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ACCOUNTABILITY OF NOTARY/LAND DEED OFFICIAL FOR TRANSACTION OF LAND SALE AND PURCHASE BASED ON FAKE EVIDENCE

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Abstrak

Notary/PPAT accountability is a form of responsibility carried out by a Notary/PPAT legally for a certain action against his position, duties and authority in making an authentic deed. In a land sale and purchase transaction, when pouring all forms of data provided by the parties, if there is a sale and purchase of land based on fake document evidence to transfer ownership rights to other people's land which is not actually being traded. In this case the Notary/PPAT is not properly positioned as a party to this case, because the Notary/PPAT where all products issued by a Notary/PPAT are based on Law Number 30 of Year 2004. Meanwhile, the legal consequences of land sale and purchase agreements based on forged documentary evidence are that a deed only has the power of proof as a private deed. This study uses a normative legal method, using a case approach, statutory approach, and legal conceptual approach with primary, secondary and tertiary legal materials. The conclusion of this study is that a Notary/PPAT cannot be said to have committed a violation of the making of the Sale and Purchase Deed, because what is stated in a Notary deed is the will of the parties, and as a legal consequence of the land sale and purchase agreement based on forged documentary evidence, namely the deed becomes legally flawed because it is based on manipulative documents.

Keywords: accountability; fake evidence; notaries; PPAT, sale and purchase of land

1. INTRODUCTION

In the development of the times to date, people tend to be used to instant things because they are considered easier, without having to work hard first to get a business. This makes many business actors who continue to conduct trials to produce a business that put aside the quality of the business itself. This happened because of the swift flow of competition open in various business sectors which later finally had an impact on the country (Nugroho et al., 2022).

A country will be considered weak when state officials and state civil servants are unable to overcome the problems that exist in their country. This will be a poor spotlight because the government is considered unable to carry out its duties consistently, so that there are many deviations that harm the country or

society.

One of the objectives of the notary deed is to provide legal certainty for those who have interests. The notary deed has a strong legal force, the existence of an authentic notary deed will be very helpful if one of the parties who come to violate the contents of the deed (default) due to a guarantee of the deed of sustainability of the agreement. In addition, the authentic notary deed is perfect evidence and can be used as evidence in court. (Koesoemawati & Rijan, 2009)

According to Article 1868 of the Civil Code, "Authentic Deed is a deed made in the form determined by the law or made in front of the authorized public official in the place of making the deed" (Wirman et al., 2019). Authentic deeds in the manufacturing and signing process are carried out before a notary. Authentic

deeds can help holders or owners if involved in legal cases. Evidence according to Sudarsono is "something that states the truth or event, real statement, witnesses and things that are a sign". (Sudarsono, 2005)

The number of cases in the authentic deed issued by the PPAT notary still occurs today, the example of the case examined by the author is that there has been a land buying and selling transactions based on evidence, namely fake letters. With the sale and purchase of land based on the fake letter, causing the notary to be involved by those who feel disadvantaged (Mugiati, 2022).

That is because the Plaintiff considers in carrying out his duties and positions, the notary is considered unprofessional and not careful in making authentic deeds (Nabilah, 2022). But basically, the notary does not have the authority to investigate or look for material truth from the data and information provided by the parties, because the notary is only in charge of expressing all forms of data and information provided by the parties when facing in the Notary Office (Murshal Sanjaya, 2021).

Based on the background of the problem above, the researcher conducted research on the ACCOUNTABILITY OF NOTARY/LAND DEED OFFICIAL FOR TRANSACTION OF LAND SALE AND PURCHASE BASED ON FAKE EVIDENCE. The purpose of this study is to understand (1) what are the legal consequences for the Notary/Officer of the Land Deed for Land Buying and Selling Transactions which then turned out to be based on false evidence? And (2) what is legal certainty and legal protection for land buying and selling transactions based on false evidence?

2. METHOD

This research uses a type of normative legal research. Soekanto statet that "normative legal research is also known as library research or document study because this research is conducted or aimed only at written regulations or other legal materials". (Soekanto & Mamudji, 2004) Approach in this research is a case approach, statutory approach, and legal conceptual approach with primary, secondary and tertiary legal materials (Kadek et al., 2023; UTAMA et al., 2022).

3. DISCUSSION

ACCOUNTABILITY OF NOTARY/LAND DEED OFFICIAL FOR TRANSACTION OF LAND SALE AND PURCHASE BASED ON FAKE EVIDENCE

Main Case in Supreme Court Decision Number: 610 PK/Pdt/2019

On August 3 2010, Plaintiff I Ketut Tokin's husband died due to illness, thus making his wife Ni Wayan Gorim (Plaintiff) the legal owner of a plot of land with an area of 2,500 M2 (two thousand five hundred square meters). In November 2013, someone came to the Plaintiff's house wanting to rent land belonging to the Plaintiff. However at that time the person only met with the plaintiff's sons. The person's arrival wanted to ask for a copy of the land certificate, photocopy of KTP and photocopy of the Plaintiff's Family Card to find out and guarantee certainty of ownership of the land.

On November 2 2015, the Plaintiff through his Attorney filed a lawsuit and was registered at the Denpasar District Court Registrar under Register Number 816/Pdt.G/2015/PN Dps, and the following is a list of names as defendants, namely:

Ni Wayan Widastri, S.H, Notary, having his address at Jalan Raya Puputan No. 16 B Renon, Denpasar, Bali, hereinafter referred to as Defendant I.

Dirja Wirawan, Entrepreneur, place / date of birth: Sumbawa Besar/January 16 1960, KTP holder with Resident Identification Number (NIK): 5204081601600001, residing on Jl. Manggis, RT/RW 003/005, Seketeng Village, Sumbawa Regency, Sumbawa District, West Nusa Tenggara Province, is referred to as Defendant II.

Ambo Enre, S.H, Land Deeds Official (PPAT), located on Jalan Raya Kapal No. 26, Mengwi District, Badung Regency, Bali Province, is referred to as Defendant III.

I Ketut Tokin ("Fake"), Entrepreneur, place/date of birth : Badung, February 14, 1953, KTP holder with Resident Identification Number: 5103011402530002 and Ni Wayan Gorim ("Fake"), Entrepreneur, place/date of birth: Badung , April 29, 1956, KTP holders with Resident Identification Number (NIK): 510301529046011, both of whom reside at Kesambi Baru Housing Number 18, Kerobokan Village/Kelurahan, North Kuta District, Badung Regency, Bali Province, however, until now it is unclear and its

whereabouts are unknown, referred to as Defendant IV.

Head of the Badung Regency Land Office, having his address at Jalan Dewi Saraswati No. 3, Seminyak, Kuta, Badung, Bali, Anak Agung Sri Partami, S.H, NIP. 19631112 198301 2 001, Position: Problem Analyst in the Dispute, Conflict and Case Section at the Badung Regency Land Office, acting based on Special Power of Attorney Number: 51/SK-51.03/XII/2015, dated 3 December 2015, referred to as Defendant V.

On March 24, 2014, a Notary (Defendant 1) made a Deed of Agreement between the Fake land owner as (Defendant 4) and a buyer as (Defendant 2). The deed stated that the fake land owner (Defendant 4) sold a land area of 25 are/2,500 M2 (two thousand five hundred square meters) with the buyer (Defendant 2). On the same day, the Notary (Defendant I) also made a power of attorney to sell dated March 24, 2014 which stated that the fake land owner (Defendant 4) gave the power of attorney to sell his own land to the same buyer (Defendant 2).

In the Deed of Agreement and Deed of Power of Attorney to Sell dated March 25 2014 which was made by a Notary (Defendant 1) it is clear and very clear that the original land owners, namely the Plaintiff and the Plaintiff's husband were never present and never gave approval and never signed the Deed of Agreement (Defendant I). Due to the fact that the Plaintiff's husband passed away on August 3 2010 (Death Certificate), while the Deed of Agreement and Deed of Attorney were drawn up 4 years after the death of the Plaintiff's husband.

That the actions of Defendant I conflicted with the rights of the Plaintiff as the legal owner (*persoonlijkheidsrechten*) of the land freehold certificate (SHM) Number 1773/Ungasan Village, the actions of the Defendant conflicted with his own legal obligation to act with necessity (prudence, decency, decency) that must be heeded by Defendant I, also emphasized in Article 1366 of the Civil Code that "Every person is responsible not only for losses caused by his actions, but also for losses caused by negligence or carelessness". That Defendant I has an obligation to examine the subject and object in the deed he made, this is regulated in Law Number 2 of Year 2014 concerning Amendments to Law Number 30 of Year 2004 concerning the Position of

Notary Public, as well as the actions of Defendant I who ignored the protests and objections of the Plaintiff's child (I Nyoman Alit Mudanu) on May 28 2014, Defendant I clearly already knew that the owner of the land, namely I Ketut Tokin (original) had died but Defendant I ignored the protests and/or objections of the Plaintiff's son (I Nyoman Alit Mudanu), Defendant I should be in an objective position obligated to act "honestly, thoroughly, independently, impartially and protect the interests of the parties involved in legal actions" as stipulated in Article 16 paragraph (1) letter a of Law Number 30 of 2004 concerning the Position of Notary Public, however Defendant I did not comply with the provisions of the Law

Legal Consequences for Transaction of Land Sale and Purchase Based on Fake Evidence

Whereas Defendant I is a Notary/Land Deed Making Officer (PPAT) committed an act in accordance with the authority permitted by Law Number 30 of Year 2004, according to article 15 a Notary is given the authority to issue Deeds. Whereas Defendant I in issuing the Deed of Agreement Number 25 dated 24 March 2014, as also required by Law Number 30 of Year 2004 concerning the Position of Notary Public, article 16 paragraph (1), that after reading the Deed before the appearers, and the appearers stated that they understood and understood the contents of the Deeds, attended by 2 (two) witnesses, and signed at the same time by the witnesses appearers and the Defendant.

In this case the plaintiff was not right in positioning Defendant I and Defendant III as parties to this case, because Defendant I and Defendant III were Notaries/Land Deed Officials (PPAT), where all products issued by the position of Notary/Land Deed Official (PPAT) are based on the Law, it is Law Number 30 of Year 2004.

Then Ni Wayan Widastri, S.H, as a notary cannot be said to "have committed a violation of the making of the sale and purchase deed", because what is stated in a notarial deed is "the will of the parties", where the notary is the authorized public official. The notary has no responsibility in relation to the decision because the notary has fulfilled the formal requirements for making the deed.

The notarial deed is indeed said to have "perfect evidentiary power", but if the notarial deed is proven to have violated

certain provisions, then the notarial deed will degrade its evidentiary value to become the strength of proof as a private deed.

When a notarial deed is declared null and void, the notary deed is "deemed to have never existed or has never been made", something that has never been made cannot be used as the basis for a claim in the form of compensation, reimbursement of costs and also interest (Wardhani et al., 2023). Thus a notarial deed that is null and void should not have legal consequences for providing compensation, reimbursement of costs or interest to other parties in the deed who feel aggrieved.

In the event that the making of a Notary deed is legally flawed, the lawsuit that is considered the most relevant and effective is a claim for compensation. However, in filing a claim for compensation for default, it is mandatory that there must be a loss arising from one of the parties and there is a causal or causal relationship between the loss and the act that violates the norms committed by the parties.

However, a private deed is considered to have perfect evidentiary power as long as the parties having an interest in the deed admit it (Girinatha & Renaya, 2023). If it turns out that one of the parties or even the parties violates certain provisions as contained in article 84 of Law of Notary's Position, then the deed concerned still has perfect evidentiary power and is binding on the parties (Ramadhani et al., 2021).

Legal Certainty and Legal Protection for Transaction of Land Sale and Purchase Based on Fake Evidence

According to Budiman Ginting, "legal certainty is one of the goals of law in addition to benefit and justice for every human being as a member of society regardless of their origin". (Ginting, 2008)

The theory of legal certainty according to Peter Mahmud Marzuki contains 2 meanings, namely "first there are general rules that provide an explanation to individuals about what may and may not be done. Second, there is legal security for individuals from the arbitrariness of government power". This theory of legal certainty provides "a basis for individual behavior and a basis for actions that can be carried out by the State against individuals. Legal certainty is not only in the form of articles in the law but also

consistency in judge's decisions between the decisions of one judge and the decisions of other judges for similar cases that have been decided". (Marzuki, 2003)

Legal certainty is closely related to Gustav Radbruch's three legal ideas, namely "justice, benefit and legal certainty". (Ali, 2009) The judge's decision in court is law, therefore "the judge's decision in court ideally contains aspects of legal certainty, justice and benefit". It is explained in Article 1335 of the Civil Code that "an agreement without cause or which has been made for a reason that is fake or prohibited, has no legal force" (Sudini & Utama, 2018).

Thus the transaction becomes invalid and/or legally flawed so that the Deeds have no legal force, this is also corroborated by the Supreme Court Jurisprudence Number 663.K/sip/1971 dated 6 August 1973, even though the land sale and purchase transaction complies with the procedures for agrarian law, it must be declared VOID because it was preceded or accompanied by unfair matters or dishonest intentions.

It is also emphasized in Article 1366 of the Civil Code that "every person is responsible not only for losses caused by his actions, but also for losses caused by negligence or carelessness" (Anggraini, 2021). That "the Notary/PPAT has an obligation to examine the subject and object in the Deed he made", this is regulated in Law Number 2 of Year 2014 concerning Amendments to Law Number 30 of Year 2004 concerning the Position of Notary (Lubis et al., 2023).

Then based on the theory of legal certainty, legal certainty that can be given is in the form of cancellation of the Notary/PPAT deed caused by an error or negligence from the Notary/PPAT when the process of making the sale and purchase deed takes place which contains elements of an act against the law.

Forms of Notary Liability for land sale and purchase transactions based on forged document evidence can be accounted for by a Notary Code of Ethics, namely in the form of imposing sanctions from the Association, namely "in the form of reprimands, Warnings, imposition of sanctions on temporary dismissal (*Schorsing*) from Association membership, dismissal (*Onzetting*) from Association membership, while civil liability is in the form of reimbursement of costs, compensation and interest, and criminal responsibility is in the form of a maximum

imprisonment of 8 (eight) years”.

Legal protection can be given when there has been a violation or action that is contrary to applicable law, whether the act was committed by the community, the government or authorities who violate the laws and regulations that apply in a rule-of-law country. Therefore, the legal protection given to parties who have been harmed in a land sale and purchase transaction based on forged document evidence is to provide repressive legal protection, namely by providing final protection in the form of fines, dismissal and imprisonment for a maximum of 8 (eight) years to a Notary.

4. CONCLUSION

Based on the descriptions that have been stated above, the writer can draw the conclusion that in this case the Notary/PPAT is not properly positioned as a party to this case, because the Notary/PPAT where all products issued by the position of Notary/PPAT are based on Law Number 30 of Year 2004. The legal consequence of the decision handed down by the Court against the Notary is that the Notary cannot be said to have violated the making of the Sale and Purchase Deed, because “what is stated in a Notary deed is the will of the parties”, where the Notary is a public official who is authorized and has committed an act according to the authority permitted by Law Number 30 of Year 2004.

As a legal consequence of the land sale and purchase agreement based on forged documentary evidence, which “results in a deed only having the power of proof as a private deed”. This is because the body of the deed of the land sale and purchase agreement contains fake/manipulative document identities because the appearer, namely the seller in the agreement, is not a real person. The court in its decision stated that the process of transferring rights over the object of land dispute to Defendant II contained legal defects because it was based on manipulative documents.

And from the results of research that has been done, the authors can provide suggestions that in carrying out the noble task of helping the public to resolve the legal issues they face, it is expected that a Notary will always act carefully, prudently, and increase his knowledge to understand the laws and regulations that apply properly while carrying out his position as a Notary, so that as little as possible the

occurrence of actions or deeds that are born disputed by interested parties.

The law of Notary's Position contains more provisions that clearly regulate the limitations of notary liability for the deed products he has made. This is because UUJN does not provide clear arrangements regarding the extent to which troubled notarial deeds can be classified as the responsibility of a notary or not classified as the responsibility of a notary.

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