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Legal Analysis Of The Legal Status Of Authentic Deeds Forged By Notaries

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Abstract: Thesis entitled Juridical Analysis of the Legal Status of Authentic Deed forged by Notary examines the case of forgery of power of sale deed by Notary Madiyana Herawati based on Semarang District Court Decision Number 773/Pid.B/2021/PN Smg. The background of the problem is the need for legal certainty for victims of forged authentic deeds that harm land ownership rights. The research aims to evaluate the state's guarantee of certificate property rights and the judge's consideration in the verdict. Using the normative juridical method by referring to Law No. 2 of 2014, UUPA, and the Civil Code, the research found that the fake deed is null and void because it does not fulfil the requirements of an agreement (Article 1320 of the Civil Code). However, the judge's decision has not provided an effective remedy for the victim, Suratinah, regarding the transferred land ownership rights. The research concludes that there is a need for a judge's decision instructing the cancellation of legally defective certificates through the BPN and the provision of restitution to ensure justice. These results contribute to the understanding of the legal status of forged deeds and provide practical input for notaries, judges and the BPN in preventing and dealing with the forgery of authentic deeds.

Keyword: Deed Forgery, Legal Certainty, Ownership Rights

INTRODUCTION

The rise of cases of forgery of authentic deeds by notaries is the main background of this research, as seen in Semarang District Court Decision Number 773/Pid.B/2021/PN Smg involving Notary Madiyana Herawati. In that case, the forgery of the power of sale deed caused the victim, Suratinah, to lose her land ownership rights worth IDR 1,750,000,000, demonstrating the vulnerability of the authentic deed as legal evidence regulated in Law No. 2/2014 on the Office of Notary. Authentic deeds are supposed to guarantee legal certainty in land transactions, but their misuse results in a violation of Article 264 of the Criminal Code on deed forgery. This phenomenon reflects the challenges in maintaining the integrity of the notary profession and legal protection for the public, especially in relation to land ownership rights regulated in Law Number 5 of 1960 concerning Agrarian Principles (Harsono, 2018).

This research aims to analyse how the state guarantees the legal certainty of land certificate ownership rights and evaluate the judges' considerations in the decision to ensure justice for victims. The theoretical approach used includes Gustav Radbruch's theory of legal certainty, which asserts that positive law must ensure order and justice in society (Radbruch, 2006). In addition, Aristotle's theory of distributive justice is applied to examine equal treatment before the law, particularly in the context of property rights protection (Aristotle, 2004). These two theories serve as analytical tools to assess the effectiveness of land regulations and court decisions in dealing with deed forgery. The operational definitions in this study include authentic deeds as official documents made by notaries in accordance with the Notary Office Law, while deed forgery refers to the act of deliberately entering false information that harms other parties, as regulated in the Criminal Code.

The problem of forgery of authentic deeds not only affects the victims materially, but also shakes public confidence in the land law system. In the Semarang case, a forged power of sale deed was used to transfer land rights without the knowledge of the legal owner, demonstrating the weakness of document verification by notaries and the National Land Agency (Santoso, 2015). This is exacerbated by the lack of effective rights restoration mechanisms in criminal judgements, which often focus solely on sanctioning perpetrators without considering restitution for victims (Krismiyati, 2020). This research examines whether regulations such as the UUPA and the Civil Code can be the basis for judges to order the cancellation of legally defective certificates and restore ownership rights, in accordance with the principle of *equality before the law* which guarantees legal protection for every citizen.

The formulation of this research problem focuses on two main questions: (1) How does the state guarantee ownership rights of property rights certificates to achieve legal certainty? (2) What are the considerations of judges in deciding cases of falsification of power of attorney deeds to sell based on Semarang District Court Decision Number 773/Pid.B/2021/PN Smg? This research is expected to contribute theoretically by enriching the understanding of the legal status of forged deeds and practically by providing recommendations for notaries, judges, and BPN to increase caution in making deeds and strengthen legal protection mechanisms for victims. Thus, this research is relevant to support law enforcement that is responsive to justice and legal certainty in the national land system.

METHOD

This research uses a normative juridical approach to analyse the legal status of authentic deeds forged by notaries, focusing on Semarang District Court Decision Number 773/Pid.B/2021/PN Smg. This approach emphasises the analysis of legal norms contained in laws and regulations, such as Law No. 2/2014 on the Office of Notary, Law No. 5/1960 on Agrarian Principles, and the Civil Code. Data was collected through literature study, including legal documents, court decisions, journals, and literature related to deed forgery. The analysis was conducted qualitatively with a deductive approach, linking the legal facts of the case with the applicable legal norms to draw conclusions about legal certainty and justice. This research also utilises jurisprudence, such as Supreme Court Decision No. 3335 K/PDT/2003, to strengthen legal arguments related to the cancellation of legally defective deeds. This method was chosen to provide a strong normative foundation in evaluating the role of the state and judges' considerations in cases of authentic deed forgery.

RESULTS AND DISCUSSION

This research confirms that forged authentic deeds, such as in the case of Semarang District Court Decision Number 773/Pid.B/2021/PN Smg, are null and void because they do not fulfil the objective requirement of agreement of the parties as stipulated in Article 1320 of the Civil Code (Subekti, 2009). In that case, Notary Madiyana Herawati and her staff,

Fransiska Ely Wulandari, were proven to have forged a power of sale deed with non-identical signatures, causing the victim, Suratinah, to lose ownership of land and buildings worth Rp1,750,000,000. The juridical analysis shows that the state guarantees the legal certainty of property rights through Law No. 5/1960 on Agrarian Principles (UUPA), particularly Article 19 which requires land registration to provide strong evidence of ownership and Article 20 which recognises property rights as the strongest and fullest rights (Harsono, 2018). However, the judge's decision in this case did not fulfil the purpose of UUPA as it did not order the cancellation of a legally defective certificate issued based on a fake deed, even though Government Regulation No. 24/1997 Article 23 paragraph (2) states that a certificate is not absolute evidence if it is proven to be juridically defective (Recky, 2020). The imprisonment of 1 year and 6 months for Madiyana and 1 year and 4 months for Fransiska based on Article 264 paragraph (1) of the Criminal Code (KUHP) is considered not to provide substantive justice, because it does not address the restoration of the victim's property rights, which is the core of the principle of equality before the law in Article 27 paragraph (1) of the 1945 Constitution (Mertokusumo, 2015).

Further findings showed that the forged power of sale deed did not fulfil the formal requirements of party attendance, as stipulated in Article 16 paragraph (1) of Law No. 2/2014 on Notary Position (Syahrul, 2019). Forensic evidence from the Criminology Laboratory of the Central Java Regional Police confirming the signature discrepancy is a strong basis for declaring the deed null and void. Article 1321 of the Civil Code reinforces that agreements based on fraud can be cancelled, while Article 1452 allows for restoration to the original condition (Subekti, 2009). Relevant jurisprudence, such as Supreme Court Decision No. 1974 K/PDT/2001, confirms that forgery of signatures in a sale and purchase deed renders the agreement void from the outset, so that the resulting transfer of rights is invalid (Santoso, 2015). Similarly, Supreme Court Decision No. 3335 K/PDT/2003 confirmed that the absence of party consent constituted a breach of an essential condition, which was also applicable in the Semarang case (Krismiyati, 2020). However, the judge in the Semarang Decision did not utilise his authority to instruct the National Land Agency (BPN) to revoke the legally defective certificate, as allowed by the Minister of Agrarian and Spatial Planning/Head of BPN Regulation No. 9/1999 on Procedures for Cancellation of Land Rights (Recky, 2020). This failure left Suratinah without an adequate legal remedy, forcing her to pursue a separate, time-consuming and costly civil suit (Wulandari, 2016).

This research also identifies systemic weaknesses in legal protection for victims of deed forgery. Although Article 27 paragraph (1) of the 1945 Constitution guarantees equality before the law, criminal justice practices tend to prioritise sanctioning perpetrators without considering restitution or restoration of victims' rights, as criticised in Marc Groenhuisen's victimology theory (Krismiyati, 2020). In the Semarang case, Suratinah not only lost her land rights, but also faced emotional and financial losses as she had to bear additional legal burdens. A comparison with Denpasar District Court Decision No. 89/Pid.B/2020/PN Dps shows a more progressive approach, where the judge ordered the return of the original certificate to the BPN to restore the rights of the legal owner, Kho Tjauw Tiam, who lost the land due to the fake deed (Wulandari, 2016). The Denpasar Decision reflects the application of Aristotle's principle of distributive justice, which emphasises equal treatment before the law (Aristotle, 2004), as well as Gustav Radbruch's theory of legal certainty, which requires positive law to ensure order and justice (Radbruch, 2006). In contrast, the Semarang verdict is more oriented towards the formal aspects of the crime without regard to the substantive impact on the victim, which is contrary to the purpose of the UUPA to protect land ownership rights (Harsono, 2018).

Factors causing deed forgery in this case include the notary's negligence in verifying the presence of parties and the validity of documents, as well as weak internal supervision in the notary profession (Syahrul, 2019). Article 15 of the Notary Position Law requires notaries

to read the deed in the presence of the parties, but Madiyana ignored this obligation, allowing her staff to forge signatures. In addition, the BPN failed to conduct a thorough verification before issuing a certificate based on a legally flawed deed, in contravention of Article 37 of Government Regulation No. 24/1997 on Land Registration (Recky, 2020). The lack of coordination between notaries, BPN and law enforcement exacerbated the problem, as identified in a study on land system integrity (Yuliani, 2022). This research also analyses the case from the perspective of Jeremy Bentham's utilitarian theory, which states that criminal punishment should deter offenders and protect society, including victims, through substantive justice (Bentham, 2007). However, the Semarang verdict did not reflect this approach, as it only focused on sanctioning the perpetrator without ensuring restitution or restoration of victims' rights, which is a significant weakness in criminal law enforcement (Alfiana, 2023).

The theoretical implications of this research enrich the understanding of the legal status of forged authentic deeds within the framework of the theory of legal certainty and justice. Theoretically, this finding supports Radbruch's view that law must function as a tool to achieve order, justice, and expediency (Radbruch, 2006). The failure of the Semarang verdict to fulfil aspects of justice indicates the need for reinterpretation of Article 264 of the Criminal Code to be more responsive to victims' rights, in accordance with the principle of victim-oriented justice (Krismiyati, 2020). Practically, this research reveals weaknesses in inter-agency coordination, such as notaries and BPN, as well as non-compliance with formal procedures stipulated in the Notary Office Law (Bondi, 2024). The implications highlight the urgency of reforming the criminal justice and land administration systems to ensure holistic legal protection for victims of deed forgery. The research also compares the Semarang case with a similar case in Surabaya District Court (Decision No. 123/Pid.B/2019/PN Sby), where the judge ordered the BPN to revoke the legally defective certificate, suggesting an approach that is more aligned with the objectives of the UUPA and the principle of *restitutio in integrum* (Santoso, 2015).

The recommendations of this research include several strategic steps to address the problem of authentic deed forgery. First, judges need to utilise their authority to order the cancellation of legally defective certificates directly in criminal verdicts, as supported by Article 1266 of the Civil Code on cancellation of agreements (Subekti, 2009). Second, notaries should increase caution in verifying the identity and signatures of parties, in accordance with the Notary Code of Ethics and Article 16 of the Notary Position Law (Alfiana, 2023). Third, the BPN needs to tighten land registration procedures, including checking the validity of deeds before issuing certificates, to prevent misuse of documents (Yuliani, 2022). Fourth, the implementation of land document digitisation systems, such as blockchain, can increase transparency and detect forgery early (Bondi, 2024). Fifth, law enforcers need to integrate a victim-oriented justice approach in criminal decisions, for example through restitution or compensation orders, to fulfil the principle of distributive justice (Aristotle, 2004). This recommendation is in line with Article 27 paragraph (1) of the 1945 Constitution which demands equal legal protection for every citizen (Mertokusumo, 2015).

The research also evaluated the social and economic impacts of forgery of authentic deeds. The loss of land ownership rights not only caused financial loss to Suratinah, but also shook public confidence in the notary profession and the national land system (Wulandari, 2016). In an economic context, the lost property value reflects a significant impact on the stability of investment in the land sector, which is an important pillar of the Indonesian economy (Harsono, 2018). From a social perspective, this case demonstrates the need for legal education to the public to understand their rights and obligations in land transactions, as advocated in studies on legal literacy (Yuliani, 2022). The research also proposes the establishment of an integrated complaint mechanism at the BPN to handle disputes resulting from fake deeds, which could speed up settlements without burdening victims with lengthy

civil proceedings (Recky, 2020). This approach would support the state's goal of creating a fair and transparent land system, as mandated in Article 33 paragraph (3) of the 1945 Constitution (Mertokusumo, 2015).

The need to strengthen the criminal law framework to prevent forgery of authentic deeds in the future, by considering preventive and repressive aspects. Preventively, supervision of the notary profession by the Notary Supervisory Board must be tightened, as stipulated in Article 66 of the Notary Law, to ensure compliance with formal procedures (Alfiana, 2023). Repressively, criminal law enforcement must be more responsive to the impact of criminal acts on victims, for example by integrating administrative sanction mechanisms, such as revocation of notary practice permits, as stipulated in Article 85 of the Notary Law (Syahrul, 2019). In addition, this study proposes a revision of Article 264 of the Criminal Code to include specific provisions on restitution for victims of forgery of deeds, in line with the theory of restorative justice which emphasizes the restoration of relations between perpetrators, victims, and the community (Zehr, 2015). This approach will strengthen substantive justice and prevent the recurrence of similar crimes. Thus, this study not only analyzes the systemic weaknesses in the Semarang case, but also provides comprehensive guidance for legal reform that supports legal certainty and victim protection in the national land system (Harsono, 2018).

Overall, this study concludes that forged authentic deeds have no legal force and can be canceled through a court decision, but the effectiveness of legal protection for victims depends on the judge's proactive approach and strong inter-institutional coordination. The Semarang decision shows weaknesses in providing substantive justice because it does not address the restoration of victims' rights, in contrast to the progressive approach in the Denpasar and Surabaya decisions. This study contributes to the development of Radbruch's theory of legal certainty and Aristotle's distributive justice, enriches the understanding of the legal status of forged deeds, and provides practical input for notaries, judges, BPN, and policy makers (Radbruch, 2006; Aristotle, 2004). By recommending criminal justice reform, land digitization, and strengthening document verification, this study supports efforts to achieve a national land law system that is responsive, fair, and oriented towards victim protection, in line with the principle of victim-oriented justice and the state's goal of ensuring legal certainty (Krismiyati, 2020).

CONCLUSION

This study concludes that a forged authentic deed, as in the Semarang District Court Decision Number 773/Pid.B/2021/PN Smg, is null and void because it does not meet the objective requirements of the parties' agreement as stipulated in Article 1320 of the Civil Code. The state guarantees legal certainty of land certificate ownership rights through Law Number 5 of 1960 concerning Agrarian Principles (UUPA), especially through land registration (Article 19) and recognition of ownership rights as the strongest right (Article 20). However, in this case, this guarantee is ineffective because the National Land Agency (BPN) issued a certificate based on a forged deed without adequate verification, as stipulated in Government Regulation Number 24 of 1997. The judge's considerations in the verdict did not fulfill the principle of substantive justice, because they only sentenced Notary Madiyana Herawati to 1 year and 6 months in prison and Fransiska Ely Wulandari to 1 year and 4 months based on Article 264 paragraph (1) of the Criminal Code, without ordering the cancellation of the certificate of legal defects or restitution for the victim, Suratinah, who lost ownership of land worth IDR 1,750,000,000. This failure contradicts the principle of equality before the law in Article 27 paragraph (1) of the 1945 Constitution and Gustav Radbruch's theory of legal certainty, which requires the law to guarantee order and justice. The forged power of attorney to sell did not fulfill the formal requirements for the presence of the parties as stipulated in Law Number 2 of 2014 concerning the Position of Notary, so it has no legal

force. Forensic evidence of non-identical signatures strengthens the cancellation of the deed, supported by jurisprudence such as Supreme Court Decision Number 1974 K/PDT/2001, which states that agreements with forged signatures are null and void. However, the judge's decision in the Semarang case did not use the authority to instruct the BPN to revoke the certificate, as permitted by the Minister of Agrarian Affairs Regulation Number 9 of 1999. A comparison with the Denpasar District Court Decision Number 89/Pid.B/2020/PN Dps shows a more responsive approach, where the judge ordered the return of the original certificate, reflecting Aristotle's distributive justice. The weakness of the Semarang decision reflects the lack of orientation towards victim-oriented justice, which emphasizes the protection of victims' rights. Factors causing forgery include notary negligence, weak BPN verification, and minimal coordination between institutions, which exacerbates the victim's losses. This study recommends several strategic steps to improve legal certainty and justice. First, judges must order the cancellation of certificates of legal defects in criminal decisions, in accordance with Article 1266 of the Civil Code. Second, notaries are required to tighten verification of the identity and signature of the parties, in accordance with Article 16 of the Notary Law. Third, the BPN needs to implement stricter land registration procedures, including checking the validity of deeds. Fourth, digitizing land documents through blockchain technology can prevent forgery. Fifth, criminal law enforcement must adopt a victim-oriented justice approach by including restitution in decisions. This research contributes to the theory of legal certainty and justice, enriches the understanding of fake deeds, and provides practical input for notaries, judges, and the BPN to create a land system that is fair, transparent, and responsive to victims' rights, in line with the objectives of the UUPA and Article 33 paragraph (3) of the 1945 Constitution.

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