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A Legal Responsibility of a Notary for Actions Performed by Parties in the Making an Authentic Ded

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Abstract

The purpose of this study was to determine the position of a notary in making an authentic deed, the form of a notary's responsibility for violations of the UUJN in creating an original act and the effectiveness of sanctions for a notary who violates the UUJN in doing an authentic deed. The writing of this thesis research methodology uses normative juridical research methods using an empirical juridical approach, with qualitative analysis. Qualitative analysis means that research results do not depend on the amount of data based on numbers, but data analysed is carried out in-depth and holistically. Based on the research results, it is known that the position of a notary in doing an authentic deed is regulated explicitly in Article 15 paragraphs (1), (2), and (3) of Law Number 30 of 2004 Jo. Law Number 2 of 2014 concerning the Position of Notary consists of general, special and future authorities. In its implementation, the form of a notary's liability that violates the UUJN in doing an authentic deed is divided into 2 (two) states, first: a civil notary liability of a notary because a notary violates the provisions of Article 84 of Law No. cancel or nullify by law, secondly: administrative liability of the notary occurs because in doing an authentic deed the notary does not heed Article 84 of Law Number 30 of 2004 concerning the position of a notary, for this violator with the threat of the heaviest penalty the notary can be dismissed from his position.

Keywords

liability; parties; notary



I. Introduction

A notary is a legal profession, and thus the Notary profession is a noble profession (officium mobile). They called officium mobile because the Notary profession is very closely related to humanity. The deed made by a notary can be the legal basis for the status of one's property, rights and obligations. Mistakes on a notarial deed can cause a person's rights to be revoked or someone's burden to a commitment.

Notary institutions in Indonesia that are known today are not notary institutions born from Indonesian soil. Notary institutions entered Indonesia at the beginning of the 17th century with the existence of Vereenigde Oost Ind. Compagnie (VOC) in Indonesia.

The position of a Notary is held, or its presence is required by the rule of law to assist and serve the community who need authentic evidence regarding legal circumstances, events or actions. With such a basis, those who are appointed as Notaries must have the spirit to serve the community. For this service, the people who the Notary has performed by the duties of his position can provide an honorarium to the Notary. Therefore, a Notary does not mean anything if the community does not need it.

Notaries in carrying out their profession must be responsible for every deed that has been made. Based on the substance of Article 65 of Law Number 30 of 2004 as amended by Law Number 2 of 2014 concerning the Position of a Notary, it is as if a Notary, a

substitute Notary, a notable substitute Notary, and temporary Notary officials have never had limitations in their responsibilities, this can be seen from the sentence "...even though the Notary protocol has been handed over or transferred to the Notary protocol keeper" or in other words, a notable substitute Notary, and the temporary Notary official until his last breath or when he dies must be responsible.

In principle, the purpose of the establishment of a legal system which later became known unlawful acts is to achieve what is called by the Latin proverb, namely: *Juris preceptum suum haec; honeste vivere, alterum non-laedere, suum cuique tribuere* (The motto of the law is to live honestly, not to harm others, and to give others their rights). Law is one of the most important elements in a state life (Hulu, 2020). Law is also the work of humans in the form of norms containing behavioral guidelines which are a reflection of human will about how society should be fostered and where it should be directed (Hartanto, 2020).

Notaries are dignified professions so that in carrying out their positions, they must comply with existing signs to avoid legal claims that may occur in the future. On the other hand, there are still Notaries who carry out their profession unprofessionally. As a result of his unprofessionalism, a Notary tends to do actions that can harm the parties and the Notary himself.

II. Review of Literature

2.1 Notary Responsibilities

The Notary's responsibility is that the Notary will bear everything (if there are things that can be prosecuted, blamed and so on). While criminal responsibility, in foreign terms also called *teorekenbaardheid* or criminal responsibility, is a situation that leads to the criminalization of the perpetrator with the intention of determining whether a defendant or suspect is responsible for a crime that occurred or not. Civil liability in the Civil Code is divided into responsibilities with elements of error (intentional and negligence), as contained in Article 1365 of the Civil Code. Responsibility with an element of error, especially the element of negligence, as contained in Article 1366 of the Civil Code. Absolute liability (without fault) in a very limited sense is found in Article 1367 of the Civil Code.

2.2 Legal Action

Legal acts are criminal acts that are not as severe as crimes. Violations according to Article 1 point 9 of the General Provisions of the Indonesian Notary Code of Ethics are acts or actions carried out by members of the association or other people who hold and carry out the position of a Notary that violates the provisions of the code of ethics and/or organizational discipline.

2.3 Authentic Deed

An authentic deed according to Article 1868 of the Civil Code is a deed which in the form determined by law is made by or before a public official who is authorized to do so at the place where the deed was made.

III. Research Methods

Legal research is basically a scientific activity based on certain methods, systematics and thoughts that aim to study one or several certain legal phenomena by analyzing them, except that an in-depth examination of the legal facts is also carried out for later arising in the symptoms concerned.

Legal research is a process to find the rule of law, legal principles, and legal doctrines in order to answer the legal issues faced. In conducting legal research, the steps taken are as follows:

1. Identifying legal facts and eliminating irrelevant matters to determine the legal issues to be resolved;
2. Collection of legal materials and if deemed to have relevance also to non-legal materials;
3. Conduct a review of the issues raised based on the materials that have been collected;
4. Draw conclusions in the form of arguments that answer legal issues;
5. Giving prescriptions based on the arguments that have been built in the conclusions.

The nature of this research is to approach the sociological juridical data (empirical). Empirical juridical approach (law is seen as a norm or *das sollen*), because in discussing the problem this research uses legal materials (both written law and unwritten law or both primary legal materials and secondary legal materials). Empirical approach (law as a social, cultural or *das sein* reality), because in this study primary data obtained from the field were used.

This research was conducted at the Notary Regional Supervisory Council of North Sumatra Province (MPWN) of North Sumatra and the Notary Regional Supervisory Council (MPDN) of Medan City. The population in this study is notaries in the city of Medan and/or in North Sumatra who have problems due to committing unlawful acts in carrying out their positions as notaries. The sample of this research is (the Supervisory Council of the Notary Region of North Sumatra Province (MPWN Sumut) and the Regional Supervisory Council of the Notary City of Medan (MPDN of Medan City), especially for the legal liability of the Notary due to violation of position in making authentic deeds and/or unlawful acts in carrying out his position. as Notary.

To carry out data analysis carried out with a qualitative data analysis model. As stated by Widoyoko, the qualitative method departs from the post-positivism paradigm, where every aspect of social reality is seen holistically as a natural unit that needs to be interpreted in depth, especially social reality is understood as a plural reality. Analysis can be formulated as a process of systematic and consistent decomposition of certain symptoms.

IV. Results and Discussion

Making authentic deeds is required by laws and regulations in order to create certainty, order and legal protection. In addition to an authentic deed made by or before a Notary, not only because it is required by legislation, but also because it is desired by the party for the sake of certainty, order and legal protection for interested parties as well as for the community as a whole.

Based on the results of an interview with one of the Notaries, namely the authority of a Notary in making an authentic deed, namely: Notaries play a very important role in making Authentic deeds, because Authentic Deeds in accordance with the provisions of Article 1 number 7 UUJN are under the authority of a notary Jo article 15 UUJN, unless

the Act determines the ¹⁵ authority referred to be handed over or become the authority of another official. So that the notary has the legal position to make an authentic deed because it has been mandated by law.

The legal responsibility of a notary in making an authentic deed is that the authority given to a notary to make an authentic deed must be / must be based on UUJN and other laws. Article 1 point 1 UUJN, and basically a notary cannot be sanctioned in making an authentic deed if it has been made in accordance with the procedures ¹² procedures regulated by law (article 1 point 7 UUJN), but if the notary leaves what is regulated in article 1 number 1 and article 1 number 7, the Notary must be responsible for the loss of the parties.

The legal responsibilities of a notary include administrative, civil and criminal responsibilities and ethics. All legal actions according to legal concepts are the responsibility of the notary if the notary in making the deed is not in accordance with the UUJN and other laws (article 1 point 1). What an authentic deed says is: according to the UUJN it must meet the elements of article 1 number 7, and according to the Civil Code it must comply with the provisions of article 1868 of the Civil Code.

Modes or problems that often occur and involve the responsibility of a notary in making an authentic deed, namely: because the notary in making the deed is not based on the procedures stipulated in the notary position law and other laws and regulations, in loading the notary deed it does not apply laws and norms related to the substance of the deed he made so that the notary must be responsible administratively, starting from a written warning sanction to dishonorable dismissal, and civilly related to the cancellation of the deed, compensation, fines and interest and the said deed may also be degraded into a private deed and then criminally penalized for placing false information in an authentic deed in article 263 or 264 or alleged assistance as referred to in article 55 of the Criminal Code.

Sanctions in the position of a Notary, namely what has been imposed on a notary as a result of making an authentic deed, namely the sanctions referred to in answer No. 7 mentioned above. Problems that are often complained of or become the object of problems from 2018-2020 are problems related to the procedures for making authentic deeds and the problem of being wrong or not applying the law in making deeds. Regarding the quantity of the problem, you can ask the secretariat of the Medan City Notary Regional Supervisory Council (MPDN) Medan City or the North Sumatra Province Notary Regional Supervisory Council (MPWN) of North Sumatra Province.

The number of complaints within the period of 2020 can be obtained from the secretariat of the institution concerned. What is the notary's responsibility in making an authentic deed? Are they still responsible for the authentic deeds made while still serving as a notary, criminally and civilly notaries are still responsible even though they are retired. However, administratively it ends after retirement.

The responsibilities of a Notary as a public official cover the fields of: private law, tax law, and criminal law. It is possible that accountability in one area of law does not involve other areas of law. On the other hand, actions that give rise to claims based on unlawful acts (Article 1365 of the Civil Code) can lead to taking action in the field of criminal law. The notary's responsibility lies mainly in the field of private law.

The responsibility of a notary who can be detrimental to the parties can report a notary to the supervisory board of the notary area where the deed was made and also based on the domicile of the notary, the following is a list of notaries who enter the table of the Notary Regional Supervisory Council especially in the city of Medan to be tried on the basis of reports from the public are as follows.

Table 1. Meeting of the Medan City Notary Regional Supervisory Council against Public Complaints to Notaries

No	Applicant Name	About	Inspection Team	Court Schedule
1.	M. Faisal as the Head of PT. Bank Negara Indonesia (Persero) Tbk Number: MDL/6.2/0882 dated 07 May 2019	Mediation Application with Note. Syamsurizul A. Bispo, SH Jl. Brigadier General Katamso No. 451 Medan	SK Examining Team No: M.55/MPDN.MDN.05.05.19.TAHUN 2019 dated May 06, 2019 Examiner Team Name Mangatas Nasution, SH Iwan Setyawan, SH, MH as Member of the Assembly; Hj. Teti Winarti, SH., M.Si; and Marzuki, SH	Tuesday, May 14, 2019
2.	M. Faisal as the Head of PT. Bank Negara Indonesia (Persero) Tbk Number: MDL/6.2/0882 dated 07 May 2019	Mediation Application with Note. Ernawaty Lubis, SH. Jalan Sutrisno No. 285-A Medan	SK Examining Team No: M.39/MPDN.MDN.05.05.19.YEAR 2019 date 06 May 2019 Examiner Team Name Mangatas Nasution, SH Iwan Setyawan, SH, MH as Member of the Assembly; Hj. Teti Winarti, SH., M.Si; and Marzuki, SH	Friday, May 10, 2019
3	Adnin Sukri Nasution President Director of PT. Mitradana Madani Rural Bank Number: 075/1/MDN-DIRT/01/29/IV/2019 dated April 10, 2019	Mediation Application with Note. Gloria Simanjuntak, SH	SK Examining Team Number: M.28/MPDN.MDN.05.04.19.YEAR 2019 April 22, 2019 Examiner Team Name Mangatas Nasution, SH Iwan Setyawan, SH, MH as Member of the Assembly; Hj. Teti Winarti, SH., M.Si; and Marzuki, SH	Friday, 26 April 2019
4	Rizal as one of the heirs of the late. H. Abdul Jalil	Complaining Notary Hustiaty, SH	SK Examining Team Number: M.40MPDN.MDN.05.05.19.YEAR 2019 date 06 May 2019	Monday, May 13, 2019

			Rosana Lubis, SH Fredy, SH, M. Hum Boy Admiral SH, M. Hum Marzuki, SH (Secretary)	
5	M. Faisal as the Head of PT. Bank Negara Indonesia (Persero) Tbk Number: MDL/6.2/0882 dated 07 May 2019	Mediation Application with Note. Ernawaty Lubis, SH Jalan Sutrisno No. 285-A Medan	SK Examining Team No: M.39/MPDN.MDN.05.05. 19.YEAR 2019date 06 May 2019 Examiner Team Name Mangatas Nasution, SH; Iwan Setyawan, SH, MH; Hj. Teti Winarti, SH., M.Si; and Marzuki, SH (Secretary)	Wednesday, May 15, 2019
6	M. Faisal as the Head of PT. Bank Negara Indonesia (Persero) Tbk Number: MDL/6.2/1035 May 20, 2019	Complaints against Not. Syamsurizul A. Bispo, SH Jl. Brigadier General Katamso No. 451 Medan	SK Examining Team No: M.79/MPDN.MDN.05.06. TAHUN 2019 June 14, 2019 Examiner Team Name Mangatas Nasution, SH Iwan Setyawan, SH, MH; Hj. Teti Winarti, SH., M.Si; and Marzuki, SH (Secretary)	Wednesday, 26 June 2019
7	Mr. Gwen Soan 20th June 2019	Application Mediation Against Notes. Helma Ariyanti, SH	SK Examining Team No: M.207/MPDN.MDN.05.07 .TAHUN 2019 03 July 2019 Examiner Team Name Agus Armani Ry, SH Iwan Setyawan, SH, MH; Hj. Teti Winarti, SH., M.Si; and Marzuki, SH (Secretary)	Thursday, 11 July 2019
8	Chris Rianto	Complaints Against Not. Roosmidar, SH	SK Examining Team No: M.219/MPDN.MDN.05.07 .TAHUN 2019 July 12, 2019 Examiner Team Name Rosana Lubis, SH Iwan Setyawan, SH, MH Freddy; and Havifah, SH (Secretary)	Thursday, 18 July 2019

Based on the table above, in 2019 there were about 8 (eight) Notaries who had made mistakes or omissions in making and issuing Deeds so that parties who had been harmed as a result of the Notary's actions could only report the actions of the Notary to the Medan City Notary Supervisory Board but only to find out the truth and the reasons the notary made a mistake or the notary has an element of intent in making and issuing a notarial deed, whether for personal interests or the interests of the parties.

The duties and authorities attached to this position are carried out by humans (*natuurlijke person*), who acts as a representative of the position and is called an office holder or official. Every use of authority by officials is always accompanied by responsibility, in accordance with the principle of "deed bevoegdheid zonder verantwoordelijkheid" (no authority without accountability). Because the authority is attached to the position, but in its implementation it is carried out by humans as representatives or functionaries of the position, then who must assume legal responsibility when there is a deviation must be seen casuistically because that responsibility can be in the form of position responsibilities and can also be in the form of responsibility and personal liability.

Personal responsibility is related to maladministration in the use of authority and public services. An official who carries out the duties and authority of the position or makes policies will be burdened with personal responsibility if he commits maladministration.

Administrative accountability of a Notary can be requested through a Notary institution/organization, in contrast to criminal and civil liability which must be carried out through the courts. However, the court through its decision can forward it to the Notary organization to follow up on the decision that has been issued by the court.

This means that if the court decision declares the Notary guilty, then the decision can then be used as a basis by the Notary organization to ask the Notary to be administratively responsible even though the Notary has been sentenced to be criminally responsible or civilly responsible.

V. Conclusion

The protection and position of a notary is regulated in the law. The position of a notary is that a notary is a public official who is authorized to make an authentic deed and other authorities as referred to in the law, in carrying out his duties and profession a notary cannot make a deed of his own volition, but the deeds are made at the request of the parties or the appearers. The responsibilities of a notary are stated in Article 65 of the UUJN which states that the notary is responsible for every deed he makes, even though the notary protocol has been submitted or transferred to the custodian of the notary protocol and also for the notary in carrying out his duties and professions he is civilly responsible and is closely related to unlawful acts and compensation for losses resulting from their actions.

The Notary's responsibility for violating the UUJN will ultimately lead to liability for the professional bearer, whether it is administratively responsible, or to compensate for civil losses. Administrative Accountability. The theory of *fautes personnelles*, namely the theory which states that losses to third parties are borne by officials who because of their actions have caused losses. In this theory the burden of responsibility is directed at humans as individuals. ¹⁶ UUJN administrative sanctions consist of 5 (five) sanctions, namely verbal warning, written warning, temporary dismissal, honorable discharge or dishonorable discharge. Civil liability as contained in Article 84 of the UUJN, has also previously been regulated in Article 60 of the PJN.

Sanctions for a Notary in administrative law, Notaries are given the authority based on UUJN. If the provisions are not heeded, the deed made by the notary can become a private deed and the deed can be canceled or null and void, then the position of the notary deed does not have the power of p₈ of as an underhand deed, which can be canceled by the parties themselves or canceled by a court decision that has permanent legal force due to the application of the principle of legal presumption.

Suggestion

Based on the problems that have been discussed previously, so that in overcoming the problem of the liability of a Notary who violates the UUJN in making an authentic deed, the author's suggestions to overcome the problem in question are:

1. There needs to be a deep legal awareness for the implementers of the Notary Office in every action taken. In making an authentic deed, one must adhere to the existing rules, namely the Notary code of ethics and UUJN, which ultimately aims to prevent Notaries from making mistakes that will lead to accountability both administratively, civilly, criminally, and morally.
2. There is a need for a special regulation which essentially regulates the accountability of Notaries in administrative, civil and criminal terms as a juridical reference to hold Notaries accountable when committing violations in making authentic deeds. On the other hand, regulatory protection for legal aid from Notary organizations is also needed to protect Notaries from arbitrary actions by law enforcement officers when Notaries are used as witnesses, suspects or defendants in their positions as Notaries.

In order for the implementation of UUJN enforcement to be effective, the professionalism of the Supervisory Board and/or the Notary Honorary Council is needed in taking action against "naughty" Notaries so that the dignity of the profession can be maintained without favoritism to both senior Notaries and newly appointed Notaries in giving sanctions to Notaries who violate code of ethics or UUJN. As well as the need for collective cooperation with stakeholders, both law enforcers, legal practitioners and the general public to oversee the performance of Notaries and Notary behavior in enforcing the code of ethics and UUJN. Actually, first of all, it is highly expected to be able to ward off crimes in the legal professional environment. Legal Ethic Professionals are what are called Disciplinary Law professionals with professional and independent disciplinary justice.

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