

## The Responsibility of *Werda* Notary to Deals the Problems What Has Done

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**Abstract.** *This study aims to find out and examine how long the Notary is responsible for the deed made after the end of his term of office, as well as to find out and examine how the forms of civil liability of the Notary are to the deeds made after the end of his term of office. This type of research uses normative juridical, which is an analytical perspective. The results showed that the form of notary accountability after a Werda Notary can be divided into 3 (three) including 1) Civil liability of the Notary to the material truth of the deed he has made, 2) Civil criminal liability of the Notary to the material truth of the deed he has made, 3) Notary's responsibility in carrying out the duties of the position are based on the notary code of ethics. Werda Notary who has violated the deed he made and caused harm to the parties may be subject to legal provisions both civil and/or criminal as long as the time limit has not been exceeded as stipulated in the Civil Code Article 1967 and the Criminal Code Article 78 jo 79, if the limit the time period has expired, then the parties can legally no longer file a lawsuit and/or claim the notary's office.*

*Keywords: Liability; Protection; Werda Notary.*

### 1. Introduction

A notary is a public official who is authorized to make an authentic deed, as long as the making of the authentic deed is not reserved for other public officials. A notary as a public official is a person who carries out some of the public functions of the state, especially in the field of civil law. Making authentic deeds is required by laws and regulations in order to create certainty, order and legal protection.

Life in society requires legal certainty, including in the field of public services, which is currently growing in line with the increasing needs of today's society. The role of law in regulating people's lives has been known since society recognized the law itself, because the law was made to regulate human life as social beings. A legal norm empowers certain individuals to create legal norms or to apply legal norms.<sup>1</sup>

The law seeks to maintain and regulate the balance between selfish individual interests or desires and common interests so that conflicts do not occur.<sup>2</sup>This also has an impact on increasing notary services.

The duty of a notary to make an authentic deed. For a notary, the most important thing is to be able to understand the provisions regulated by law so that the general public can understand correctly and not do things that are contrary to the law. Certainty, order and legal protection demand, among other things, that legal traffic in people's lives requires evidence that clearly determines a person's rights and obligations as a legal subject in society.<sup>3</sup>

A Notary actually carries out his authority, a Notary must always carry out his duties according to the highest standards in a trustworthy, honest, thorough, independent and impartial manner. Notaries in exercising their authority may not consider personal gain, a notary may only provide information or opinions that can be proven true, a notary must be sincere towards the client and use all his scientific sources, if the notary concerned does not master certain legal fields in making the deed, then he must consult with other colleagues who have expertise in the problem at hand,<sup>4</sup>

A notarial deed as an authentic deed is made according to the forms and procedures stipulated in Article 38 to Article 65 of the UUJN.<sup>5</sup>A deed becomes authentic if it fulfills the conditions determined by law, therefore a notary in carrying out his duties is obliged to: ... carry out his duties with full discipline, professionalism and his moral integrity should not be doubted. What is

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<sup>1</sup>Hans Kelsen. (1991). *General Theory of Norms, terjemahan Michael Hartney*. New York: Oxford University Press, p. 102.

<sup>2</sup>Rachmad Hendra. (2014). "Tanggungjawab Notaris Terhadap Akta Otentik Yang Penghadapnya Mempergunakan Identitas Palsu Di Kota Pekanbaru", *Jurnal Hukum*, Edition no.3, vol.3. 2013, p.1.

<sup>3</sup> Ibnu Sajadi. (2015). "Tanggung Jawab Notaris Terhadap Keabsahan Akta Notaris Yang dibuatnya Atas Penghadap Yang Tidak Dapat Membaca Dan Menulis". *Jurnal Repertarium*, Edition no. 2, vol. 2, 2015, p. 178.

<sup>4</sup>Philipus M.Hadjon & Tatik Sri Djatmiati. (1997). *Tentang Wewenang*. Surabaya: Majalah Yuridika, Edition V, p. 1.

<sup>5</sup>Abdul Ghofur Ansori. (2009). *Lembaga Kenotariatan Indonesia: Perspektif Hukum dan Etika*. Yogyakarta: UII Press, p. 16.

contained in the beginning and end of the deed which is the responsibility of the notary is an expression that reflects the actual situation at the time of making the deed.<sup>6</sup>

Furthermore, the explanation of UUJN explained the importance of the Notary profession, which is related to the making of authentic deeds. Making authentic deeds is required by laws and regulations in the context of certainty, order or legal protection. In addition to authentic deeds made by or before a Notary, not only because it is required by laws and regulations, but also because it is desired by interested parties to ensure the rights and obligations of the parties for the sake of certainty, order and legal protection for interested parties as well as for the community.

If a deed is an authentic deed, then the deed will have 3 (three) functions to the parties who made it, namely:<sup>7</sup>

- As evidence that the parties concerned have entered into certain agreements;
- As evidence for the parties that what is written in the agreement is the goals and desires of the parties;
- As evidence to third parties that on a certain date unless otherwise specified the parties have entered into an agreement and that the contents of the agreement are in accordance with the will of the parties.

A notary as a public official who is authorized to make an authentic deed can be held responsible for his actions in connection with his work. The scope of his responsibility includes the material truth of the deed he made. The material truth here can be in the form of truth that is proven and materially accountable to the parties.<sup>8</sup>

A Retired Notary (*Werda* Notary) must still be responsible for the deed that has been made, if the deed causes legal problems. The age and physical factor of a retired Notary (*Werda* Notary) will definitely be one of the factors that affect the ability to think and remember events that occurred several years ago while carrying out his position. So that this situation can endanger the Notary who has retired (*Werda* Notary) if he has to give testimony before Law Enforcers. From this, there is a difference in the issue of accountability of a notary who is still

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<sup>6</sup>Tan Thong Kie. (2000). *Studi Notariat- Serba Serbi Praktek Notaris*. Jakarta: Ichtar Baru Van Hoeve, p. 166.

<sup>7</sup>Salim HS. (2006). *Hukum Kontrak-Teori dan Teknik Penyusunan Kontrak*. Jakarta: Sinar Grafika, p. 43.

<sup>8</sup>Gladys Octavianadya Melati. (2015). "Pertanggungjawaban Notaris Dalam Pendaftaran Fidusia Online Terhadap Penerima Fidusia, *Jurnal Repertorium*, Edition no. 3, 2015, p. 63.

active with a notary who has retired (*Werda* Notary) to be a witness in making the deed he has made.<sup>9</sup>

Taking into account the provisions of Article 65 of the UUJN that the notary is responsible for every deed he made even though the notary protocol has been submitted or transferred to the notary protocol keeper. This then raises the question of how long is the deadline for the notary's responsibility for the deed he made. Furthermore, a notary is a position, which means there is a time limit, so that one day a notary will no longer serve as a notary. In this case, the question also arises whether the notary whose term of office has ended (*Werda* Notary) is still responsible for the deed he made while being a notary. If the notary person is asked to be responsible for the deed he has made, what form of legal protection can the notary get.

## 2. Research Methods

This study uses a type of normative research which is based on legal materials (library based). This research focuses on studying and reading primary legal materials and secondary legal materials to generate arguments for new concepts or theories as a description of the problems faced. The research is conducted by providing a systematic explanation of the order that governs a certain legal category, analyzing the relationship between regulations and explaining areas of difficulty and predict future development.<sup>10</sup> The specifications of this research use analytical descriptive research, which is intended to provide data that is as accurate as possible about a situation or other symptoms.<sup>11</sup> It is said to be descriptive, because this research is expected to be able to provide a detailed, systematic and comprehensive picture of all matters relating to the Notary's responsibility after the end of his term of office in terms of Act No. 30 of 2004 concerning Notary Positions.

## 3. Results and Discussion

### 3.1. The Notary's Accountability Against the Deed He Has Made

Article 1 point 1 of Act no. 2 of 2014 concerning the Position of a Notary (UUJN) states that what is referred to as a Notary is a public official who is authorized to make an authentic deed and other authorities as referred to in this Law. ,

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<sup>9</sup>Iva Qohari. (2022). "Pertanggungjawaban Notaris Setelah Masa Jabatannya Berakhir Terhadap Semua Akta Yang Pernah Dibuat". *Jurnal Hukum dan Kenotariatan*, Volume 6 No. 1 February 2022, p. 616.

<sup>10</sup>Peter Mahmud Marzuki. (2014). *Penelitian Hukum*. Jakarta: Kencana, p. 35.

<sup>11</sup>Soerjono Soekanto. (1986). *Pengantar Penelitian Hukum*. Jakarta: UI Press, p. 10.

agreements and stipulations required by a general regulation or by interested parties are required to be stated in an authentic deed, guarantee the certainty of the date, keep the deed and provide grosse, copies and quotations, all as long as the making of the deed by a general regulation is not assigned or excluded to officials or other people.

The notary's responsibility adheres to the principle of responsibility based on fault of liability, in making an authentic deed, the notary must be responsible if the deed he made contains an error or intentional violation by the notary. Conversely, if the element of error or violation occurs from the parties appearing, then as long as the Notary carries out his authority according to the regulations. The Notary concerned cannot be held accountable, because the Notary only records what was conveyed by the parties to be poured into the deed. False information submitted by the parties is the responsibility of the parties.<sup>12</sup>

The notary in making an authentic deed makes every effort to make the deed free from defects or errors. However, as a human being, there will be errors in the deed. According to Supriadi<sup>13</sup> if a Notary makes a mistake this is a human thing. In addition, if there is an addition or deletion of the deed, it will experience problems. Therefore, Article 48 of the UUJN states that the contents of the deed may not be changed or added, either in the form of overlapping writing, insertion, deletion, or deletion and replacing it with someone else. Changes to the deed in the form of additions, replacements, or deletions in the deed are only valid if the changes are initialed or given another sign of ratification by the witnesses, and the Notary Public.

A notary as a public official (*openbaar ambtenaar*) who is authorized to make an authentic deed can be held responsible for his actions in connection with his work in making the deed. The scope of the notary's responsibility includes the material truth of the deed he made. Regarding the responsibilities of a notary as a public official related to material truth, it is divided into four points, namely:<sup>14</sup>

- The civil liability of the notary to the material truth of the deed he made; The notary's civil liability for the deeds he made, it can be said that the deed made by the notary is related to civil matters, namely regarding the engagement made by two or more parties although it is possible to make unilaterally (its nature only strengthens). The nature and principles adopted by the law of

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<sup>12</sup>Andi Mamminanga. (2008). *Pelaksanaan Kewenangan Majelis Pengawas Notaris Daerah dalam Pelaksanaan Tugas Jabatan Notaris Berdasarkan UUJN*. Tesis. Fakultas Hukum Universitas Gadjah Mada, p.32.

<sup>13</sup>ibid

<sup>14</sup>Abdul Ghofur, Op.cit. 34.

engagement, especially the engagement that was born out of an agreement, that the law is only possible and may be changed or replaced or declared invalid, only by those who make it, meaning that the agreement of both parties as outlined in an authentic deed binds both parties as binding by law.<sup>15</sup>

The role of the Notary here is only to record or pour a legal action carried out by the parties/appearers into the deed. The notary only checks what happened, what he saw, and experienced from the parties/appearances, as well as adjusting the formal requirements for making an authentic deed and then pouring it into a deed. Notaries are not required to investigate the correctness of the material contents of the authentic deed. This requires the Notary to be neutral and impartial and to provide some kind of legal advice for clients who seek legal advice from the Notary concerned.

- The notary's criminal responsibility for the material truth of the deed he made;

A criminal act is an act that is prohibited by a rule of law, which is punishable by punishment. There is a close relationship between prohibitions and criminal threats, such as the relationship between the event and the person who caused the event. To express this relationship, the word "deed" is used which means an abstract meaning that refers to two concrete things.<sup>16</sup>

Notaries who actively participate in engineering the substance of the deed that are not in accordance with the laws and regulations, it is possible to violate legal norms, especially criminal law. The parameters are cheating, misdirection, concealment, reality, manipulation, breach of trust, and circumvention of rules, which must be done intentionally and absolutely no justification and excuses can be used.

- The notary's responsibility based on the notary position regulation (UUJN) for the material truth of the deed he made;
- The responsibilities of a notary in carrying out his duties are based on a notary code of ethics.

In connection with the responsibilities of a notary, it is explicitly stated in Article 65 of the UUJN which states that a notary (substitute notary, and temporary notary official) is responsible for every deed he makes, even though the notary protocol has been submitted or transferred to the custodian of the notary protocol.

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<sup>15</sup>Kunni Afifah. (2017). "Tanggung Jawab dan Perlindungan Hukum Bagi Notaris Secara Perdata Terhadap Akta Yang Dibuatnya". *Jurnal Lex Renaissance* Vol.2 No.1 January 2017, p.154

<sup>16</sup> <https://matakedip1315.wordpress.com/2013/06/24/perbuatan-pidana/> accessed on 13 June 2022 at 12.00.

Regarding the material responsibility for the deed made before a notary, it should be emphasized that the notary's authority in making an authentic deed does not mean that the notary can freely as he wish to make an authentic deed without the parties requesting the deed to be made. The notary deed is thus actually the deed of the parties concerned, not the notary deed concerned, because that is why in the event of a dispute over the agreement contained in the notary deed made for them and before a notary then those who are bound are those who entered into the agreement itself. , while the notary is not bound to fulfill any promises or obligations as stated in the notarial deed made before him and the notary is completely outside of those who are the parties.

### **3.2. Term of Expiration of *Werda* Notary's Liability for the Deed He Made**

Authentic deeds made by a Notary include all deeds, agreements. and stipulations required by laws and regulations and/or desired by the interested parties to be stated as authentic, guaranteeing the certainty of the date of making the deed, keeping the deed, providing grosse, copies and quotations of the deed, all of this as long as the making of the deed is not assigned or excluded to other officials or other people stipulated by law (Article 15 paragraph 1). In addition, a notary has the authority to ratify signatures and to determine the certainty of the date of underhanded letters by registering in a special book: To record underhand letters by registering in a special book; Make copies of the original underhand letters in the form of copies containing descriptions as written and described in the letter concerned; Validating the compatibility of the photocopy with the original letter; Provide legal counseling in connection with the making of the deed; Make a deed related to land; or make a deed of minutes of auction (Article 15 paragraph (2)). The notary also has the authority to conduct counseling related to the deed he made.

Provisions regarding the time limit for a notary to be sued in a civil manner and/or criminally prosecuted in court for parties who are harmed as a result of a violation in the making of an authentic deed must be based on an expiration date. Western law recognizes the meaning of expiration. In the 4th book of BW, among other things, the expiry date is regulated:<sup>17</sup>

- Which causes a person to be released from an obligation or which causes a person's right to claim to be invalidated, *praescriptio* (Latin) and *hereditijieve verjaring* (Dutch);

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<sup>17</sup>Retnowulan Sutantio & Iskandar Oeripkartawinata. (2005). *Hukum Acara Perdata Dalam Teori dan Praktek*. Bandung: Mandar Maju, p.205.



- Which causes a person to obtain a certain right. This expiration requires the good faith of the person who will obtain the right, *usutterio* (Latin) and *acquistieve verjaring* (Dutch).

Expiration as a tool is released from an obligation, namely the elimination of all rights to file lawsuits, both material and individual after 30 (thirty) years have passed. In order to show the existence of an expiration date, it is not necessary to show a basis for the right of ownership. Against him also can not be submitted a rebuttal based on bad intentions (Article 1967 of the Civil Code).

In Article 1967 BW, the expiration date in civil law is thirty years and Article 78 in conjunction with 79 of the Criminal Code in criminal law is twelve years. The parties may hold the notary accountable for the juridically flawed deed until the time limit or expiration date has expired even though the notary concerned has retired or resigned from his position as a notary. However, after the expiration date, the parties can no longer hold the notary accountable. Article 65 UUJN states:

"Notaries, Substitute Notaries, and Temporary Officials are responsible for every deed made even though the Notary protocol has been submitted or transferred to the protocol keeper".

A cursory reading of Article 65 of the UUJN, especially the clauses even though the Notary protocol has been submitted or transferred to the custodian of the protocol, has caused problems and also the question as to when is the deadline for the liability of the Notary, Substitute Notary, and Temporary Notary Officer for any deed made before or by him. ? The temporary answer to this question is until the notary dies. Is that the time limit for accountability based on Article 65 of the UUJN because the article is not clear so it needs to be interpreted?<sup>18</sup>

If the contents of Article 65 of the UUJN are applied as is, meaning that there is no or no time limit for accountability, it will cause several problems, among others, what if the notary is still alive, but is no longer in office or has died, and the deed is then disputed certain people or parties are then submitted to the authorities (police, prosecutors, or courts), do the authorities need to request permission from the regional supervisory board (MPD) in accordance with the provisions of Article 66 of the UUJN? or will the police, prosecutors or courts summon or present a former notary, and do not need to ask for permission from

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<sup>18</sup>Suwindarsih. [www.google.com](http://www.google.com). Pasal Kontroversial UUJN, accessed on June 13, 2022 at 16.21



the MPD because they are no longer in office? Does the MPD have the authority to refuse or give permission at the request of the police, prosecutors, or the court in the above incident?<sup>19</sup>

To determine how long the Notary must be responsible for the deed made before or by him, it must be related to the concept of a Notary as a Position. Everyone who holds or holds a certain position in any field as the implementation of a state or government structure or organization has limitations, there are limits in terms of authority, there are also limitations in terms of time, meaning that the time limit when the position held by someone must end.

The notary must be authorized as long as the time of making the deed is concerned. Notaries in carrying out their duties must be active, meaning they are not on leave or temporarily dismissed. The notary is not on leave, sick, or temporarily unable to carry out his duties, so that there is no vacancy, the notary concerned may appoint a substitute notary (Article 1 point 3 UUJN).

Therefore, every position has a time limit for accountability, namely as long as the person concerned holds office because when the position held by someone has expired, the person concerned also stops being responsible for the position he has held. Especially for notaries, substitute notaries, and temporary notary officials the responsibility has limits according to the place of domicile and area of office. For example, if the notary changes his domicile and office area or is a substitute notary, and the temporary notary becomes a notary, he will be responsible according to his domicile and area of office.

The time limit for the Notary's responsibility is as long as he is carrying out his duties, until the Notary retires because he has reached the age of 65 or 67 years, or retires at his own request for certain reasons. For a Substitute Notary, if he does not act as a Substitute Notary anymore and does not make another deed, then the Substitute Notary does not need to be responsible for anything, as well as for a Notary Temporary Officer and after not making a deed anymore, there is no need to be responsible for any deed made before or by him.

Responsibilities between a notary and a substitute notary as well as a temporary notary official have the same responsibilities even though a notary and a substitute notary as well as a temporary notary official have a different time limit for accountability, this is because what is the responsibility is the deed they

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<sup>19</sup>Habib Adjie. (2009). *Meneropong Khasanah Notaris dan PPAT Indonesia*. Bandung: PT. Citra Aditya Bakti, p.46.

made, so how long they can serve the measure of their accountability. A substitute notary or temporary notary official will still be responsible for his deed before the court if an error occurs in making an authentic deed, this is in accordance with the theory of responsibility as in Hans Kelsen's theory which states that a person is legally responsible for a certain act or that he or she is legally responsible for certain actions assume responsibility for a sanction in the case of a contrary act.

#### 4. Conclusion

There are 3 types of accountability for the notary's deed that he has made, namely: a) the civil responsibilities of the notary for the material truth of the deed he has made, b) The criminal responsibility of the notary to the material truth of the deed he has made, and c) the responsibility of the notary in carrying out his duties based on the notary code of ethics. Violations committed by Notaries related to the code of ethics are actions that need to be followed up and supervised by the Notary Honorary Board, so that in the future there will be no more violations and so that the level of discipline will increase and become an example for new Notaries.

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