

## Notary Legal Protection on Making Agreement of Sale and Purchase to The Parties

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Abstract. In practice of the problem of the degradation of the authentic act can occur because of negligence and / or lack of rigor / carelessness of a Notary resulting in a deed made degraded strength of evidence or null and void.

The aim of research in this paper is to determine the responsibility of the Notary deed purchase agreement to the parties and to determine the legal protection against the manufacture Notary deed of sale and purchase agreement to the parties.

This study uses normative juridical approach, using a primary law, especially regarding legislation law on Notary. In this study, the data collected through the study of documents and literature.

Responsibilities of the Notary civilly against the deed he had done, namely the engagement made by two or more parties despite allowing made unilaterally (in nature only strengthens). MKN is not in providing a legal protection for the Notary as an institution that is independent, because in this case the existence of MKN not a sub part of the government who appointed him. MKN to exercise its authority issued a decision is not influenced by the parties or other institutions, so in this case generated by MKN decision is not inviolable.

Keywords: Legal Protection; Notary Deed.

### 1. Introduction

Authentic act is meant as an authority made before a Public Notary or Notary useful for people who need a certificate as certificate of incorporation Company Limited, deeds wills, power of attorney, and so forth.

The presence of the Notary as a public official is the answer to people's need legal certainty on every engagement accomplishments, especially trade-related engagements and daily life. Written agreements made by or before a Notary called by deed. According to Article 1 point 7 UUJNP specify that: "Deed is authentic deed made by or in the presence of a Notary according to the forms and procedures stipulated in this law". Authentic act in question is authentic act in accordance with the provisions of Article 1868 the Code of Civil Code (hereinafter the Civil Code), namely: "An authentic deed is a deed in the form prescribed by law, be made by or before an employee General personnel that has authority to the place where the deed was made.

Authentic act provides proof that binding and perfectly against the parties (and their heirs them) or those who acquired the rights of the parties, this is in accordance with the provisions of Article 1870 of the Civil Code, which reads as follows: "A certificate to provide between the parties and their heirs or people who got this right from them, a perfect evidence about what is contained therein".<sup>4</sup>

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<sup>4</sup>Christin Sasauw, "Tinjauan Yuridis Tentang Kekuatan Mengikat Suatu Akta Notaris", Jurnal Lex Privatum, Vol. III/No. 1, 2015, p. 100.

In connection with such authority can Notary charged with the responsibility for his actions / her work in creating an authentic deed. Notary responsibilities as public officials include responsibility Notary profession itself related to the deed. In connection with such authority can Notary charged with the responsibility for her actions or her work in creating an authentic deed.<sup>5</sup>

Notary responsibilities as public officials include the responsibilities of the profession itself Notary deed relating to, among others: First, civilly liable Notary on deeds made. The responsibility in this case is the responsibility of the material truth of the deed, in the construction of tort.<sup>6</sup>

Authentic deed made by or before a Notary may be used as evidence in a legal dispute that is used as evidence to recall the events that have happened, so it can be used for the purposes of proof. Article 1866 of the Civil Code says that written evidence is one of the written evidence. Similarly, under Article 1867 of the Civil Code which stipulates that: "The proof with the writing being done with authentic writings and the writings under the hand."

Legal issues can arise at the present time, or can appear after a few years later when the minutes of the deed has been stored in the protocol Notary is one example that Notary less rigorous, because at the time of manufacture notarial deed do not see the certificate is genuine and that letters support the purchase agreement and if a Notary less scrupulous when a deed, will be many people who will be harmed, especially for the plaintiff.

The purpose of this study are: 1).To determine the responsibility of the Notary deed purchase agreement to the parties; 2) To determine the legal protection against the manufacture Notary deed purchase agreement to the parties.

## **Research methods**

This study uses normative juridical approach, using primary law<sup>7</sup> especially regarding legislation law on Notary. In this study, the data collected through the study of documents and literature. Research on secondary legal materials<sup>8</sup> derived from literature sources such as books, articles, and interviews as a supplement. These data will be analyzed by descriptive qualitative.

## **2. Results and Discussion**

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<sup>5</sup>H. Budi Untung, *Visi Global Notaris*, Andi, Yogyakarta, 2002, p. 43-44

<sup>6</sup>Kartini Soedjendro, *Perjanjian Peraihan Hak atas Tanah yang Berpotensi Konflik*, Kanisius, Yogyakarta, 2001, p. 43.

<sup>7</sup>C.F.G. Sunaryati Hartono, *Penelitian Hukum di Indonesia Pada Akhir Abad ke-20*, Alumni, Bandung, 1994, p. 134

<sup>8</sup>C.F.G. Sunaryati Hartono, *Ibid*, p. 100

Public notary accountable to the deeds he had done, it can be said that the deed made by Notary related to civil issues, namely the engagement made by two or more parties despite allowing made unilaterally (in nature only strengthens).<sup>9</sup>

Asnahwati H. Herwidi, SH said that<sup>10</sup>, basically Notary is not responsible for the content deed made in front of him because of the contents of the deed is the will and the desired agreement by the parties. Notary simply pour the agreement in the form of an authentic deed so that in this case the notary is only responsible for the formal form of authentic deed as required by law.

Rusiana Suryadi said that<sup>11</sup> unless the contents of the deed, every action performed by a Notary can be held accountable when there is an offense and the act causes damage to the parties. Notary accountable for the material truth of a deed if the legal advice given later turned out to be a false.

As a result of such a notarial deed, then it can be a reason for the injured party to demand reimbursement of damages, compensation and interest to the Notary. Concerning an error in the legal violation, the civil law does not distinguish between errors caused by willful perpetrator, but also because of mistakes or carelessness, her perpetrator. This provision is in accordance with that proposed by Riduan Syahrani as follows: "no less careful".<sup>12</sup>

Sri Peni Nughrohowati, SH said that<sup>13</sup> Notaries can be held accountable if there is a fault element holding accomplishments and need proof of the elements of the mistakes made by the notary.

Notary Deed void that can not be requested to provide replacement costs, damages and interest. Replacement costs, damages and interest can be sued to the Notary by basing on the legal relationship with the parties to the Public Notary. The loss is in the form of material, namely the loss amount can be calculated, whereas immaterial damages, the amount can not be calculated, for example, his reputation tainted, causing death. With the deed can be canceled or null and void, resulting in the emergence of a loss, so there must be a loss element has been fulfilled.

A claim for damages on the basis of legal violation if the perpetrators do anything that takes up the whole element of Article 1365 of the Civil Code, regarding who is required to prove the existence of misconduct. Legal protection of the Notary in carrying out its duties and authorities for the implementation of service functions and the achievement of legal certainty in providing services to the public, has been regulated and set forth in Article 66 UUJNP. Sri Peni Nughrohowati, SH said that<sup>14</sup> as defined in the Deed

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<sup>9</sup>Andi Mamminanga, *Pelaksanaan Kewenangan Majelis Pengawas Notaris Daerah dalam Pelaksanaan Tugas Jabatan Notaris berdasarkan UUJN*, Thesis, Faculty of Law Gajah Mada University, Yogyakarta, 2008, p. 32.

<sup>10</sup>Results of interviews with Asnahwati H. Herwidi, SH, Notary / PPAT Sleman on October 10, 2016.

<sup>11</sup>Results of interviews with Rusiana Suryadi, SH, Notary / PPAT Sleman on October 17, 2016.

<sup>12</sup>Riduan Syahrani, *Seluk Beluk dan Asas-Asas Hukum Perdata*, Alumni, Bandung, 1998, p. 279

<sup>13</sup> Results of interviews with Sri Peni Nughrohowati, SH, Notary / PPAT Sleman on October 19, 2016.

<sup>14</sup>*Ibid.*

authentic UUJNP which essentially contains the formal correctness notified in accordance with what the parties to the Notary.

Notaries must have extensive knowledge of the agreement in order to make the deed of agreement in any form even that there is no example deed agreement. With a deep knowledge of the agreement, a notary may ask clients about:

- The scope of the agreement to be made;
- Any data that is owned by clients (stakeholders), and all regulations related to the material and substance of the agreement;
- All data, regulations, all of which related to the scope of the agreement are requested to be made;
- The rights and obligations of any who ask formulated in the editorial agreement.

In making the agreement notarized deed, deed of Notary need to build structures and draw up a deed of Notary deed in accordance anatomy. There are several things that can be the foundation for building structures notarial deed, among others:

- Background will be agreed.
- Identification of the parties (legal subjects).
- Identification of objects that will be agreed upon.
- Creating a certificate template.
- Formulate the substance of the deed.

Notaries in a deed notarized agreement to be honest, careful, do not favor one party and understand all the rules relating to the deed that will be made. The prohibitions in making arrangements for the Notary. The prohibition for Notaries in making the agreement:

- Notary deed prohibited from making agreements in favor of either party.
- Notary deed prohibited from making a treaty which conflicts with a previously created certificate.
- Notary certificate revocation prohibited from making unilateral agreement granting authority where the authorization certificate has been signed by both parties (endorser and endorsee).
- Notaries are prohibited from notifying contents (everything regarding the deed had made) and any information obtained in order to deed.
- Notaries are forbidden to not read the contents of the deed to the parties, unless the parties have already read it myself, understood and agreed to, such things as stated in the cover deed and each page initialed by the parties / the penghadap, the witnesses and the notary while the last page signed the the parties, the witnesses and the Notary.<sup>15</sup>

Daru Purwoningsih say that<sup>16</sup> the importance of legal protection for Notaries is to:

- Keeping the sublime dignity of the office, including when testifying and proceed in the investigation and trial;

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<sup>15</sup>Sri Endah Wahyuningsih, *Hal-Hal Yang Perlu Diperhatikan Oleh Notaris Dalam Membuat Akta Perjanjian Notariil*, Jurnal Akta, dated March 1, 2018.

<sup>16</sup> Results of interviews with Daru Purwoningsih SH, Notary / PPAT Sleman district on October 20, 2016

- Concealing information deed in order to safeguard the interests of the parties concerned in such deed;
- Keeping minuta or letters attached to the minutes of the deed, as well as the protocol Notaries in storage.

Legal protection given to (Occupation) Public Notary provided for in Article 66 UUJNP. Article 66 regulates the establishment UUJNP Honorary Council of Notaries (hereinafter referred to MKN) consisting of representatives of Notaries, government and academia, which functions as an institution of legal protection for Notary associated with a deed made by or diahadapannya.

MKN existence, is expected to provide an optimal contribution to the institution of law Notaries in performing his duties as an institution of legal protection. Regarding the setting of the position and shape of the legal protection of MKN is actually not as expressly provided in UUJN or in the form of legislation to another.<sup>17</sup>

As contained in Article 66 paragraph (1) UUJNP namely: For the purposes of judicial proceedings, investigators, prosecutors or judges with the approval of the competent Notary Honorary Council:

- take photocopies Minuta Deed and / or letters attached to Minuta Deed or the Protocol Notary Notaries in storage; and
- Notary call to be present in the examination relating to the Deed or protocols that are in storage Public Notary.

### **3. Closing**

#### **3.1. Conclusion**

Based on the results of research and discussion that has been expressed by the author, it can be concluded as follows:

- Civil liability of a Notary who committed an unlawful act is the Notary shall account for his actions with civil sanctions in the form of reimbursement or compensation to the injured party on an unlawful act committed by a Notary. But before Notary sanctioned civil then Notary must first be proven that there has been any loss arising out of a tort Notary against the parties, and between the losses and the tort of Notaries are causal relationships, and tort or negligence due to an error that can be accounted to the Notary concerned.
- Forms of legal protection for Notary on the deeds which made related to civil liability Notary is the Honorary Council of notaries who are independent, in this case the existence of MKN not a sub part of the government who appointed him. MKN to exercise its authority issued a decision is not influenced by the parties or other institutions, so in this case generated by MKN decision is not inviolable.

#### **3.2. Suggestion**

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<sup>17</sup>Irene Dwi Enggarwati, 2015, *Pertanggungjawaban Pidana Dan Perlindungan Hukum Bagi Notaris Yang Diperiksa Oleh Penyidik Dalam Tindak Pidana Keterangan Palsu Pada Akta Otentik*, Thesis, Master of Notary Faculty of Law, University of Brawijaya, Malang, p. 17.

Researchers suggest, first, that a Notary inevitable of all risks in the form of penalties and cancellation of the authentic act in the process of making a deed which requires Notary responsible civilly against the deed he had done, the Notary must apply the precautionary principle, more thoroughly and have faith both in the manufacture of an authentic deed and to comply with applicable laws and regulations and be based on moral and ethical. Second, the presence of the Honorary Council Notaries in Article 66 UUJNP expected to be formed in stages such as the Assembly of Trustees Notary, making it possible to provide an appeal for those who feel aggrieved (Notary or investigator) to a higher level, namely through MKN Territory, and MKN Center, with placed the decision of Regional MKN as Inverstigate Object because the decision which published by MKN Center is the decision which has final and uncomplaintable.

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