

Legal Protection for Parties whose Act Disappeared in the Post-Natural Disaster (*Tsunami*)

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Abstract. *The formulation of the problems in this study are 1) Legal protection for parties whose minimum deeds are lost after the natural disaster (Tsunami) In Palu City, Central Sulawesi, 2) Notary responsibilities for the minimum deeds in post-natural disaster (Tsunami) notary protocol storage in Palu City Central Sulawesi, 3) legal efforts made by a notary against the parties requesting a copy of the missing, damaged, or damaged certificate after the natural disaster (Tsunami) in Palu City, Central Sulawesi. The research method used in this research is descriptive using a sociological empirical approach. Based on the results of this study, it is known that the legal protection for parties whose actions have been lost after the natural disaster (Tsunami) in Palu City, Central Sulawesi is to ensure the rights and obligations of the parties for certainty, law order and protection for interested parties. In making the authentic deed, we must observe the requirements so that it can be said to be an authentic deed. Authentic deeds are made based on law and before public officials. In this case, it starts with the minimum deed making.*

Keywords: Legal Protection; Minuta Deed; Natural Disaster.

1. Introduction

To realize the concept of happiness in life above, the law of course must also follow this rapid technological development, because legal science cannot ignore and turn a blind ear to the fundamental changes that occur in science, and if this situation is allowed we will be very stupid and left behind (retarded)¹ However, in reality Indonesia as a rule of law in the current era of globalization, the pace of positive law development in Indonesia is very difficult to match the pace of technological development that exists. So that the state becomes increasingly difficult in providing legal certainty for the Indonesian people.

The development of information technology, for example through the internet, gave birth to a legal phenomenon in the form of an electronic contract, namely an agreement between the parties made through an electronic system, as well as an electronic contract in the form of legal actions carried out using computers or computer networks and or other electronic media. Information technology itself was

¹ Raharjo, Satjipto. (2009). *Lapisan-lapisan dalam Studi Hukum*. Malang: Bayumedia. p. 11

born around 1947 marked by the discovery of the computer as its main component, after the technological era that exploited material 50,000 years BC to the 18th century and the technology era that exploited energy from the 18th century to 1947.²

Notary is a profession that has the authority to make an authentic deed and as a witness for the signing of a document. Apart from having the authority to make an authentic deed and as a witness in signing a document, the Notary also has the obligation to keep the original deed of the document which is called the deed of deed. In addition to the Minuta Deed of a Notary, it is also obligatory to keep a set of documents or archives called the Notary Protocol. The Notary Public Protocol must be cared for and kept by the Notary Public, must not be lost or damaged because these documents are very valuable. These documents serve as evidence for the Notary and the clients who make deeds to the Notary concerned as evidence that the deed was made based on law and the parties concerned.

The importance of the documents and archives contained in the Notary Protocol, the Notary Public must really pay attention to security aspects. The notary must have a steel safe for storing these documents so that the documents are not easily damaged and avoid bugs that can damage them, besides that documents made of paper are also easily damaged by humidity. The Notary Public must keep the Notary Protocol (which contains the minimum deed) and not allow the Notary Protocol to be held by its employees, therefore a legal action for a Notary who is unable to keep the Minutes of the Act properly will result in legal consequences for the Notary Public who cannot keep it.

The birth of Act No. 2 of 2014 concerning Amendments to Act No. 30 of 2004 concerning the Position of Notary Public (UUJN) further reinforces the important position of the notary's position as a public official who provides legal certainty through the authentic deed he makes. The philosophical basis for the birth of the Law on Notary Position Number 30 of 2004 concerning the Position of Notary Public as amended by Act No. 2 of 2014 concerning Amendments to Act No. 30 of 2004 concerning the Position of Notary is the realization of guarantees of legal certainty, order and legal protection which cored with truth and justice. Through the deed he makes, the Notary must be able to provide legal certainty to the public who uses Notary services.³

Notary is a public official who has the authority to make authentic deeds and other powers as stipulated in Act No. 30 of 2004 concerning the Position of Notary (UUJN). In the fifth century, notaries were defined as court officials who performed various administrative jobs. This understanding is different from the notary we know today. Notaries began to appear in Indonesia in the 17th century. At that time, Melchior

² Lubbe, JCA Vam Der and Nauta, Peircean semiotics, culture and expert systems, Int. Forum Information and Documentation Journal, Vol. 17 (3), July 1992, p. 3-10

³ Ira Koes. (2013). *Notaris*. Depok: Raih Asa Sukses. p. 9

Kerchem, Secretary of the College van Schepenen, was the first person to be appointed as a notary on 27 August 1620.⁴

The Notary profession is very important, because of the nature and nature of the work of a Notary which is very evidence-oriented, so that it can become the main legal foundation regarding the status of assets, rights and obligations of the parties involved. In making a notarial deed, it must contain the wishes or will of the parties as stated in the contents of the agreement (deed).

The Notary Deed as an authentic deed has an important function in social life. The need for written evidence, in the form of authentic deeds, is increasing in line with the development of demands for legal certainty which is one of the principles of a rule of law. Notary deed is a perfect, strongest and full tool of proof so that in addition to guaranteeing legal certainty, notarial deeds can also avoid disputes. It is considered better to write down an act, agreement, stipulation in the form of a notary deed than to write it down in a letter under hand, even though it is signed on a stamp duty, which is also strengthened by the witnesses' signatures.

In current practice, there have been many deeds made by Notaries as authentic evidence, being questioned in court or notaries who are immediately summoned to be witnesses, even a Notary has been sued or prosecuted in court. In every examination of a Notary by an investigator or court, the Notary deed as an authentic deed will be used as evidence in any investigation or trial process. Notary Deed as a legal product of a public official, so the assessment of the Notary deed must be carried out with the Presumption of Principle (*Vermoeden Van rechmatigheid*) or *Presumptio iustae Causa*. This principle can be used to assess a Notary's deed, namely the Notary's deed must be considered valid until a party declares the deed invalid. Legal certainty about a deed made by a notary is very important, that what is stated in the deed is valid evidence against the parties who made the deed or those who have rights and apply to the public, unless there is evidence to the contrary (*tegenbewijs*). Information or statements set forth or contained in the deed or statements of the parties given before a Notary and the parties must be considered correct.⁵

To ensure legal certainty, order and protection, the community's need for authentic deeds regarding legal conditions, events or acts is very important. Through authentic deeds that clearly define rights and obligations, guarantee legal certainty and at the same time hopefully avoid disputes. Although the dispute cannot be avoided, in the dispute resolution process, the authentic deed which is the strongest and fulfilled written evidence provides a real contribution to the dispute settlement of the parties.

Due to the absence of statutory regulations on how to keep the minimum deed, it results in notaries in carrying out their obligation to keep the state archives from having no standard procedure for carrying out their obligations. Which ultimately results in

⁴ Notodisoerjo, R. Soegondo. (1982). *Hukum Notariat di Indonesia Suatu Penjelasan*. Jakarta: Rajawali. p. 12.

⁵ Adjie, Habib. (2011). *Kebatalan dan Pembatalan Akta Notaris*. Bandung: Refika Aditama. p. 85

the notary's protocol vulnerable to damage, loss and destruction. So that the notary public must be responsible for the damage, loss and destruction of the notary protocol.

Based on Act 1 number 1 of Act No. 30 of 2004 concerning the position of notary public (hereinafter referred to as UUJN) states Notaries are public officials who are given the authority to make authentic deeds and other powers as regulated in UUJN. Act 15 paragraph (1) of the Law on Notary Position states that:

"Notaries are authorized to make authentic deeds regarding all deeds, agreements, and provisions required by laws and regulations and/or those interested in being stated in the authentic deed, guarantee the certainty of the date of making the deed, keep the deed, provide grosse, copy and excerpt. deeds, all of which as long as the making of the deeds is not assigned or excluded to other officials or other people as stipulated by law".

In carrying out his position, the notary is obliged, one of which is to make deeds in the form of a minimum deed and keep it as part of the notary protocol as regulated in Act 16 paragraph (1) letter b of the Law on Notary Position, and in the explanation of this Act, it is explained that the obligation to keep Minuta deed is part of the Notary protocol, intended to maintain the authenticity of a deed by keeping the deed in its original form, so that if there is falsification or abuse of grosse, the copy, or the quotation can be found easily by matching it with the original. However, the provisions of the Law on the Position of Notary Public do not explain how to keep them.

For example, the Minuta deed will be damaged by termites, the influence of cold (humid) weather or due to fire. A very real example was when the earthquake and *Tsunami* occurred in Palu in 2018, some notary offices were destroyed which resulted in the damage to the minuta deeds, and even the minuta deeds were lost due to the *Tsunami* water.

In fact, the 1945 Constitution of the Republic of Indonesia clearly stipulates that the Republic of Indonesia is a state based on law. The principle of a rule of law guarantees certainty, order and protection of the law which has the essence of truth and justice; where legal certainty, order and protection demands, among other things, that legal traffic in people's lives requires evidence that clearly determines the rights and obligations of a person as a legal subject in society.

With so many legal events that have occurred, thus encouraging and demanding the public on the importance of the power of proof of a deed, the role of a notary as a public official must always follow legal developments to people who need and maintain the deeds he has made to always provide legal certainty. This is also because notaries can keep the minimum amount of their deeds properly, the public is increasingly aware of the importance of agreements or legal relationships made by the parties as outlined in authentic deeds with the aim of ensuring legal certainty and can be used as perfect evidence.

During his tenure, a notary may be exposed to an incident that is uncertain or uncertain. An event that is uncertain or uncertain can be anything, one example is a

disaster. According to Act No. 24 of 2007 concerning Disaster Management Act 1 number 1:

Disaster is an event or series of events that threatens and disrupts the life and livelihood of the community which is caused, either by natural factors and/or non-natural factors as well as human factors, resulting in human casualties, environmental damage, property loss, and psychological impact.

However, the provisions of the Law on the Position of Notary Public do not explain how to keep the minuta deed which should only be limited to storing it in a protocol, it does not reach where the notary should keep the minuta deed, because there are no statutory rules that clearly regulate how to save the deed minuta. , this is what causes notaries in carrying out their obligations to keep the minimum deeds of the state archives, they do not have a standard procedure for carrying out their obligations. In the end, the Minuta deed is vulnerable to damage and loss. So that the notary must be responsible for the damage and loss of the deed. For example, the certificate will be damaged and lost or even destroyed because of being eaten by termites.

2. Research Methods

The research method used in this research is descriptive using a sociological empirical approach, which then analyzes juridical normative, namely by searching for and finding positive legal aspects in accordance with the problem under study in order to be determined to solve a particular legal problem, in the form of positive law and how it is implemented.

3. Results and Discussion

Legal protection can be interpreted as the provision of guarantees or certainty that someone will get what their rights and obligations are or protection of their interests so that they are safe.⁶ Legal protection is defined as the guarantee of protection of rights provided by law to those who are entitled normatively according to the provisions of a legal rule. The limitation on the legal side of the rights of legal subjects is only as long as it is regulated, otherwise the context of protection in question is outside the law.

The substance of legal protection is essentially the same, namely to guarantee protection to those who have normative rights. However, when the area of discussion stepped on an intellectual and more technical issue, differences would certainly appear.

Legal protection for notaries in terms of criminal aspects will be very different from legal protection when viewed from the aspect of UUJN. Legal protection aspects for notaries that intersect with criminal law institutions are more external in nature, in the

⁶ Ratih Tri Jayanati. (2010). *Notary Legal Protection in Relation to the Deed When There is a Dispute in the District Court (Case Study of Pontianak District Court Decision No. 72/pdt/pn. Pontianak)*, Thesis, Master of Notary Study Program, Postgraduate Program of Universitas Diponegoro, Semarang, p. 74.

sense that notaries as public officials are attached to special rights as a consequence of their title of position. Privileges owned by a notary, differentiate the treatment (treatment) of ordinary people. The forms of treatment include: relating to the right of refusal of a notary which must be heeded, treatment in terms of summons, examination, investigation and investigation processes.

Based on the provisions in UUJN, legal protection is more of an internal/administrative nature. UUJN regulations that are violated by a notary is a standard professional measure that should be obeyed by all notaries as bearers of state authority in making authentic deeds. In this area the protection of notaries from administrative decisions, aims to provide a guarantee for a notary to be able to defend himself and defend his right to work as a notary.

In the UUJN, there is no single Act that specifically regulates legal protection for Notaries. Basically, this legal protection is only implied in Act 66 concerning supervision of Notaries which aims to provide legal protection for Notaries in carrying out their duties and positions as General Officials, such supervision is very necessary, so that in carrying out their duties and positions, Notaries are obliged to uphold the dignity of their positions.

Notaries as public officials in carrying out their positions need to be given legal protection, among others, first to maintain the dignity and dignity of their positions, including when giving testimony and proceeding in examinations and trials. Second, keep the information deed obtained for the purpose of drawing up the deed and thirdly, keep the minutes or letters that are attached to the minutes of the notary deed or protocol in the Notary's custody.⁷

These three things are the basis for Act 66 of the UUJN in terms of summons of a Notary for judicial proceedings, investigations, public prosecutors or judges with the approval of the Supervisory Panel. With this agreement, it means that in the absence of an agreement it cannot be done.

Act 20 paragraph (1) Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number M.02.PR.08.10 of 2004 concerning Procedures for Appointment of Members, Dismissal of Members, Organizational Structure, Work Procedures and Inspection Procedures for the Notary Supervisory Council states that: in conducting examination of Notaries, the Chairperson of the Notary Supervisory Council shall form the Regional Examining Council, the Regional Examining Council and the Central Examining Council from each element consisting of 1 (one) Chairperson and 2 (two) members of the Examining Council.

In accordance with the provisions of Act 73 paragraph (1) UUJN, the Examining Council has the authority to examine and decide upon received reports submitted by parties who feel they have been aggrieved by submitting in writing, accompanied by accountable evidence. Based on the report, the Supervisory Panel conducts an examination of the Notary concerned to determine whether there is an alleged

⁷ Renvoi Magazine, Issue 11, Third Year, dated January 11, 2006, p. 611

violation of the Notary's Code of Ethics or a violation of the implementation of the Notary's position.

In conducting the examination, the Supervisory Council not only checks the Notary concerned but also the third party as the reporter, so that the results of the examination are obtained in a balanced manner.⁸ This is in accordance with Act 22 paragraph (1) of the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number M.02.PR.08.10 of 2004 concerning Procedures for Appointment of Members, Dismissal of Members, Organizational Structure, Work Procedures and Procedures for Examination of the Notary Supervisory Council.

According to Act 1 point 5 of the Ministerial Regulation above, the definition of supervision is an activity that is preventive and curative in nature including coaching activities carried out by the Supervisory Council for Notaries. From the above formulation, the main objective of supervision is so that all rights and authorities as well as obligations given to the Notary in carrying out his duties as outlined in the relevant basic regulations, are always carried out on a predetermined path, not only legal channels but also on moral grounds and professional ethics to ensure legal protection and legal certainty for the community.

Furthermore, based on Act 23 paragraph (4) it states that the results of the examination are contained in the examination report. Subsequently, paragraph (5) states that the results of the examination are sent to the Notary concerned as the reported party and the third party including the reporting party, with copies of the Regional Supervisory Council, Regional Board of the Indonesian Notary Association and the local Indonesian Notary Association Regional Administrator. Thus, the formation of the Supervisory Council to save the interests of the public from losses caused by irresponsible Notaries and to maintain the image and authority of the Notary Public as well as to protect the reputation of the Notary profession group as well as a form of legal protection for Notaries provided by the state

Notary as a public official in carrying out his profession in the field of legal services to the community is protected by law, in the law the notary office is a certain position that carries out the profession in legal services to the public, it is necessary to obtain protection and guarantee, in order to achieve legal certainty . The Notary Office Law has provided a special procedure in law enforcement for Notaries, legal protection for Notaries is stated in Act 66 of the Notary Office Law which stipulates that for judicial proceedings, investigators, public prosecutors,

The existence of a notary is considered very important to help people who need written evidence. With regard to written evidence, it can be seen in Act 1867 of the Civil Code that evidence in writing must be done in authentic writing or under hand writing. It can be concluded that the deed consists of authentic deed and underhand deed. The deed under hand was made in a free form and not before a public official,

⁸ Adian, Riefika. (2008). *Efforts and Legal Protection for Notaries against Position Sanctions in Semarang City*, Thesis, Universitas Diponegoro Master of Notary Studies Program, Semarang, p. 31.

deliberately drawn up by the parties and later the parties could prove the deed themselves.

In connection with the various kinds of written evidence above, Notaries have the task of providing legal certainty, not only that, protection and order to the public in making authentic deeds. The making of a deed which is usually called an authentic deed is a product of a notary. Authentic deeds aim to provide legal certainty for the community.

Information from parties or parties will be compiled in writing by a Notary Public. A series of words, the intentions and wishes of the parties or parties are stated in an authentic deed.

Based on an interview with Ms. Nurlaelah⁹ as the Regional Office of the Ministry of Law and Human Rights of Central Sulawesi Province, explaining the legal protection for parties whose actions have not been lost after the natural disaster (*Tsunami*) in Palu City, Central Sulawesi, namely to ensure the rights and obligations of the parties for certainty, order and legal protection for interested parties. In making the authentic deed, we must look at the requirements so that it can be said to be an authentic deed. Authentic deeds are made based on law and before public officials. In this case, it starts with the minimum deed making.

4. Closing

Based on the research, it is concluded that to ensure the rights and obligations of the parties for the sake of certainty, order and legal protection for the parties concerned. In making the authentic deed, we must look at the requirements so that it can be said to be an authentic deed. Authentic deeds are made based on law and before public officials. In this case, it starts with the minimum deed making. Furthermore, it can be suggested that additional regulations be needed both in UUJN and other Legislative Regulations as implementers that are more detailed regarding the resolution of the problem of damaged deeds.

5. References

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[1] *Journals and Articles:*

⁹ Results of an interview with Ms. Nurlaelah as the Regional Office of the Ministry of Law and Human Rights of Central Sulawesi Province on January 7, 2020 at 14.00 WITA

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- [5] Renvoi Magazine, Issue 11, Third Year, dated January 11, 2006

Interview:

Results of an interview with Ms. Nurlaelah as the Regional Office of the Ministry of Law and Human Rights of Central Sulawesi Province on January 7, 2020 at 14.00 WITA