

Analysis of the Role and Responsibilities of Notaries in Storing Minutes of Deeds

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Abstract. *Notaries have an obligation to store and maintain the minutes of the deeds they make, explained in Article 16 paragraph (1) letter b UUJN which states that Notaries have an obligation to make deeds in the form of minutes and also store them as Notary protocols. The purpose of this study is to find out, understand, study, and analyze the Notary's responsibility in his obligation to store deeds and the Legal Consequences of the Notary's responsibility in storing the minutes if there is negligence in storing them, such as damaged or lost deeds. The research method used in this study uses a normative legal approach method. The research specifications used are descriptive analytical. The types of data used consist of two data, namely primary data and secondary data consisting of primary legal materials, secondary legal materials, and secondary legal materials. The data collection method used is literature study and document study. This study uses a qualitative data analysis method. Based on the results of the study, it can be concluded that the Notary's responsibility in his obligation to store the minutes of the deed, the notary as a public official has an obligation in carrying out his position, one of which is to store the minutes of the deed. It is explained in Article 16 paragraph (1) letter b UUJN which states that notaries are required to make a deed in the form of minutes of the deed and store it as a notary protocol which is a follow-up to the provisions in Article 15 paragraph (1) UUJN. Then the legal consequences of the Notary's responsibility in storing the minutes if there is negligence in storing such as a damaged or lost deed, namely that administrative sanctions can be imposed. As stated in Article 16 paragraph (11) that the sanctions are in the form of: written warnings, temporary dismissal, honorable dismissal and dishonorable dismissal. In addition, there are not only administrative sanctions, but there are also civil sanctions and criminal sanctions.*

Keywords: Deed; Notary; Responsibility.

1. Introduction

A society that is in a state of law in its life is based on the applicable legal rules. If a problem occurs related to society, individuals, or the state, then the resolution must be based on the applicable legal rules. As a state of law, Indonesia must have law enforcers who will carry out existing legal regulations and are regulated in the Law and other Regulations. Law enforcers have a definition that is a party that is responsible and also directly involved in the field of law enforcement that prioritizes justice or is mentioned as a factor that influences the application of law to society. On In the legal field, there is a profession that is usually called a Notary, who is one of the law enforcers who has individual and social responsibility to legal norms and must also obey the notary's professional code of ethics.¹

The duties and obligations of a Notary are expected to be able to provide legal services and consultations to the community. In addition, Notaries in carrying out their duties are based on normative legal rules that are related to all actions taken in making deeds in the future. The role of Notaries in making authentic deeds that have perfect evidentiary power in the event of a legal dispute, in addition, it can be useful for the community in creating certainty and legal protection that is preventive or prevents legal problems from occurring.²

Notaries as public officials appointed by the State have the duty to fulfill the needs of the community in particular in civil law, the product of a Notary is an authentic deed as written evidence. On scope of Notary's authority in the Notary Law (hereinafter abbreviated as UUJN), Notary will provide legal certainty to the community as a party facing or a party with an interest. This will prove that the community can trust Notary as a public official who is authorized according to the UUJN regulations.³

A Notary in his position provides services in the form of services to the community where the Notary profession in Indonesia is now in great demand. A Notary as a public official who has the authority to make authentic deeds and must also store and maintain the minutes of the deeds he has made as a Notary Protocol as stated in Article 1 number 13 of the UUJN. In addition, the UUJN also explains the Notary's Responsibility in storing deeds and Notary Protocols as long

¹Agustianto, 2023. "Notary's Responsibility in Storing Notary Protocols in Riau Islands Province", JUSTISI Journal of Legal Science, No. 1 Vol. 9, p. 31.

²Sjaifurrachman and Habib Adjie, 2011, Aspects of Notary Accountability in Making Deeds, Mandar Maju, Jakarta, page 7.

³Lely Herlina, 2016. "Legal Analysis of Notary Negligence in Keeping Minutes of Deeds", Student Journal of the Faculty of Law, Brawijaya University. <https://www.neliti.com/publications/117394/analysis-yuridis-terhadap-kelalaian-notaris-dalam-pengimpanan-minuta-akta#cite> accessed November 06, 2023 at 15.42 WIB

as his position is still valid and will then be continued by the Notary who will replace him.⁴

According to Article 1 number (8) UUJN, the definition of Minutes of Deed is the original deed that includes the signatures of the parties, witnesses and Notary which is stored as a Notary protocol. Meanwhile, the definition of a Notary Protocol is a collection of documents that are State archives that must be stored and maintained by a Notary in accordance with applicable provisions, namely Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary (UUJN) in Article 1 number (13). It is explained in Article 62 UUJN that the Notary Protocol consists of:⁵

- a. Minutes of the deed;
- b. Reportorium deed register book;
- c. A register of private deeds signed before a notary or private deeds that are registered;
- d. Book of names of the face or clapper;
- e. Protest register book;
- f. Will register book; and other register books that must be kept by a Notary based on the provisions of laws and regulations.

It is explained in Article 16 paragraph (1) letter b UUJN which states that Notaries have an obligation to make deeds in the form of minutes and also store them as Notary protocols, but in reality the UUJN does not regulate the storage and maintenance of notary protocols, covering how policies, guidance, and management of Notary Protocol Archives. In other words, there is no legal certainty that regulates this matter. The minutes of the deed made by a Notary have legal force that can be used as perfect evidence, but in its storage, where the minutes of the deed become one of the state archives, there is no procedure that regulates it in writing in the UUJN. The Notary Law only explains that Notaries have an obligation to store deeds as Notary protocols.⁶

⁴Ibid.

⁵Andi Putra Marbun, 2023, "Legal Responsibilities of Notaries in Keeping Minutes of Deeds", *Jurnal Media Bina Ilmiah*, Vol. 18, No. 2, <http://binapatria.id/index.php/MBI/article/view/605> accessed on November 06, 2023 at 16.16 WIB

⁶Ibid.

It is true that in essence, as a Notary, like a human being, he is also prone to making personal mistakes and mistakes related to carrying out his position. There are several Notaries who are often sued civilly or charged criminally because the parties feel disadvantaged as a result of the authentic deed made by the Notary. In order not to harm the Notary, it is necessary to see the legal force made by the Notary in handling all forms of claims or lawsuits from the parties. If the party filing the claim or lawsuit denies the truth of the deed made by the Notary, then the party must be able to show evidence that the Notary's deed is not true.⁷

Notary Protocols originating from other Notaries who are 25 (twenty five) years old or more during the submission period will be submitted from the Notary receiving the Notary Protocol to the Regional Supervisory Council (MPD) as stated in Article 63 paragraph (5) of the Notary Law (UUJN). Meanwhile, Article 70 of the UUJN states that the Regional Supervisory Council (MPD) has the authority to determine the place for storing Notary Protocols that are 25 (twenty five) years old or more. In fact, all of this has not been implemented in accordance with applicable provisions, because the Regional Supervisory Council (MPD) cannot store Notary Protocols that are very large in number. In order for the storage of Notary Protocols by the Regional Supervisory Council (MPD) to be carried out, it requires a lot of costs because it must provide facilities for storing the Notary Protocols. Therefore, in reality, the Notary must store the Notary Protocols themselves.⁸

⁷Agitya Mahardhika Imani and Yunanto, 2022, "Obligations and Responsibilities of Notaries in the Implementation of Notary Protocols and Storage of Deed Minutes", Indonesian Scientific Journal Syntax Literate Vol. 7, No.12,<https://jurnal.syntaxliterate.co.id/index.php/syntax-literate/article/view/10842> Accessed November 7, 2023 at 07.44 WIB

⁸Andi Putra Marbun, Op.cit., p. 347.

Minutes of deed are included as notary protocols, therefore Notaries must store, maintain and guard the minutes of the deed which is a collection of documents as state archives that must be archived by the Notary concerned, as for the legal consequences that will be imposed as sanctions against Notaries who do not archive. As a public official who has been trusted by the parties who appear, the Notary has full responsibility in storing the minutes of the deed and also guaranteeing the security of the documents. In addition, according to Tan Thong Kie, Notaries must guarantee the security and safety of the minutes of the deed that they store from various damages and thefts.⁹Damage or loss of the minutes of this deed may be caused by the attitude of the Notary or Notary's employees who do not pay attention to their obligations in carrying out storage. This can also be caused by conditions at the storage location such as damage due to termites, or due to poor and systematic storage or due to natural damage (natural disasters).

Many events that occur such as legal events, which can encourage and demand the public to understand the importance of proof of a deed. As a public official, in this case it is expected to be able to follow legal developments to help people in need, in addition, Notaries in storing the deeds they make are expected to provide legal certainty.¹⁰Based on the background description above, the author conducted a study to discuss the study entitled "ANALYSIS OF THE ROLE AND RESPONSIBILITY OF NOTARIES IN STORING MINUTES OF DEEDS"

2. Research Methods

The research approach method used in this study is the normative legal research method. Normative legal research is an approach carried out by reviewing library materials by examining legal principles which are carried out on written positive law (statutory regulations) and unwritten (customary law). The specification of this research uses analytical descriptive, which is explained as a description and depiction and analyzing the implementation of provisions that are already in force in the law. This research aims to provide a picture of the reality of the state of the object or its problems. The types and sources of data used in this study are primary data and secondary data consisting of primary legal materials, secondary legal materials, and tertiary legal materials. Data collection methods include literature studies and document studies. The data analysis method used to compile and process data is qualitative, namely a technique whose results cannot

⁹Tan Thong Kie, 2000, *Notary Studies (All About Notary Practice)*, PT. Ichtiar Baru Van Hoeve, Jakarta, p. 86.

¹⁰Lely Herliana, *Op.cit*, p. 5.

be calculated with numbers, this analysis technique relies on the causes, explanations and things that underlie the topic being studied.

3. Results and Discussion

1. Notary's Responsibilities in His Obligation to Keep Minutes of Deeds

Responsibility is an inherent characteristic possessed by every person to carry out their obligations as a result of their actions. According to Sugeng Istianto, responsibility is a form of obligation to provide an answer that is the basis for calculating all things that happen and the obligation to provide compensation for losses that may arise. The term responsibility according to the legal dictionary is divided into liability and responsibility. Liability is a legal responsibility, namely a liability that comes from a legal subject who commits an act contrary to the law, while responsibility is a political responsibility.

The emergence of legal responsibility comes from the consequences of an act that is considered detrimental or violates applicable rules. Legal responsibility has several different meanings put forward by Ridwan Halim. According to Ridwan Halim, legal responsibility is a further consequence of fulfilling a role, regardless of whether the role represents rights and obligations or power. In general, legal responsibility is interpreted as an obligation to do something or behave in a certain way without deviating from existing regulations.

Responsibility for a person's actions will arise if the person carries out an act that is not permitted or prohibited as according to the Civil Code it is called an unlawful act as stated by Wirjono Prodjodikoro.¹¹ Article 1365 of the Civil Code states that: "Every act that violates the law and causes loss to another person, requires the person who caused the loss due to his fault to replace the loss." According to JH Nieuwenhuis, the elements of a legal act include:¹²

1. The act that causes the loss is unlawful because it is contrary to the rights of others, morality, and the legal obligations of the perpetrator.
2. Losses arising as a result of these actions.
3. The perpetrator is guilty.
4. Norms that are violated have "strekking" to compensate for losses.

Notary is one of the law enforcement professions that has responsibilities and obligations regulated in Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2014 concerning the Position of Notary. The authority held by a Notary in his position is an authority that can give rise to accountability, such as

¹¹Abdul Ghofur Anshori, 2010, Indonesian Notary Institution, Legal and Ethical Perspectives, UII Press, Yogyakarta, pp. 38-39.

¹²JH Nieuwenhuis, 1985, Principles of Engagement Law, Surabaya, p. 118.

in the general principle of "gee bevoegheid zonder verantwoordelijkheid" which means there is no authority without accountability.

The responsibility of a notary in carrying out his/her duties against violations of the notary's office and various sanctions, such as administrative, civil, and criminal liability. Sanctions are punitive actions that force individuals to carry out or comply with legal provisions based on the Law.¹³The responsibilities of a notary are divided into three forms, namely:

1. Administrative Accountability

The provisions that discuss administrative sanctions related to violations committed by notaries are regulated in Article 85 of the UUJN. The authority of a notary as a public official to make authentic deeds is an administrative responsibility. Based on the provisions stipulated in the Law, a notary as a public official has the authority to make authentic deeds related to acts, agreements, and also provisions required by laws and/or regulations and/or desired by the interested party to be included in the authentic deed.

In addition, the notary also has the authority to maintain the certainty of the date of the deed, keep the minutes of the deed and provide the grosse deed, copies and excerpts of the deed. All of this is provided that the making of the deeds is not assigned or excluded to other officials determined by law.¹⁴As for the administrative responsibilities of a notary which are clearly regulated in UUJN, a notary is responsible for registering and validating deeds or letters made underhand. If the notary does not follow these provisions, it can result in legal consequences, which can cause the authentic deed and also the underhand deed to be revoked or null and void by law.

2. Civil Liability

Notarial deeds have perfect evidentiary value, but if there is a violation of certain rules, then its evidentiary value is degraded to a deed under hand. A notary who, in carrying out his/her position, makes an authentic deed that does not comply with the provisions that have been set, can be held responsible for his/her actions. If the notary acts outside his/her authority, then the notarial deed does not have binding legal force or cannot be enforced.

Furthermore, the party who feels aggrieved by the notary's actions can file a civil lawsuit against the notary to the District Court or Religious Court. The claim for costs, compensation and interest against the notary is not based on the position of the evidence that has changed due to the violation of the provisions of the

¹³Department of National Education, 2008, Big Indonesian Dictionary, Gramedia Pustaka Utama, Jakarta, p. 1224

¹⁴Habib Adjie (I), 2007, Indonesian Notary Law, Thematic Interpretation of Law Number 30 of 2004 concerning the Position of Notary, Riefka Aditama, Surabaya, p. 13

UUJN, but is based on the legal relationship between the notary and the parties who appear before the notary.

3. Criminal liability

Notarial deeds are often disputed by the parties, causing the notary who made the deed to be considered to have indirectly participated in or assisted in committing a crime, one of which is providing false information in the deed. Therefore, it raises confusion as to whether a notary could intentionally commit negligence or error against the parties in carrying out an act intended as a crime. If it turns out that the notary has violated it, sanctions must be imposed.

Regarding this matter, according to Article 66 of the UUJN to request information from a notary regarding a report from a certain party, if the notary is summoned by the Police, Prosecutor's Office, or Judge, the agency that summons must request the approval of the Notary Honorary Council. Criminal liability against a notary can be demanded if these requirements are met together, which means that the notary meets the elements of committing a violation of the Criminal Code and violating the UUJN.

2. Legal Consequences of the Notary's Liability in Storing Minutes If There is Negligence in Storage, Such as a Damaged or Lost Deed

The loss of minutes of a deed as a notary protocol has legal consequences for both the Notary and the deed made by the notary himself, so the Notary must be responsible in carrying out his profession. According to Article 84 of the UUJN, actions caused by lack of discipline or violations of the implementation of the Notary's position can have fatal consequences for the actions he has carried out. Article 84 of the UUJN regulates: "actions of violation committed by a Notary against the provisions as referred to in Article 16 paragraph (1) letter i, Article 16 paragraph (1) letter k, Article 41, Article 44, Article 48, Article 49, Article 50, Article 51, or Article 52 which result in a deed only having evidentiary force as a private deed or a deed being null and void by law can be a reason for the party suffering losses to demand reimbursement of costs, damages, and interest from the Notary."

The Notary Law or other laws and regulations do not properly regulate the settlement of minutes of deeds that are lost or damaged and how to overcome or handle them. This is one of the weaknesses of UUJN which still does not take into account the possibility of loss, damage or loss caused by the notary's own negligence or caused by natural conditions, which results in the notary protocol being lost or damaged. If the notary is negligent in carrying out his duties and results in the loss or damage of the minutes of the deed, then he must be subject to sanctions for accountability, but if the cause of the loss or damage of the minutes of the deed is due to force majeure, then the notary concerned cannot

be held accountable. Because this is a violation that is committed unintentionally and beyond the authority of the notary concerned.

Sanctions that can be imposed on a Notary who violates the minutes of the deed as a Notarial Protocol, such as loss or damage due to the Notary's own error or negligence, can be as follows:

1. Administrative Sanctions

According to Ministerial Regulation Number 61 of 2016 concerning Procedures for Imposing Administrative Sanctions on Notaries, it states "Administrative sanctions are punishments imposed by authorized officials on Notaries for committing violations that are required or fulfilling provisions that are prohibited by laws and regulations. Article 16 paragraph (11) of the UUJN explains that administrative sanctions for notaries who commit violations can be subject to sanctions in the form of:

- a. Written warning;
- b. Temporary suspension;
- c. Honorable discharge; or
- d. Dishonorable discharge.

2. Civil Sanctions

As explained in Article 16 paragraph (1) letter b UUJN if a notary is negligent such as not keeping or losing the minutes of the deed he made, then he has violated the applicable provisions. Then if a notary violates an article, then the notary will be held liable for having committed an unlawful act. The beginning of an unlawful act comes from an act carried out by a perpetrator, which act violates applicable laws. The conditions that can be categorized as an unlawful act are the element of error from the perpetrator, so that they can be held legally responsible if they fulfill the existence of intent, negligence and no justification. In addition, there are several elements that contain unlawful acts as follows:¹⁵

- a. The existence of an act;
- b. The act is against the law;
- c. There was an error on the part of the perpetrator;
- d. There is a loss for the victim;
- e. There is a causal relationship between the act and the loss;

3. Criminal Sanctions

As the era develops and the activities and needs of society increase, it is very possible for acts to be created that are not accommodated in the Criminal Code (KUHP). The Criminal Code regulates the form of criminal acts that are general in nature. A notary who intentionally damages or removes the minutes of a deed is

¹⁵Muhammad Yusuf Ibrahim, 2018, Unlawful Acts Training, Abdurachman Saleh University, Situbindo, p. 7.

one of the provisions of a criminal act. However, in reality, in the Criminal Code there are no rules that specifically regulate how to apply to this problem.¹⁶The provisions for notaries who are negligent by damaging or removing the minutes of the deed are contained in Article 86 of Law Number 43 of 2009 concerning Archives. In addition, the act of removing the minutes of the deed is included in the category of an attempt to destroy state archives, which in Article 86 reads "Any person who intentionally destroys archives outside the correct procedure as referred to in Article 51 paragraph (2) shall be punished with imprisonment of a maximum of 10 (ten) years and a maximum fine of Rp. 500,000,000.00 (five hundred million rupiah).

4. Conclusion

Based on the results and discussion in the research above, the author draws the The responsibility of a notary in his/her obligation to keep the minutes of the deed, a notary as a public official has an obligation in carrying out his/her position, one of which is to keep the minutes of the deed. It is explained in Article 16 paragraph (1) letter b of the UUJN which states that a notary is required to make a deed in the form of minutes of the deed and keep it as a notary protocol which is a follow-up to the provisions in Article 15 paragraph (1) of the UUJN. The Notary Protocol is a state archive that must be stored and maintained properly by a Notary. A notary is required to keep the notary protocol not only the minutes of the deed made by and/or in his/her presence but also including other notary protocols such as notary protocols from other notaries whose notaries have retired, died, or other reasons as stated in Article 62 of the UUJN. According to Article 65 of the UUJN, a Notary must be responsible for every deed he/she makes, even though the Notary Protocol has been submitted and transferred to the party keeping the Notary Protocol. The legal consequences of the Notary's responsibility in storing the minutes if there is negligence in storing the minutes of the deed, such as a damaged or lost deed, namely administrative sanctions can be imposed. As stated in Article 16 paragraph (11) that the sanctions are in the form of: written warnings, temporary suspension, honorable dismissal and dishonorable dismissal. In addition, there are not only administrative sanctions, but there are also civil sanctions where the notary is considered to have committed an Unlawful Act because it harms the parties who have an interest in the deed. While in criminal sanctions, a notary who is negligent can be subject to Article 86 of Law 43 of 2009 concerning Archives because removing the minutes

¹⁶CST Kansil, 1989, Introduction to Indonesian Legal Science and System, Balai Pustaka, Jakarta, p. 264

of the deed is categorized as the destruction of state archives. The legal efforts that can be taken by a notary against the loss of the minutes of the deed are by making a loss report to the Police and the Notary Supervisory Board.

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