HANG TUAH LAW JOURNAL

Volume 3 Issue 1 April 2019

THE AUTHENTIC DEED VERSUS THE PRIVATE DEED IN THE CASE OF NEW TRADERS TURI MARKET

Gideon Johanes Suryanda*

Abstract

This article discusses about the private deed of the Turi Market's new developer with Surabaya City Government that can defeat the authentic deed that is owned by new Turi Market traders. The incident began when Turi Market caught fire in 2007, this great fire damage most Turi Market. Many dealers who sell cheap their booth that hasn't burned for venture capital. Traders and shoppers booth could not make transactions normally because the head of Turi Market dismissed, then they had to use a notarial deed in selling booth. Problems arise in 2012 when the Turi Market has finished construction and opened registration for old traders. Notarial deed belong to new traders are not recognized by the developers of the new Turi Market. The trader who has a book registration but the name is different from the owner, then the cost price of the initial regimen prescribed. This led to heavy losses and make the new Turi Market have recently become much quiet. Surabaya City Government should also act to help resolve this problem by creating regional regulations to resolve this issue.

Keywords

authentic deed, private deed, surabaya city government, developer

***Correspondence:** Gideon Johanes Suryanda, Faculty of law, Universitas Surabaya, Surabaya, Indonesia. Email: gideonjohanessuryanda@gmail.com.

Introduction

Surabaya Turi Market caught fire in August 2007. Many traders of Turi Market went bankrupt and had to sell their assets to survive. One of them was Mr. J who sold his booth to Mr. X, even though Mr. J's booth was still intact, not burning. Mr. J and Mr. X used the right of ownership certificate using a booth in front of notary I because the Head of Turi Market was frozen by the Surabaya City Government. All Turi Market traders who want to pass their use rights must use a notary deed as a perfect proof. Then Mr. X began selling starting in 2008. When the Turi Market was demolished to be rebuilt, Mr. X also participated in the drawing of TPS (Temporary Shelter) and participated in selling at TPS. Then in 2010, PT A was chosen as the winner of the tender for the construction of the new Turi Market. Then after Turi Market was completed in 2012, PT A opens a registration so that traders register themselves to buy a new Turi Market booth. When Mr. X wants to buy back the new Turi Market booth, Mr X gets a different price than he expected, which should be Rp 20,000,000 / m2 to Rp 66,500,000 / m2. PT A argues that the price of Rp 20,000,000 / m2 for the old Turi Market trader, whose name is listed in the booth book, PT A defines the Turi Market traders as traders who sell in Turi Market before being burned and the same in the booth book as written In the cooperation agreement between the Surabaya City Government and PT A on March 9, 2010, the cooperation agreement between the Surabaya City Government and PT A on March 9, 2010 was Private deed, not an authentic deed. PT A gives more expensive prices to all 'new traders' even though they have already bought the Turi Market booth and sold it in Turi Market before PT A was chosen as the new Turi Market contractor. PT A ignores the proof of the agreement to use the right to use the booth owned by Mr. X made in the presence of notary I with a cooperation agreement between the Surabaya City Government and PT A on March 9, 2010. Mr. X is required to pay 3 times the price of his booth. Mr. X and many new traders in Turi Market were harmed by PT A and could not open their business in Turi Market. Following the research background, this study tries to analyze a research problem of how to resolve disputes in the new Turi market ?

Discussion

There are 2 types of deeds, the first is a deed or Private letter , and the second is an authentic deed. Article 1874 of the Civil Code is written: "What is deemed to be private writing is a signed autograph, a letter, a register, a household affidavit, and other writings made without the intercession of a public official ...". Article 1868 of the Civil Code is written: "An authentic deed is a deed made in a law-determined form by or before an authorized official for that on the place of the deed made". Deed or private letter (*onderhands acte*) is an agreement made by the parties freely without being bound by legislation, can be made without seal, without witnesses, or without an authorized official for that . While authentic deed is a letter of agreement made because the law requires that, so that it is bound by laws and regulations, authentic deeds are made by and / or before the competent authority for that, as written in article 1868 of the Civil Code. Authentic deeds are made by several types of public officials who have different

tasks and functions. "Public officials" are officials appointed by the state who represent the government to administer administrative interests as state data and rules that require legal certainty regarding the civil behavior of the public. The officials in question are officials appointed by the state to make authentic letters as evidence of public law and evidence of civil law, which are determined by law (Andi Prajitno, 2018).

The authentic deed is the deed that has been guaranteed the correctness and certainty of the content and time of making the deed and has perfect proof power (*volledig bewijs-full*) from the side:

1. Outlaws, officials and authorities in accordance with the provisions of the law. The outward ability of a notary deed is the ability of the deed itself to prove its validity as an authentic deed. If you see the birth as an authentic deed and in accordance with the prescribed legal rules regarding the requirements for making authentic certificates, then the deed will be valid as an authentic deed, until proven otherwise by a court ruling that has a fixed power. The parameter for determining the notary deed as an authentic deed is the signature of the notary in question, both in the minuta and the copy and the beginning of the deed up to the end of the deed.

2. Formal, writing is the truth of the contents of the deed. The notary deed must provide certainty that the events and facts written in the deed are properly carried out by the notary or explained by the parties facing at the time recorded in the deed in accordance with the procedures specified in the making of the deed. Truth formally includes day, date, month, year, hour (time) facing, parties facing, initial and signature of the viewers, identity and signature of witnesses, and notary, and proving what is seen, witnessed, heard by a notary (on official deed / minutes), and record information or statements of the parties / viewers (on the deed of the party)

3. Material, certainty about the events written in the deed. It is certainty about the material of a deed, that what is written in the deed is a valid proof of the parties that make the deed or those who get the rights and apply to the public, unless there is evidence to the contrary (*tegenbewijs*). The information written on the deed must be considered correct. If it turns out that the information provided by the viewers is not true then this is the responsibility of the parties themselves. The contents of the notary deed have certainty as the truth, is valid evidence among the parties and the heirs and the recipients of their rights.

The three aspects above are the perfection traits of the notary deed as authentic deed and whoever is presented by the deed, if there is anyone who can prove in a court hearing that there is one aspect that is not true then the deed only has proof power as a deed under the hand. (Habib Adjie, 2011).

Authentic written evidence is needed to be used by private makers and for third parties, the interests or benefits of the state to enforce the law in terms of facilitating settlement of civil cases in an easy and short time through guaranteeing the truth of the

contents of the deed and legal certainty. The perfection of written evidence in the form of deeds made by and before a notary according to the applicable legal system, is accepted and recognized by the Indonesian people. Minuta deeds that have been perfect, meaning that they have been signed and / or affixed with a fingerprint stamp (*surrogaat*) by the parties, witnesses and notaries are automatically state records and belong to the state which are entrusted to the notary protocol that makes and or before them . The deed submitted or given to the parties is a copy deed from the Minuta deed stored in the notary protocol. A copy of the notary deed is of two types, namely: First, the type of copy of the certificate has a stamp with a thickness of approximately 80 grams, and Second, the type of copy of the deed was not stamped with *dorslaag* (thin) paper (Andi Prajitno, 2015)

In Book III of the civil code the Alliance subject KUH (verbintenis) has the meaning of the words of the Covenant is in question, "a relationship of laws (regarding the wealth of objects) between two people who give the right on that one to demand the goods one over the other, while the other person who is required to meet the demands of it ". So the contents of Book III is also called the perhutangan law, the parties are entitled to demand the 2 parties named or the creditor, while the parties are obliged to meet the demands of the named parties owed or the debtor. As for the goods is something that can be called an accomplishment demanded by law can be :
1. Submit an item;
2. Doing a deed;
3. Do not perform an act.

Contract or contract (in English) and eveerenkomst (in Dutch) in the wider sense is often called also with the term of the agreement, though in subsequent descriptions the author wears the term contract for agreement which actually has almost the same meaning. The parties agree on terms that are exchanged, is obliged to comply with and carry out the agreement, thereby incurring the legal relationship called the Alliance (verbintenis). (Bondan Bayu Tetuko, 2018).

Notary

Notary Law Number 2 of 2014 concerning Notary Position (hereinafter referred to as UUJN) article 1 number 1 is written: "Notary is a public official authorized to make authentic deeds and has other authorities as referred to in this Act or under other laws A notary as a public official (*Openbaar Ambtenaar*) represents the state to carry out his professional duties to make authentic deeds as evidence. Notary as a public official, in this case a public that has legal meaning, not as a public for the general public. Notaries as public officials are not the same as public officials in the field of government or can be called Civil Servants (PNS). This can be distinguished from the products produced by each public official. Products issued by notaries as public officials are authentic deeds, which are bound by the provisions of civil law as proof. The notary deed does not fulfill the requirements as a State Administrative Decision which is concrete, individual and final and officials of the State Administration

constitute a permanent position, does not result in the consequences of civil law for legal subjects, because the contents of the deed are the wishes of the parties, as stated in the notary deed made before or by a notary and not the will of the notary. If there is a dispute regarding a notary deed, it will be examined in a public court, whereas if there is a dispute in a State Administrative Decision, it will be examined at the State Administrative Court. Notary as an official for making deeds relating to Civil Law, in accordance with his authority granted by the State / Government, is making Authentic Deeds as perfect written evidence, directly related to the evidentiary law and part of civil law known as the BW (*Burgerslijk Wetbook*), precisely the fourth book: about proof and expiration (*Van Bewijs en Verjaring*). After the deed is perfect, meaning that it has been signed and / or affixed with a fingerprint stamp (one form of suggestion) by the parties, witnesses and Notaries, the deed automatically becomes a temporary state document entrusted to the Notary who made the deed or protocol holder. (Andi Prajitno, 2015).

Notary profession in carrying out his duties and authority which is regulated in Law Number 30 of 2004 Juncto Law Number 2 of 2014 concerning notary profession (hereinafter referred to as "UUJN-Changes") regulates the obligation to conceal all about deeds made and all about information gained for making deed as contained in Article 16 Section (1) letter f UUJN Changes. (Mohammad Nizar Sabri, 2018)

Use Of Notary Deed in The Sale And Purchase Rights Of The Booth

UUJN article 15 paragraph (1) is written: "Notary is authorized to make authentic Deed regarding all acts, agreements, and stipulations required by legislation and / or what is desired by those concerned to be stated in authentic deeds, guaranteeing the date of making the deed, storage of deed, providing *grosse*, copy and quotation of deed, all of which as long as the deed is made is not also assigned or excluded to other officials or other people as determined by law. " The notary deed used in the sale and purchase of the rights of the booth, namely the deed of the party (*partij acte*) which is a request from a minimum of two parties, the *Partij acte* or deed creates rights and obligations that must be carried out by the parties, and cannot be revoked or revoked unilaterally, unless all parties agreed. (Andi Prajitno, 2015).

In the sale and purchase rights of the booth (the agreement to use the right to use the booth) that is entitled to make a deed of sale and purchase is a notary, not PPAT (Land Deed Official). This is stated in Government Regulation number 37 of 1998 concerning Position Regulations for Acting Land Acting Article 3 paragraph (1): "To carry out the main tasks as referred to in article 2, a PPAT has the authority to make authentic deeds regarding all legal acts as referred to in Article 2 paragraph (2) concerning land rights and ownership rights over unit housing located in the area of work. PPAT is only entitled to make an authentic deed regarding land rights, while the right to use the booth is not land rights, the right to use the booth is the right to an item, therefore, the sale and purchase rights to the booth are the authority of the notary. The right to use the booth is included in the Civil Code second book regarding goods.

Civil Code article 508 is written: "What is also immovable property are the following rights: 1. Usufructuary rights; 2. Land rights; 3. Right to ride rocks; 4. Right to use business; 5. Land interest, both in the form of money and in the form of goods; 6. Tithing rights; 7. Government-recognized bazaars or markets and privileges relating to them; 8. Claims to demand the return or surrender of immovable property.

The right to use the booth includes the right to use immovable property, the booth including immovable property, because it is embedded in the building. In the Civil Code it is not specifically written that buying and selling using a notary deed, but in the Civil Code article 1466 is written: "The cost of the sale and purchase deed and other additional costs borne by the buyer unless otherwise agreed". The meaning of this article is that, usually in the practice of buying and selling, the public can use a notary deed to buy and sell, especially goods that do not move. So it can be concluded that the parties, sellers and buyers, can use the notary deed to make the deed of sale of immovable goods, the same as the deed of sale of the booth or the deed of operation using the booth.

Unlawful Acts

In article 1365 of the Civil Code states: "Any act that violates the law, which brings harm to another person, requires the person who caused the wrong to issue the loss," said the term "violating the law is not only an act that directly violates the law, but also acts that directly violating regulations other than law, such as decency, norms.

Elements of unlawful acts in article 1365 of the Civil Code include: 1. Existence of Actions; 2. Who violates the law; 3. Bring loss to others; 4. There is compensation from the party making the loss.

All the above elements must be fulfilled so that an act can be called an illegal act. If there is one that has not been fulfilled, then the action cannot be categorized as illegal.

In the beginning, "*onrechtmatige daad*" was interpreted narrowly because "*onrechtmatige*" only meant actions which directly violated a legal regulation, only since 1919 after being pioneered by the highest court in the Netherlands (*Hoge Raad* decision of January 31, 1919, contained in the magazine "*Nederlandsche Jurisprudentie* "1919-101), the term "*onrechtmatige daad*"is no longer only interpreted as violating legal regulations, but can also be interpreted broadly, which includes an act that is contrary to decency or deemed appropriate in society. (Wirjono Prodjodikoro, 2000).

Violating the rights of others can be referred to by violating the subjective rights of others, subjective rights refer to a right given by law to someone specifically to protect the interests of that person. These include rights to freedom, right to good name and honor, and rights to property. Whereas what is meant by contradicting legal obligations refers to violating statutory obligations in the formal sense and legal regulations issued by the government. Acts that violate legal obligations such as theft,

besides being included in Civil law, can also be sued for compensation under article 1365 of the Civil Code.

Victims of violating the law are those who will receive compensation from the offender. Because this concerns compensation that is of a civil nature, the right to receive compensation can be inherited, in accordance with applicable customary law. The victim is anyone who suffers a loss due to the violation of the law. Article 1365 of the Civil Code does not distinguish victims, provided that the loss suffered by the victim is related to the factual causal relationship (*sine qua non*) and proximate cause.

Then the party that has the basis to sue is the party that is harmed itself, including:

1. The victim itself, the party who suffered losses as referred to in article 1365 of the Civil Code has the right to compensation, can request and even sue him to court for compensation payments.

2. Recipients, especially if the violation of the law causes the death of the victim in accordance with the provisions of article 1370 of the Civil Code which is entitled to compensation is the party who usually receives income from the victim, such as the husband or wife left behind, and child or parent of the victim.

3. Families of blood from a straight line from their wives / husbands, this only applies to claim compensation for violating the law in the form of insulting or dropping someone's good name when the person has died, with a time limit of 1 (one) year since the act of insult is known, after this time, the claim cannot be accepted because it has expired, the one who can claim compensation is the parents, grandparents, children and grandchildren of the family of the husband or wife.

4. Heirs in general, other than from the victim or substitute for victims of unlawful acts who are entitled to compensation, are included as heirs in accordance with the principles of applicable inheritance law (Munir Fuady, 2002)

How to Sue for Unlawful Acts

In the Civil Code system there are various kinds of claims, which should not be mixed up, in the sense that a plaintiff does not simply ask for justice, but he must also tell (*stellen)* and prove a violation of certain articles of the Civil Code or other laws, and also he must determine what he is asking for, for example the surrender of a certain item, payment of compensation or a certain act, or prohibition to do certain acts, the defendant has never done but will do, if not prohibited. In article 102 the Civil Code distinguishes three types of claims, namely 1 claim that is individual (*persoonlijke rechtsvordering*), the second claim is material (*zakelijke rechtsvordering*) and the third is a claim that is mixed (*gemengde rechtsvordering*). Individual claims are based on an agreement (*verbintenis*) whether sourced from an agreement or sourced from the law. Material claims are in the form of prosecution of the surrender of an item of property, based on ownership rights (*eigendomsrecht*) or other material rights (*andere zakelijke rechten*), such as erfpacht, opstal and others.

Mixed claims are four, namely:

1. Claim to request inheritance (Civil Code article 834).
2. Claims for the separation of inherited goods (Civil Code article 1066).
3. Claims to divide goods collected according to law (Civil Code article 128, 573, 1652).
4. Claims to limit various yards which are located side by side (Civil Code article 630,642,643). Lawsuits based on an act that violates the law include the 1st group of claims, which are individual because in the Civil Procedure Code this claim is based on an agreement (*verbintenis*) which is based on the laws (Article 1365 and so on from the Civil Code). The difference between a default and a violation of the law lies in the burden of proof (*bewijslas*), in the case of violating the law, the plaintiff must always state and prove not only the existence of an illegal act and a loss, but also a mistake (*schuld*) from the defendant . In the event of default, the plaintiff is sufficient to state the existence of an agreement and the event of default, according to article 1244 of the Civil Code, the defendant proves that there is no default in the presence of a *force majeure*.

One element of material claims is that the basic basis of this claim is the existence of an absolute right (*absoluut recht*) on an item, then the claim is called material, if there is an absolute right to an item of property, which is disturbed by another person . On the other hand, a claim based on an act that violates the law, does not care for the existence of an absolute right to a property that is disturbed, but generally based on an act that can be considered as violating the law with the condition of the wrongdoing of the subject of legal action. Then there is a high probability that there will be a mixture of these two claims, if there is an act that violates the law, which also disrupts the absolute rights of a property. If that happens, the plaintiff can also choose which claim he intended. In general, a disruption to a legal right can be a violation of the law. So if an item owner (*eigendom*) sues a person who interferes with his *eigendom* rights by holding the item, then the owner can use a claim that is based on article 1365 Civil Code. The plaintiff expressed all the events (*posita*) that occurred, which according to the plaintiff was an incongruity in the community, followed by a judicial request in general, asking that the anomalies be corrected by the judges as well as possible, so that in accordance with the sense of justice living in the community, the plaintiff requested judge to grant his wish (*petitum*) (Wirjono Prodjodikoro, 2000)

Conclusion

the conclusion of this article to answer how to resolve disputes that occur in the new Turi market are ; (1) Pasar Turi Baru traders can sue PT A who has committed an unlawful act and requires them to give them the rights they should receive, provide a reasonable price, the same price as the old Turi market traders, PT A must also accept this resolution to market disputes this Turi can be finished peacefully, Turi market traders can open a booth and start selling at the Turi market like they used to. (2) The Surabaya City Government must also participate to help resolve this dispute, by making a regional regulation regarding Turi market traders, new Turi market traders whose names are not written in the booth book, are also given the same price as the old

Turi market traders. the Surabaya city government must actively help resolve this problem, because this problem affects many parties. (3) Surabaya city government can take over the Turi market management so that the Turi market can operate properly and correctly

References

Andi Prajitno, A.A. 2018. *Seri A Kewenangan Notaris dan Contoh Bentuk Akta,* Pmn : Surabaya.

Andi Prajitno, A.A. 2015. *Pengetahuan praktis tentang Apa dan Siapa Notaris di Indonesia sesuai UUJN Nomor 2 tahun 2014,* Pmn : Surabaya.

Bondan Bayu Tetuko. (2018). "*The Implications Of The Existence Of The Alleged Criminal Acts Of Corruption Towards The Implementation Of The Construction Contract*" Volume 2 Issue 2. *Hang Tuah Law Journal.*

Habib Adjie. 2011. *Kebatalan dan Pembatalan Akta Notaris,* Bandung : Refika Aditama.

Mohammad Nizar Sabri. (2018). "*The Publicity Principle In Making The Deed Of The Nuptial Agreement By Notary*". Volume 2 Issue 1. *Hang Tuah Law Journal.*

Munir Fuandy. 2002. *Perbuatan Melanggar Hukum,* Bandung: Citra Aditya Bakti.

Wiryono Prodjodikoro, R. 2000. *Perbuatan Melanggar Hukum Dipandang Dari Sudut Hukum Perdata*, Bandung : Mandar Maju.