



Proceeding of 2nd Malikussaleh Internasional
Conference on Law, Legal Studies and Social
Science (MICoLLS) 2022

Accountability of a Notary in Making a Deed Based on Law No. 2 of 2014 concerning the Position of a Notary

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Abstract

This research aims to examine how the Notary official is responsible with the deed he has made, and examine legal remedies against a Notary official if a loss occurs to another party due to false documents or incorrect information from the party as an appearer which has been stated in the process of making the deed. . And legal protection for Notary officials. This research uses quantitative research using a normative juridical approach which is known as doctrinal law research. Data ta obtained from library research (library research), as well as using legal material analysis. The results of this study, namely, the first notary official can be held accountable to the deed he made if there is an error. There are 3 (three) responsibilities, namely civil. Administratively, and criminally. Second, a Notary cannot be held responsible if there are false documents or incorrect information from the parties appearing to cause harm to other parties, because the Notary is only in charge of writing down all the statements of the parties in the deed. Also, Notary officials cannot be summoned for examinations relating to the disputed deed for the benefit of court proceedings, investigators, public prosecutors and judges without the approval of the Notary Honorary Council.

Keywords

Notary, Notary Accountability, Legal Effort

DOI : 10.29103/micolls.v2i.86

1. Preliminary

Notary officials in Indonesia are public officials, that is, they are a state organ that is equipped with legal powers to provide public services to the community, especially in the formation of an authentic deed as evidence which will serve as a reference that what is recorded in it is true and authentic regarding legal action in the civil aspect .

In accordance with the provisions that have been implemented in Law no. 2 of 2014 changes to Law no. 30 of 2004 regarding the Office of a Notary which states that "The Republic of Indonesia is a state of law. The principle of the rule of law guarantees certainty, order and legal protection based on justice and truth, certainty, order and legal protection requires, among other things, that the traffic of law in people's lives requires evidence that clearly determines the rights and obligations of a person as a legal subject. in society."

Written agreements are formed in front of a notary which is often referred to as a deed. The intention is that the deed made can be used for sharp and valid evidence before

the law and if at any time there is a dispute or dispute that arises between the parties or there is a lawsuit from a third party or from another party.

As described above, it is very clear that the important role of a notary deed is, therefore, an effort is needed to stay away from the unofficialness of a deed, so that the government makes rules regarding Notary / PPAT officials which are described in UUJN.

Often the community forms an agreement written privately by unauthorized parties, where the written agreement is not formed in front of a notary. Writing like that is commonly known as an agreement made by several parties but does not involve an authorized person (Notary/PPAT), this is often practiced by the public by making an agreement without being legalized by a Notary/PPAT official .

Notaries have several responsibilities that cover aspects of private law, tax law, and also criminal law. There is a possibility that liability for one of the legal aspects is not related to other legal aspects. And also vice versa, actions that give rise to violations that result in prosecution according to acts that are against the law (Article 1365 of the Civil Code) which can lead to withdrawal of actions in aspects of criminal law. The coverage of Notary officials in particular is in the private law component. In accordance with what we all know, PJN punishes with fines, verbal warnings, written warnings, up to temporary dismissal (Articles 50 and 51 PJN) and even dismissal due to various irregularities committed by Notary officials when carrying out their positions .

Only in the Notary Law and also the previous Law or the existing Law, it does not explicitly and definitely regulate matters such as whether a Notary official who as a public official bears responsibility by law if they make a mistake or oversight in making a deed, but only explains that a Notary official is not permitted to refuse to form a deed requested and a Notary cannot form a deed that may conflict with applicable legal provisions.

However, we can see that in practice there are so many found, there are notarial deeds that are questioned by other parties and other third parties, therefore it is not surprising that notaries are often considered as people who take part in carrying out and may support carrying out a criminal act or against law, namely forming or submitting a false statement in the deed made by him .

If we look at the theoretical aspects and practice in general in carrying out his position as a notary, what a notary must have is vigilance, thoroughness and aspects of honesty which form a permanent thing when carrying out his position as a notary. However, if this field is underestimated in the formation of a deed, it can have a direct or indirect impact with an action that is required to be borne, administratively *and* apart from administrative sanctions there are also civil sanctions, but in this case it is not stated what the criminal sanctions are.

Based on the descriptions above, therefore the author will carry out further studies regarding **"Notary Responsibilities in Making Deeds Based on Law Number 2 of 2014 Concerning the Position of Notary"**

2. Research Methods

2.1 Problem formulation

- a. What is the Notary's Accountability if there is an error in making the deed he made based on Law Number 2 of 2014 regarding the Office of a Notary?

- b. What are the legal remedies against notary officials if losses arise against other parties due to fake documents or false statements from one of the parties as appearers?

2.2 Types of research

As for this research, the authors use this type of research, the authors use the type of normative juridical research commonly known as doctrinal legal studies. Normative legal studies are also referred to as *normative legal research*. This type of legal research is carried out only on written rules or other legal materials.

2.3 Research approach

The writing of this research uses an approach from the law which is also known as *the Statute Approach*. The statutory approach includes an approach that aims to examine all laws and regulations related to the legal issues under study, namely relating to how the responsibility of a notary official as a general official in power for making authentic deeds in the formation of land deeds, if the notary official makes a mistake in carrying out his job. The statutory approach is a type of research that focuses more on written legal material which can include statutory rules as the basis for guidelines when carrying out an assessment.

2.4 Data types

- a. primary legal material

Primary legal materials are written legal materials that are binding, such as the 1945 Constitution of the Republic of Indonesia and laws and regulations related to this research, for example:

1. Civil Code (KUHPperdata)
2. The Criminal Code (KUHP)
3. The 1945 Constitution Concerning Transitional Rules
4. UU no. 30 of 2004 concerning the Position of Notary
5. UU no. 2 of 2014 concerning the Position of Notary

- b. secondary legal material

It provides a discussion regarding primary legal materials, namely scientific papers, previous research, legal and non-legal books related to this research, and other literature related to this study.

- c. tertiary legal material

Tertiary legal material is a guide for discussing primary law and secondary legal material, for example, the Big Indonesian Language Dictionary (KBBI), Indonesian English Dictionary, legal journals related to this study, encyclopedias, magazines and newspapers.

2.5 Theoretical basis

- a. Accountability theory
- b. Legal protection theory

3. Research Results and Discussion

3.1 Liability of a Notary in the Case of an Error in Making the Deed Made Based on Law Number 2 of 2014 Concerning the Position of a Notary

a. Responsibility of the Notary for the Deed He Made

Notary as a public official must obey and follow it and make the guidelines contained in the rules of Law no. 2 of 2014 concerning the Position of Notary. Regarding the responsibilities that must be carried out by Notary officials, Notaries in carrying out their duties and positions must be responsible, meaning:

- a) The notary is required to make the deed properly and correctly, meaning that the deed made fulfills the will of the law and the request of interested parties because of their position;
- b) A notary is required to produce a quality deed, meaning that the deed he makes must be in accordance with the rule of law and the wishes of the interested parties in the real sense, not making it up. The notary explains to the interested parties the truth of the contents and procedures of the deed made;
- c) It has a positive impact, meaning that anyone who acknowledges the notarial deed has perfect strength of evidence.

The most important notary's responsibility is also the moral responsibility that has been regulated in the notary's code of ethics which must also be fulfilled because the position of a notary as a public official is a guideline for the notary's profession. The notary's responsibility lies in the material certainty that the deed will be made, with regard to the responsibilities of the notary as a public official which is certainly related to the material truth of the contents of the deed he made, which can be divided into 4 (four) points, namely:

- a) Responsibilities of the Notary civilly for the material truth of the deed he made;
- b) Notary's criminal responsibility for material truth in the deed he made;
- c) Responsibilities of a Notary based on the Notary's position regulations for the material truth in the deed he made;
- d) The responsibility of a notary in carrying out his duties is based on the notary's code of ethics .

b. Civil Notary Liability

The civil responsibility of a Notary who commits an unlawful act, in this case involves making an authentic deed. Unlawful acts committed by a Notary can be divided into 2 (two) namely passive and active in nature, in the active sense that the Notary commits an act that causes harm to other parties, therefore prohibited acts or acts against can be categorized as active . Meanwhile, in a passive sense, a Notary does not commit an act which is a must, so that it can cause other people/parties to suffer losses. So there is one element of an unlawful act, namely an error related to an unlawful act and the existence of losses that can befall other parties.

A basis as a public official (Notary) can be said to be unlawful is contained in Article 1365 of the Civil Code which states that any unlawful act that can bring harm to other people obliges the person who because of his mistake to issue the loss, compensate for the

loss . And the article is used as a basis for declaring the act committed by the Notary is an unlawful act.

The construction of Law no. 2 of 2014 outlining the existence of civil sanctions (Article 41 UUJN) states that if a Notary official is under the Notary Office Act (UUJN), then the deed made by the Notary can only be underhanded evidence. It is the same as canceling a deed by law, if it is canceled by law it is considered that the deed never existed or was never made.

The sanctions that can be imposed on Notary officials for an act that violates the law are civil sanctions. Civil sanctions in the form of reimbursement of costs, compensation or interest must be based on a legal relationship between the Notary and the parties involved in making an authentic deed, if one of the parties feels a loss, then it is permissible to sue the Notary civilly .

c. Criminal Liability

In Simons' opinion that a crime is a behavior of a person who violates the provisions of the law intentionally and must be held accountable by the violator for the actions or behavior committed and the actions that violate the law in the Act have been stated as acts that violate the law. Criminal acts or criminal acts, namely where someone violates the rule of law, every prohibition will also be in line with sanctions or in the form of criminal sanctions that can be imposed on people who commit acts that violate the rule of law. In Law no. 2 of 2014 and the previous law have not yet touched on criminal provisions, in UUJN it only regulates civil and administrative sanctions.

As for Article 9 paragraph 1 UUJN, one of them is currently undergoing a detention period. Meanwhile, Article 13 states that if a Notary official commits a crime and is sentenced to imprisonment for 5 (five) years or more, the Notary can be dishonorably discharged by the Minister.

Criminal acts related to the formal aspect of the notary deed, namely where investigators, public prosecutors, and judges see the actions of a notary from the aspect of legal action, are as follows :

1. Making fake or forged letters by using forged fake letters (Article 263 paragraphs (1), (2) of the Criminal Code);
2. Committing counterfeiting (Article 264 of the Criminal Code);
3. Ordered to include false statements in an authentic deed (Article 266 of the Criminal Code);
4. Doing, ordering to do, those who participate in doing (Article 55 in conjunction with Article 263 paragraph (1) and 92) or 264 or 266 of the Criminal Code);
5. Assisting in making fake or forged letters and using fake or forged letters (Article 56 paragraphs (1) and (2) in conjunction with Article 263 paragraphs (1) and (2) or 264 or 266 of the Criminal Code) .

However, it needs to be emphasized that notary officials cannot be summoned by the competent authorities before being permitted by the Notary Supervisory Board (MKN) a report which says that a notary violates the rules indicating a criminal act must be proven before the supervisor of the previous notary and calling a notary official is not like

summons of people in general because there are legal remedies that protect notary officials who are public officials in carrying out their duties.

d. Administrative responsibility

The category often becomes an error in the process of making a deed when viewed from a formal aspect, namely, as follows:

1. Certainty of day, date, month, and time of facing;
2. Whose parties are facing;
3. Signatures of the appearers;
4. A copy of the deed that does not match the minutes of the deed;
5. There is a copy of the deed, but minutes of the deed are not made;
6. The minutes of the deed are not completely signed, while the minutes of the deed have been issued.

Regarding administrative sanctions previously regulated in Article 85 of Law no. 30 of 2004 concerning the Position of Notary, which was previously amended by Law no. 2 of 2014 concerning the Position of Notary, Article 85 has been removed/removed, but in Law no. 2 of 2014 concerning Notary Positions still outlines administrative sanctions, while some of the sanctions are as follows:

1. Verbal warning;
2. written warning;
3. temporary stop;
4. Honorable discharge; or
5. Dishonorable discharge .

3.2 What are the Legal Remedies Against Notary Officials If The emergence of losses against other parties due to the existence of fake documents or false statements by one of the parties as appearers

1. Efforts to protect the law for Notaries in making deeds that contain false information from one of the parties

Notary officials / PPATs function as public officials as stated in the UUJN, when carrying out their duties which function as serving the community in making authentic deeds, it is very necessary to obtain legal certainty in the form of guarantees for Notaries in order to achieve legal certainty for Notaries in carrying out their duties. The rights of a Notary should be respected, protected and obeyed as a form of legal protection for the rights of a Notary as a public official and the result of the transformation of interests carried out through the legalization process in maintaining legal or parliamentary forms. As for a notary who is negligent and deliberately makes mistakes in carrying out his duties and authorities, this does not mean that he must also be protected .

Therefore, a Notary in the process of serving the community as a client is very much not allowed to violate the rules that have been determined, if violated it will have fatal consequences. However, we can see in practice that it is not surprising that notaries are still brought or reported to the court of law, with various arguments alleged by law enforcers, one of which is the lack of thoroughness or some negligence committed by the notary, even the existence of fake documents and also the existence of inconsistent information given by the parties as clients which makes the notary one of the suspects

who will be held responsible by the notary too, in fact this can be a sharp spear for the notary to be punished if problems and disputes arise from the deed he made.

As for Article 66 paragraphs 1 and 2 of Law Number 2 of 2014 concerning the Position of a Notary regarding taking minuta deed and summoning a Notary, it has regulated the form of legal protection that can be given to a Notary who is carrying out his duties as an official, namely as follows:

- 1) For the purposes of court proceedings, investigators, public prosecutors or judges with the approval of the Honorary Council of Notaries are authorized to:
 - a. take a photocopy of the Minutes of the Deed and/or the letters attached to the Minutes of the Deed or the Notary Protocol in the Notary's safekeeping; and
 - b. summon the Notary to attend the examination relating to the Notary's Deed or Protocol which is in the Notary's custody.
- 2) Taking photocopies of minuta deed or letters as referred to in paragraph (1) letter a, minutes of submission are made.

Based on Article 50 of the Criminal Code, it provides affirmation by providing legal protection for Notaries which reads that " whoever commits an act to carry out the provisions of the Law, may not be punished". The meaning of what is stated in Article 50 of the Criminal Code against a Notary is not solely to protect the Notary to acquit him of a criminal act he has committed but considering that the Notary has the authority as stipulated in UUJN whether the actions he has committed when making the Notary deed are in accordance with the applicable regulations.

Whereas a Notary as a public official in carrying out his position should indeed provide protection, the protection referred to is as follows:

1. To continue to maintain the nobility of the dignity of his position, including when giving testimony and proceeding in examinations and trials.
2. Keep the deed and information obtained in order to draw up the deed
3. Maintain the minutes of the deed or letters attached to the minutes of the notary deed or protocol in the notary's repository.

That the intended legal protection is not given to the Notary personally but to the profession and position of the Notary who carries the mandate and trust of the public. However, in carrying out his position for the sake of truth and justice, a Notary at one time is required to provide information while taking into account the existing provisions.

Furthermore, namely the existence of Law No. 2 of 2014 concerning the Position of Notary, one of which is to create a Notary protection institution, namely the Notary Honorary Council (MKN). With this MKN it is hoped that it can provide protection for Notaries so as to provide a sense of security for Notaries in carrying out their duties as public officials.

The position of the Notary Honorary Council in providing legal protection for a Notary is an independent institution, because the existence of the Notary Honorary Council is not a sub-section of the government that appoints it. The Notary Honorary Council in carrying out its duties and issuing a decision is not influenced by other parties or institutions, so that in this case the decision given by the Notary Honorary Council can be trusted. As in Article 66 paragraph (3) of Law no. 2 of 20014 concerning the Position of Notary "The Honorary Council of Notaries within a maximum period of 30 (thirty)

working days from the receipt of the request for approval as referred to in paragraph (1) must provide an answer accepting or rejecting the request for approval." The Notary/PPAT official cannot be summoned in the inspection process related to the notary deed or protocol that is in the notary's custody, prior to approval from the Notary Honorary Council.

If in the case of falsification and incorrect information given by the parties as appearers in the process of making the notarial deed concerned, they cannot be held responsible if the elements of fraud and error later cause disputes, because a Notary official only records what will be conveyed by the parties. the appearing party that will be stated in the deed is known as a *partij* deed, the definition of a *partij* deed. False statements submitted by the parties must be accounted for by the parties concerned, in the sense that a notary official is only responsible if a false statement or forged document comes from the notary accompanied by evidence referring to the notary who made the mistake. . In the UUJN which regulates regarding sanctions for violations committed by a Notary, namely a deed which made by a Notary has no power as an authentic deed but only has the power as a deed under the hand. Relating to action A notary who commits a criminal act of forgery of a deed or a criminal act False statements made by the parties, the UUJN does not specifically regulate specifically related to criminal provisions because it is based on the principle of legality are principles in the Criminal Code.

Proving that a Notary has committed the criminal act of forging a deed or making a forged deed as referred to in Article 263, Article 264 and Article 266 must be based on an investigation and evidentiary process that is legal by looking for elements of error and intentionality from the Notary himself. This is intended to be accounted for both institutionally and in the capacity of a notary as a legal subject. The Law on Notary Office stipulates that when a Notary in carrying out his position is proven to have committed a violation, the Notary may be subject to sanctions or be subject to sanctions, in the form of civil, administrative and ethical sanctions, but does not regulate criminal sanctions.

Based on the understanding of the forgery article contained in the Criminal Code, if we associate it with a violation of Article 15 of Law No. 2 of 2014, changes to Law No. 30 of 2004 Law on Notary Office, there are several examples of cases, namely as follows:

1. To draw up a deed, and without the Notary knowing that the appearer has provided a false identity "such as a fake Identity Card (KTP)". If an agreement or deed made results in a dispute or legal issue due to falsification of the identity of the appearer which is not in accordance with the KTP so that the person concerned cannot find the perpetrator (Case Study of the Decision of the Tanjung Karang District Court Number 244/PID.B/PN.TJK)
2. Article 266 paragraph (1) of the Criminal Code: a case that occurred at the Medan Court where there was a ruling which reads stating that the defendant Ignasius Sago has been proven legally and convincingly guilty of committing the crime as charged, namely "jointly ordering to place false statements in the deed authentic. It can be concluded that the defendant who acted as an appearer came to the notary official to draw up the deed, but what was stated in the contents of the deed turned out to be false or incorrect and it seemed as if the statement was in accordance with the truth.

4. Conclusion

As for the responsibilities of the Notary/PPAT official with the deed he made, there are 3 (three) responsibilities, which include: (1) civil, a Notary/PPAT has violated the provisions of article 1365 of the Civil Code civil sanctions in the form of reimbursement of costs, compensation or interest must be based on a legal relationship between the Notary and the parties concerned in making an authentic deed. (2) Criminal, criminal liability by a Notary when his actions must fulfill the elements contained in the Criminal Code. (3) Administrative, in Law no. 2 of 2014 concerning the Position of Notary describes administrative sanctions, in the form of verbal warning sanctions; written warning; temporary stop; Honorable discharge; or Dismissal.

Legal action against a Notary/PPAT if there is falsification and incorrect information provided by the parties as appearers in the process of making a deed, the Notary concerned cannot be held responsible, because a Notary is only tasked with deciphering what his client said into a deed commonly called with "partij deed", the definition of partij deed is as a deed drawn up before a notary, a deed made based on the statement or actions of the party facing the notary, and the statement or deed must be described or written by a notary to make a deed .

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