will be seen physically and in behavior that can be seen directly there are irregularities and differences. Knowledge, Integrity and Professionalism are things that a Notary must have, a Notary must understand all legal actions desired by the appearers. Having the ability and knowledge in the field of law, when a Notary does not understand the legal actions that the appearers want, then the Notary does not understand the knowledge that he must have. If a Notary has the ability in terms of the legal actions desired by the appearers, it will minimize the risk of losses and disputes that will be experienced by the appearers or the Notary himself.

The Applicants have fulfilled all the formal requirements, so that is sufficient as a basis for the Notary to carry out the legal acts desired by the Applicants. The Notary is not burdened with seeking the truth materially, but when there are doubts and oddities in the documents that are a requirement for making the deed of the Applicants. Then the Notary should seek the truth materially on the Applicants' documents. In order to achieve the Principle of Notary's Caution in getting to know the Applicants. If there are doubts and errors in the documents of the Applicants, the Notary should refuse to make an authentic deed, in order to achieve the Principle of Caution in getting to know the Applicants and not become a dispute in the future.⁶

3.2. Legal Consequences of the Notary's Principle of Caution in Making Deeds of Inheritance Information to Avoid False Information in the Distribution of Inheritance Assets

If a Notary makes a mistake in carrying out his/her duties, he/she cannot escape from the existing sanctions. Sanctions can be in the form of criminal sanctions or civil sanctions. Civil law applies to deeds made by a Notary that lose their nature as a Notarial deed, the deed loses its authenticity.

The legal consequences of a Notary not implementing the Principle of Caution in recognizing the parties, namely, it must be seen from his legal actions first. Mistakes come from the parties such as falsification of

⁶Brilian Pratama, Happy Warsito, Herman Adriansyah, 2022, Principles of Caution in Making Deeds by Notaries, Notary Agister, Faculty of Law, Sriwijaya University, Scientific Journal of Notary Law Vol.11 No.1, p. 25.

documents and those present are not the actual parties, the Notary is not responsible for that. This is the responsibility of the parties themselves. Whereas if the mistake comes from the Notary, then he can be held accountable in civil and criminal law. His deed can be degraded to a private deed.

In addition, the legal consequences of the Notary not implementing the Principle of Caution in recognizing the parties are that the legal actions to be carried out by the parties can be seen in advance. If the person present is not the real person who is appearing at the Notary's office, then the deed can be degraded. The Notary is not responsible for false documents and errors shown by the parties. An authentic deed is degraded to a private deed, namely an authentic deed experiences a decrease in quality or decline or decline in status, in the sense that its position is lower in strength as evidence, from complete and perfect evidence to the beginning of proof such as a private deed and can have legal defects that cause the deed to be canceled or invalid. The difference between degradation and cancellation of an authentic deed is that if it is declared null and void by the judge, then the authentic deed is declared to have never existed.

Notaries who make mistakes in recognizing the identities of the parties, namely propriety, accuracy and caution require everyone to pay attention to the interests of others in fulfilling their interests. Fulfillment of one's interests must be carried out in such a way that it is not harmful to the interests of the parties. Notaries who are detrimental, for example, make deeds that do not protect the rights of the parties as stated in the Notarial deed. The sanction is the loss of trust in the Notary, while the sanction for violating the law committed by the Notary if there are parties who file a lawsuit depends on the judge's decision. If one of the parties is harmed due to the Notary's error and negligence, then the party can request compensation.⁷

4. Conclusion

Notaries must always implement the Principle of Prudence as an effort to prevent criminalization related to responsibility both in civil, administrative, Notary code of ethics and criminal law, the application of the Notary's principle of prudence in recognizing the identity of the person appearing, namely carefully verifying the data of the subject and object of the person appearing, checking documents with related agencies, checking documents directly online to the government agency system. The legal consequences of

Fikri Ariesta Rahman, 2018, Implementation of the Notary's Principle of Caution in Recognizing Applicants, Student Journal of the Master of Notary Program, Islamic University of Indonesia Vol 3, No. 02, p. 432-433.

a Notary's deed that does not apply the Principle of Caution in recognizing the parties are carried out by looking at the legal act first, if the error comes from the parties, the legal consequences of the deed can be degraded to a deed under hand. If in the process of making the deed an error is made by the party and is contrary to the applicable legal regulations, then the authentic deed can be null and void and can be canceled through a judge's decision. Meanwhile, the legal consequences of a Notary who is proven not to have applied the principle of caution in recognizing the parties are that he can be subject to administrative sanctions in accordance with the Notary Law and can be subject to civil sanctions such as compensation or criminal sanctions such as imprisonment.

5. References

Journals and Research:

Bella Okladea Amanda, 2022, Prinsip Kehati-Hatian Notaris Di Dalam Pembuatan Akta Yang Sempurna, *jurnal hukum Vol. 4 No. 1*.

Brilian Pratama, Happy Warsito, Herman Adriansyah, 2022, Prinsip Kehati-Hatian Dalam Membuat Akta Oleh Notaris, Agister Kenotariatan, Fakultas Hukum Universitas Sriwijaya, *Jurnal Ilmiah Hukum Kenotariatan Vol.11 No.1*.

Fikri Ariesta Rahman, 2018, Penerapan Prinsip Kehati-Hatian Notaris Dalam Mengenal Para Penghadap, *Jurnal Kemahasiswaan Magister Kenotariatan Universita islam Indonesia Vol 3, No. 02*.

Heressa Delfiyanti, dan Ade Saptomo, 2022, Tanggung Jawab Hukum Pemberi Keterangan Palsu Dalam Pembuatan Akta Keterangan Waris Studi Kasus Putusan Kasasi Mahkamah Agung Republik Indoensia Nomor 121 K/Pid/2017, *Jurnal Kemahasiswaan Hukum & Kenotariatan Vol 1, No. 02*.

Ida Bagus Paramaningrat Manuaba, 2017, Prinsip Kehati-hatian Notaris dalam Membuat Akta Autentik, *Tesis*, Program Magister Kenotariatan Fakultas Hukum Universitas Udayana.

Jahja Santoso, 2003, "Tanggung Gugat Notaris Dalam Pembuatan Keterangan Waris, *Tesis*, Magister Kenotariatan Universitas Airlangga, Surabaya.

Zuliana Maro Batubara, 2011, Analisis Yuridis Terhadap Pembatalan Akta Notaris (Studi Kasus Pada Pengadilan Negeri Medan), *Tesis*, Fakultas Hukum USU, Medan.

Legislation

The 1945 Constitution of the Republic of Indonesia

Civil Code

Criminal Code

Constitution Number 2 of 2014 concerning Amendments to the Law

Invite Number 30 of 2004 concerning the Position of Notary