

Legal Protection Duties on Notary Positions if Malpractice Happen in the Making of Authentic Deals

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Abstract. *This legal research aims to identify and analyze the juridical consequences and responsibilities of a Notary if a Notary commits malpractice while carrying out his duties as a Notary, as well as to find out and analyze the extent of legal protection for the duties of a Notary's office who are suspected of having committed malpractice in making authentic deeds. This study uses a sociological juridical approach using descriptive analytical research specifications. The type of data in this legal research uses primary legal materials and secondary legal materials, as well as tertiary legal materials. The data collection method in this study is in the form of literature and the data analysis method used is qualitative data analysis. Based on the results of research and discussion, that if a Notary commits a malpractice against his authentic deed, then the authentic deed is relegated to a private deed. Then, legal protection for Notaries who commit acts of malpractice must involve professional organizations or INI as a forum that can educate and solve problems that exist among its members.*

Keywords: Notary; Malpractice; Protection.

1. Introduction

Law is a norm that invites people to achieve certain ideals and conditions¹, without ignoring the world of reality and therefore classified into cultural norms.² The principle of the rule of law based on the theory of Triadism Law

¹ Ambe J. Njoh, Liara Bigon, Erick O. Ananga, Richard A. Ayuk-Etang, Institutional, economic and socio-cultural factors accounting for gender-based inequalities in land title procurement in Cameroon, *Journal of Public Transportation*, p. 116-125, <https://www.sciencedirect.com/journal/land-use-policy/vol/78/suppl/C>

²Rahardjo, S. (2000). *Ilmu Hukum*. Bandung: Citra Bakti Aditya. p.27.

(Gustav Radburch) is defined through three basic legal values, namely the value of justice (philosophical), the value of expediency (sociological), and the value of legal certainty (doctrinal).

The existence of a notary institution is based on the making of an authentic deed as a valid and binding evidence. The role of a notary in providing services for the public interest is to provide services in making deeds and other tasks that require the services of a notary. A notary is a public official who is only authorized to make an authentic deed regarding all actions, agreements, and stipulations required by a general regulation or by an interested party that is required to be stated in an authentic deed, guaranteeing the certainty of the date, keeping the deed and giving grosse copies and quotations thereof, all as long as the making of the deed by a general regulation is not assigned or excluded to other people's officials.³

The task of carrying out the position of a Notary is to make evidence desired by the parties for a certain legal action, and the evidence is at the level of civil law. The Notary makes a deed based on evidence or information from the parties stated or explained or shown before a Notary, and then the Notary frames it outwardly, formally, and materially in the form of a Notary deed by remaining based on the legal rules and procedures for making a deed related to the action.⁴ The notary is not responsible for the negligence of the deed made before him, but the notary is only responsible for the formal form of the authentic deed as required by law.

An important element in the making of the deed is the intentional making of the deed and the signing. To be classified in terms of a deed, the deed must be signed (found in Article 1869 of the Civil Code). A deed due to incompetence or incompetence of an employee, or because of a defect in its form, cannot be treated as an authentic deed, however, it has the power as an underhand deed if it is signed by the parties.

Fingerprints are used as a substitute for the signature of a person who cannot affix his signature, either because he cannot write (illiteracy) or because his hand

³Article 1 of Act No. 2 of 2014 concerning Amendments to Act No. 30 of 2004 concerning the Position of a Notary.

⁴E. Herguido Sevillano, J.F. Lavado Contador, S. Schnabel, M. Pulido, J. Ibáñez, Using spatial models of temporal tree dynamics to evaluate the implementation of EU afforestation policies in rangelands of SW Spain, *Journal of Public Transportation*, p. 166-175, <https://www.sciencedirect.com/journal/land-use-policy/vol/78/suppl/C> see <https://www.euredd.efi.int/publications/opportunities-for-improving-land-tenure-and-land-use-rights-in-indonesia>, accessed on March 24, 2022

is handicapped or paralyzed.⁵In this case, the signature will usually be replaced with a fingerprint. In practice and custom it is not called a fingerprint but just a thumbprint.⁶

The problem is that if the Notary is involved in legal problems related to the deed made before him, the investigator, public prosecutor, or judge when summoning the Notary must obtain approval from the Regional Supervisory Council (MPD).

A Notary who is suspected of committing an error or malpractice in the process of making an authentic deed even though the Notary has carried out his duties and authorities in accordance with the rule of law, the Notary Honorary Council (MKN) must provide legal protection to the Notary concerned by summoning and examining the Notary for questioning. It is possible that there are parties or clients who come before the Notary with bad intentions, such as asking for an authentic deed to be made using a false identity, so that the Notary who tries to help the party is actually involved in legal problems and can be accused of participating in a crime.

The function of a notary is not only to record and make evidence regarding the legal actions of certain parties, but to strive so that the affairs entrusted to him can run in accordance with the applicable law. Therefore, Notaries are required to always maintain their dignity and honor, implement the Notary code of ethics that has been established in carrying out their daily duties and always improve their abilities and master legal products.

2. Research Methods

This research method used a sociological juridical approach. The sociological juridical approach was used because this research was conducted to obtain legal knowledge empirically by going directly to the field and then combining it with data obtained from literature studies, so that accurate data were obtained. The specification of this research was descriptive analytical. Sources of data and data collection methods using primary data obtained by interviewing sources who are considered to understand the research topic and secondary data obtained by reviewing literature related to research topics, legal journals, scientific articles, and opinions of legal practitioners. As well as tertiary legal materials in this study in the form of legal dictionaries and the internet.

⁵Chuasanga A., Ong Argo Victoria. (2019). *Legal Principles Under Criminal Law in Indonesia and Thailand*, Jurnal Daulat Hukum, Vol 2, No 1 (2019) <http://jurnal.unissula.ac.id/index.php/RH/article/view/4218>

⁶Sri Hartati, The Sustainable Cropland Protection In The Perspective Of Policy Implementation In Karawang Regency, *Journal of New Government Paradigm* Volume 2, 2nd Edition, 2015, p. 73

3. Results and Discussion

3.1 Juridical Consequences and Responsibilities of a Notary If a Notary Performs Improper Practices While Carrying Out the Duties of a Notary

A notary as a public official in making an authentic deed must show the standards or requirements of an authentic deed, besides that the notary must also be based on the applicable legal rules. Notaries when asked for assistance by the general public also provide legal counseling and provide explanations regarding applicable laws, this is based on statutory provisions in order to make correct deeds and are required by law. Legal counseling and explanations regarding the law provided by a Notary are aimed at assisting in the making of the necessary deeds and are an inseparable unit⁷.

The function of a Notary is based on the authority granted by law and the trust of the community, which is guaranteed by supervision so that the Notary's duties are in accordance with the rule of law and avoid abuse of the authority and trust given. The purpose of supervision is so that the rights and obligations as well as the authority given to Notaries in carrying out their duties as stipulated in the law are always carried out properly and in accordance with applicable legal procedures, not only from legal channels but also on the basis of moral and professional ethics to ensure legal protection and legal certainty for the community⁸.

Notaries who are entrusted with placing responsibilities based on law and moral ethics are due to the nature of the position of a notary, namely maintaining the dignity of his position which requires responsibility for personality and high moral ethics. A Notary is said to have neglected his/her duties if he/she neglects the duties of his/her position and does not properly carry out an obligation that is given to him by law.

Articles in the Law on Notary Positions contain provisions for sanctions in Article 84 and Article 85 which state that parties who suffer losses can claim reimbursement of costs, compensation to the Notary concerned may be subject to sanctions in the form of:

- verbal reprimand
- Written warning

⁷ Hunter, Susan & Bulirwa, Elizabeth & Kisseka, Edward. (1993). AIDS and agricultural production. *Land use policy*. 10. 241-58. 10.1016/0264-8377(93)90018-6.

⁸ Sri Ahyani, Land Registration As A Legal Construction Of Law In Order To Facing Asean Economic Communities, *International Journal of Nusantara Islam* Vol. 06 No. 02 2017: (198-207), DOI: 10.15575/ijni.v6i2.6227

- Temporary stop
- Respectful stop
- Disrespectful dismissal.⁹

The participation of the Notary in legal acts must be proven. If the act cannot be proven, it is better for the Notary to refuse a deed that can cause doubts in the Notary concerned. The profession of a notary must be based on law and must pay attention to certain norms that are standardized by the code of ethics of the profession. Therefore, it is necessary for Notaries to understand in an effort to increase professionalism, namely regarding the responsibilities of Notaries. This is very important because with a deep understanding of responsibilities, it is hoped that a Notary will carry out his duties as well as possible¹⁰.

According to Hermien Hadiati Koeswadji, the responsibilities of a Notary can be seen from a juridical perspective and from a civil and criminal law perspective.¹¹ Liability in terms of civil law arises because of a work agreement between a Notary and a client, in Article 1868 of the Civil Code whose implementation is specifically regulated in Article 1 Paragraph (1), Article 1909 Paragraph (3), and Article 15 Paragraph (1) of the Law. Notary position. Criminal responsibility, a formal violation of the rules of criminal law alone is not enough to be used as a reason to impose a sentence. The Notary's responsibilities include obedience to the Notary's oath of office. This forms the basis for a professional code of ethics.

Article 84 and Article 85 of the Notary Position Act, the Notary is responsible for the parties regarding:¹²

- In cases where it is expressly stipulated in the Law on Notary Positions
- If a deed, due to a defect in the form, is only a deed made under the hand
- In the event that, according to Articles 1365, 1366, and 1367 of the Civil Code, there is an obligation to pay compensation.

Malpractice action with an authentic deed made by a Notary if it occurs, then the person concerned can be prosecuted according to civil law and criminal law. According to A. Kohar, the causes of wrong or problematic notarial deeds are:¹³

⁹Article 84 and Article 85 of the Law on Notary Positions.

¹⁰ Laura Notess (WRI) , Peter Veit (WRI), Iliana Monterroso (WRI), Andiko (WRI), Emmanuel Sulle (WRI), Anne M. Larson (WRI), Anne-Sophie Gindroz (WRI), Julia Quaedvlieg (WRI) and Andrew Williams (WRI) - July 2018, The Scramble for Land Rights, Reducing Inequity between Communities and Companies, <https://wri-indonesia.org/en/publication/scramble-land-rights>

¹¹Koeswadji, Hermien Hadiati. *Hak Ingkar (Verschoningsrecht) dari Notaris Dan Hubungannya Dengan KUHAP*. Media Notariat Edition January-October No. 22-25 year VII. p.122-126. 1992.

¹²Ibid.

- Due to Notary's error
- Due to a Notary's mistake
- Because of coercion and deception from one party.

The notary's mistake is not the cause of the cancellation, unless one of the parties is not willing to make a deed of improvement. The cause of the wrong or problematic notary deed is the behavior of the notary himself and the dishonest behavior of the notary.¹⁴

Based on the results of the study, it can be concluded that if a Notary commits a malpractice against his authentic deed, then the authentic deed is relegated to a private deed. This is if the Notary has been proven to have committed malpractice. If this is the result of the Notary's own fault, it can be summoned with the approval of the Regional Supervisory Council (MPD).

3.2 Legal Protection Against the Duties of Notary Positions Who Are Allegedly Conducting Malpractice in Making Authentic Deeds

The responsibility of a Notary in making an authentic deed needs to be reviewed first in relation to the Notary's relationship with his client to find out when and in which case there is a claim against a Notary due to an act or omission. Legal protection for Notaries as public officials is contained in Article 1 Paragraph (1) of the Law on Notary Positions. The existence of laws and regulations underlying the implementation of their duties is intended to ensure legal certainty in the actions or tasks assigned to the Notary.

Notaries are given the trust to provide legal certainty for community members, so it can be concluded that the duties of a Notary's position are based on the trust of both the Government and the community it serves.

Legal protection for the duties of a Notary's office is carried out by the Regional Supervisory Council (MPD), the MPD's authority is to give or refuse a request for approval from an investigator who wants to summon a Notary for the purpose of examination related to the authentic deed he made (based on Article 66 Paragraph (1) of the Position Act. Notary Public).

Article 66 Paragraph (1) of the Law on Notary Positions states that the police, prosecutors and judges if they wish to summon a Notary for examination must first obtain approval from the MPD. MPD in providing legal protection must comply with applicable laws in accordance with the procedures and procedures

¹³Kohar, A. (1985). *Notaris Dan Persoalan Hukum*. Surabaya: PT Bina Indra Karya. p. 10.

¹⁴Ibid, p. 15.

for summoning a Notary that has been regulated in the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia.

Based on the results of the study, it can be concluded that legal protection for Notaries must involve professional organizations, namely INI as a forum that can resolve existing problems among its members and will be protected if this malpractice act has not been proven. And if the malpractice act has been proven to be the result of a Notary's mistake, it can be proven in court and waivers will be requested by the Notary professional organization or INI and the Notary concerned must comply with legal rules in accordance with the procedures and procedures already contained in the Notary Position Regulations.

4. Conclusion

The juridical consequences and responsibilities of a Notary in the event of a malpractice act can be in the form of legal or moral responsibility. Legal responsibility is based on the Notary Position Act which has provided a special legal protection for Notaries, moral responsibility can be in the form of sanctions imposed on the professional code of ethics carried out by the Regional Honorary Council or the Central Honorary Council as supervisors in professional organizations or THIS. And legal protection for the duties of a Notary's position in the event of malpractice in the process of making authentic deeds can be carried out preventively, namely by providing education, provide legal matters so that the Notary does not commit malpractice and can be carried out repressively, namely giving approval or refusing the investigator who wants to summon the Notary in the judicial process. The existence of the MPD as a legal protection institution against the duties of a Notary. The legal protection given to a Notary is aimed at avoiding arbitrary actions from investigators who wish to summon a Notary in the trial.

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