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Juridical Study of Notary on Forgery of Deed of Division of Joint Property in Criminal Cases

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ABSTRACT

The forgery of authentic deeds carried out by notary office employees has profound implications for the resulting deeds' evidentiary strength and legal enforceability. This study aims to analyze the applicability and evidentiary strength of the deed of division of common property forged by notary employees and evaluate legal responsibility in the juridical context of the notary. The approach used is normative juridical with a qualitative analysis method through literature studies and case studies of the Palembang District Court Decision Number 996/Pid.B/2020/PN. PLG. The results of the study show that although formally the forged deed has not been legally canceled by the court, materially the deed has lost its force as an authentic deed and is only valuable as a deed under hand. This reinforces the importance of the principle of prudence and supervision by notaries on the performance of their employees. These findings contribute to clarifying the boundaries of notary legal responsibility and strengthening legal protection for the community that uses notary services.

Keywords: Notary, Authentic Deed, Forgery, Notary Officer, Power of Proof.

I. Introduction

The development of the legal system in Indonesia has encouraged the public's increasing need for professional and accountable legal services, one of which is through the existence of notaries. Notaries are public officials authorized by law to make authentic deeds with perfect and binding evidentiary power for the parties. In practice, a notary deed not only functions as evidence but also as a guarantee of legal certainty for parties who enter into legal engagements or transactions. (fauziah Nudiati, 2023). The position of notary is a legal institution formed to provide services to the community by providing written evidence with authentic legal force for an act, legal event, or specific circumstances. Therefore, every individual appointed to the notary profession must have a commitment and spirit of devotion to providing legal services to the community. As a form of appreciation for the services provided by the authority of their position, the public can give rewards or honorariums to notaries. Thus, the existence of a notary directly depends on the community's needs, especially if the community does not need its services. The function and position of the notary in legal practice become irrelevant (Adjie, 2015).

The leading authority possessed by a notary is to make an authentic deed related to all agreements, determinations, or other legal actions required by laws and regulations, or desired by interested parties to be stated in the form of an authentic deed. In addition, the notary also has the authority to determine the certainty of the date of making the deed, issue the grosse deed, keep the minutes of the deed, and provide



copies and citations of the deed, as long as such authority is not limited or transferred to other officials as determined by the applicable law (Budiono, 2015).

Law Number 30 of 2004, as amended by Law Number 2 of 2014 concerning the Position of Notary, stipulates in Article 16, paragraph (1) that a notary must carry out his duties honestly, independently, and professionally. In addition, Article 65 states that a notary bears responsibility for every deed he makes while carrying out his official functions. (Subrata et al., 2025). In criminal procedure law, several pieces of evidence are known, as stipulated in Article 184 of the Criminal Code, including witness statements, expert statements, letters, instructions, and defendant statements. Meanwhile, in the Civil Procedure Law, several pieces of evidence have been determined in Article 1866 of the Civil Code: Written Evidence, Evidence with witnesses, Suspicions, Confessions, and Oaths. Proof in writing is carried out with an authentic deed or deed under hand. A deed is a writing deliberately made to be used as evidence if there is an event and is signed (Subekti, 2001). Deeds play two important roles in the legal system, namely as a form of *formality (formalitas causa)* and as a means of proof (*probationis causa*). The function of formality indicates that, to complete a legal action, even though it is not a legal requirement, it is necessary to make a deed as a complementary document. Meanwhile, the function as evidence shows that the deed was prepared deliberately from the beginning for proof in the future. Thus, the existence of a deed as a written document does not determine the agreement's validity; instead, it aims to make the agreement legally proven in legal proceedings if necessary (Mertokusumo, 1999).

A deed prepared by a notary serves as legally valid written evidence and plays a vital role in providing legal certainty for the parties involved. (Budiman et al., 2025). The deed under hand is a legal document made without following the form and procedures determined by laws and regulations, and without the involvement or presence of authorized public officials. On the other hand, an authentic deed is made in the format established by law, by or in the presence of a public official who has authority in the place where the deed is drafted. Both serve as evidence in legal proceedings; however, their evidentiary strength is the essential difference between them. An authentic deed is perfect, complete, and meets the minimum evidentiary requirements in civil cases without the need for additional evidence. On the other hand, the deed under hand only has evidentiary force if it is acknowledged by the parties who made it, or there is no denial from the party concerned in the legal process (Fahmi, 2013). In a dispute over a deed, the deed can be canceled through a court decision. Canceling a notary deed is not solely caused by the notary's mistake or negligence. However, it can also be caused by the mistake or negligence of the parties who bind themselves in the deed, thus giving rise to a lawsuit from one of the parties. In civil cases, it is not uncommon for notaries to be placed as co-defendants by force. This happens even though, in a notarial deed, especially in the form of a *partij acte* (deed of the parties), the notary is not involved in the substance of the regulated legal act and is even legally prohibited from interfering in the agreement's content. The involvement of a notary is limited to the formal function, which is to pour the will of the parties into the form of a deed and ratify it officially. The placement of a notary as a co-defendant is often carried out to obtain information or clarification about the deed being used as evidence in the trial process (Sukisno, 2008). In criminal cases, it is not uncommon for a notary to be in a position as a defendant, especially when involved in the criminal act of forging an authentic deed, where the deed is a legal product issued by the notary himself.

The notary profession is highly vulnerable to legal entanglements, both from internal and external factors. Internal factors include personal negligence, non-compliance with legal procedures, and professional code of ethics violations. Meanwhile, external factors include the social dynamics of the community, such as the rampant circulation of fake documents that the parties often present to the notary. These documents can cause serious legal consequences for the owner and other parties related to the law (Central Board of the Indonesian Notary Association, 2008). If it can be proven that the notary made negligence or mistakes in making the deed, then the notary concerned can be held criminally or civilly liable. Therefore, as a form of self-protection from potential legal risks, a notary must always be vigilant and carry out his duties with caution by the provisions of the law and the applicable professional code of ethics (Wawan Tunggal Alam, 2001). In a lawsuit that postulates that a notary deed is invalid or void for the sake of the law, then proof of the validity of the deed must be carried out comprehensively, both from external, formal, and material aspects. If the plaintiff

cannot prove the defects in these three aspects, the notary deed is still valid and has binding force for the interested parties. On the other hand, if the deed is proven to contain a defect in one of the required elements in the trial process, it loses its authentic force and can be qualified as a deed under hand or even declared null and void.

The legal force of a notary deed as evidence in the judicial process highly depends on its authenticity. If the deed is declared void by the court, it is necessary to review whether the deed is an authentic deed made by a notary by the provisions of laws and regulations, or is it just a deed under the hand. The deed under hand does not have full binding legal force but only serves as evidence if no party denies its validity. Therefore, the assessment of a deed's legal force must consider the existence or absence of legal defects in its making. In carrying out their duties, notaries also have a moral and professional responsibility to reject requests from parties that are contrary to the applicable legal provisions and are obliged to conduct a careful and thorough examination of the documents submitted before the process of making the deed is carried out (Untung, 2015). In carrying out the duties of his office, a notary cannot work independently. Generally, the notary is accompanied by a minimum of two employees. This is because, in the process of making a deed, at least two witnesses are required. Employees who work in notary offices have an important role in both internal and external aspects of office operations. In the internal context, employees administer notary deeds, prepare the documents necessary to prepare deeds, record the deed in the deed register book, and so on (Kurniawan, 2016). In the external context of the office, notary employees carry out administrative tasks related to various other agencies, such as the National Land Agency (BPN) Office, Tax Office, Regional Revenue Office (Dispenda), Licensing Office, and so on. Notary employees have the authority to assist notaries in carrying out the functions of their position. However, suppose the notary team member exceeds the authority given, such as when doing a deed without the notary's knowledge. In that case, the action can be classified as a criminal act of forgery.

Therefore, in addition to notaries, the crime of forging deeds is also often committed by the notary's office employees, namely by making or issuing deeds without the knowledge or consent of the notary concerned. These actions can cause legal and reputational losses for notaries because, in terms of office responsibility, notaries can still be held accountable for negligence in supervising their employees. This condition shows the weak application of the principle of prudence in carrying out the internal supervision function in the notary office environment. As public officials, notaries cannot work alone. The presence of notary office staff significantly assists in the administrative and technical processes of deed preparation. However, this staff presence poses potential legal risks without strict supervision and an adequate internal control system. Internal supervision is not merely a form of administrative compliance but also reflects the notary's responsibility for the work of its staff.

Negligence in supervising staff can result in deed forgery, as occurred in Palembang District Court Decision No. 996/Pid.B/2020/PN.PLG, where the notary staff prepared and used a deed without the notary's knowledge. This demonstrates weak internal controls and the absence of a structured internal audit system. Strengthening internal SOPs, ongoing team member training, and using digital archive and record-keeping systems are preventative measures to minimize criminal acts by notary office staff. Regular reporting and physical verification of stored deed minutes must also complement internal supervision. (Suminar et al., 2024).

Based on the Palembang District Court Enby Number 996/Pid.B/2020/PN. PLG, which revealed the forgery of the joint property distribution deed by a notary's office team member without the knowledge of the notary concerned. The deed is still used in legal activities and even in applying for credit to banking institutions, thus causing serious legal consequences for interested parties (Palembang District Court Decision Number 996/Pib.b/2020/PN.PLG). This phenomenon raises fundamental questions about the applicability of a deed that has been forged but has not been legally annulled by the court, as well as how its evidentiary strength is in the Indonesian legal evidentiary system, Thus, when viewed from a formal legal perspective, a deed is still considered valid and has legal force until there is a court decision declaring the deed null and void. However, if analyzed from the perspective of notary science, deeds that are proven to contain material and formal defects will experience a decrease in the value of their evidentiary strength. The deed no longer has

the force of an authentic deed, but is only equivalent to a deed under hand, the evidentiary strength of which depends on the confession of the parties and the judge's judgment. In other words, even if the court has not formally annulled it, the legal defects attached to the deed can lower its legal status in notarization. Therefore, normative legal research is needed to study and present it in the form of a thesis with the title "Notary Juridical Study on the Forgery of Deeds of Joint Property Distribution in Criminal Cases (Study of Palembang District Court Decision Number 996/Pid.B/2020/PN.PLG)." From the explanation, several main problems can be identified that will be discussed further. The main problems raised by the author are: (1) How does the deed of division of joint property forged by a notary office team member apply? (2) What is the power of proof of a deed of division of joint property forged by a notary office team member?

II. Research methods

The type of research used in writing this journal is normative legal research, which is a method that relies on the study of laws and regulations, legal doctrines, and court decisions (*jurisprudence*) that are relevant to the problem being studied (Fajar, 2015). This research is also known as a literature law study because it analyzes secondary legal materials (Soekanto, 1986). This study aims to examine in depth the legal norms related to the validity of the deed of division of joint property forged by the notary's office team member and to analyze the evidentiary strength of the deed from a legal perspective. The data used in this study are sourced from secondary legal materials, including three legal materials. First, the basis for the study is the primary legal materials, namely, binding legal provisions, such as laws and other laws and regulations. Second, secondary legal materials, namely literature that explains primary legal materials, including law books, academic manuscripts, theses, scientific works from legal experts, scientific journals, and online legal resources. Third, tertiary legal materials are references that provide direction and further explanation of primary and secondary legal materials, such as legal dictionaries, legal encyclopedias, and legal interpretation documents (Efendi, 2016). In analyzing legal norms, the author uses a grammatical interpretation method, an interpretation technique based on grammar and the use of words in everyday language, to understand the meaning of legal terms or phrases listed in the provisions of laws and regulations.

III. Results and Discussion

3.1. The enactment of the Deed of Distribution of Joint Property that the notary's office team member has forged.

A notary deed has perfect legal force as long as it is prepared by formal and material requirements stipulated in the Law on Notary Positions (UUJN). However, in the case of forgery of deeds of division of joint property by notary office employees, as in the Palembang District Court Decision No. 996/Pid.B/2020/PN.PLG. Normatively, an authentic deed made by or in the presence of a public official has perfect evidentiary power as stipulated in Article 1868 of the Civil Code. However, if it is proven that the deed was made without the involvement of a notary, then the deed loses its authentic force and only stands as a deed under hand (Palembang District Court Decision Number 996/Pid.b/2020/PN.PLG). If analyzed through the theory of legal certainty as stated by Satjipto Rahardjo, legal certainty is not enough to be interpreted formally or normatively. However, it must provide a sense of justice and legal protection that the public can trust. In this case, the act of forgery carried out by the notary's office team member has damaged the principle of legal certainty, because documents that are supposed to guarantee trust and legal validity are manipulated and abused. This results in losses and legal uncertainty for third parties, such as Bank Mandiri, which has relied on the validity of notary deeds in the credit document verification process (Raharjo, 2000).

Based on the legal facts in this case, the deed was made by a notary's team member without the presence of the parties or the supervision of a notary. The deed even included the names of fictitious witnesses and contained signatures and notary stamps without the knowledge of the notary concerned. This reflects a

gross violation of the notary office's principles of prudence and accountability. Although there has been no official annulment by the civil court, the deed made unlawfully is substantively formal and materially defective, so its legal force is weakened. Therefore, in the context of notarization, the deed does not have the validity of an authentic deed and can be considered null and void if submitted in a judicial process. However, formally, as long as there is no cancellation by a court decision with permanent legal force, the deed is still considered valid and authentic. This is based on the principle in Article 1868 of the Civil Code, which states that an authentic deed can only be canceled through a proven mechanism in court, and cannot be canceled unilaterally by anyone. This principle is strengthened by Supreme Court Jurisprudence No. 702 K/Sip/1973, which affirms that canceling a notary deed can only be done through a valid judicial process (Jurisprudence MA No. 702K/SIP/1973).

The evidentiary power of an authentic deed rests on three main elements: external, formal, and material. Habib Adjie (2008). These three elements are not met in the case of forgery by notary office employees. The absence of direct involvement of the notary, a lawful presence, and the administrative processes that should be carried out, such as recording in the repertoire and keeping the minutes, proves that the deed does not have the power of proof as an authentic deed. Based on Article 1875 of the Civil Code, such a deed can only be assessed as a deed under hand and only has legal force as long as it is not denied by one of the parties (Article 1875 of the Civil Code).

3.2. Proof of the Deed of Distribution of Joint Property forged by the Notary Office Employee.

Then, regarding the Evidentiary Power of the Deed of Distribution of Common Property that has been forged by the notary's office team member, when viewed in the theory of the power of proof of authentic deeds, the power of proof of the deed is divided into three dimensions: *the external aspect (uitwendige bewijskracht)*, formal (*formele bewijskracht*), and material (*materiële bewijskracht*). In the case of forgery by notary employees, these three aspects are not met. First, the external aspect is damaged because the authorized official does not sign the deed. Second, the formal aspect is invalid because it is not read and signed in front of a notary. Third, the material aspect is doubtful because it contains facts and information that do not match the actual situation (Adjie, 2008).

According to the Decision of the Palembang District Court Number 996/Pid.B/2020/PN. The PLG, the court stated that the documents produced by RV were not recorded in the repertoire and minutes of the valid deed. The document was used by a third party (Mr. Ahmad Zuliandi) to apply for a loan to Bank Mandiri, which later confirmed that the deed was unofficial. This results in legal and financial losses and creates legal uncertainty. Referring to Article 1875 of the Civil Code, deeds under the hand that are not recognized by the party named in the deed cannot be used as evidence without being supported by other evidence. Therefore, in this context, the forged deed has a very weak evidentiary position in the judicial forum. Meanwhile, because the Notary as a legal subject does not carry out the legal acts that occur, the liability imposed is civil liability if the notary does not commit the unlawful act, based on Article 1365 of the Civil Code, which explains that every act that violates the law and harms others, it is mandatory for the person who created the loss due to their mistake to compensate for the loss as well as referring to Article 1367 of the Civil Code, which explains that a person is not only responsible for losses caused by himself, but also for losses caused by acts that are his dependents or due to goods under his supervision. However, suppose this is proven by negligence on the part of the notary himself, due to the lack of supervision of his notary employees. In that case, the notary must be civilly responsible, or can be given administrative sanctions as stipulated in article 85 paragraph (1) of the UUJN, consisting of:

1. Verbal Reprimand: Given for minor offenses or carelessness that do not have a profound impact
2. Written Reprimand: Imposed when the notary commits a more serious violation or repeats the violation given an oral reprimand

3. Temporary Dismissal: Notaries can be temporarily dismissed from their positions if they are proven to have seriously violated the provisions of the UUJN, are in criminal law proceedings, or have strong suspicions of gross ethical violations.
4. Dismissal Without Honor: Awarded to a notary who is legally and convincingly proven to have committed a serious offense, such as forgery of deeds, bribery, or other serious crimes that can defame the profession.

The granting of administrative sanctions is carried out by a notary institution consisting of:

- a) Regional Supervisory Council (MPD)
- b) Regional Supervisory Council (MPW)
- c) Central Supervisory Council (MPP)

These institutions have the authority to conduct examinations, assessments, and decision-making based on public reports and internal findings. If the notary is proven negligent in carrying out the supervisory function of the notary's office employees who then carry out the supervisory function of the notary's office employees who then forge the deed, the notary may be subject to administrative sanctions in the form of a written reprimand or temporary dismissal, depending on the severity of the violation and the legal consequences caused. This form of accountability is in line with the principle of office responsibility (*functioneel daderschap*), which requires public officials to maintain the integrity and performance of their work environment. Thus, administrative sanctions are not only coaching but also a means to ensure the accountability and professionalism of notary officials to protect the public as users of notary services.

IV. Conclusion

The deed of distribution of joint property made by a notary office team member without the notary's knowledge and direct involvement is an act that violates the provisions of formal and material law as stipulated in Article 38 of Law Number 2 of 2014 concerning the Notary Position. The deed does not meet the element of authenticity because it is not made in the presence of a notary, the reading process is not carried out, and it is not recorded in the notary's minutes and repertoire. Therefore, the deed made unlawfully cannot be considered authentic and loses its perfect legal force (Article 38 of the Law on the Notary Position). However, formally, as long as there is no cancellation by a court decision with permanent legal force, the deed is still considered valid and authentic. This is based on the principle in Article 1868 of the Civil Code, which states that an authentic deed can only be canceled through a proven mechanism in court, and cannot be canceled unilaterally by anyone. This principle is strengthened by Supreme Court Jurisprudence No. 702 K/Sip/1973, which emphasizes that canceling a notary deed can only be done through a legitimate judicial process (Jurisprudence MA. No. 702K/Sip/1973). The evidentiary power of an authentic deed rests on three main elements: external, formal, and material. These three elements are not met in the case of forgery by notary office employees. The absence of direct involvement of the notary, a legal presence, and the administrative processes that should be carried out, such as recording in the repertoire and keeping of minutes, proves that the deed does not have the power of proof as an authentic deed. Based on Article 1875 of the Civil Code, such a deed can only be considered as a deed under hand and only has legal force as long as it is not denied by one of the parties (Habib Adjie, 2008). Thus, the deed of distribution of joint property made illegally by a notary team member is not only contrary to the legal principles of notarization but also has the potential to harm interested parties. In this context, the legal responsibility of the notary is important, not only in the aspect of making the deed, but also in the aspect of supervision and control of the activities carried out by the team member under his authority.

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